



EPA REGION 2
CARIBBEAN ENVIRONMENTAL PROTECTION DIVISION

September 30, 2024

Via Electronic Mail & Certified Mail

Hon. Eileen M. Vélez Vega, P.E.
Secretary
Department of Transportation and Public Works
P. O. Box 41269
San Juan, Puerto Rico 00940-1269

Attention: Luis Sánchez, MS4 Coordinator
lsanchez@dtop.pr.gov

Re: **Transmittal of Administrative Compliance Order**
Department of Transportation and Public Works
Docket Number CWA-02-2024-3102
NPDES Permit Number PRR040080

Dear Secretary Vélez Vega:

The United States Environmental Protection Agency (“EPA”) has made findings that the Puerto Rico Department of Transportation and Public Works (“DTPW”) is in violation of Sections 301(a) and 402 of the Clean Water Act (the “Act”), 33 U.S.C. §§ 1311(a) and 1342, respectively. Enclosed please find an electronic copy of the Administrative Compliance Order (“Order”), Docket Number CWA-02-2024-3102, issued to DTPW pursuant to Section 309(a) of the Act, 33 U.S.C. §1319(a), which details findings of violation. Please sign, date, and submit Appendix 1 of the Order via electronic mail to maclay.yolianne@epa.gov acknowledging receipt of this Order.

Failure to comply with this Order may subject DTPW to civil penalties pursuant to Section 309 of the Act. Failure to comply with this Order may also subject DTPW to ineligibility for participation in work associated with Federal contracts, grants, or loans.


If you have any questions regarding this Order, please contact me by email at guerrero.carmen@epa.gov, or by telephone at (787) 977-5875. Your staff may also contact Ms. Yolianne Maclay, P.E., Senior Environmental Engineer, Clean Water Act Team, at telephone number (787) 977-5849, or by email at maclay.yolianne@epa.gov.

EPA urges your prompt attention to this matter.

Sincerely,

**CARMEN
GUERRERO
PEREZ**

Carmen R. Guerrero Pérez
Director

 Digitally signed by
CARMEN GUERRERO PEREZ
Date: 2024.09.30 16:29:50
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Enclosure

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

IN THE MATTER OF:

DEPARTMENT OF TRANSPORTATION AND PUBLIC WORKS

Box 41269

Minillas Station

San Juan, Puerto Rico 00940-1269

NPDES Permit PRR040080

RESPONDENT

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

**ADMINISTRATIVE
COMPLIANCE ORDER**

**DOCKET NUMBER
CWA-02-2024-3102**

I. PRELIMINARY STATEMENT

1. This Administrative Compliance Order (“Order”) is issued to the Puerto Rico Department of Transportation and Public Works (“DTPW”) 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 has delegated the authority to take these actions 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.

3. Pursuant to the NPDES regulations at 40 C.F.R. § 122.1(b)(1), the NPDES Permit Program requires permits for the discharge of any pollutant from any point source into waters of the United States.
4. 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.
5. The CWA and applicable implementing regulations contain the following relevant definitions and requirements implementing NPDES regulations:
 - a. “Administrator” means the Administrator of EPA, or an authorized representative. 40 C.F.R. § 122.2;
 - b. “Director” means the Regional Administrator or the State Director, as the context requires, or an authorized representative. 40 C.F.R. § 122.2;
 - c. “discharge of a pollutant” means any addition of any “pollutant” or combination of pollutants to navigable waters and/or “water of the United States” from any “point source”. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), and 40 C.F.R. § 122.2;
 - d. “facility” means any NPDES “point source” or any other facility or activity (including land or appurtenances thereto) that is subject to the regulations of the NPDES program. 40 C.F.R. § 122.2;
 - e. “municipality” means a city, town, borough, county, parish, district, association, or other public body created by or under State law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes. Section 502(4) of the CWA, 33 U.S.C. § 1362(4), and 40 C.F.R. § 122.2;
 - f. “municipal separate storm sewer system” or “MS4” is defined by 40 C.F.R. §§ 122.2 and 122.26(b)(8), as a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains), that are:
 - i. owned or operated by a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States;

- ii. designed or used for collecting or conveying storm water;
 - iii. which is not a combined sewer; and
 - iv. which is not part of a Publicly Owned Treatment Works (“POTW”) as defined at 40 C.F.R. 122.2.
- g. “municipal separate storm sewer system” or “MS4” is also defined by 40 C.F.R. § 122.26(b)(18), as all separate storm sewer systems that are identified as “large” or “medium” or “small” municipal separate storm sewer systems pursuant to 40 C.F.R. §§ 122.26(b)(4), (b)(7), and (b)(16), or designated under 40 C.F.R. § 122.26 (a)(1)(v).
- h. “navigable waters” means the waters of the United States, including the territorial seas. Section 502(7) of the CWA, 33 U.S.C. § 1362(7);
- i. “NPDES” means a National Pollutant Discharge Elimination System permit pursuant to Section 402 of the Act, 33 U.S.C. § 1342;
- j. “outfall” means a point source as defined by 40 C.F.R. § 122.2 at the point where a municipal separate storm sewer discharges to waters of the United States and does not include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels or other conveyances which connect segments of the same stream or other waters of the United States and are used to convey waters of the United States. 40 C.F.R. § 122.26(b)(9);
- k. “owner” or “operator” means the owner or operator of any “facility or activity” subject to regulation under the NPDES program. 40 C.F.R. § 122.2;
- l. “permit” means an authorization, license, or equivalent control document issued by EPA or an “approved State” to implement the requirements of 40 C.F.R. Parts 122, 123, and 124. The term “permit” does not include any permit which has not yet been subject of final agency action, such as a “draft permit” or a “proposed permit.” 40 C.F.R. § 122.2;
- m. “person” means an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body. Section 502(5) of the CWA, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2;
- n. “point source” means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), and 40 C.F.R. § 122.2;

