

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

February 21, 2024 @ 10:30 am  
USEPA – Region II  
Regional Hearing Clerk

In the Matter of:

**HÉCTOR RODRÍGUEZ VALLE**

P.O. Box 1239

Hormigueros, Puerto Rico 00660

and

**TRANSPORTE RODRIGUEZ ASFALTO, INC.**

P. O. Box 1239

Hormigueros, Puerto Rico 00660

**TRA RECYCLING PLANT CONSTRUCTION PROJECT**

PR-419 Road, Km. 11.05

Intersection with Road PR-2, Km. 139.7

Cerro Gordo Ward, Aguada, Puerto Rico

**RESPONDENTS**

**DOCKET NUMBER**

**CWA-02-2024-3451**

Proceeding pursuant to Section  
309(g)(2)(B) of the Clean Water Act, 33  
U.S.C. § 1319(g)(2)(B), to assess a Class II  
Civil Penalty

**ADMINISTRATIVE COMPLAINT, FINDINGS OF VIOLATION, NOTICE OF PROPOSED ASSESSMENT OF AN  
ADMINISTRATIVE PENALTY, AND NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

**I. STATUTORY AND REGULATORY AUTHORITIES**

1. This Administrative Complaint, Findings of Violation, Notice of Proposed Assessment of a Civil Penalty, and Notice of Opportunity to Request a Hearing (“Complaint”) is issued under the authority vested in the Administrator of the United States Environmental Protection Agency (“EPA”) by Section 309(g)(2)(B) of the Clean Water Act (“CWA” or “Act”), 33 U.S.C. § 1319(g)(2)(B). The Administrator of the EPA (“Administrator”) has delegated this authority to the Regional Administrator of EPA, Region 2, who in turn has delegated it to the Director of the Caribbean Environmental Protection Division of EPA, Region 2 (“Complainant”).
2. Pursuant to Section 309(g)(2)(B) of the CWA, and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits” (“CROP”), 40 Code of Federal Regulations (“C.F.R.”) Part 22, a copy of which is attached, Complainant

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hereby requests that the Regional Administrator assess a civil penalty against Héctor Rodríguez Valle and Transporte Rodríguez Asfalto, Inc. (collectively, the “Respondents”), as a result of Complainant’s determination that Respondents violated Sections 301(a) and 402(p) of the CWA, 33 U.S.C. §§ 1311(a) and 1342(p), for their failure to apply for and obtain National Pollutant Discharge Elimination System (“NPDES”) permit coverage for its discharges of pollutants from the TRA Recycling Plant Construction Project located in Aguada, Puerto Rico, and for their discharges of pollutants from such project into a water of the United States without a NPDES permit coverage.

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 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 to issue a NPDES permit for the discharge of any pollutant, or combination of pollutants, subject to certain requirements of the Act and such conditions as the Administrator determines are necessary.
5. Section 402, 33 U.S.C. § 1342, of the CWA authorizes the Administrator to promulgate regulations for the implementation of the NPDES requirements.
6. Section 402(p)(2)(B), 33 U.S.C. § 1342(p)(2)(B), of the CWA requires a permit with respect to a storm water discharge associated with industrial activity.
7. Pursuant to Section 402(p)(3)(A) of the Act, 33 U.S.C. § 1342(p)(3)(A), permits for storm water discharges associated with industrial activity shall meet all applicable provisions of Sections 301 and 402 and of the CWA, 33 U.S.C. §§ 1311 and 1342.
8. 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.
9. Pursuant to 40 C.F.R. § 122.21(a)(1), any person who discharges or proposes to discharge pollutants, and who does not have an effective permit, must submit a complete NPDES permit application to EPA.
10. Pursuant to 40 C.F.R. § 122.1(b)(1), the NPDES program requires permits for the discharge of pollutants from any point source into waters of the United States.
11. Pursuant to 40 C.F.R. § 122.21(c)(1), any person proposing a new discharge shall submit an application at least 180 days before the date on which the discharge is to commence, unless permission for a later date has been granted by the Regional Administrator. Facilities described under 40 C.F.R. §§ 122.26(b)(14)(x) or (b)(15)(i) shall submit applications at least 90 days before the date on which construction is to commence.

