

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

In the Matter of:

TRANSPORTE RODRIGUEZ ASFALTO, INC.

P. O. Box 1239

Hormigueros, Puerto Rico 00660

FACILITY

CONSTRUCTION OF TRA RECYCLING PLANT

PR-419 Road, Km. 11.05

Intersection with Road PR-2, Km. 139.7

Cerro Gordo Ward, Aguada, Puerto Rico

NPDES ID: PRR1000IX

Proceeding pursuant to Section 309(a) of the Clean Water Act, 33 U.S.C. § 1319(a).

**ADMINISTRATIVE
ORDER ON CONSENT**

**DOCKET NUMBER
CWA-02-2024-3112**

I. PRELIMINARY STATEMENT

1. This Administrative Order on Consent ("Order") is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") pursuant to Section 309(a) of the Clean Water Act ("CWA" or the "Act"), 33 U.S.C. § 1319(a).
2. The Administrator of EPA has delegated the authority to take this action to the Regional Administrator of Region 2, who in turn, has delegated such authority to the Director of the Caribbean Environmental Protection Division ("CEPD").

II. LEGAL AUTHORITY

3. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), makes it unlawful for any person to discharge any pollutant from a point source to waters of the United States, except, among other things, with the authorization of, and in compliance with, a National Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.
4. Section 402 of the CWA, 33 U.S.C. § 1342, authorizes the Administrator of EPA to issue an NPDES permit for the discharge of any pollutant, or combination of pollutants, subject to certain requirements of the CWA and conditions which the Administrator determines are necessary.
5. EPA is the agency within the Commonwealth of Puerto Rico with authority to administer the NPDES program. EPA maintains enforcement authority for violations of the CWA and its implementing regulations pursuant to Section 309 of the CWA, 33 U.S.C. § 1319.

6. The Administrator of EPA has promulgated regulations, 40 C.F.R. §§ 122.26(a)(1)(ii) and 122.26(b)(14), which require operators to obtain a NPDES permit for storm water discharges associated with industrial activity. The regulations at 40 C.F.R. § 122.26(b)(14)(x) define construction activities, including clearing, grading and excavation, except operations that result in the disturbance of less than five acres of total land area. The term construction activity also includes the disturbance of less than five acres of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb five acres or more.
7. The Administrator of EPA promulgated the “Construction and Development Point Source Category” regulations applicable to discharges associated with construction activity required to obtain NPDES permit coverage pursuant to 40 C.F.R. §§ 122.26(b)(14)(x) and (b)(15). 40 C.F.R. § 450.
8. On January 18, 2022, pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, EPA issued the National Pollutant Discharge Elimination System Construction General Permit for Stormwater Discharges from Construction Activities (“2022 CGP” or “CGP”). The 2022 CGP became effective on February 17, 2022, and expires on February 16, 2027. 87 Fed. Reg. 3,522 (January 24, 2022).
9. The 2022 CGP established requirements and conditions, including among others, the development of a Storm Water Pollution Prevention Plan (“SWPPP”); submittal of electronic Notice of Intent (“eNOI”) forms; design, installation, and maintenance of storm water controls (i.e., “Best Management Practices”) and pollution prevention controls; performance and documentation of inspections; and implementation and documentation of corrective actions.
10. Section 309(a) of the CWA, 33 U.S.C. § 1319(a), authorizes the Administrator to issue an order requiring compliance or to commence a civil action when any person is found to be in violation of Sections 301 or 308 of the CWA, 33 U.S.C. §§ 1311 or 1318, or in violation of any permit condition or limitation in a permit issued under Section 402 of the CWA, 33 U.S.C. § 1342.

III. FINDINGS OF FACT

11. Transporte Rodríguez Asfalto, Inc. (“TRA”) is a corporation organized under the laws of the Commonwealth of Puerto Rico.¹
12. TRA is the lessee of two (2) contiguous parcels of land located at PR-419 Road, Km. 11.05 (Intersection with PR-2 Road, Km. 139.7), Cerro Gordo Ward, Aguada, Puerto Rico (the “Site”), by virtue of a private Lease Contract, dated October 25, 2021.² The Site has an access entrance from PR-419 Road located in Aguada, Puerto Rico. The Site has an area of approximately 13 acres.

¹ Mr. Héctor Rodríguez Valle is the president of TRA.