- o. “pollutant” means, among others, solid waste, dredged spoil, rock, sand, cellar dirt, sewage, sewage sludge and industrial, municipal and agricultural waste discharged into water. Section 502(6) of the CWA, 33 U.S.C. § 1362(6), and 40 C.F.R. § 122.2; and
 - p. “small municipal separate storm sewer system” or “Small MS4” means all separate storm sewers, pursuant to 40 C.F.R. § 122.26(b)(16), that are:
 - i. owned or operated by the United States, a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under Section 208 of the CWA that discharges to waters of the United States;
 - ii. not defined as “large” or “medium” municipal separate storm sewers pursuant to 40 C.F.R. §§ 122.26(b)(4) and (b)(7), or designated under 40 C.F.R. § 122.26(a)(1)(v); and
 - iii. this term includes systems similar to separate storm sewer systems in municipalities, such as systems at military bases, large hospital or prison complexes, and highways and other thoroughfares. The term does not include separate storm sewers in very discrete areas, such as individual buildings.
 - q. “waters of the United States” means the territorial seas, waters which are currently used, were used or may be susceptible to use in interstate or foreign commerce, including waters which are subject to the ebb and flow of the tide, tributaries, lakes, ponds, impoundments of jurisdictional waters and wetlands. 40 C.F.R. §§ 120.2 and 122.
6. Section 402(p)(6) of the Act, 33 U.S.C. § 1342(p)(6), authorizes EPA to issue storm water regulations and permits to Small MS4s.
7. Pursuant to the NPDES regulations at 40 C.F.R. §§ 122.26(a)(9)(ii), 122.26(b)(16) and 122.33, the Administrator of the EPA has promulgated regulations which require operators of Small MS4s to seek coverage under a NPDES permit.
8. On December 8, 1999, EPA issued the NPDES Regulations for Revision of the Water Pollution Control Program Addressing Storm Water Discharges, Phase II (“SW Phase II Regulations”), to address storm water permit regulations for Small MS4s within urbanized areas. 64 Fed. Reg. 68,722 (Dec. 8, 1999).

9. The SW Phase II Regulations extended the NPDES program to include, among others, discharges from any MS4 that contributes substantially to the storm water pollutant loadings of a physically interconnected MS4 already subject to regulation under the NPDES program. 64 Fed. Reg. 68,736 (Dec. 8, 1999).
10. The NPDES regulations at 40 C.F.R. § 122.26(a)(9)(ii) directs operators of designated Small MS4s to seek coverage in accordance with 40 C.F.R §§ 122.33 through 122.35.
11. On September 2, 2006, EPA issued the NPDES General Permit for Discharges from Small MS4s for systems located in the Commonwealth of Puerto Rico (the “2006 Small MS4 Permit”). The 2006 Small MS4 Permit became effective on November 6, 2006, and expired on November 6, 2011.
12. The 2006 Small MS4 General Permit allowed coverage for operators of Small MS4s within the Commonwealth of Puerto Rico. This included public universities, municipalities, State agencies and Federal facilities.
13. On June 13, 2016, EPA issued the NPDES General Permit for Small MS4s in the Commonwealth of Puerto Rico (the “2016 Small MS4 Permit”). 81 Fed. Reg. 38,175 (Jun. 13, 2016).
14. The 2016 Small MS4 Permit replaced the 2006 Small MS4 Permit.
15. The 2016 Small MS4 Permit became effective on July 1, 2016, and expired on June 30, 2021.
16. The 2016 MS4 Permit authorizes the discharge of pollutants from the MS4 outfalls into waters of the United States.
17. The 2006 Small MS4 Permit and the 2016 Small MS4 Permit established, among other things, eligibility criteria, and instructions on how to submit a Notice of Intent (“NOI”) to obtain coverage.
18. Part 5.0 of the 2016 Small MS4 Permit indicates that a “Non-Conventional Small MS4” is a conveyance or system of conveyances that collects stormwater which are owned and operated by the Commonwealth of Puerto Rico and/or Federal government which are located within an urbanized area. The term MS4 does not solely need to be municipally owned storm sewer systems. These Commonwealth of Puerto Rico and Federal operated facilities include universities, prisons, hospitals, and military bases (e.g., State Army National Guard barracks, parks, and office building complexes), flood control pumps, transportation authority, among others.
19. The 2016 Small MS4 Permit established requirements to reduce pollutants to the Maximum Extent Practicable (“MEP”) for Illicit Discharge Detection and Elimination (“IDDE”) in Part 2.4.4, which includes addressing Sanitary Sewer Overflows (“SSOs”) in Part 2.4.4.4, and for Pollution

Prevention and Good Housekeeping for Municipal Operations (“PP&GH”) in Part 2.4.7, among others.

