



United States Environmental Protection Agency, Region 2
Caribbean Environmental Protection Division
Multimedia Permits and Compliance Branch

**NPDES Compliance Evaluation Inspection
Municipal Separate Storm Sewer Systems**

Permittee

Municipality of Cabo Rojo
P. O. Box 1308
Cabo Rojo, Puerto Rico 00623
Telephone Number: (787) 851-1025

Statute / Regulations

Sections 301(a), 308(b) and 402(p) of the Clean Water Act
40 Code of Federal Regulations Part 122.26

NPDES ID Number: PRR040030

Inspection Date: July 17, 2024

Participating Personnel:

U.S. EPA: Yolianne Maclay, P.E.
Senior Environmental Engineer

Municipality of Cabo Rojo: Luis López
Planning Office Director

Edgar Seda
Permits Office Director

Inspection Report
Prepared by:

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8/26/2024

Date

**JOSE
RIVERA**

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Inspection Report
Approving Officer:

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Date

1. INTRODUCTION

This Inspection Report includes the findings and observations concerning the National Pollutant Discharge Elimination System (“NPDES”) Municipal Separate Storm Sewer Systems (MS4s) Inspection (the “Inspection”) conducted on July 17, 2024, by Ms. Yolianne Maclay, P.E., Senior Environmental Engineer (the “EPA Inspector”), of the United States Environmental Protection Agency (“EPA”), Region 2, Caribbean Environmental Protection Division (“CEPD”), at the Municipality of Cabo Rojo (“Permittee” or the “Municipality”).¹

The purpose of the Inspection was to evaluate Municipality’s compliance with the NPDES General Permit for Discharges from Small Municipal Separate Storm Sewer Systems (“MS4s”) in the Commonwealth of Puerto Rico (“MS4 Permit”). The Inspection was focused on two of the six Minimum Control Measures (“MCMs”) named “Public Education and Outreach” and “Construction Site Stormwater Runoff Control”, which conditions and requirements are found in Parts 2.4.2 and 2.4.5 of the MS4 Permit.

Upon showing of credentials to Mr. Luis López and Mr. Edgar Seda, the Inspection was conducted under the authority of Section 308(a) of the Clean Water Act (“CWA”). The Inspection consisted of an entry meeting to discuss the purpose of the Inspection, a document request to assess records for compliance review, and a closing meeting to discuss preliminary findings.

2. PARTICIPANTS

The following officials represented the Municipality (the “Municipal Officials”) during the Inspection:

Mr. Luis López
Planning Office Director
Tel.: 787-851-1025, ext.2235
Email: llopez@caborojopr.net

Mr. Edgar Seda
Planning Office Director
Tel.: 787-851-1025
Email: eseda@caborojopr.net

Mr. Jose Ramos²
Permits Office Inspector

¹ On July 16, 2024, the EPA Inspector had a telephone conversation with Mr. Luis López and sent an email to planificacion@caborojopr.net to provide notice of the Inspection. The email included a statement of the date and purpose of the Inspection.

² Mr. José Ramos only participated during the site visits walkthrough.

3. PERMIT INFORMATION

On November 6, 2006, EPA issued an MS4 Permit for regulated MS4s entities located in the Commonwealth of Puerto Rico (“2006 MS4 Permit”). After the expiration of the 2006 MS4 Permit, EPA issued an MS4 Permit (“2016 MS4 Permit”) for regulated MS4s entities located in Puerto Rico on June 13, 2016. The 2016 MS4 Permit replaced the 2006 MS4 Permit.

The 2016 MS4 Permit became effective on July 1, 2016, and expired on June 30, 2021. EPA administratively continued the 2016 MS4 General Permit for those MS4s entities that obtained coverage in accordance with the 40 C.F.R. § 122.6(a).³ Pursuant to 40 C.F.R. § 122.6(b), the 2016 MS4 Permit remains fully effective and enforceable.

On September 28, 2016, the Municipality submitted a Notice of Intent form (the “2016 NOI”) to EPA seeking coverage under the 2016 MS4 Permit. EPA granted coverage on December 16, 2016.