² Héctor Rodríguez Valle and Sonia N. Rivera López are the owners of the Site.

13. TRA is the "owner and operator" of a construction project at the Site known as "TRA Recycling Plant Construction Project" (the "Project" or the "Construction Project").
14. The construction activities at the Site concern the establishment of a used tire recycling plant. The construction activities at the Site include among other things, earth movement activities (i.e., grading); construction of an entrance and an internal road; construction of stormwater runoff collection, conveyance, and discharge systems ("SW Systems"); construction of the recycling plant building; and construction of vehicles and trucks parking lots. TRA also uses areas of the Site for supporting construction activities.
15. Pursuant to Section 308(a) of the CWA, 33 U.S.C. 1318(a), on September 13, 2023, an EPA official performed a NPDES Stormwater Reconnaissance Inspection (the "September 2023 Inspection") of the Site. The findings of the September 2023 Inspection were documented in the NPDES Stormwater Inspection Report, dated September 18, 2023 (the "September 2023 Inspection Report").
16. On September 21, 2023, EPA issued an Administrative Compliance Order ("2023 Order"), Docket Number CWA-02-2023-3105, against Héctor Rodríguez Valle, Sonia N. Rivera Lopez, and TRA (hereinafter, the "2023 Order Respondents"), pursuant to Section 309(a) of the CWA, U.S.C. § 1319(a). A copy of the September 2023 Inspection Report was included with the 2023 Order.
17. The 2023 Order required the 2023 Order Respondents to among other things, provide soil stabilization, erosion controls and flow management until their completion (paragraph 61); submit a Plan of Action (paragraph 68);³ submit a response to the September 2023 Inspection Report (paragraph 71); to prepare and submit a SWPPP and eNOI for the Project in the event that the 2023 Order Respondents elects to continue conducting construction activities at the Site (paragraph 72); once permit coverage is obtained, immediately comply with all applicable regulatory requirements and the 2022 CGP, in addition to the requirements of the 2023 Order (paragraph 73); and submit Bi-Weekly Progress Reports ("BPR") until Termination of the 2023 Order (paragraph 74).
18. The 2023 Order Respondents acknowledged receipt of the 2023 Order on September 25, 2023.
19. By letter dated October 14, 2023, TRA submitted a BPR (the "October 2023 BPR") corresponding to the period between September 25 and October 15, 2023. TRA reported that among other things, it had begun to install control measures, such as perimeter controls and diversion of stormwater runoff. This October 2023 BPR included pictures and cost estimates for soil stabilization, erosion controls and flow management.

³ Per paragraph 68 of the 2023 Order, the tasks in the POA shall be undertaken as quickly as possible but in no case the completion date of all required activities shall be beyond sixty (60) calendar days of receipt of this Order by Email. EPA sent the 2023 Order by Email on September 21, 2024.

20. Pursuant to Section 308(a) of the CWA, 33 U.S.C. 1318(a), on October 18, 2023, an EPA official performed an NPDES Stormwater Inspection (the "October 2023 Inspection") of the Site. The findings of the October 2023 Inspection were documented in the NPDES Stormwater Inspection Report, dated November 16, 2023 (the "November 2023 Inspection Report").
21. By letter dated October 25, 2023, TRA submitted to EPA a Plan of Action (the "October 2023 PAO") required under paragraph 66 of the 2023 Order. The October 2023 PAO included among others, a description of erosion and sediment controls for the Site; performance of inspections and corrective actions; and a schedule describing each control measure, proposed due date and completion date. Except for the installation of soil stabilization controls at the east and southeast sides slopes and upper west side slopes, for which proposed due dates were not included, the controls measures listed were to be installed by November 24, 2023, at the latest.
22. By letter dated November 9, 2023, TRA submitted to EPA its response to the September 2023 Inspection Report. TRA placed emphasis on its ongoing activities at the Site for the implementation of soil stabilization on slopes and control measures for flow diversion, velocity dissipation and sediment retention.
23. On November 16, 2023, representatives from EPA and TRA met at the EPA office in Guaynabo, Puerto Rico, to discuss among others, the October 2023 BPR, the October 2023 PAO and the findings of the October 2023 Inspection. EPA requested, and TRA agreed, to submit a revised PAO because the October PAO did not include certain corrective actions, such as stormwater run-on into the Site, on-site stormwater runoff management, and EPA's concerns of the delays in implementing erosion and sediments which would not be met by the established due date (November 24, 2023).
24. By electronic mail ("Email") dated November 20, 2023, EPA notified a copy of the November 2023 Inspection Report to TRA.
25. Between November 30, 2023, and January 11, 2024, TRA submitted three BPRs corresponding to the period between October 31, 2023, and November 20, 2023; December 1, 2023, and December 15, 2023; and December 16, 2023, and December 30, 2023. These three BPRs included pictures and cost estimates for soil stabilization, erosion controls and flow management. These three BPRs also included updates on implementation of erosion and sediments controls and soil stabilizations that were on-going beyond the requirements of the 2023 Order and due date in the 2023 PAO.
26. On February 15, 2024, EPA issued an Administrative Complaint, Docket Number CWA-02-2024-3451 ("APO"), against Héctor Rodríguez Valle and TRA under Section 309(g) of the CWA, 33 U.S.C. § 1319(g), for alleged violations of Sections 301(a) and 402(p) of CWA concerning storm water discharges associated with the construction activities at the Site.