12. Pursuant to 40 C.F.R. § 122.26(c)(1)(ii), an operator of an existing or new stormwater discharge that is associated with industrial activity solely under 40 C.F.R. § 122.26(b)(14)(x) or is associated with small construction activity solely under 40 C.F.R. § 122.26(b)(15), is exempt from the requirements of 40 C.F.R. § 122.21(g) and 40 C.F.R. § (c)(1)(i). Such operator shall provide a narrative description of:
  - a. the location (including a map) and the nature of the construction activity;
  - b. the total area of the site and the area of the site that is expected to undergo excavation during the life of the permit;
  - c. proposed measures, including best management practices, to control pollutants in stormwater discharges during construction, including a brief description of applicable State and local erosion and sediment control requirements;
  - d. proposed measures to control pollutants in stormwater discharges that will occur after construction operations have been completed, including a brief description of applicable State or local erosion and sediment control requirements;
  - e. an estimate of the runoff coefficient of the site and the increase in impervious area after the construction addressed in the permit application is completed, the nature of fill material and existing data describing the soil or the quality of the discharge; and
  - f. the name of the receiving water.
13. Pursuant to 40 C.F.R. § 122.26(b)(14)(x), operators of construction activities are required to obtain an NPDES permit for storm water discharges associated with construction activity.
14. Pursuant to 40 C.F.R. § 122.26(b)(14)(x), construction activity, including clearing, grading and excavation, are considered a category engaging in industrial activity.
15. The CWA and its NPDES implementing regulations contain the following definitions:
  - a. “Best Management Practices” or “BMPs” mean schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of “waters of the United States.” BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage. 40 C.F.R. § 122.2;
  - b. “construction activity” means the discharge of storm water from construction activities including clearing, grading, and excavation, except operations that result in the disturbance of less than five acres of total land area. 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. 40 C.F.R. § 122.26(b)(14);

- c. “discharge of a pollutant” means any addition of any pollutant to navigable waters and/or waters 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” or “activity” 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. “municipal separate storm sewer system” or “MS4” means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains):
  - 1) owned and 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, stormwater, 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;
  - 2) designed or used for collecting or conveying stormwater;
  - 3) which is not a combined sewer; and
  - 4) which is not part of a Publicly Owned Treatment Works (POTW) as defined at 40 C.F.R. § 122.2. 40 C.F.R. § 122.26(b)(8).
- f. “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);
- g. “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;
- h. “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. 40 C.F.R. § 122.2;
- i. “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;

- j. “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;
  - k. “pollutant” includes 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;
  - l. “site” means the land or water area where any “facility” or “activity” is physically located or conducted, including adjacent land used in connection with the facility or activity. 40 C.F.R. § 122.2;
  - m. “stormwater” or “storm water” means storm water runoff, snow melt runoff, and surface runoff and drainage. 40 C.F.R. § 122.26(b)(13);
  - n. “territorial seas” means the belt of the seas measured from the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters, and extending seaward a distance of three miles. Section 502(8) of the CWA, 33 U.S.C. § 1362(8); and
  - o. “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 122.2.
16. Pursuant to 40 C.F.R. § 450, EPA issued 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).
  17. On January 18, 2022, EPA re-issued the NPDES Construction General Permit for Stormwater Discharges from Construction Activities (“2022 CGP”) pursuant to Section 402(p)(2)(B) of the CWA, 33 U.S.C. § 1342(p)(2)(B). 87 Fed. Reg. 3,522 (January 24, 2022).
  18. The 2022 CGP became effective on February 17, 2022, and expires on February 16, 2027.
  19. The Appendix A of the 2022 CGP defines the following terms as follows:
    - a. “bank” (e.g., stream bank or river bank) as the rising ground bordering the channel of a water of the U.S;

- b. “borrow areas” as the areas where materials are dug for use as fill, either onsite or off-site;
- c. “commencement of construction activities” as the initial disturbance of soils (or ‘breaking ground’) associated with clearing, grading, or excavating activities or other construction-related activities (e.g., stockpiling of fill material; placement of raw materials at the site);
- d. “construction activities” as earth-disturbing activities, such as the clearing, grading, and excavation of land, and other construction-related activities (e.g., stockpiling of fill material; placement of raw materials at the site) that could lead to the generation of pollutants. Some of the types of pollutants that are typically found at construction sites are: sediment; nutrients; heavy metals; pesticides and herbicides; oil and grease; bacteria and viruses; trash, debris, and solids; treatment polymers; and any other toxic chemicals;
- e. “construction support activity” as a construction-related activity that specifically supports the construction activity and involves earth disturbance or pollutant-generating activities of its own, and can include activities associated with concrete or asphalt batch plants, equipment staging yards, materials storage areas, excavated material disposal areas, and borrow areas;
- f. “construction site” or “site” as the land or water area where construction activities will occur and where stormwater controls will be installed and maintained. The construction site includes construction support activities, which may be located at a different part of the property from where the primary construction activity will take place, or on a different piece of property altogether;
- g. “conveyance channel” as a temporary or permanent waterway designed and installed to safely convey stormwater flow within and out of a construction site;
- h. “discharge point” as the location where collected and concentrated stormwater flows or dewatering water are discharged from the construction site;
- i. “discharge-related activity” as activities that cause, contribute to, or result in stormwater and allowable non-stormwater point source discharges, and measures such as the siting, construction, and operation of stormwater controls to control, reduce, or prevent pollutants from being discharged;
- j. “earth-disturbing activity” as actions taken to alter the existing vegetation and/or underlying soil of a site, such as clearing, grading, site preparation (e.g., excavating, cutting, and filling), soil compaction, and movement and stockpiling of top soils;
- k. “exit points” as any points of egress from the construction site to be used by vehicles and equipment during construction activities;