20. Part 2.4.4.4.a of the 2016 MS4 Permit states that “Discharges from SSOs to the MS4 are prohibited and any such discharge violates this permit and remains a violation until eliminated. Upon detection, the permittee shall notify the Puerto Rico Aqueduct and Sewer Authority (“PRASA”) and any pertinent agency to collaborate and eliminate SSOs as expeditiously as possible and shall take interim mitigation measures to minimize the discharge of pollutants to and from its MS4 until elimination is completed.”
21. Part 2.4.4.8 of the 2016 MS4 Permit requires permittees to develop and implement an IDDE Program that includes each of the elements described in Part 2.4.4.8(a - h) of the 2016 Small MS4 Permit.
22. Part 2.4.7 of the 2016 MS4 Permit named Pollution Prevention and Good Housekeeping for Municipal Operations, requires permittees to develop and implement an operation and maintenance program, including an employee training component that has the ultimate goal of preventing or reducing pollutant runoff from municipal activities and municipally owned areas.
23. Attachment B.1 of the Permit (Standard Conditions) requires permittees to comply with all conditions of the permit. Any permit non-compliance constitutes a violation of the CWA and is grounds for enforcement action.
24. Attachment B.5 of the Permit (Standard Conditions) requires permittees to at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by you to achieve compliance with the conditions of this permit, including the requirements of your SWPPP.
25. The terms and conditions of the 2016 Small MS4 Permit remain in effect and fully enforceable pursuant to 5 U.S.C. § 558(c) and 40 C.F.R. § 122.6.
26. Section 308(a)(A) of the Act provides that “[w]henver required to carry out the objective of . . . [CWA Section 402] the Administrator shall require the owner or operator of any point source to (i) establish and maintain such records, (ii) make such reports, (iii) install, use, and maintain such monitoring equipment or methods (including where appropriate, biological monitoring methods), (iv) sample such effluents (in accordance with such methods, at such locations, at such intervals, and in such manner as the Administrator shall prescribe), and (v) provide such other information as [the Administrator] may reasonably require.”
27. Section 309(a)(3) of the Act provides that “[w]henver on the basis of any information available . . . the Administrator finds that any person is in violation of [CWA Sections 301 and 308], or is in violation of any permit condition or limitation implementing any of such sections in a permit issued under [Section 402 of the Act, the Administrator] shall issue an order requiring such person to comply with such section....”

28. Section 309(a)(5)(A) of the Act provides that “[a]ny order issued under [CWA Section 309] shall state with reasonable specificity the nature of the violation and shall specify a time for compliance . . . taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements.”

III. JURISDICTIONAL STATEMENTS

29. DTPW (“Respondent” or “Permittee”) is an executive department of the Commonwealth of Puerto Rico created pursuant to Section 6 of Article IV of the Constitution of the Commonwealth.
30. DTPW and the Highways and Transportation Authority¹ (“HTA”) currently own and operate a MS4 in Puerto Rico (the “DTPW/HTA MS4s”), a portion of which is interconnected with the MS4 of the Municipality of Ponce (“Municipality” or “Ponce”).
31. The DTPW’s MS4 is a non-conventional MS4.
32. DTPW is responsible for the operation and maintenance of MS4s within an urbanized area of the Municipality of Ponce known as Playa Ward.
33. Respondent is a “person” pursuant to Section 502(5) of the CWA, 33 U.S.C. § 1362(5), and 40 C.F.R. 122.2.
34. Respondent is the “owner and operator” of the MS4 at PR-123 Road and PR-585 Road, in the Municipality of Ponce, Puerto Rico, as defined in 40 C.F.R. § 122.2.
35. The DTPW’s MS4 is a “facility”, as defined in 40 C.F.R. § 122.2.
36. The DTPW’s MS4 has discharge points, which 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.
37. Respondent discharged and continues to “discharge pollutants” into the Bucaná River, Matilde River, Portugués River, and the Caribbean Sea.
38. The Bucaná River, Matilde River, Portugués River, and the Caribbean Sea are “waters of the United States” pursuant to Section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. §§ 120.2 and 122.
39. Respondent is 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.

¹ The HTA is a government-owned corporation under DTPW’s umbrella that is responsible for the administration, maintenance, and conservation of Puerto Rico highways.