27. On February 16, 2024, TRA submitted an eNOI for the Project under the 2022 CGP. EPA assigned the NPDES identification number PRR1000IX to the eNOI (the "Project eNOI").
28. On March 1, 2024, EPA granted TRA coverage for the Project under the 2022 CGP.
29. By letter dated February 16, 2024, TRA submitted a BPR corresponding to the period between January 31, 2024, and February 15, 2024 (the "February 2024 BPR"). TRA included a copy of a SWPPP prepared for the Project, dated February 14, 2024 (the "February 2024 SWPPP"); and reported among other things, installation of soil blankets on certain slopes located on the west side of the Site.
30. On the February 16, 2024 BPR, the pictures of certain areas of the Site showed lack of soil stabilization and stormwater runoff management. TRA continued to report delays on implementation of corrective measures, such as erosion and sediments controls and soil stabilizations, that were on-going beyond the requirements of the 2023 Order and due date in the 2023 PAO.
31. On April 2, 2024, representatives from EPA, TRA and Héctor Rodríguez Valle met at the EPA office in Guaynabo, Puerto Rico (the "April 2024 Meeting"), to discuss the APO and the 2023 Order. During the April 2024 Meeting, the parties agreed to meet again to discuss among other things, pending actions under the 2023 Order toward termination of the 2023 Order.
32. Between March 8, 2024, and April 15, 2024, TRA submitted three BPRs corresponding to the period between February 16, 2024, and February 29, 2024; March 1, 2024, and March 15, 2024; March 16, 2023, and March 31, 2024. These reports included pictures and cost estimates for soil stabilization, erosion controls and flow management. These three BPRs also included updates on implementation of erosion and sediments controls and soil stabilizations that were on-going beyond the requirements of the 2023 Order and due date in the 2023 PAO.
33. By Email dated April 12, 2024, EPA offered TRA and Héctor Rodríguez Valle an opportunity to meet and included a detailed list of outstanding compliance issues at the Site (the "April 2024 Email").
34. By letter dated April 17, 2024, an EPA official sent to TRA comments on EPA's review of the February 2024 SWPPP prepared for the Project (the "April 2024 Letter").
35. On April 30, 2024, EPA, TRA and Héctor Rodríguez Valle met at the EPA office in Guaynabo, Puerto Rico (the "April 2024 Meeting"), to discuss the April 2024 Email and the April 2024 Letter, and alternatives to address pending non-compliance matters concerning the 2022 CGP and 2023 Order. EPA also requested TRA to submit of revised POA for the Project, including timetables, and a response to the April 2024 Letter.