- l. “exposed soils” as soils that as a result of earth-disturbing activities are left open to the elements;
- m. “final stabilization” on areas not covered by permanent structures, as either:
  - 1) uniform, perennial vegetation (e.g., evenly distributed, without large bare areas) has been established, or for arid or semi-arid areas, will be established that provides 70 percent or more of the cover that is provided by vegetation native to local undisturbed areas; and/or
  - 2) permanent non-vegetative stabilization measures (e.g., riprap, gravel, gabions, and geotextiles) have been implemented to provide effective cover for exposed portions of the site;
- n. “general contractor” as the primary individual or company solely accountable to perform a contract. The general contractor typically supervises activities, coordinates the use of subcontractors, and is authorized to direct workers at a site to carry out activities required by the permit [2022 CGP];
- o. “new site” as a site where construction activities commenced on or after February 16, 2017;
- p. “Electronic Notice of Intent” or “eNOI” as the electronic form required for authorization of coverage under the Construction General Permit [2022 CGP];
- q. “operator” as any party associated with a construction project that meets either of the following two criteria:
  - 1) the party has operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications (e.g., in most cases this is the owner of the site); or
  - 2) the party has day to day operational control of those activities at a project that are necessary to ensure compliance with the permit conditions (e.g., they are authorized to direct workers at a site to carry out activities required by the permit; in most cases this is the general contractor of the project);
- r. “run-on” as sources of stormwater that drain from land located upslope or upstream from the regulated site in question;
- s. “sediment-related parameter” as for the purposes of this permit [2022 CGP], a pollutant parameter that is closely related to sediment such as turbidity, total suspended solids (TSS), total suspended sediment, transparency, sedimentation, and siltation;

- t. “stabilization” as the use of vegetative and/or non-vegetative cover to prevent erosion and sediment loss in areas exposed through the construction process;
  - u. “storm sewer system” as a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains) designed or used for collecting or conveying stormwater;
  - v. “stormwater inlet” as a structure placed below grade to conduct water used to collect stormwater runoff for conveyance purposes;
  - w. “storm event” as a precipitation event that results in a measurable amount of precipitation;
  - x. “storm sewer” as a system of pipes (separate from sanitary sewers) that carries stormwater runoff from buildings and land surfaces;
  - y. “Stormwater Pollution Prevention Plan” or “SWPPP” as a site-specific, written document that, among other things: (1) identifies potential sources of stormwater pollution at the construction site; (2) describes stormwater controls to reduce or eliminate pollutants in stormwater discharges from the construction site; and (3) identifies procedures the operator will implement to comply with the terms and conditions of this general permit [2022 CGP]; and
  - z. “temporary stabilization” as a condition where exposed soils or disturbed areas are provided temporary vegetative and/or non-vegetative protective cover to prevent erosion and sediment loss. Temporary stabilization may include temporary seeding, geotextiles, mulches, and other techniques to reduce or eliminate erosion until either final stabilization can be achieved or until further construction activities take place to re-disturb the area.
20. The 2022 CGP establishes requirements and conditions, including among others, the development of a SWPPP; submittal of 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.
  21. Part 1.4 of the 2022 CGP requires all operators associated with a construction site seeking 2022 CGP coverage, who meet the eligibility requirements in Part 1.1 of the 2022 CGP, to submit to EPA a complete and accurate eNOI prior to commencing construction activities.
  22. Parts 1.4.1 and 7 of the 2022 CGP require operators associated with a construction site to develop a SWPPP before submitting an eNOI for coverage under the 2022 CGP.
  23. Part 1.4.3 and Table 1 of the 2022 CGP require operators of a new site to submit an eNOI for 2022



CGP coverage at least fourteen (14) calendar days before commencing construction activities.

24. Part 2.1.3 of the 2022 CGP requires permittees to complete installation of storm water controls by the time each phase of construction activities has begun.
25. Section 309(a)(3) of the CWA provides that “[w]henever 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 CWA, the Administrator] shall issue an order requiring such person to comply with such section....”
26. Section 309(g)(1)(B) of the CWA, 33 U.S.C. § 1319(g)(1)(B), authorizes the Administrator, upon a finding that any person has violated, among other things, Section 301(a) of the CWA, 33 U.S.C. § 1311(a), or has violated any permit condition or limitation implementing such section in a permit issued under Section 402 of the CWA, 33 U.S.C. § 1342, to assess a civil penalty.

