

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

September 30, 2025 4:48 pm
USEPA – Region II
Regional Hearing Clerk

In the Matter of:

DESARROLLADORA YAHIR, INC.

P. O. Box 2133
San Sebastián, Puerto Rico 00685

and

A & M GROUP, INC.

P. O. Box 2133
San Sebastián, Puerto Rico 00685

**TRES PALMAS SUNSET VIEW RESIDENTIAL
DEVELOPMENT**

PR-413 Road, Km. 2.2, Puntas Ward
Rincón, Puerto Rico 00677
Coordinates: 18° 21' 17.96" N; 67° 15' 57.04" W

NPDES Tracking Numbers: PRR1000JG / PRU002453

RESPONDENTS

**DOCKET NUMBER
CWA-02-2025-3451**

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 EPA 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, 33 U.S.C. § 1319(g)(2)(B), 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 hereby requests the assessment of a civil penalty against Desarrolladora Yahir, Inc. and A & M Group, Inc. (collectively, the “Respondents”), as a result of Complainant’s determination that Respondents violated Sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a) and 1342, for A & M Group, Inc.’s failure to apply for and obtain National Pollutant Discharge Elimination System (“NPDES”) permit coverage for its discharges of pollutants from the Tres Palmas Sunset View Construction Project located in Rincón, Puerto Rico , for its discharges of pollutants from such construction project into a water of the United States without NPDES permit coverage, and for Desarrolladora Yahir’s failure to comply with requirements and conditions of an NPDES permit issued under Section 402 of the CWA, 33 U.S.C. § 1342.

3. Section 301(a) of the CWA provides in part that “[e]xcept as in compliance with this Section and Sections ...402, and 404 of the CWA, the discharge of any pollutant by any person shall be unlawful.”
4. Section 402 of the CWA defines NPDES as the national program for, among other things, issuing and enforcing permits.
5. Section 402 of the CWA 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 Act and such conditions as the Administrator determines are necessary.
6. Section 402 of the CWA authorizes the Administrator to promulgate regulations for the implementation of the NPDES program.
7. Section 402(p)(2)(B) of the CWA requires a permit with respect to a storm water discharge associated with industrial activity.
8. Pursuant to the CWA, on April 1, 1983, EPA promulgated regulations known as “EPA Administered Permit Programs: the National Pollutant Discharge Elimination System,” which was codified at 40 C.F.R. Parts 122, 123 and 124, as amended.
9. 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.
10. 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. Facilities described under 40 C.F.R. § 122.26(b)(14) shall submit applications at least ninety (90) days before the date on which construction is to commence.
11. Pursuant to 40 C.F.R. § 122.26(b)(14)(x), operators of construction activities are required to

obtain an NPDES permit for their storm water discharges associated with construction activity into a water of the United States.

12. 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” or “MS4” means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains):
 - 1) 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;
 - 2) designed or used for collecting or conveying storm water;
 - 3) which is not a combined sewer; and

- 4) which is not part of a Publicly Owned Treatment Works (“POTW”), as defined at 40 CFR 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.

13. Pursuant to 40 C.F.R. Part 450, the “Construction and Development Point Source Category” regulations are applicable to discharges associated with construction activity and small construction activity defined in 40 C.F.R. §§ 122.26(b)(14)(x) and (b)(15).
14. Pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, on January 18, 2022, EPA renewed the NPDES Construction General Permit for Stormwater Discharges from Construction Activities, as modified (“2022 CGP”). The 2022 CGP became effective on February 17, 2022, and expires on February 16, 2027. 87 Fed. Reg. 3,522 (January 24, 2022).
15. The 2022 CGP established requirements and conditions, including among others, development of a Storm Water Pollution Prevention Plan (“SWPPP”) prior to submittal of a Notice of Intent (“NOI”) form; submission of a complete and accurate NOI form; design, installation, and maintenance of storm water controls (i.e., BMPs, performance and documentation of inspections, and implementation and documentation of corrective actions); and modification of the SWPPP, as required under Part 7.4.
16. 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 United States;
 - 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 17, 2022;