IV. FACTUAL FINDINGS

40. On September 30, 2016, the DTPW and HTA submitted a joint NOI to continue coverage under the 2016 MS4 Permit. The NPDES number assigned to DTPW and HTA (collectively, “DTPW/HTA”) is PRR040080.
41. On February 22, 2017, EPA issued a letter to acknowledge the submittal of the NOI and notified the Respondent that coverage under the 2016 MS4 Permit began on January 20, 2017.
42. DTPW/HTA MS4s extends throughout the Commonwealth of Puerto Rico and discharge into several waters of the United States, including but not limited to Bucaná River, Matilde River, Portugués River, and the Caribbean Sea.
43. On March 8, 2022, an EPA Inspector performed an NPDES Stormwater Inspection (“March 2022 Inspection”) of Ponce’s MS4. The purpose of the March 2022 Inspection was to evaluate Ponce’s compliance with the 2016 Small MS4 Permit and to respond to citizen complaints of sanitary sewer overflows (“SSOs”) in the Puerto Viejo Sector of Ponce’s Playa Ward, specifically on Valajú Street, Puerto Viejo Street, and Salmon Street, which are all part of PR-123 Road.
44. The findings of the Inspection were included in an NPDES Inspection Report, dated March 31, 2022.
45. On February 15, 2023, EPA issued a Request for Information (“RFI Letter”) pursuant to Section 308(a) of the CWA, 33 U.S.C. § 1318(a), requesting Respondent to submit information related to its MS4 in the Municipality of Ponce.²
46. On March 24, 2023, DTPW submitted the response to the RFI Letter stating, among other information, that DTPW owns and operates PR-123 Road and PR-585 Road within the Playa Ward in Ponce.
47. On April 27, 2023, EPA issued a follow-up letter (the “RFI Follow-up Letter”) to DTPW requesting clarification and information concerning DTPW’s response to the RFI Letter and to identify the routes of PR-123 Road and PR-585 Road.
48. On May 17, 2023, DTPW submitted the response to the RFI Follow-up Letter, which included a map depicting the route for PR-123 Road and PR-585 Road.
49. DTPW’s response to the RFI Follow-up Letter showed that PR-123 Road is the same road as Hostos Avenue, Salmón Street, Puerto Viejo Street, and Valajú Street, and that PR-585 Road is the same road as Eduardo Ruberté Avenue and Padre Noel Avenue.

² The Request for Information Identification Number is CEPD-CWA-02-IR-2023-003.

50. On May 22, 2023, EPA received a citizen complaint about SSOs at PR-123 Road following a rain event that left the sidewalks and streets covered by a dark-colored sediment and sewage odors.
51. On October 20, 2023, EPA received a citizen complaint about SSOs at PR-123 Road following a rain event.
52. On August 28, 2024, an EPA Inspector performed a NPDES Stormwater Inspection (“August 2024 Inspection”) of DTPW’s MS4 located in Ponce’s Playa Ward. The purpose of the Inspection was to assess DTPW’s compliance with the 2016 MS4 Permit, including maintenance and operational conditions of certain structures and appurtenances of the MS4s situated at PR-123 Road and PR-585 Road within Playa Ward, Municipality of Ponce.
53. The findings of the Inspection were included in the NPDES Inspection Report, dated September 12, 2024 (“September 2024 Inspection Report”).
54. During the August 2024 Inspection, EPA found among other things, water in two storm sewer inlets with concentrations of ammonia higher than 1 mg/L, which is an indicator of wastewater; and storm sewers appurtenances (i.e., catch basins) in certain areas of the PR-123 Road and PR-585 Road that showed a lack of maintenance and poor housekeeping practices.
55. By electronic mail (“Email”) dated September 16, 2024, an EPA official transmitted an electronic copy of the September 2024 Inspection Report to DTPW’s officials, including its consultant.
56. A DTPW official acknowledged receipt of the September 16, 2024, Email on September 16, 2024.
57. As of the effective date of this Order, DTPW has not submitted a response to the findings included in the September 2024 Inspection Report.

V. CONCLUSIONS OF LAW AND FINDINGS OF VIOLATIONS

58. Respondent is subject to the provisions of the CWA, 33 U.S.C. § 1251, et seq., the applicable NPDES regulations found at 40 C.F.R. § 122, and the 2016 MS4 Permit issued under Section 402 of the CWA, 33 U.S.C. § 1342.
59. As described in Paragraphs 29 to 57 above [Section III (“Jurisdictional Statements”) and Section IV (“Factual Findings”)], Respondent violated Sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a) and 1342, for its failure to comply with the 2016 MS4 Permit; therefore, Respondent is subject to an enforcement action under Section 309 of the CWA, 33 U.S.C. § 1319.

VI. ORDERED PROVISIONS

In consideration of the Findings of Fact and Conclusions of Law above, EPA has determined compliance with the following ordered provisions is consistent with the authority in Section 309 of the CWA, 33 U.S.C. § 1319.

IT IS HEREBY ORDERED:

60. **Immediately upon receipt of the originals of this Order by email**, Respondent shall comply with all the requirements and conditions of the 2016 MS4 Permit.
61. **Acknowledgment of receipt of this Order**. That within five (5) calendar days upon receipt of this Order by Email, an authorized representative of Respondent shall complete the acknowledgment of receipt included as **Appendix 1** of this Order and return it via Email to Ms. Yolianne Maclay, P.E., Senior Environmental Engineer, Clean Water Act Team, Multimedia Permits and Compliance Branch, at maclay.yolianne@epa.gov. Also, Respondent shall send, by certified mail (or its equivalent), the signed acknowledgement of receipt to Ms. Yolianne Maclay to the address specified in paragraph 72, below.
62. **MS4 System Mapping at Playa Ward in Ponce**. By the deadline specified in **Appendix 2**, Respondent shall develop and submit to EPA a map depicting the DTPW's MS4 of PR-123 Road and PR-585 Road in Ponce. The route of the PR-123 Road to be investigated begins at the intersection with the PR-2 Road and ends at the intersection with the PR-12 Road, as shown in **Figure 1 of Appendix 3**. The route of the PR-585 Road to be investigated begins at the intersection with the PR-2 Road and ends at the intersection with the PR-123 Road, as shown in **Figure 2 of Appendix 3**. The maps shall identify the required elements in Section 2.4.4.6.a.i of the 2016 MS4 Permit, including but not limited to, the MS4, outfalls and receiving waters, pipes, open channel conveyances, catchment delineations for each outfall or interconnection, manholes, flood control pump stations, interconnections with other MS4s, municipality-owned stormwater treatment structures, waterbodies identified by name, and indication of all use impairments as identified in the Commonwealth's most current CWA's § 303(d) List. In preparing the map, DTPW must take into consideration the elements included in Sections 2.4.4.6.a.ii, where available, and 2.4.4.6.a.iii (recommended) of the 2016 MS4 Permit. Respondent shall submit to EPA the revised maps to EPA in Portable Document Format ("PDF") or in GIS file format (i.e., Shapefiles).
63. **SSO Inventory at Playa Ward in Ponce**. By the deadline specified in **Appendix 2**, Respondent shall develop, maintain, and update an inventory of all SSO events that have reached DTPW's MS4 located within the area of investigation³, as depicted in **Figure 3 of Appendix 3**, in the previous three (3) years during dry or wet weather pursuant to Part 2.4.4.4 of the 2016 MS4 Permit. The SSO Inventory must include the elements described in Part 2.4.4.4.b of the 2016 MS4 Permit. Upon detection of a SSO, DTPW shall inform PRASA and any pertinent entity to coordinate and

³ The area of investigation is bounded to the north by PR-2, to the west by Rio Matilde, to the east by PR-12, and to the south by the Caribbean Sea. Figure 3 of Appendix 3 shows the study area surrounded by red lines.

eliminate the SSO as expeditiously as possible and shall perform interim mitigation measures to minimize the discharge of pollutants to and from its MS4 until elimination is completed. DTPW shall also clean the streets and sidewalks after a SSO event and dispose of the collected material following the applicable solid waste regulations. If the SSO occurs during or after a rain event, DTPW shall investigate its MS4 for any MS4's locations connected to PRASA's sanitary sewer system that may cause the SSO.⁴

64. **Outfall Inventory at Playa Ward in Ponce.** By the deadline specified in **Appendix 2**, Respondent shall develop and submit to EPA an outfall and interconnection inventory ("Outfall Inventory") of DTPW's outfalls and interconnections within the area of investigation³, as depicted in **Figure 3** of **Appendix 3**, pursuant to Part 2.4.4.7 of the 2016 MS4 Permit. The Outfall Inventory must include the elements described in Part 2.4.4.7.c of the 2016 MS4 Permit. In preparing the Outfall Inventory, DTPW shall consider the "Outfall Reconnaissance Inventory/Sample Collection Field Sheet in the Illicit Discharge Detection and Elimination ("IDDE") Manual", as a reference, which is available at the following link: https://www3.epa.gov/npdes/pubs/idde_appendix-d.pdf.

65. **Screening and sampling of outfalls and interconnections from the MS4 in dry and wet weather at Playa Ward in Ponce**

Respondent shall comply with the following for its MS4s located in the areas of investigation in Playa Ward in Ponce:⁵

- a. By the deadline specified in **Appendix 2**, Respondent shall develop and submit for EPA review, a proposed procedure for screening and sampling of all outfalls and interconnections from DTPW's MS4 in dry and wet weather for evidence of illicit discharges and SSOs. The proposed procedure: (1) must be in accordance with Section 2.4.4.8.d of the 2016 MS4 Permit; (2) must include methods for sample collection, use of field kits, storage, and conveyance of samples, visual observations, and relevant sample parameters, (3) shall include procedures for sampling and analysis of outfalls and interconnections for at least: surfactants (such as MBAS), ammonia, potassium, chlorine, conductivity, salinity, enterococci, fecal coliforms, and temperature; and (4) must include procedures for visual observations of samples taken to assess for the presence of odor, surfactants, turbidity, foam, trash, and color.

⁴ Refer to Part 2.4.4.4.c of the Small MS4 Permit concerning DTPW notifications to PRASA sanitary sewer system concerning SSOs events.

⁵ Respondent shall consider maintaining a Sampling Registry with data about each outfall and interconnection in the Playa Ward where, provided there is a flow rate of at least two gallons per minute, and the results of visual observations for odor, color, turbidity, floatables, or oil sheen; and field testing for ammonia (NH₃) concentrations greater than 3.0 mg/L, residual chlorine concentration greater than 5 mg/L and pH outside the range of 7.3 to 8.5. If field sampling results indicate that there is a suspected illicit connection, DTPW sampling shall be consider to determine if results show enterococci concentrations greater than 35 colonies/100 mL, fecal coliforms concentrations higher than 14 MPN/100 mL, and surfactants as Methylene Blue Active Substances (MBAS) higher than 0.5 mg/L.

- b. By the deadline specified in **Appendix 2**, Respondent shall perform dry and wet weather screening and sampling of all its MS4 outfalls and interconnections located within the area of investigation³, as depicted in **Figure 3** of **Appendix 3**. Wet weather screening and sampling shall be conducted only at outfalls or interconnections with discharges.