## II. JURISDICTIONAL STATEMENTS

27. Héctor Rodríguez Valle (“Respondent Rodríguez Valle”) owns two (2) contiguous parcels of land located at PR-419 Road, Km. 11.05 (Intersection with Road PR-2, Km. 139.7) Cerro Gordo Ward, Aguada, Puerto Rico (the “Site”).<sup>1</sup>
28. The Site is a “facility”, as defined in 40 C.F.R. § 122.2.
29. Respondent Rodríguez Valle is a “person” pursuant to Section 502(5) of the CWA, 33 U.S.C. § 1362(5) and 40 C.F.R. § 122.2.
30. Respondent Transporte Rodríguez Asfalto, Inc. (“Respondent TRA”) is a corporation organized under the laws of the Commonwealth of Puerto Rico.
31. The President of Respondent TRA is Respondent Rodríguez Valle.
32. At relevant times alleged in this Complaint, Respondent TRA is and has been the owner and general contractor of the construction project “TRA Recycling Plant” (the “Project”) located at the Site.
33. Respondent TRA 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 TRA mobilized to the Site on or about January 30, 2023.
35. Respondent TRA began construction activities at the Site on or about February 1, 2023.

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<sup>1</sup> Approximate coordinates of the Site are Latitude 18.327106° N and Longitude -66.149497° W.

36. At all relevant times alleged in this Complaint, Respondent TRA performed construction activities at the Site that consisted of earth-disturbing activities including clearing, grubbing and earthworks, in two existing adjacent lots comprising approximately 9.7 acres (10 “cuerdas”).
37. Respondents temporarily ceased construction activities at the Site on or about April 29, 2023.
38. The Site is a “point source” pursuant to Section 502(14) of the CWA, 33 U.S.C. § 1362(14) and 40 C.F.R. § 122.2.
39. At all relevant times alleged in this Complaint, Respondents had control over the Project’s construction plans and specifications, including the ability to make modifications to those plans and specifications.
40. At all relevant times alleged in this Complaint, Respondents had day-to-day operational control over the construction activities being conducted at the Project.
41. At all relevant times alleged in this Complaint, Respondents had control over the design, installation, maintenance and inspection of storm water run-on and runoff controls to minimize the discharge of pollutants in stormwater runoff from the Site into Cañas River.
42. At all relevant times alleged in this Complaint, Respondents were “operators” of the Project, as defined in 40 C.F.R. § 122.2 and Appendix A of the 2022 CGP.
43. Respondents discharged turbid storm water runoff containing “pollutants” from the Site into the Cañas River, a tributary of Culebrinas River, which in turn flows into a territorial sea.
44. Cañas River, Culebrinas River and the territorial sea are “waters of the United States” pursuant to Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and 40 C.F.R. §§ 120.2 and 122.2.
45. Respondents are subject to the provisions of the CWA, 33 U.S.C. § 1251, *et seq.*, and the applicable NPDES permit application regulations found at 40 C.F.R. §§ 122, 124, and 350.
46. Respondents were required to apply for and obtain NPDES permit coverage for the Project’s discharges of pollutants into waters of the United States pursuant to Sections 402(a)(1) and 402(p) of the CWA, 33 U.S.C. §§ 1342(a)(1) and 1342(p), and the applicable NPDES permit application regulations found at 40 C.F.R. § 122.

### **III. FINDINGS OF VIOLATIONS**

47. Complainant re-alleges paragraphs 1 to 46, above.
48. By letter dated June 5, 2023, EPA issued a Request for Information letter (the “RFI Letter”) to Respondent TRA requesting information about the Site pursuant to the authority vested in the Administrator of EPA by Section 308(a) of the CWA, 33 U.S.C. § 1318(a).