4. GENERAL INFORMATION ABOUT THE MUNICIPALITY

The Municipality of Cabo Rojo was created under the laws of the Commonwealth of Puerto Rico and is located in the southwest coastal region of the island neighboring with the municipalities of Lajas, and Hormigueros. The Municipality owns and operates a Small MS4s and has urbanized areas, as defined by the Census Bureau.⁴ The stormwater runoff generated at the urbanized areas is transported through a system of conveyances consisting of among other appurtenances, storm drains, pipes, ditches, roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, and storm drains.

5. ENTRY MEETING

The Inspection began at 9:15 a.m., with the presentation of credentials to Mr. Luis López and Mr. Edgar Seda. The EPA Inspector explained that the purpose of the Inspection was to evaluate Municipality’s compliance with the 2016 MS4 Permit; specifically, Municipality’s implementation of the Public Education and Outreach MCM and Construction Site Stormwater Runoff Control MCM. Then, the EPA Inspector proceeded to request documents that the Municipality is required to prepare and keep under the 2016 MS4 Permit.

Ms. López explained that the Municipality hired a contractor named ACE Environmental for the implementation of the MS4 Permit requirements. As of the date of the Inspection, the contract had expired, and the Municipality is in process of renewing it.

³ See 5 U.S.C. § 558(c).

⁴ Refer to the Census 2020 Urban Area Reference Map in the following link
<https://www.arcgis.com/home/webmap/viewer.html?url=https%3A%2F%2Ftigerweb.geo.census.gov%2Farcgis%2Frest%2Fservices%2FTIGERweb%2FUrban%2FMapServer&source=sd>

6. DOCUMENTS REVIEW

At the conclusion of the Entry Meeting, the Inspection activities turned to discussions about records. I requested records concerning the Stormwater Management Program (SWMP), Annual Reports (“ARs”) for calendar years 2019 to 2023, education program that includes goals based on stormwater issues, and Municipality’s program requiring operators of construction activities to select, install, implement, and maintain stormwater control measures that prevent illicit discharges. Below are the responses provided by Municipality’s Officials:

- A. Stormwater Management Program (SWMP)** – Section 2.3 of the 2016 MS4 Permit states that *“A SWMP shall be developed, implemented and enforced...”*.

The SWMP was available at the Municipal Planning Office during the Inspection. Through my review of records in EPA’s possession, I found that the Municipality submitted the SWMP to EPA on June 12, 2018.

- B. Annual Reports (ARs)** – Section 3.0 of the 2016 MS4 Permit requires that the permittee shall *“conduct a self-evaluation of its compliance with the terms and conditions of the MS4 General Permit and submit an annual report due thirty days after July 1”*.

I requested the Annual Reports from 2019 to 2023. The Municipality’s officials provided the requested ARs. The Municipality submitted to EPA the ARs on the following dates: August 5, 2019, September 2, 2020, August 16, 2021, September 1, 2022, and September 21, 2023.

- C. System Mapping** – Section 2.4.4.6 of the 2016 MS4 Permit requires that the permittee shall *“develop a revised and more detailed map than was required by the 2006 Small MS4 General Permit”*.

During the Inspection, Mr. López displayed an image of the MS4 map on his computer and indicated that the Municipality had completed approximately 90% of the map within the urbanized area of the Municipality. A review of the MS4 Map shared by Mr. López in the July 17, 2024 email⁵, showed that the map identifies the wards, water bodies, the catch basins, gutters, headwall, inlet, manholes, outfalls, superficial flow direction, channels, and pipes. The maps do not depict the interconnections with other MS4s and the catchment delineations.

D. Public Education and Outreach

- 1) **Comprehensive Stormwater Education and Outreach Program** - Section 2.4.2.1 of the 2016 MS4 Permit requires the permittee to *“develop, implement, and maintain a comprehensive stormwater education and outreach program to educate public employees, businesses, and*

⁵ On the same date of the Inspection, Mr. López sent the EPA Inspector a list of documents requested during the Inspection (the “July 17 Email”), which included an example of the MS4 Map.

the general public of hazards associated with the illegal discharges and improper disposal of waste and about the impact that stormwater discharges can have on local waterways, as well as the steps that the public can take to reduce pollutants in stormwater."