- p. “Notice of Intent” as the form (electronic or paper) 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 this area.
17. 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 NOI form prior to commencing construction activities.
18. Parts 1.4.1 and 7 of the 2022 CGP require operators associated with a construction site to develop a SWPPP before submitting a NOI form for coverage under the 2022 CGP.
19. Part 1.4.3 and Table 1 of the 2022 CGP require operators of a new site to submit a NOI form for 2022 CGP coverage at least fourteen (14) calendar days before commencing construction activities.
20. Part 2.1 of the 2022 CGP requires permittees to design, install, and maintain stormwater controls required in Parts 2.2 and 2.3 of the 2022 CGP, in order to minimize the discharge of pollutants in stormwater from construction activities.
21. 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.
22. Part 2.2 of the 2022 CGP requires permittees to implement erosion and sediment controls in accordance with the requirements established in the 2022 CGP, in order to minimize the discharge of pollutants in stormwater from construction activities.
23. Part 2.3 of the 2022 CGP requires permittees to implement pollution prevention controls in accordance with specific requirements in order to minimize the discharge of pollutants in stormwater and to prevent the discharge of pollutants from spilled or leaked materials from construction activities.
24. Part 4 of the 2022 CGP requires permittees to conduct and document site inspections.
25. Part 5 of the 2022 CGP requires permittees to take and document corrective actions to address any of the conditions identified therein at the construction site.
26. Part 7.1 of the 2022 CGP requires all permittees to keep the SWPPP up-to-date throughout coverage under this permit. Where there are multiple operators associated with the same site, they may develop a group SWPPP instead of multiple individual SWPPPs. Regardless of whether there is a group SWPPP or multiple individual SWPPPs, each permittee is responsible for

compliance with the permit's ["2022 CGP"] terms and conditions. In addition, all permittees must ensure, either directly or through coordination with other permittees, that their activities do not cause a violation or compromise any other permittees' controls and/or any shared controls.

27. Part 7.4 of the 2022 CGP establishes the conditions when a SWPPP must be modified, including:
 - a. if inspections or investigations by EPA or its authorized representatives determine that SWPPP modifications are necessary for compliance with this permit (Part 7.4.1.c); and
 - b. where EPA determines it is necessary to install and/or implement additional controls at your site in order to meet the requirements of this permit, the following must be included in your SWPPP:
 - 1) a copy of any correspondence describing such measures and requirements; and
 - 2) a description of the controls that will be used to meet such requirements. (Part 7.4.1.d).
28. Pursuant to 40 C.F.R. §122.41 and Part G.1 of the 2022 CGP (Duty to Comply), the permittee has a duty to comply with all conditions of the 2022 CGP, and any permit noncompliance constitutes a violation of the CWA and is grounds for enforcement action.
29. 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...."
30. 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

31. Desarrolladora Yahir, Inc. ("DYI" or "Respondent DYI") is a "person" pursuant Section 502(5) of the Act, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.
32. Respondent DYI is a for-profit corporation organized under the laws of the Commonwealth of Puerto Rico, registered in the Puerto Rico Department of State on July 19, 2005, under number 154685. The President of DYI is Mr. Alexis Medina Soto.
33. Respondent DYI is the owner of four contiguous parcels of land that are located at PR-413 Road, Km. 2.2, Puntas Ward, Rincón, Puerto Rico, approximate coordinates 18° 21' 17.96" N; 67° 15'

57.04" W (the "Site").