49. By letter dated July 17, 2023, Respondent TRA submitted a partial response (the “Response”) to the RFI Letter.
50. By letter dated July 28, 2023, Respondent TRA submitted a supplemental response to the RFI Letter (the “Supplemental Response”). The Supplemental Response included the information in the Response and additional information that was pending submittal.
51. On August 3, 2023, an EPA official sent an email to Respondent TRA (the “August 2023 email”) indicating that: the Response and Supplemental Response had been reviewed and found to be incomplete; described which information and documents were not provided; and requested an update on the status of the construction activities at the Project and application for NPDES stormwater permit coverage under the 2022 CGP, including development of the SWPPP for the Project.
52. By letter dated August 11, 2023, Respondent TRA submitted its response to the August 2023 email including additional documents and clarifying certain information.
53. The Response, Supplemental Response, and email correspondence revealed, among other information, that:
  - a. the total area of surface soil to be disturbed at the Site is approximately 13 acres;
  - b. Respondent TRA has not filed for nor obtained NPDES permit coverage for the Project;
  - c. a SWPPP has not been prepared for the Site; and
  - d. a segment of the Cañas River is adjacent of the Site.
54. On September 13, 2023, an EPA official performed a NPDES Stormwater Reconnaissance Inspection (the “September 2023 Inspection”) of the Site.
55. By email dated September 14, 2023, Respondent TRA representative submitted to EPA additional information concerning the topography of the Site and a Puerto Rico Planning Board’s Cease-and-Desist Order, Number 0074-OCD-2023-SRQ—13155, issued to Respondents on April 28, 2023.
56. The findings of the September 2023 Inspection were included in an inspection report, dated September 18, 2023 (the “September 2023 Inspection Report”). The findings in the September 2023 Inspection Report included, among other things, the following findings and observations:
  - a. the Site has three (3) outfalls (discharge points);
  - b. the Site is adjacent to the Cañas River;

- c. the owners of the Project had not applied for and obtained NPDES permit coverage for the storm water discharges associated with construction activity from the Site into waters of the United States;
  - d. slopes without soil stabilization, especially those located at the upper west side of the Site;
  - e. landslides in several locations at the Site;
  - f. exposed soils at slopes;
  - g. erosion and sediment controls were not installed and/or maintained;
  - h. most of the Site's disturbed areas and areas where gradings had been conducted lacked soil stabilization;
  - i. concentrated stormwater flows from run-on and runoff sources towards one discrete area north of the Site;
  - j. stormwater run-on into the Site lacked runoff management to divert flows away from exposed soils; and
  - k. Respondents informed that they ceased construction activities due to the Puerto Rico Planning Board's cease-and-desist order.
57. The September 2023 Inspection Report included rain data obtained from the National Climatic Data Center's ("NCDC") online meteorological database (the "First NCDC Review") for three climatological stations located in the municipalities of Rincón and Mayaguez, Puerto Rico. The 1<sup>st</sup> NCDC Review covered the period between January 2023 and August 2023.
58. The purpose of the First NCDC Review was to learn about the storm events of 0.10 inches or greater that had occurred at or near the Project, which caused the discharge of pollutants (storm water associated with construction activities) from the Site into the Cañas River.
59. Pursuant to Section 309(a) of the CWA, 33 U.S.C. § 1319(a), and based on the information provided by Respondents in response to the RFI letter, the findings of the September 2023 Inspection and further investigations, EPA issued an Administrative Compliance Order ("ACO"), Docket Number CWA-02-2023-3105, on September 21, 2023, against Sonia N. Rivera López and Respondents to address the violations described in paragraph 56, above.
60. The ACO incorporated findings of violations, and required Respondents to, among other things:

- a. cease the discharge of any pollutant, including storm water run-off associated with construction activities, from the Project into waters of the United States, and construction activities related thereto (i.e., clearing, grading and excavation), except with authorization and in compliance with the requirements and conditions of the 2022 CGP or other NPDES permit for which Respondents obtained coverage;
  - b. commence to provide soil stabilization, erosion controls and flow management to certain areas at the Site, and consequently continue to implement such controls until their completion;
  - c. prepare and submit for EPA’s review, a Plan of Action (“POA”) with a detailed description of actions to be taken to prevent pollutant from the Site to reaching Cañas River, including an implementation schedule; and
  - d. bi-weekly Progress Reports.
61. On October 27, 2023, an EPA official reviewed the National Climatic Data Center’s (“NCDC”) online meteorological database (the “Second NCDC Review”) for two climatological stations located in the municipality of Rincón, Puerto Rico. The Second NCDC Review covered the period between for September 2023 and October 2023.
62. The First NCDC Review and Second NCDC Review revealed numerous storm events of 0.10 inches or more were recorded at the three meteorological stations located in the municipalities of Rincón and Mayaguez, Puerto Rico, in February 2023, March 2023, April 2023, May 2023, June 2023, July 2023, August 2023, and September 2023.
63. Based on the findings on paragraphs 48 to 63 above, Respondents are liable for the violations of Sections 301(a) and 402(p) of the CWA, 33 U.S.C. §§ 1311(a) and 1342(p), as specified below:
- a. **Claim 1 – Respondents failed to apply for and obtain NPDES permit coverage for the Project.**
    - 1) Respondents did not submit an individual NPDES permit application, as required by 40 C.F.R. § 122.21, nor did they file a complete and accurate eNOI seeking coverage under 2022 CGP.
    - 2) The period of violation for this claim is between January 22, 2023, (fourteen (14) days prior to NCDC Station’s recorded storm events of 0.13 inches and 0.38 on February 5, 2023, in nearby Site’s climatological stations, that caused a storm water runoff discharge containing pollutants from the Site into the Cañas River) and September 21, 2023 (date when EPA issued the ACO).
    - 3) The number of days that Respondents failed to file for NPDES permit coverage is **two hundred forty-two (242) days.**

b. **Claim 2 – Respondents illegally discharged pollutants (storm water associated with construction activities) from the Project into waters of the United States without NPDES permit coverage.**