66. **Catchment Investigations and Remedial Work for MS4s at Playa Ward in Ponce**. By the deadline specified in **Appendix 2**, Respondent shall prepare a work plan for investigation and remediation of PR-585 Road and PR-123 Road. The area of investigation for PR-585 Road is from the intersection with PR-2 Road to the intersection with PR-123 Road. The area of investigation for PR-123 Road is from the intersection with PR-2 Road to the intersection with PR-12 Road. Refer to **Figure 1** and **Figure 2** of **Appendix 3**, which shows the area of investigation marked in red. Each work plan shall include the four phases described below. By the deadlines specified in **Appendix 2**, Respondent shall complete the activities in each phase.

- a. Phase I (Reconnaissance) of the work plan must include: (a) information and data gathering to develop or update the maps and perform outfall reconnaissance; (b) identification of interconnections with other storm sewer systems and runoff collection systems; identification of suspicious or illicit flow (e.g., wastewater flow) in storm sewer pipes; (c) identification of potential interconnections between storm sewers, illicit connections from sanitary sewers, MS4's locations connected to PRASA's sanitary sewer system, and straight pipe connections; (d) identification of suspicious surface depressions on or in the vicinity of sewer pipe or manhole areas; (e) identification of obstructions in sewer pipes where cleaning actions are to be required; and (f) documentation of preliminary findings from the field verification exercise in anticipation of the Phase II (Investigation) activities.
- b. Phase II (Investigation) shall include: (a) preparation and implementation of a sewer system cleaning and inspection schedule, (b) creation of a manhole and catch basin inspection database, (c) performance of additional reconnaissance activities to confirm and assess the sources of illicit discharges or interconnections (i.e., video inspections with CCTV or pole camera, dye testing, smoke testing), (d) identification of illicit discharges, illicit connections and MS4 connections to PRASA's Sanitary Sewer System found during Phase I and Phase II; and (e) preparation of a final Phase II Report with a summary of all findings of Phases I and II, including a list of the MS4's locations in need of further actions to eliminate illicit discharges and illicit connections (i.e., repair, replacement and/or construction of storm water manholes, pipes, catch basins, pump stations, and any other alternatives or actions to properly operate and maintain the MS4). Implementation of Phase II shall not exceed six months after the Effective Date of this Order.
- c. Phase III (Planning and Design) shall include: (a) development and/or design of actions necessary to eliminate illicit discharges and illicit connections (i.e., repair, replacement and/or construction of storm water manholes, pipes, catch basins, pump stations, and any other alternatives or actions to properly operate and maintain the MS4); and (b)

preparation of a final Phase III Report and the Proposed Phase IV Implementation Schedule, which implementation shall not exceed 12 months after the Effective Date of this Order.

- d. Phase IV (Implementation/Construction) shall include the completion of all work described in the Phase III Report and the Phase IV Implementation Schedule, which shall not exceed 24 months following EPA's approval of the proposed Phase IV Implementation Schedule.

- 67. **Procedure for Removal and Confirmation of an Illicit Discharge at Playa Ward in Ponce.** By the deadline specified in **Appendix 2**, DTPW shall develop a procedure to confirm that the source of an illicit discharge has been eliminated, in accordance with Section 2.4.4.8.f of the 2016 MS4 Permit. Respondent shall include in the corresponding Quarterly Progress Report (see paragraph 70) the location of the discharge and its source(s); a description of the discharge; the method of discovery; the date of discovery; the date of elimination, mitigation, or affirmative action for elimination; and estimate of the volume of flow removed.
- 68. **Outfall Monitoring at Playa Ward in Ponce.** By the deadline specified in **Appendix 2**, DTPW shall monitor its outfalls, pursuant to Part 3.3 of the 2016 MS4 Permit, within the area of investigation³, as depicted in **Figure 3** of **Appendix 3**. The Outfall Monitoring shall include the following parameters: enterococci, fecal coliform, ammonia, surfactants, boron, pH, and total phosphorus and shall be conducted using analytical methods specified in 40 C.F.R. § 136.
- 69. **MS4 Infrastructure Operation and Maintenance Program at Playa Ward in Ponce.** By the deadline specified in **Appendix 2**, Respondent shall develop and implement a written program detailing the activities and procedures that will be implemented, pursuant to Part 2.4.7.1.d of the 2016 MS4 Permit to: (a) reduce the discharge of pollutants from the MS4 into waters of the United States; and (b) ensure that the MS4 infrastructure is maintained in a timely and effective manner. The Infrastructure Operation and Maintenance Program ("MS4 Infrastructure O&M Program") must include descriptions of: routine inspections; cleaning and maintenance of storm drains, catch basins, and storm sewers to ensure that the requirements under Part 2.4.7.1.d.2 of the 2016 MS4 Permit are met; procedures for sweeping and/or cleaning streets; ensuring proper storage and disposal of the catch basins' debris and street sweepings; and inspection and maintenance frequencies and procedures for storm drainage systems. Respondent shall implement the MS4 Infrastructure O&M Program at the areas of investigation³ depicted in **Figure 3** of **Appendix 3**.
- 70. **Quarterly Progress Reports.** Until Termination of this Order, Respondent shall prepare and submit to EPA Quarterly Progress Reports ("Progress Reports") describing the status and progress of Respondent's actions taken to comply with the Ordered Provisions of this Order. Respondent shall:

- a. Submit the first Progress Report on January 15, 2025, and thereafter every three months (e.g., April 15, 2025).
- b. Each Progress Report shall include, at a minimum, the following:
 - i. The actions taken during the reporting period.
 - ii. Description of any non-compliance with this Order, including a statement describing the non-compliance, its underlying causes, and a proposed new date(s) to comply with this Order.
 - iii. A cost report detailing the expenses incurred during the reporting period.