34. A & M Group, Inc. ("A&M" or "Respondent A&M") is a "person" pursuant to Section 502(5) of the Act, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.
35. Respondent A&M is a for-profit corporation organized under the laws of the Commonwealth of Puerto Rico, registered in the Puerto Rico Department of State on April 8, 2013, under number 324352. The President of A&M is Ms. Omayra Torres Sánchez.
36. On February 15, 2024, the Puerto Rico Department of Economic Development and Commerce ("DDEC") issued a Construction Permit 2022-426770-PCOC-300544 to A&M to conduct earth movement and infrastructure activities at the Site.
37. On March 25, 2024, DDEC issued Permit 2022-426770-PUI-300225 authorizing A&M to perform extraction of terrain materials at the Site.
38. The Site has an area of approximately 6.52 acres.
39. The construction activities at the Site consist of the development of ten (10) lots for future residential structures construction, known as "Tres Palmas Sunset View" (the "Project"). The construction activities at the Site include, among others, earth movement activities (i.e., clearing, grading and excavation); construction of an entrance and internal roads; and the construction of a stormwater runoff collection, conveyance and discharge system.
40. The Site 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.
41. 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.
42. The PR-413 Road is a "municipal separate storm sewer", as defined in 40 C.F.R. § 122.26(b)(8).
43. Respondent DYI hired Respondent A&M as the general contractor to perform construction activities at the Site.
44. At all relevant times, Respondent DYI was and is the "owner" and "operator" of the Project, as defined in 40 C.F.R. § 122.2, and Appendix A of the 2022 CGP.
45. At all relevant times, Respondent A&M was and is the "operator" of the Project, as defined in 40 C.F.R. § 122.2, and Appendix A of the 2022 CGP.
46. Respondents began construction activities at the Site on May 15, 2024.
47. Respondents were engaged at all relevant times in construction activity at the Project, including earth movement activities, such as clearing, grading and excavation.

48. At all relevant times, Respondents had control over the Project's construction plans and specifications, including the ability to make modifications to those plans and specifications.
49. At all relevant times, Respondents had day-to-day operational control over the construction activities being conducted at the Site.
50. At all relevant times, 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.
51. At all relevant times, Respondents discharged storm water runoff containing "pollutants" from the Site into the Piletas Creek and the Caribbean Sea.
52. Piletas Creek and the Caribbean 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.
53. 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.
54. Respondent A&M was required to apply for and obtain NPDES permit coverage for its discharges of storm water containing pollutants from the Site 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.
55. Respondent DYI had a duty to comply with the terms and conditions of the 2022 CGP pursuant to Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342, and 40 C.F.R. § 122.41(a).

III. FINDINGS OF VIOLATIONS

56. Complainant alleges paragraphs 1 to 55, above.
57. On April 30, 2024, Respondent DYI submitted an electronic NOI form for the Project under the 2022 CGP. EPA assigned the NPDES identification number PRR1000JG (the "DYI NOI").
58. On May 14, 2024, EPA granted Respondent DYI coverage for the Project under the 2022 CGP.
59. By letter dated April 28, 2025, EPA issued a request for information (the "RFI Letter") to Respondent DYI requesting information about the construction activities at 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).
60. On April 28, 2025, EPA received a citizen complaint via email with various attachments, including videos dated April 27, 2025, and pictures of the Site. The videos show turbid, brown-colored stormwater runoff being discharged from the Site into a municipal separate storm sewer system

(the “PR-413 Road MS4”).

61. On May 15, 2025, EPA received a citizen complaint via email with a video as attachment. The email stated that the video was taken on the same date. The video shows turbid, brown-colored stormwater runoff being discharged from the Site into the PR-413 Road MS4 and then flowing into a surface depression and eventually reaching the Piletas Creek.
62. On May 20, 2025, an EPA official performed an NPDES Stormwater Inspection (the “Inspection”) of the Site.
63. The findings of the Inspection were documented in the Inspection Report, dated July 9, 2025 (the “Inspection Report”).
64. The findings of the Inspection included, among other things, the following:
 - a. four discrete conveyance points at the west and south perimeter of the Site;
 - b. erosion control measures installed at a discrete conveyance point lacked maintenance and/or repair;
 - c. lack of erosion control measures at the slope disturbances located on the northern, western and southern perimeters of the Site;
 - d. erosion and sediment controls were not installed and/or maintained at areas other than the west perimeter of the Site;
 - e. lack of silt fence barrier in perimeter areas other than the west perimeter of the Site;
 - f. disturbed areas where grading had been conducted lacked soil stabilization;
 - g. lack of erosion controls for stockpiles;
 - h. lack of storm drains inlet protection;
 - i. lack of dust controls;
 - j. lack of sediment basin;
 - k. concrete washout leaking from the designated concrete mixing area;
 - l. lack of stormwater run-on management at the east side of the Site to divert flows away from areas where earth movement activities have been conducted;
 - m. current copy of the SWPPP developed for the Project was not available on-Site for review;

and

n. lack of rain gauge on-Site.