36. Between April 30, 2024, and April 15, 2024, TRA submitted two BPRs corresponding to the period between April 1, 2024, and April 16, 2024; and April 16, 2024, and April 30, 2024. These two BPRs included pictures and cost estimates for soil stabilization, erosion controls and flow management. These two BPRs also included updates on implementation of erosion and sediments controls and soil stabilizations that were on-going beyond the requirements of the 2023 Order and due date in the 2023 PAO.
37. On May 21, 2024, TRA submitted to EPA a revised SWPPP for the Project, dated May 21, 2024.
38. Between May 15, 2024, and September 3, 2024, TRA has submitted BPRs corresponding to the applicable reporting periods. These BPRs included pictures and cost estimates for soil stabilization, erosion controls and flow management. The BPRs also included updates on implementation of erosion and sediments controls and soil stabilizations that were on-going beyond the requirements of the 2023 Order and due date in the 2023 POA.
39. On June 19, 2024, TRA submitted to EPA a proposed Compliance Plan ("CP") for the Project.
40. On June 26, 2024, representatives from TRA and EPA met to discuss, among other things, the draft CP, actions required for compliance with the 2022 CGP, and timetables for the implementation of corrective actions at the Project.
41. On July 11, 2024, representatives from TRA and EPA met at the Site to discuss, among other things, actions required for compliance with the 2022 CGP and for the implementation of the proposed CP, and timetables therefor.

IV. CONCLUSIONS OF LAW AND FINDINGS OF VIOLATIONS

42. TRA is a "person" pursuant Section 502(5) of the CWA, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.
43. The Project is a "construction activity", as defined in 40 C.F.R. § 122.26(b)(14)(x), respectively.
44. The Site is a "point source" and a "facility" pursuant to Section 502(14) of the Act, 33 U.S.C. § 1362(14), and 40 C.F.R. § 122.2, respectively.
45. At all relevant times to this Order, TRA was and is the owner and operator of the construction activities at the Site, and had and continues to have operational control over construction plans, site drawings and specifications, stormwater conveyances, and control designs, including the ability to make modifications to such at the Project, and had and continues to have day-to-day control of activities at the Site that were and are necessary to ensure compliance with the 2022 CGP.
46. The outfalls at the Site are "point sources" within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14), and 40 C.F.R. § 122.2.

47. Sediments from construction activities at the Site are “pollutants”, as defined under Section 502(6) of the Act, 33 U.S.C. § 1362(6), and 40 C.F.R. § 122.2.
48. TRA discharges stormwater containing “pollutants” within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(c), and 40 C.F.R. § 122.2, from the Site into the Cañas River.
49. The Cañas River is a water of the United States pursuant to Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and 40 C.F.R. § 122.2.
50. TRA is therefore subject to the provisions of the CWA, 33 U.S.C. § 1251, *et seq.*, and the applicable NPDES regulations found at 40 C.F.R. §§ 122 and 450.
51. Based upon the above, TRA failed to comply with Sections 301, 309 and 402 of the CWA, 33 U.S.C. §§ 1311, 1319 and 1342, by not complying with certain ordered provisions of the 2023 Order, and conditions and requirements of the 2022 CGP at the Site.

V. CONSENT

52. TRA and EPA have negotiated this Order in good faith, which is fair, reasonable, and consistent with the goals of the CWA.
53. TRA, without admitting liability for the findings of violations asserted in this Order or the factual allegations set forth therein, admits that EPA has authority under Section 309(a) of the CWA, 33 U.S.C. § 1319(a), to issue this Order and agrees to be bound by this Order.
54. TRA waives any rights to contest the allegations and its right to appeal this Order.
55. The Ordered Provisions (Part VI) of this Order shall be binding upon TRA, its officers, directors, agents, servants, authorized representatives and successors and assigns.
56. The Ordered Provisions (Part VI) of this Order supersede the Ordered Provisions in Part IV of the 2023 Order, which shall be deemed as closed-out upon the Effective Date of this Order.

VI. ORDERED PROVISIONS

57. In consideration of the Legal Authority, Findings of Fact, and Conclusions of Law and Findings of Violations, and pursuant to the authority in Section 309 of the CWA, 33 U.S.C. § 1319, EPA has determined that compliance with the following requirements is reasonable, and TRA so agrees.

EPA HEREBY ORDERS AND TRA HEREBY CONSENTS THAT:⁴

58. **Except as otherwise indicated in this Order**, TRA shall comply with the CWA, its implementing regulations and the 2022 CGP, including performance and documentation of site inspections and corrective actions in accordance with Parts 4 and 5 of the 2022 CGP.

RAIN GAUGE & RAIN DATA LOG

59. **Until Termination of this Order**, TRA shall maintain a rain gauge and a daily rain gauge data log at the Site.