The SWMP includes the best management practices (BMPs) selected by the Municipality to implement this measure, which includes development and distribution of stormwater related materials, development of educational materials and presentations for schools and the community, MS4 Educational webpage, and an MS4 Public survey. However, no evidence of its implementation was provided.

- 2) **Educational materials** - Section 2.4.2.2 of the 2016 MS4 Permit requires the permittee to *"throughout the permit term, all permittees shall make the educational materials available to convey the program's message to the target audience(s) at least annually."*

The Municipality's officials showed images with information intended to educate about illegal dumping into catch basins, promoting the recycling of used oils, and promoting cleaning of vehicles over the lawn. The Municipality officials indicated that these materials had been distributed in community fairs. However, the Municipality officials could not indicate when and where these materials were distributed.

E. Construction Site Stormwater Runoff Control

Section 2.4.5 of the 2016 MS4 Permit requires the permittee to *"develop, implement and enforce a program requiring operators of small and large construction activities, to select, install, implement, and maintain stormwater control measures that prevent illicit discharges to the MEP."*

The 2016 MS4 Permit requires that the Construction Controls Program includes the following elements:

- 1) **Legal Authority** – Section 2.4.5.3 of the 2016 MS4 Permit requires an *"ordinance or other regulatory mechanism that requires the use of sediments and erosion control practices at construction sites"*.

Mr. López indicated that the Municipality has enacted an ordinance for this purpose and showed ordinance number 5, Serie 2016-2017. This Ordinance was adopted by the Municipality on July 13, 2016, and states that *"[T]o establish the program to regulate runoff discharges from construction projects and new developments or redevelopments in the post-construction stage and the application of the environmental charge for runoff"*

*management.*⁶ The ordinance authorizes issuance of a penalty of \$500.00 per day per violation. The Municipality officials did not provide records where this authority has been applied and penalties issued.

- 2) **Requirements for construction operators** - Section 2.4.5.3.b of the 2016 MS4 Permit requires the implementation of “sediment and erosion control program to the extent allowable by Commonwealth of Puerto Rico and federal law”.

The ordinance requires the owner of a construction project to develop an Operation and Maintenance Plan that must include design, installation, implementation, and maintenance of structural and non-structural control measures for stormwater management. The purpose of this plan is to control the volume and velocity of the runoff.

- 3) **Requirements to control waste** – Section 2.4.5.4.c of the 2016 MS4 Permit requires the implementation of requirements to control waste and prohibit discharges.

Mr. López indicated that the ordinance requires to implementation of the “Plan CES”, which among other, requires proper management of waste. A review of the ordinance states that the Municipality will enforce the Operation Plan to control and eliminate waste generated from construction projects.

- 4) **Construction Plan Review Procedures** – Section 2.4.5.3.d of the 2016 MS4 Permit requires that *“permittees must maintain and implement site plan review procedures that describe which plans will be reviewed as well as when an operator may begin construction.”*

The ordinance states that *“the developer, contractor, or person in charge of the construction project shall submit to the Office of Permits and Internal Regulations of the Municipality, prior to the start of the project, the Erosion Control and Pollution Prevention Plan (CES Plan) approved by the Environmental Quality Board, the SWPPP, and the NPDES Permit CGP⁷-2021”*.

The Municipality officials did not provide a written site plan review procedure. However, Mr. Seda explained that they have requested modifications to erosion and sediment controls to address stormwater concerns. He further indicated that, the Municipality requested a construction project to modify a retention pond plan, which were eventually modified.

⁶ In Spanish, as written in the Ordinance, “para establecer el programa para regular las descargas de escorrentías provenientes de proyectos de construcción y de nuevos desarrollos o redesarrollos en la etapa de post-construcción y la aplicación del cargo ambiental por concepto de manejo de escorrentías.”