- 1) Storm events of 0.10 inches or greater occurred on ninety-six (96) instances during the period between February 5, 2023 (date when NCDC Station recorded a storm event of 0.13 inches during the month that Respondents initiated construction activities at the Project) and September 20, 2023 (date before the issuance of the ACO in which the NCDC Station recorded storm events of 0.83 and 0.56 in nearby climatological stations).
- 2) The number of days that Respondents discharged pollutants from the Project into a water of the United States without NPDES permit coverage is **ninety-six (96) days**.

64. The EPA will notify the Puerto Rico Department of Natural and Environmental Resources regarding this proposed action by mailing a copy of this Complaint and Notice and offering an opportunity to confer with EPA on the proposed penalty assessment.

#### **IV. Notice of Proposed Order Assessing a Civil Penalty**

Based on the foregoing Findings of Violation, and pursuant to the authority of Section 309(g) of the CWA, 33 U.S.C. § 1319(g), EPA Region 2 hereby proposes to issue a Final Order Assessing Administrative Penalties (“Final Order”) to Respondents assessing a penalty of **\$145,418**. The amount of the proposed civil penalty has been determined in accordance with the applicable factors under Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3).

In determining the amount of the civil penalty, EPA is required to consider the nature, circumstances, extent and gravity of the violation (or violations), and Respondents’ prior compliance history, degree of culpability, economic benefit or savings accruing to Respondents by virtue of the violations, and Respondents’ ability to pay the proposed penalty. EPA also must consider the Federal Civil Penalties Inflation Adjustment Act, as amended, which prescribes a formula for adjusting statutory civil penalties to reflect inflation, maintain the deterrent effect of statutory civil penalties, and promote compliance with the law.

Based on the Findings set forth above, Respondents have been found to have violated the CWA and its implementing NPDES regulations by failing to apply for NPDES permit coverage prior to commencing earth-disturbing activities for the Project, as required by the NPDES applications and the 2022 CGP. Respondents are culpable for the violations alleged in this Complaint. EPA considered Respondents’ history of violations under the CWA, their knowledge of the NPDES regulations, the 2022 CGP, and the risks to human health and the environment posed by the uncontrolled discharges of storm water runoff from the Project into Cañas River, which is a water of the United States.

The violations discussed in this Complaint are serious since Respondents' failure to design, implement/install, maintain and inspect controls to comply with the requirements of the 2022 CGP, such as technology-based effluent limitations and water quality-based effluent limitations, lead to the discharges of pollutants into waters of the United States that caused significant amount of pollutants to reach surface water that resulted in direct and indirect negative effects on the environment. Respondents knew of their obligations under the NPDES regulations, the 2022 CGP, and the CWA.

Respondent TRA does not have a prior history of violations under the CWA and the implementing NPDES regulations. Respondent Rodríguez Valle is the owner and president of Cantera HR Corp., which has prior history of violations under the CWA and its implementing NPDES regulations.

EPA may issue a final Order Assessing Administrative Penalties thirty (30) days after Respondents' receipt of this Notice, unless Respondents, within that time, file an answer to the Complaint and request a hearing on this Notice pursuant to the following section.

## **V. Procedures Governing this Administrative Litigation**

The rules of procedure governing this civil administrative litigation have been set forth in the CROP, which have been codified at 40 C.F.R. Part 22. A copy of these rules accompanies this Complaint.

### **1. Answering the Complaint**

Where Respondents intend to contest any material fact upon which the Complaint is based, to contend that the proposed penalty is inappropriate or to contend that Respondents are entitled to judgment as a matter of law, Respondents must file with the Regional Hearing Clerk of EPA, Region 2, both an original and one copy of a written Answer to the Complaint, and such Answer must be filed within thirty (30) days after service of the Complaint. 40 C.F.R. § 22.15(a). The address of the Regional Hearing Clerk of EPA, Region 2, is:

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 17<sup>th</sup> floor  
New York, New York 10007-1866  
Email: [maples.karen@epa.gov](mailto:maples.karen@epa.gov)

Respondents shall also then serve one copy of the Answer to the Complaint upon Complainant and any other party to the action. 40 C.F.R. § 22.15(a).