VII. GENERAL PROVISIONS

71. Any questions concerning this Order should be directed to the following EPA designated official: Eng. Yolianne Maclay, P.E., Senior Environmental Engineer, Clean Water Act Team, Multimedia Permits and Compliance Branch, Caribbean Environmental Protection Division, at (787) 977-5849, or by email at maclay.yolianne@epa.gov. Any legal questions concerning this Order should be directed to the following EPA designated official: Suzette M. Meléndez Colón, Esq., Office of Regional Counsel, Caribbean Team, at (787) 977-5222, or by email at melendez-colon.suzette@epa.gov.
72. All documents to be submitted by Respondent as part of this Order shall be sent by electronic mail, in PDF, to:

Angel Meléndez
Manager, Water Quality Area
Puerto Rico Department of Natural and Environmental Resources
Electronic mail: angelmelendez@drna.pr.gov

and

Yolianne Maclay, P.E.
Clean Water Act Team
Multimedia Permits and Compliance Branch
Electronic mail: maclay.yolianne@epa.gov
73. Pursuant to 40 C.F.R. § 122.22, all information or documents required to be submitted by Respondent by electronic mail shall be signed by an authorized representative of Respondent, 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.”

74. Respondent shall have the opportunity, for a period of twenty (20) calendar days from the effective date of this Order, to confer, regarding the requested information and the Ordered Provisions, with the following designated Agency representatives:

José A. Rivera, BSCE
Team Leader
Clean Water Act Team
Multimedia Permits and Compliance Branch
Caribbean Environmental Protection Division
U.S. Environmental Protection Agency, Region 2
City View Plaza II, Suite 7000
48 RD. 165 Km. 1.2
Guaynabo, Puerto Rico 00968-8069
Email: rivera.jose@epa.gov
Telephone: (787) 977-5842

and/or

Yolianne Maclay, P.E.
Senior Environmental Manager
Clean Water Act Team
Multimedia Permits and Compliance Branch
Caribbean Environmental Protection Division
U.S. Environmental Protection Agency, Region 2
City View Plaza II, Suite 7000
48 RD. 165 Km. 1.2
Guaynabo, Puerto Rico 00968-8069
Email: maclay.yolianne@epa.gov
Telephone: (787) 977-5849.

75. Respondent has the right to seek immediate federal judicial review of the Order pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706. Section 706, which is set forth at <http://uscode.house.gov/download/pls/05C7.txt>, and provides the grounds for such review.

- 76. This Order does not constitute a waiver from compliance with, or a modification of, the effective terms and conditions of the CWA, the NPDES implementing regulations, or the 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.
- 77. Notice is hereby given that failure to comply with the terms of the CWA Section 309(a)(3) Compliance Order may result in Respondent’s liability for civil penalties for each violation of up to \$66,712 per day under Section 309(d) of the CWA, 33 U.S.C. § 1319(d), as modified by 40 C.F.R. Part 19. Upon suit by EPA, the United States District Court may impose such penalties if the Court determines that Respondent has violated the CWA as described above and failed to comply with the terms of this Order. The District Court has the authority to impose separate civil penalties for any violations of the CWA and for any violations of this Order.
- 78. 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.
- 79. This Order shall become effective upon the date (“Effective Date”) of execution by the Director, Caribbean Environmental Protection Division.

Dated: September 30, 2024

Signed: _____

**CARMEN
GUERRERO
PEREZ**

Digitally signed by
CARMEN GUERRERO
PEREZ
Date: 2024.09.30 16:32:30
-04'00'

CARMEN R. GUERRERO PÉREZ
Director
Caribbean Environmental Protection Division
Environmental Protection Agency, Region 2

Appendixes

APPENDIX 1

Acknowledgement of Receipt

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF:

DEPARTMENT OF TRANSPORTATION AND PUBLIC WORKS

Box 41269

Minillas Station

San Juan, Puerto Rico 00940-1269

NPDES Permit PRR040080

RESPONDENT

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

**ADMINISTRATIVE
COMPLIANCE ORDER**

**DOCKET NUMBER
CWA-02-2024-3102**

**ACKNOWLEDGMENT OF RECEIPT OF
ADMINISTRATIVE COMPLIANCE ORDER**

I do hereby acknowledge receipt by electronic mail of a true copy of the Administrative Compliance Order, Docket Number CWA-02-2024-3102.

Pursuant to the signatory's requirements in 40 C.F.R. § 122.22, I certify that I am authorized to sign this acknowledgment.