⁷ CGP stands for the Construction General Permit of the EPA. Refer to the following link <https://www.epa.gov/npdes/2022-construction-general-permit-cgp>

- 5) **Procedures for pre-construction review** – Section 2.4.5.3.e of the 2016 MS4 Permit requires that *“permittees must maintain and implement pre-construction review procedures that describe which environmental requirements for the construction project are applicable, including the environmental permits, as well as to establish the responsible party (e.g., owner, developer, contractor, among others) of the construction project.”*

The Municipality officials did not provide any written procedures for site plan review.

- 6) **Construction Site Inspection and Enforcement** - Section 2.4.5.3.f of the 2016 MS4 Permit requires that *“permittees shall implement written procedures for inspecting large and small construction projects for sediment and erosion control measures”*.

Mr. López explained that inspections are performed in response to citizen complaints and stated that ACE Environmental conducts inspections of construction projects on behalf of the Municipality. The EPA Inspector reviewed an inspection report prepared by Keyla Pacheco of ACE Environmental on June 27, 2022, for the Cabo del Mar construction project, which was performed in response to citizen complaints about sediment in the waterbody.

- 7) **Information submitted by the public** – Section 2.4.5.3.g of the 2016 MS4 Permit requires to develop and implement *“procedures for receipt and consideration of information submitted by the public.”*

The Municipality officials indicated that complaints are received in three different ways:

- From telephone calls to the Permits Office,
- Online through a web page created by the Municipality to receive all types of citizen complaints (<https://querellavirtual.com/>), and
- Through the “Business Portal” system created by the “Departamento de Desarrollo Económico de Puerto Rico” created to receive citizen complaints about many subjects and for all the municipalities.

7. FIELD ACTIVITIES

After the completion of the records review, the Inspection focused on assessing how Municipality officials perform an inspection and assessment of a construction site. According to information provided by the Municipality officials at the time of the Inspection, there was one active private construction project and one inactive public construction project within Cabo Rojo’s jurisdiction.

As stated above, Mr. López indicated that inspections related to the MS4 Permit are performed by ACE Environmental. Because the contract has not been renewed, ACE Environmental representatives were not available to participate in the Inspection, including field activities. However, the Municipality officials indicated that the Municipality Permits Office has an inspector

named José Ramos, whose responsibilities include the oversight of permits issued by the Municipality. Mr. Ramos stated that he has not been trained on the MS4 Permit requirements or stormwater related matters.

On July 17, 2024, the EPA Inspector visited the two construction sites, “Urb. Mirador del Sol” and a Flooding Mitigation Infrastructure. Mr. Ramos joined the Inspection at approximately 12:40 p.m. and participated only in the field visits.

The primary purpose of the site visits was to assess Cabo Rojo’s oversight activities for construction sites. Because of their relevance to Cabo Rojo’s obligations under its MS4 permit, a summary of the EPA Inspector’s observations is presented below.

The EPA Inspector, Mr. Seda and Mr. Ramos conducted the walkthrough of both sites from 12:45 a.m. to 2:45 p.m. The EPA Inspector used a government-owned camera Nikon Camera (Model Coolpix P530, Series 30100016) to take photographs and document her observations. All photographs taken by the EPA Inspector were transferred unaltered to an EPA computer system database (C:\Users\YMaclay\OneDrive - Environmental Protection Agency (EPA)\Pictures\FY 2024\2024-07-17 MS4 Cabo Rojo). Referenced photographs are contained in Attachment I, Photograph Log.

Site Visit: “Urb. Mirador del Sol”

The Mirador del Sol Development is located at PR-102 Road, Km. 16.5, Cabo Rojo, Puerto Rico. The project consists of the construction of one-story residences and a recreational area. A portion of the project has been completed. Currently, constructing is undergoing at one street with houses on both sides.