Respondents' Answer to the Complaint must clearly and directly admit, deny, or explain each of the factual allegations that are contained in the Complaint regarding which Respondents have any knowledge. Where Respondents have no knowledge of a particular factual allegation and so state in their Answer, the allegation is deemed denied. The Answer shall also state: the circumstances or arguments which are alleged to constitute the grounds of any defense; the facts

which Respondents dispute; the basis for opposing any proposed relief; and whether a hearing is requested. 40 C.F.R. § 22.15(b).

Respondents' failure to affirmatively raise in the Answer facts that constitute or that might constitute the grounds of its defense may preclude Respondents, at a subsequent stage in this proceeding, from raising such facts and/or from having such facts admitted into evidence at a hearing.

## **2. Opportunity to Request a Hearing**

If requested by Respondents in the Answer, a hearing upon the issues raised by the Complaint and Answer may be held. 40 C.F.R. § 22.15(c). If, however, Respondents do not request a hearing, the Presiding Officer (as defined in 40 C.F.R. § 22.3) may hold a hearing if the Answer raises issues appropriate for adjudication. 40 C.F.R. § 22.15(c).

Any hearing in this proceeding will be held at a location determined in accordance with 40 C.F.R. § 22.21(d). A hearing of this matter will be conducted in accordance with the applicable provisions of the Administrative Procedure Act, 5 U.S.C. §§ 551-59, and the procedures set forth in Subpart D of 40 C.F.R. Part 22.

Should Respondents request a hearing on this proposed penalty assessment, members of the public, to whom EPA is obligated to give notice of this proposed action, will have a right under Section 309(g)(4)(B) of the CWA, to be heard and to present evidence on the appropriateness of the penalty assessment. Should Respondents not request a hearing, EPA will issue a Final Order, and only members of the public who submit timely comment on this proposal will have an additional thirty (30) days to petition EPA to set aside the Final Order and to hold a hearing thereon. EPA will grant the petition and will hold a hearing only if the petitioner's evidence is material and was not considered by EPA in the issuance of the Final Order.

## **3. Failure to Answer**

If Respondents fail in the Answer to admit, deny, or explain any material factual allegation contained in the Complaint, such failure constitutes an admission of the allegation. 40 C.F.R. § 22.15(d). If Respondents fail to file a timely [i.e., in accordance with the 30-day period set forth in 40 C.F.R. § 22.15(a)] Answer to the Complaint, Respondents may be found in default upon motion. 40 C.F.R. § 22.17(a). Default by Respondents constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the Complaint and a waiver of Respondents' right to contest such factual allegations. 40 C.F.R. § 22.17(a). Following a default by Respondents for a failure to timely file an Answer to the Complaint, any order issued therefore shall be issued pursuant to 40 C.F.R. § 22.17(c).

Any penalty assessed in the default order shall become due and payable by Respondents without further proceedings thirty (30) days after the Default Order becomes final pursuant to 40 C.F.R.



§ 22.27(c). 40 C.F.R. § 22.17(d). If necessary, EPA may then seek to enforce such Final Order of Default against Respondents, and to collect the assessed penalty amount, in federal court.

## **VI. Informal Settlement Conference**

Whether or not Respondents request a formal hearing, EPA encourages settlement of this proceeding consistent with the provisions of the CWA and its applicable regulations. 40 C.F.R. § 22.18(b). At an informal conference with a representative(s) of Complainant, Respondents may comment on the charges made in this complaint, and Respondents may also provide whatever additional information that it believes is relevant to the disposition of this matter, including: (1) actions Respondents have taken to correct any or all of the violations herein alleged, (2) any information relevant to Complainant's calculation of the proposed penalty, (3) the effect the proposed penalty would have on Respondents' ability to continue in business, and/or (4) any other special facts or circumstances Respondents wish to raise.

Complainant has the authority to modify the amount of the proposed penalty, where appropriate, to reflect any settlement agreement reached with Respondents, to reflect any relevant information previously not known to Complainant or to dismiss any or all of the charges, if Respondents can demonstrate that the relevant allegations are without merit and that no cause of action as herein alleged exists. Respondents are referred to 40 C.F.R. § 22.18.

Any request for an informal conference or any questions that Respondents may have regarding this Complaint should be directed to the EPA attorney named in Section VIII, Paragraph 2, below.

The parties may engage in settlement discussions irrespective of whether Respondents have requested a hearing. 40 C.F.R. § 22.18(b)(1). Respondents' requesting a formal hearing do not prevent him from also requesting an informal settlement conference; the informal conference procedure may be pursued simultaneously with the formal adjudicatory hearing procedure. A request for an informal settlement conference constitutes neither an admission nor a denial of any of the matters alleged in the Complaint. Complainant does not deem a request for an informal settlement conference as a request for a hearing as specified in 40 C.F.R. § 22.15(c).