65. By letter dated May 21, 2025, Respondent DYI submitted its response to the RFI Letter (the “RFI Response Letter”).
66. EPA reviewed the RFI Response Letter (the “Review”) and found the following:
- a. earth movement activities began at the Site on May 15, 2024;
 - b. the expected completion date for construction activities at the Site was June 30, 2025;
 - c. the total area of surface soil to be disturbed at the Site was approximately 6.52 acres;
 - d. a Soil Study had not been conducted for the Project;
 - e. a Hydrologic/Hydraulic Study had not been conducted for the Project;
 - f. a SWPPP dated April 15, 2024, was prepared for the Project, and its review revealed that:
 - 1) the document was not signed and certified according to Part 7.2.10 of the 2022 CGP;
 - 2) the members of the Pollution Prevention Team in Section 1.2 did not identify the individuals responsible for the installing and maintaining the controls;
 - 3) the site map did not depict: (1) locations where sediment, soil or other construction materials will be stockpiled; (2) the drainage patterns of stormwater runoff before and after major grading activities; and (3) locations of the stormwater controls, including the sedimentation basin referenced in Section 4.2;
 - 4) the controls for sediment track-out were not included in Section 4.3;
 - 5) the controls for stockpiles were not included in Section 4.4;
 - 6) the dust controls method(s) were not included in Section 4.5;
 - 7) designated areas for stockpiles were not included in Section 4.7;
 - 8) the Site stabilization practice(s) were not included in Section 4.10;
 - 9) the installation of Site stabilization in Section 4.10 were to be completed by May 15, 2025;

- 10) site inspections in Section 6.1 were established to be conducted every seven days;
 - 11) the Appendix I (Training Documentation) did not document the training requirements in Part 6.2 of the CGP;
 - 12) the Appendix E (Corrective Action Log) was blank;
 - 13) the Appendix H (Grading and Stabilization Activities Log) was blank;
 - 14) the Appendix J (Delegation of Authority Form) was blank; and
 - 15) the Appendix M (Rainfall Gauge Recording) was blank.
67. EPA reviewed the online meteorological database from the National Centers for Environmental Information (the “NCEI Review”) from the National Oceanic and Atmospheric Administration (“NOAA”) for a climatological station¹ located in Rincón, Puerto Rico. The purpose of the NCEI Review was to learn about the storm events of 0.25 inches or more within a 24-hour period that had occurred at or near the Site, which will result in stormwater runoff discharge carrying pollutants (storm water associated with construction activities) from the Site into Piletas Creek and the Caribbean Sea.
68. The NCEI Review revealed that storm events of 0.25 inches or greater occurred on eighty-one (81) instances during the period between May 15, 2024 (commencement of construction activities) to July 30, 2025.
69. On or around June 27, 2025, an EPA official reviewed the EPA database known as the “Central Data Exchange / NeT” and found that A&M had not submitted a NOI form to obtain coverage for the Project under the 2022 CGP.
70. On July 15, 2025, EPA issued an Administrative Compliance Order, Docket Number CWA-02-2025-3107 (the “Order”), against Respondents requiring, among others, compliance with Sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1318(a) and 1342, its implementing NPDES stormwater permit application regulations codified in 40 C.F.R. § 122.26, and the 2022 CGP. The Order requested Respondents to amend the SWPPP and implement immediate corrective actions. It also required Respondent DYI to submit a “Change NOI,” and A&M to submit a complete and accurate NOI form for the Project under the 2022 CGP.
71. The Order also required Respondents to prepare and implement a corrective action plan (“CAP”), including, a detailed description of the actions to be taken to prevent pollutants from the Site from reaching Piletas Creek and the Caribbean Sea, along with an implementation schedule to address soil stabilization measures for all bare soils at the Site, perimeter controls, run-on and

¹ The precipitation data analyzed was from the climatological station identified as RINCON 1.5 N< PR RQ (RQ1PRRN003).
<https://www.ncei.noaa.gov/access/past-weather/rincon,%20PR>

run-off management, sediment track-out controls into the PR-413 Road and revision of the Site's inspection documentation form. Respondents were required to implement the CAP as quickly as possible, but no later than September 13, 2025.