Mr. Waldermar Valentín, from Karimar Construction, accompanied the Municipality officials and EPA Inspector during a walkthrough of the project. During the walkthrough, the EPA Inspector, Mr. Seda, and Mr. Ramos observed the following findings related to storm water runoff controls (or lack thereof) at the site and reported them to Mr. Valentín:

- The tire wash area was filled with water to its capacity. Refer to Picture 1 of Attachment I.
- No erosion control was observed at the entrance to the construction site, and sediment track-off was observed on the access road to the entrance of the construction site. Refer to Pictures 1 and 2 of Attachment I.
- Deteriorated, broken, and unstable silt fences were observed near outfall. Refer to Picture 5 of Attachment 1.
- A 55-gallon drum of hydraulic oil was observed exposed to stormwater without secondary containment. Refer to Pictures 5 and 6 of Attachment I.
- No perimeter sediment controls were installed downgradient of the disturbed area adjacent to the completed section of the construction site. Sediment was observed on the adjacent street within the project site. Refer to Picture 9 of Attachment I.

- Construction workers were observed dumping brown-colored water from an underground power line manhole into a gutter, which flowed into a storm sewer inlet. Refer to Pictures 7, 8, and 9 of Attachment I. Mr. Seda spoke to the construction workers and they stopped doing so.

At the end of the walkthrough Mr. Edgar Seda, Mr. Ramos, and Mr. Valentín agreed to meet the next day at the Municipal Permits Office to discuss the findings of the inspection and determine the appropriate actions to correct them.

Site Visit: “Flooding Mitigation Infrastructure”

The Flooding Mitigation Infrastructure consists in the construction of a retention basin located in the PR-301 Road, Pole Ojea Community, Cabo Rojo. The Municipality is the owner of the project. Construction activities involves soil disturbance of approximately 28 acres. Mr. Seda explained that the project was almost complete, but cracks began to appear around the pond and the construction was stopped until the cause of the cracks is investigated and corrected. The EPA Inspector and Municipality officials visited the retention basin from a bridge located in Jon the Dominguez Street (17°58'33.88"N, 67°10'41.59"W) exit near the Cabo Rojo National Wildlife Refuge.

During the site visit, the EPA Inspector observed that the water in the basin discharge structure was brown in color. No active earth movement activities were observed. Refer to Pictures 11 and 12 of Attachment I.

On the return trip from the field visit, the EPA Inspector observed an earth movement on PR-301, which Mr. Seda indicated it was the construction of a stormwater channel related to the retention basin project. The EPA Inspector requested a copy of the inspection reports prepared for the Flooding Mitigation Infrastructure construction project; specifically, for the “Canal de Desvío Aguas Pluviales Pole Ojea” in PR-301 Road⁸. During an off-site review of the information, the EPA Inspector found that the last three inspection reports were prepared by Mr. Jose L. Perez Berenguer to comply with the Department of Natural and Environmental Resources’s Erosion and Sediment Control program (known as “Plan CES”) for March 2024, April 2024, and May 2024, and were signed and certified on June 9, 2024, June 10, 2024, and June 11, 2024, respectively. The EPA Inspector did not receive any inspection reports prepared by the Municipality (or its consulting firm) to verify compliance with the Municipal Ordinance No. 5, Series 2016-2017, the Construction Controls Program required by the MS4 Permit, or the CGP.

⁸ On the same date of the Inspection, Mr. López sent the EPA Inspector, as per her request, the inspections performed at the Flooding Mitigation Infrastructure.

8. CLOSING MEETING

The closing meeting began at 3:30 p.m. and was held at the Municipality's Planning Office. Ms. López and Mr. Seda represented the Municipality. The EPA Inspector indicated the areas of potential non-compliance with the 2016 MS4 Permit, including the very limited implementation of the Public Education and Outreach Program. The EPA Inspector requested a copy of the following documents: the SWMP, the Municipal Ordinance, educational materials developed by the Municipality, construction inspection reports, example of the MS4 map, and the Flooding Mitigation Infrastructure construction project inspection reports.⁹

In addition, the EPA Inspector explained that an inspection report will be prepared including findings of the Inspection and will request the Municipality to respond and submit a plan of action, including milestones, to address the findings of the Inspection.

End of Report

Attachment I – Photo Documentation

⁹ On July 17, 2024, the same date of the Inspection, Mr. López sent EPA Inspector an email with the requested information.

Municipality of Cabo Rojo
NPDES ID Number: PRR040030
MS4 Inspection Report
Page 11 of 11