



EPA REGION 2
CARIBBEAN ENVIRONMENTAL PROTECTION DIVISION

October 28, 2024

Orlando R. Mendez
DBR Dorado Owner, LLC



Re: Notice of Potential Clean Water Act Violations at parcel number 037-000-001-07-000
Dorado, Puerto Rico

Dear Mr. Mendez:

This letter concerns the U.S. Environmental Protection Agency, Region 2's ("EPA") investigation of the placement of unauthorized fill material within the wetlands owned and maintained by DBR Dorado Owner, LLC ("DBR") at a roughly 499-acre property located on tax parcel number 037-000-001-07-000, in the Municipality of Dorado, Puerto Rico (the "Site"). Lead enforcement agency status in this matter, which was previously held by the U.S. Army Corps of Engineers (the "Corps"), was officially requested by the EPA on June 12, 2024, in accordance with a 1989 Memorandum of Agreement regarding Federal enforcement of the Section 404 program of the Clean Water Act ("CWA" or "the Act").

The purpose of the CWA is "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters." 33 U.S.C. § 1251(a). Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants into waters of the United States except as in compliance with Sections 301, 302, 306, 307, 318, 402 and 404 of the Act, 33 U.S.C. §§ 1311, 1312, 1316, 1317, 1328, 1342, 1344. Section 404 of the Act, 33 U.S.C. § 1344, authorizes the Secretary of the Army to authorize discharges of dredged and fill material into navigable waters of the United States. The discharge of pollutants, consisting of dredged and fill material, into navigable waters of the United States without authorization from the Secretary of the Army as provided by Section 404 of the Act, 33 U.S.C. § 1344, from a point source, is unlawful under Section 301(a) of the Act, 33 U.S.C. § 1311(a).

EPA's investigation of the Site has included the following: a review of publicly available aerial imagery of the Site; a June 13, 2024 Site inspection; and a review of documents associated with Corps file SAJ-2019-03898. Corps file SAJ-2019-03898 includes, but is not limited to: a Memorandum for the Record ("MFR") for a January 29, 2020 Site inspection; an April 2024 Site inspection MFR conducted in relation to DBR's 2021 Approved Jurisdictional Determination application and October 23, 2023 supplemental report; and a Notice of Violation issued on January 29, 2020 (rescinded on July 31, 2020), to DBR alleging the presence of unauthorized fill material within waters of the United States ("WOTUS"). All of this is collectively referred to as "EPA's Investigation".

Based on EPA's Investigation to date, we are concerned that there have been unauthorized filling activities on the Site in wetland areas that meet the definition of WOTUS. During EPA's June 13, 2024 inspection, EPA observed evidence of earth moving activities, including vegetative clearing and the discharge of fill material. EPA also observed potential areas of jurisdictional wetlands and streams that may have been subject to unauthorized filling activities on the Site.

You are advised to immediately stop the placement of any additional fill into WOTUS until such time as you have either obtained a determination that the location is not WOTUS or you have obtained a permit for its placement from the Corps.

Opportunity to Confer

Information currently available to EPA suggests that DBR may be in violation of the requirement under Section 404 of the CWA to obtain a permit prior to conducting earth moving activity at the Site and potentially other provisions of the CWA. By this letter, EPA is extending to you an opportunity to advise EPA, via telephone or video conference, about any further information that EPA should consider with respect to potential violations.

Under the CWA, the United States can unilaterally seek compliance and penalties to address violations through a civil action in federal district court, or through administrative actions that include penalty complaints and orders for compliance. However, as a courtesy, EPA is providing DBR with the opportunity to demonstrate that DBR was in compliance with the CWA at the time of EPA's Inspection, or to confer about a negotiated resolution for any violations. Thus, EPA is inviting DBR to commence settlement discussions with EPA.

If DBR is interested in resolving this matter prior to the filing of a complaint, as described above, DBR must respond within **thirty (30) days** of receipt of this letter. EPA is willing to speak with representatives of DBR to further discuss the potential violations, potential actions, potential penalties and settlement. Any negotiated resolution will be subject to final approval by the Regional Administrator for EPA Region 2 or her designee.

Should DBR fail to provide information that would prove that the Site was in compliance at the time of the Inspection or should DBR and EPA fail to enter into a negotiated settlement in this matter, EPA reserves the right to unilaterally pursue an enforcement action to address the potential violations described in this letter without further advance notice to you. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and 40 C.F.R Part 19 (Adjustment of Civil Monetary Penalties for Inflation), EPA may seek administrative penalties of up to \$333,552. If this matter is not resolved administratively, higher penalties and/or injunctive relief may also be sought by EPA through referral to the U.S. Department of Justice for judicial action. Additionally, persons who knowingly violate certain provisions of the CWA may be subject to criminal prosecution pursuant to 33 U.S.C. § 1319(c).

Please provide your written response via email and any questions and communications pertaining to the matters addressed in this letter to the attorney assigned to represent EPA:

Lauren Fischer, Esq.
U.S. Environmental Protection Agency, Region 2
Office of Regional Counsel
(212) 637-3231
fischer.lauren@epa.gov

If, during the course of discussing this matter with EPA, you intend to submit documents or information to EPA, please be advised that you may assert a claim of business confidentiality covering any part or all of the information you submit to EPA in the manner described in 40 C.F.R. § 2.203(b). Information subject to a claim of business confidentiality will be made available to the public only in accordance with 40 C.F.R. Part 2, Subpart B. Unless a claim of business confidentiality is asserted at the time the information is submitted to EPA, EPA may make this information available to the public upon request without further notice to you.

You must also include as part of any submission of information or documentation to EPA relating to this matter the following certification signed and dated by a responsible corporate officer of your corporation:

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this response to the Notice of Potential Violations and that, based on my inquiry of those individuals immediately responsible for obtaining or compiling the information, I believe that the submitted information is true, accurate, and complete. I recognize that there are significant penalties for submitting false and/or misleading information, including the possibility of fine and/or imprisonment.

Signature: _____
Printed Name:

This letter is not subject to review by the Office of Management and Budget pursuant to the Paperwork Reduction Act, 44 U.S.C. §§ 3501-3520.

EPA has not determined whether DBR is a “small business” under the Small Business Regulatory Enforcement and Fairness Act (“SBREFA”). Please see the Small Business Information Sheet attached as an enclosure. The enclosed sheet provides information on (1) contacting the SBREFA Ombudsman to comment on Federal enforcement and compliance activities and (2) compliance assistance. As noted in the enclosure, any decision to participate in such program or to seek compliance assistance does not relieve DBR of its obligation to respond in a timely manner to an EPA information request or other enforcement action and does not create any new rights or defenses under law.

Sincerely,

HECTOR

VELEZ-CRUZ

Digitally signed by
HECTOR VELEZ-CRUZ

Date: 2024.10.28
12:33:58 -04'00'

Carmen R. Guerrero-Pérez

Director

Caribbean Environmental Protection Division

Enclosure