CHANGE eNOI

60. **No later than seven (7) calendars days after the Effective Date of this Order**, TRA shall submit a complete and accurate "Change NOI" thru "Central Data Exchange" ("CDX") tool "Net" pursuant to the 2022 CGP.⁵ The "Change NOI" shall identify all outfalls and areas at the Site where construction activities and supporting construction activities are conducted and will be conducted until completion of the construction activities at the Site. The Change NOI shall include the new estimated completion date for the Project.

STUDY

61. **No later than forty-five (45) calendars days after the Effective Date of this Order**, TRA shall conduct and submit a stormwater runoff hydrology/hydraulic study ("H/H Study") covering all areas from which storm water runoff is discharged or may be discharged from the Site, to determine the quantity of storm water runoff that may reach the Cañas River. The H/H Study shall be based on June 28, 2006 of Precipitation-Frequency Atlas of the United States (Volume 3, Version 4.0: Puerto Rico and the U.S. Virgin Islands)⁶ and the Puerto Rico Department of Natural and Environmental Resource Guide for Developing Hydrology-Hydraulic Studies (in Spanish, Guías para la Elaboración de Estudios Hidrológicos-Hidráulicos), dated June 15, 2016⁷, for 24-hour storm events with a return period of at least two (2) years and ten (10) years.

STORMWATER POLLUTION PREVENTION PLAN

62. **No later than forty-five (45) calendars days after the Effective Date of this Order**, TRA shall submit an amended SWPPP for the Site. The amendments to the SWPPP shall include at a minimum, the following:

⁴ Refer to the Site Map in Attachment 1 of this Order for references and locations of slopes, areas, storm drains / catch basins and other Site areas.

⁵ <https://cdx.epa.gov/>

⁶ https://hdsc.nws.noaa.gov/pub/hdsc/data/pr/na14_pr_grid_metadata.html#1.

⁷ <https://www.jp.pr.gov/wp-content/uploads/2021/06/GUIAS-PARA-LA-ELABORACION-DE-ESTUDIOS-HIDROLOGICOS-HIDRAULICOS.pdf>.

- a. detailed description of all current and future construction activities associated with the Project;
- b. updated timetable for the development of the Project;
- c. description of the erosion and sediment controls, and flow management controls under paragraphs 63 (Corrective Actions), below;
- d. amended Site Map according to Part 7.2.4 of the 2022 CGP, including locations of structures (i.e., outfalls) and other impervious surfaces at the Site upon completion of the Project;
- e. updated timetable for the implementation of the corrective actions under paragraph 66 (Corrective Actions), below;
- f. a log form for documenting implementation of dust controls;
- g. amended Site inspection documentation form, which shall list and identify all areas and associated erosion and sediment controls, outfalls, SW Systems, construction support activities and pollution prevention; and
- h. any other required modification resulting from any required corrective action resulting from Site inspections findings under Parts 4.5 and 4.6 (Site Inspections), 5.1 (Conditions Triggering Corrective Action), and 7.4 (SWPPP Modification) of the 2022 CGP.

SW SYSTEMS

63. **No later than thirty (30) calendar days after the Effective Date of this Order**, TRA shall submit the SW Systems conceptual design drawings ("SW Conceptual Design") for the Site. The SW Conceptual Design shall indicate whether each SW System is temporary or final, and shall identify, locate, and describe the SW Systems at the Site.⁸ The SW Conceptual Design shall address at a minimum, storm water run-on and runoff at the following areas of the Site:

- a. storm water run-on flowing through Slope 3;
- b. storm water run-on flowing through Slope 4 towards Storm Drain Inlets #6 and #7;
- c. storm water run-on flowing through Slope 5 towards Storm Drain Inlets #1, #2, #3, and #4;

⁸ Refer to the Site Map included as Attachment 1 of this Order showing the areas and slopes subject to this paragraph 63.

- d. storm water run-off flowing downhill through Slope 1 into Cañas River;
 - e. storm water run-on flowing through Slope 2 towards the area where Outfall 001 has been established; and
 - f. other storm water run-off flowing towards PR-2 Road and Cañas River.
64. The SW Conceptual Design shall include a flow velocity dissipation device⁹ for each outfall identified in the Change eNOI and amended SWPPP (per paragraphs 60 and 62, above) to minimize erosion and scouring along each discharge flow path.
65. **No later than thirty (30) calendar days after the Effective Date of this Order**, TRA shall submit a schedule for final installation and placement into operation (“SW Installation Schedule”) of the SW Systems according to the SW Conceptual Design.
66. The SW Installation Schedule shall not exceed one-hundred twenty (120) days after the Effective Date of this Order.