A request for an informal settlement conference does not affect Respondents' obligation to file a timely Answer to the Complaint pursuant to 40 C.F.R. § 22.15. No penalty reduction, however, will be made simply because an informal settlement conference is held.

Any settlement that may be reached as a result of an informal settlement conference shall be embodied in a written Consent Agreement. 40 C.F.R. § 22.18(b)(2). In accepting the Consent Agreement, Respondents waive their right to contest the allegations in the Complaint and waives any right to appeal the Final Order that is to accompany the Consent Agreement. 40 C.F.R. § 22.18(b)(2). In order to conclude the proceeding, a Final Order ratifying the parties' agreement to settle will be executed. 40 C.F.R. § 22.18(b)(3).

Respondents' entering into a settlement through the signing of such Consent Agreement and its complying with the terms and conditions set forth in such Consent Agreement terminates this administrative litigation and the civil proceedings arising out of the allegations made in the Complaint. Respondents' entering into a settlement does not extinguish, waive, satisfy or otherwise affect its obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance.

**VII. Resolution of this Proceeding Without Hearing or Conference**

Instead of filing an Answer, Respondents may choose to pay the total amount of the proposed penalty within 30 days after receipt of the Complaint, provided that Respondents file with the Regional Hearing Clerk, Region 2 (at the address noted above), a copy of the check or other instrument of payment. 40 C.F.R. § 22.18(a). A copy of the check or other instrument of payment should be provided to the EPA Assistant Regional Counsel identified on Section VIII, paragraph 2. Payment of the penalty assessed should be made by sending a cashier's or certified check payable to the "Treasurer, United States of America", in the full amount of the penalty assessed in this complaint to the following addressee:

United States Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P. O. Box 979077  
St. Louis, MO 63197-9000  
Docket Number: CWA-02-2024-3451

Pursuant to 40 C.F.R. § 22.18(a)(3), if Respondents elect to pay the full amount of the penalty proposed in the Complaint within thirty (30) days of receiving the Complaint, then, upon EPA's receipt of such payment, the Regional Administrator of EPA, Region 2 (or, if designated, the Regional Judicial Officer), shall issue a Final Order in accordance with 40 C.F.R. § 22.18(a)(3). In accordance with 40 C.F.R. § 22.45(c)(3), no Final Order shall issue until at least ten (10) days after the close of the comment period on this Complaint. Issuance of a Final Order terminates this administrative litigation and the civil proceedings arising out of the allegations made in the Complaint. Further, pursuant to 40 C.F.R. § 22.18(a)(3), the making of such payment by Respondents shall constitute a waiver of Respondents' right both to contest the allegations made in the Complaint and to appeal said Final Order to federal court. Such payment does not extinguish, waive, satisfy or otherwise affect Respondents' obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance.

**VIII. Filing of Documents**

1. The original and one copy of the Answer and any Hearing Request and all subsequent documents filed in this action should be sent to:

Regional Hearing Clerk  
U.S. Environmental Protection Agency  
290 Broadway, 17<sup>th</sup> Floor  
New York, New York 10007-1866  
Email: [maples.karen@epa.gov](mailto:maples.karen@epa.gov)

2. A copy of the Answer, any Hearing Request and all subsequent documents filed in this action shall be sent to:

Suzette M. Meléndez-Colón, Esq.  
Office of Regional Counsel, Caribbean Team  
U.S. Environmental Protection Agency, Region 2  
City View Plaza II, Suite 7000  
Guaynabo, Puerto Rico 00968  
Email: [melendez-colon.suzette@epa.gov](mailto:melendez-colon.suzette@epa.gov)  
Telephone Number: (787) 977-5822

#### **IX. General Provisions**

1. Respondents have a right to be represented by an attorney at any stage of these proceedings.
2. This Complaint does not constitute a waiver, suspension or modification of the requirements of the CWA, regulations promulgated thereunder, or any applicable permit.
3. Neither assessment nor payment of an administrative civil penalty pursuant to Section 309(g) of the CWA will affect Respondents' continuing obligation to comply with the CWA, and with any separate compliance order issued under Section 309(a) of the CWA, 33 U.S.C. § 1319(a), for the violations alleged herein.

ISSUED THIS 15 DAY OF FEBRUARY 2024.

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**HÉCTOR L. VÉLEZ CRUZ**

Acting Director

Caribbean Environmental Protection Division

United States Environmental Protection Agency, Region 2

cc: Puerto Rico Department of Natural and Environmental Resources  
San José Industrial Park  
1375 Ave. Ponce de León  
San Juan, Puerto Rico 00926