Print Name and Title

Date

Signature

APPENDIX 2

DTPW Work Deadlines

Paragraph Number	Description of Work	Deadline
62	MS4 System Mapping	Six months from the Effective Date of this Order
63	SSO Inventory	Three months from the Effective Date of this Order
64	Outfall Inventory	Three months upon receipt of this Order
65.a	Screening and sampling of outfalls and interconnections procedure	Three months from the Effective Date of this Order
65.b	Implementation of the screening and sampling of outfalls and interconnections procedure	Six months after submittal of the Outfall and Interconnection Screening and Sampling Procedure
66	Catchment Investigations and Remedial Work Plan	Three months from the Effective Date of this Order
66.a and 66.b	Implementation of Phases I and II	Six months from the Effective Date of this Order
66.c	Implementation of Phase III	Twelve months from the Effective Date of this Order
66.d	Implementation of Phase IV	Shall not exceed 24 months after the Effective Date of this Order
67	Procedure for Removal and Confirmation of an Illicit Discharge	Six months from the Effective Date of this Order
68	Outfall Monitoring	Twelve months from the Effective Date of this Order
69	MS4 Infrastructure Operation and Maintenance Program	Six months from the Effective Date of this Order
70	Quarterly Progress Reports	First Progress Report is due on January 15, 2025, and thereafter every three months (e.g., April 15, 2025)

APPENDIX 3

Areas for Investigation

Figure 1 - Image depicting the area of investigation for PR-123 Road (see red line)

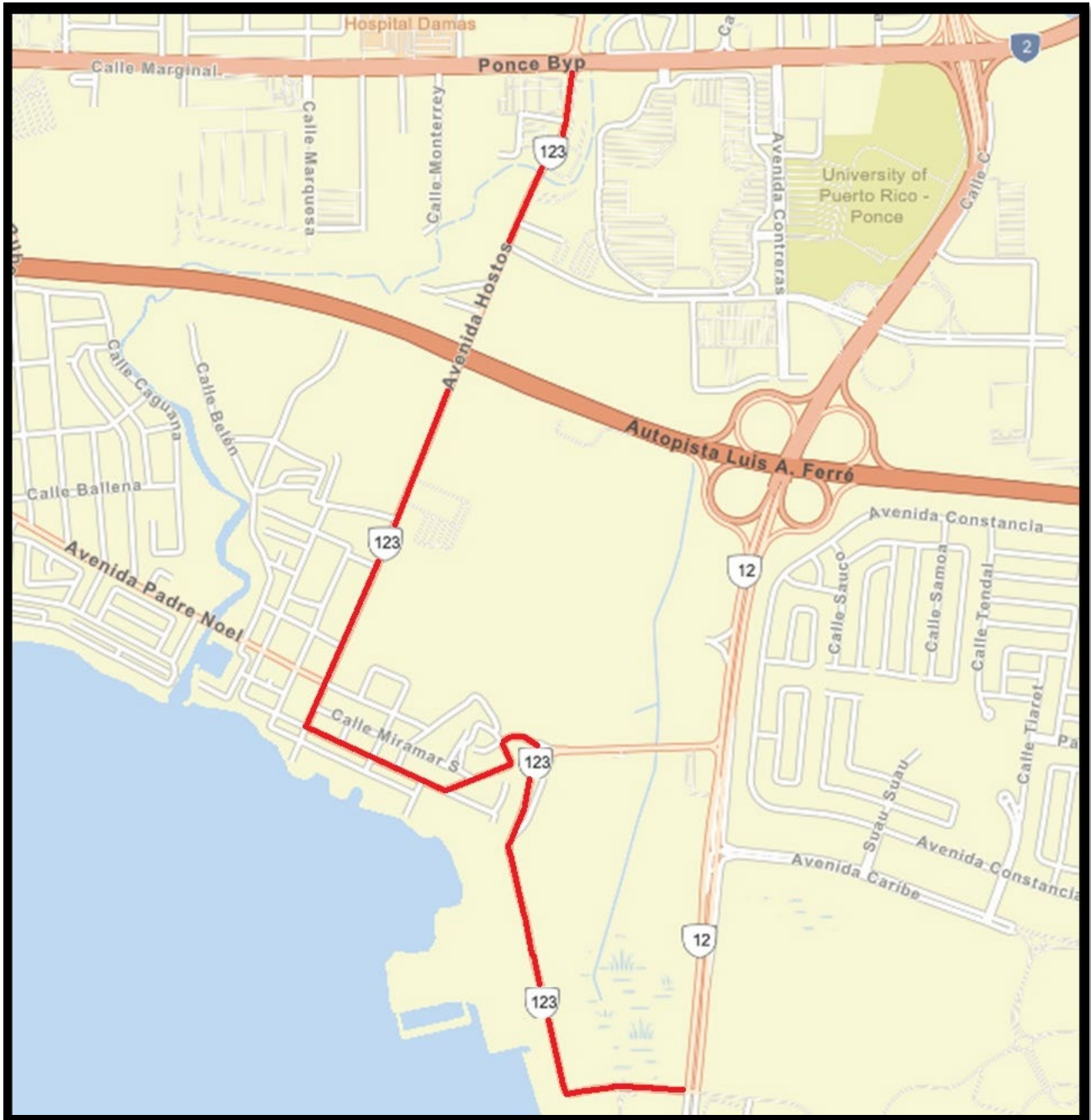


Figure 2 - Image depicting the area of investigation for PR-585 Road (see red line)



Figure 3 - Image identifying the area of investigation within the confines of the red line