CORRECTIVE ACTIONS

67. TRA shall implement the following corrective actions according to the descriptions and timetables hereinbelow:

Maintenance and Protection of Storm Drain Inlets

- a. **No later than seven (7) calendar days after the Effective Date of this Order**, clean all storm drain inlets according to Part 2.1.4 (Maintenance and Effectiveness) of the 2022 CGP.
- b. **No later than seven (7) calendar days after the Effective Date of this Order**, replace protection measures at all storm drain inlets according to Parts 2.1.2 (Good Engineering Practices) and 2.2.10 (Protection of Inlets) of the 2022 CGP.

Erosion and Sediment Controls, and Velocity Dissipation

- c. **No later than seven (7) calendar days after the Effective Date of this Order**, replace protection measures along the lower areas near Outfall 001 according to Parts 2.1.2 (Good Engineering Practices) and 2.2.10 (Protection of Inlets) of the 2022 CGP.
- d. **No later than seven (7) calendar days after the Effective Date of this Order**, install flow velocity dissipation device at Outfall 001, to minimize erosion and scouring along its

⁹ Refer to Part 2.2.12.e of the 2022 CGP.

discharge flow path.

- e. **No later than fourteen (14) calendar days after the Effective Date of this Order**, install a berm (e.g., using compacted reclaimed asphalt pavement) along the upper perimeter of the slope formerly used as an access to the Site located in Area 3, to eliminate a storm water runoff discharge flowing into the municipal separate storm sewer system associated with PR-2 Road.
- f. **No later than sixty (60) calendar days after the Effective Date of this Order**, install a berm (e.g., using compacted reclaimed asphalt pavement) along the upper perimeter of Slope 1 up to Outfall 001, to avoid any storm water runoff from flowing downhill. Before installation of the berm, TRA shall inspect the upper perimeter of the Slope 1 up to Outfall 001 and provide final soil stabilization to such perimeter according to Part 2.2.14. of the 2022 CGP.

Installation of Temporary and Final SW Systems

- g. **No later than sixty (60) calendar days after the Effective Date of this Order**, complete the installation of the temporary SW System for the storm water run-on flowing from Slope 4 into Storm Drain Inlet #6, and Storm Drain Inlet #7.
- h. **No later than ninety (90) calendar days after the Effective Date of this Order**, install the SW System to be located between the upper part of the pre-cast retaining wall identified in Area 6 and the bottom of Slope 3, to collect and convey storm water runoff away from exposed soils at the Site.
- i. **No later than one-hundred twenty (120) calendar days after the Effective Date of this Order**, install the SW System for the storm water runoff flowing through Slope 1 into Cañas River and any other SW Systems included in the SW Conceptual Design.

Temporary or Final Soil Stabilization

- j. **No later than thirty (30) calendar days after the Effective Date of this Order**, complete erosion control blanket installation at Slope 5 along with vegetation coverage, such as hydroseeding and/or sod.
- k. **No later than thirty (30) calendar days after the Effective Date of this Order**, complete soil stabilization (e.g., compacted reclaimed asphalt pavement, crushed stone, or combination of both) at Area 1, Area 2, and Area 5.
- l. **No later than ninety (90) calendar days after the Effective Date of this Order**, complete temporary or final soil stabilization at all other areas of the Site.

- m. TRA shall include vegetation coverage (e.g., hydroseeding, sod) to those areas where erosion control blankets will be installed for final soil stabilization.

REPORTING REQUIREMENTS

68. **Until Termination of this Order**, TRA shall prepare and submit bimonthly Compliance Progress Reports ("CPR") describing the current status and progress of the actions that TRA has taken to comply with the provisions of this Order. TRA shall:

- a. submit each CPR on the fifteenth (15th) day of the month following the two-month reporting period; provided that the first CPR covering the period from the Effective Date of this Order until October 31, 2024, shall be submitted on November 15, 2024.
- b. indicate in the CPR, at a minimum, the following:
 - 1) the specific activities undertaken by TRA relating to the completion of work required under this Order, including, but not limited to, the expected date for "substantial completion," defined as the date when the activity is sufficiently completed such that it can be used to accomplish the purposes for which it was intended, and identification of those requirements which have been accomplished since the previous CPR, including the dates of substantial completion of any of the remedial actions, capital improvements, or any other actions identified in this Order;
 - 2) any impediments TRA encountered in meeting the compliance schedules, the steps that TRA has taken to overcome such impediments, and the steps that Respondent TRA will take to overcome such impediments, including the anticipated dates by which such steps will be taken; and
 - 3) a copy of the daily rain gauge log pursuant to Paragraph 59 of this Order, above;
 - 4) a copy of the Site grading and stabilization activities documentation pursuant to the Part 7.2.3 of the 2022 CGP;
 - 5) a copy of all site inspections documentation prepared for the Project pursuant to Part 4.7 of the 2022 CGP;
 - 6) any modifications to the SW Conceptual Design and SW Systems; and
 - 7) a copy of all corrective actions logs pursuant to Part 5.4 of the 2022 CGP.

If TRA has already submitted a deliverable to EPA, TRA shall reference that deliverable in the CPR and its date of submission, instead of submitting another copy of that deliverable to EPA.

VII. GENERAL PROVISIONS

69. Any technical questions concerning this Order should be directed to Mr. José A. Rivera, Lead Environmental Engineer, Clean Water Act Team, Multimedia Permits and Compliance Branch, Caribbean Environmental Protection Division, at (787) 977-5842, or by Email at rivera.jose@epa.gov. Any legal questions concerning this Order should be directed to Mrs. Suzette M. Meléndez-Colón, Office of Regional Counsel, Caribbean Team, at (787) 977-5822, or by Email at melendez-colon.suzette@epa.gov.
70. All documents to be submitted by TRA as part of this Order shall be sent by Email, as a PDF document, to Mr. José A. Rivera, Lead Environmental Engineer, Clean Water Act Team, at rivera.jose@epa.gov.
71. Pursuant to 40 C.F.R. § 122.22, all information or documents required to be submitted by TRA by electronic mail shall be signed by an authorized representative of TRA, and shall include the following certification:
- "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."*
72. TRA waives any and all claims for relief and otherwise available rights to administrative or judicial review of any issue of law or fact, or any other provision, set forth in this Order, including, but not limited to, any right of judicial review of this Order under the Administrative Procedure Act, 5 U.S.C. §§ 701-708.
73. Notwithstanding any other provision of this Order, TRA reserves their right to contest liability in any subsequent action filed by EPA to seek penalties for a violation of this Order and reserves their right to contest liability in any subsequent action for any violations EPA has alleged in this Order. TRA reserves all defenses to any action asserted or taken by EPA under its reservations in this Order or otherwise.
74. This Order does not constitute a waiver from compliance with, or a modification of, the effective terms and conditions of the CWA, its implementing regulations, or any applicable permit, which remain in full force and effect. This Order is an enforcement action taken by EPA to ensure swift compliance with the CWA. Issuance of this Order shall not be deemed an election by EPA to forego any civil or criminal actions for penalties, fines, imprisonment, or other appropriate relief under the CWA.

75. Notice is hereby given that should EPA commence an action in a United States District Court for a violation of any Ordered Provision of this Order, TRA may be subject to:
- a. civil penalties up to \$66,712 per day under Section 309(d) of the CWA, as modified by 40 C.F.R. Part 19, pursuant to Section 309(d) of the Act, 33 U.S.C. § 1319(d); and/or
 - b. injunctive relief, pursuant to Section 309(b) of the Act, 33 U.S.C. § 1319(b), as imposed by the Court.
76. If any provision of this Order is held by a court of competent jurisdiction to be invalid, any surviving provisions shall remain in full force and effect.

VIII. DELAY OF PERFORMANCE/FORCE MAJEURE

77. "Force Majeure," for purposes of this Order, is any event entirely beyond the control of TRA or any entity controlled by TRA that delays or prevents performance of any obligation under this AOC, notwithstanding TRA's best efforts to avoid the delay. The best-efforts requirement includes using best efforts to anticipate any such event and to minimize the delay caused by any such event to the greatest extent practicable. Examples of events that are not force majeure events include, but are not limited to, increased costs or expenses of any work to be performed under this Order, TRA's financial or business difficulties, and normal inclement weather.¹⁰
78. Unless otherwise specified, if any event may occur or has occurred that may delay the performance of any obligation under this Order, whether or not caused by a force majeure, TRA shall notify Mr. José A. Rivera, Lead Environmental Engineer, Clean Water Act Team, by telephone at (787) 977-5842, and by electronic mail at rivera.jose@epa.gov, within four (4) business days of when TRA knew or reasonably should have known that the event might cause a delay. Within ten (10) calendar days thereafter, TRA shall provide in writing the reasons for the delay, the anticipated duration of the delay, the measures taken or to be taken to prevent or minimize the delay, and a timetable by which those measures will be implemented. TRA shall exercise its best efforts to avoid or minimize any delay and any effects of a delay. Failure to comply with the notice requirement of this paragraph shall preclude TRA from asserting any claim of force majeure.
79. If EPA agrees that an actual or anticipated delay is attributable to force majeure, the time for performance of the obligation shall be extended by written agreement of the parties. An extension of the time for performing an obligation directly affected by the force majeure event shall not, of itself, extend the time for performing a subsequent obligation. The time of performance of any subsequent obligation that is directly impacted by an extension of time granted for an obligation due to a force majeure event shall be extended at the request of TRA. EPA will review TRA's request and will provide a new set of compliance date(s) in writing, if deemed necessary.

¹⁰ Refer to https://www.weather.gov/sju/climo_pr_usvi_normals.

80. TRA shall have the burden of demonstrating, by a preponderance of the evidence, that the actual or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay was or will be warranted under the circumstances, that TRA did exercise or is using its best efforts to avoid and mitigate the effects of the delay, and that TRA complied with the requirements of this section.

IX. TERMINATION AND SATISFACTION

81. After TRA has complied with all the Ordered Provisions of this Order, TRA may serve upon EPA a Request for Termination, stating that TRA has satisfied those requirements, together with all necessary supporting documentation. The Request for Termination shall:
- a. state the actions TRA has taken to comply with this Order, including temporary and final stabilization according to Part 2.2.14. of the 2022 CGP (Stabilization of Exposed Areas of the Site);
 - b. a copy of the most recent Site inspection report depicting legible color pictures that depicts the entire Site; and
 - c. be signed and certified in accordance with Paragraph 71, above.
82. Following receipt by EPA of TRA's Request for Termination, within thirty (30) calendar days or at another mutually agreed upon time, EPA and TRA shall confer informally concerning the Request for Termination and any disagreement that EPA and TRA may have as to whether TRA has satisfactorily complied with the requirements for termination of this Order. If EPA agrees, it will close-out this Order by informing TRA in writing of such decision. However, the determination to close-out this Order shall be solely in the discretion of EPA.
83. Any violation of this Order may be grounds for EPA to terminate this Order in its sole discretion.

X. EFFECTIVE DATE AND EFFECT OF CONSENT

84. This Order shall become effective upon the date of receipt via electronic mail of this Order executed by the undersigned Director, Caribbean Environmental Protection Division, Region 2, EPA (the "Effective Date").
85. This Order may be executed in multiple counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.
86. Each undersigned signatory to this Order certifies that he/she is duly and fully authorized to enter into or ratify this Order and all of the applicable terms and conditions set forth herein.

87. TRA and EPA shall bear their own costs of this Order, including attorneys' fees.
88. Nothing in this Order limits TRA's obligations to comply with the requirements of all applicable federal and Commonwealth of Puerto Rico laws and regulations.

[remainder of the page intentionally left blank]

TRA and EPA hereby consent to the issuance of this Order and agree to be bound thereby.

FOR TRANSPORTE RODRIGUEZ ASFALTO, INC.:



HECTOR RODRIGUEZ VALLE

President

Dated: 9/25/2024

[remainder of the page intentionally left blank]

FOR UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 2:

CARMEN

GUERRERO PEREZ

Digitally signed by CARMEN
GUERRERO PEREZ

Date: 2024.09.30 16:39:44
-04'00'

Dated: September 30, 2024

CARMEN R. GUERRERO PEREZ

Director

Caribbean Environmental Protection Division

APPENDIX 1 – SITE MAP

In the Matter of:
Transporte Rodríguez Asfalto, Inc.
Administrative Order on Consent
Docket Number CWA-02-2024-3112
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APPENDIX 1 (SITE MAP)