72. On July 15, 2025, EPA received a citizen complaint via email with two pictures as attachments. The email stated that the pictures were taken on the same date. The pictures show turbid, brown-colored stormwater runoff being discharged from the Site into PR-413 Road MS4.
73. On July 18, 2025, Respondents authorized representatives signed and submitted to EPA the "Acknowledgment of Receipt of the Administrative Compliance Order," as required by paragraph 74 of the Order.
74. On July 27, 2025, EPA received a citizen complaint via email with a video as attachment. The email stated that the video was taken on the same date. The video shows turbid, brown-colored stormwater runoff being discharged from the Site into PR-413 Road MS4 and crossing PR-413 Road.
75. On September 15, 2025, A&M Group sent a letter dated September 12, 2025, to EPA in response to the Inspection Report and the Order (the "September 12 Letter").
76. The EPA reviewed the September 12 Letter and found that control measures had been implemented in response to the findings of the Inspection Report and that a CAP had been included detailing the erosion control measures that had been or would be implemented at the Site.
77. The EPA review of the September 12 Letter also revealed that Respondents failed to provide information to EPA demonstrating compliance with paragraphs 76, 77, 78, 79, 80, 81, 85, 86, and 87 of the Order.
78. Based on the findings on paragraphs 56 to 77 above, Respondents are liable for the violations of Sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a) and 1342, as specified below:

a. Claim 1 – Respondent A&M failed to apply for and obtain NPDES permit coverage

Respondent A&M did not submit an individual NPDES permit application, as required by 40 C.F.R. 122.21, nor did they timely file a complete and accurate NOI seeking coverage under the 2022 CGP.

The period of violation for this claim is from May 26, 2024 (14 days prior to first rain event equal or greater than 0.25 inches) through July 30, 2025 (the due date for A&M to file the NOI under the Order), which are four hundred and thirty **(430) days**.

b. Claim 2 - Respondent DYI failed to submit an accurate NOI

On April 30, 2024, Respondent DYI submitted a NOI. EPA assigned the NPDES identification

number PRR1000JG to the DYI NOI. On May 14, 2024, EPA granted Respondent DYI coverage for the Project under the 2022 CGP.

Based on the Inspection and EPA's administrative record, EPA found that: 1) the DYI NOI identified two outfalls while EPA identified four outfalls during the Inspection; 2) the completion date included in the DYI NOI and RFI Response Letter are different; 3) the DYI NOI did not specify that the Site discharges stormwater into the PR-413 Road MS4; and 4) the DYI NOI did not identify the Piletas Creek as one of two (2) receiving waters. The Order required Respondent DYI to submit a complete and accurate "Change NOI" thru the "Central Data Exchange / NeT" tool by July 22, 2025, but Respondent DYI has failed to do so.

The period of violation for this claim is from May 20, 2025 (the date of the Inspection) through July 22, 2025 (the due date for DYI to file the Change NOI under the Order), which are sixty-three **(63) days**.

c. **Claim 3 – Respondents A&M illegally discharged storm water associated with industrial activities (construction activity) containing pollutants from the Site into a water of the United States without NPDES permit coverage**

Respondent A&M failed to apply and obtain NPDES Permit coverage for its discharges of pollutants (stormwater associated with construction activity) from the Site into a water of the United States.

Storm events of 0.25 inches or greater occurred on eighty-one (81) instances during the period between May 15, 2024 (commencement of construction activities) and July 30, 2025.

The period of violation for this claim is from June 9, 2024 (first rain event equal or greater than 0.25 inches after land movement commenced) through July 30, 2025. The number of days that Respondent A&M discharged pollutants from the Site into a water of the United States without NPDES permit coverage was eighty-one **(81) days**.

d. **Claim 4 – Respondents failed to modify the SWPPP**

Respondent DIY developed an SWPPP on April 15, 2024. Respondents failed to have a copy of the SWPPP on-Site for review during the Inspection. Respondents failed to modify and submit an amended SWPPP for the Site, as required by paragraph 80 of the Order.

The period of violation for this claim is from June 13, 2025 (the date when EPA reviewed the SWPPP) through July 30, 2025 (the due date to submit the amended SWPPP under the Order), which are forty-seven **(47) days**.

e. Claim 5 – Respondents failed to install and/or maintain erosion and sediment controls

Respondents failed to install and maintain erosion and sediment controls, as required by Part 2.2 of the 2022 CGP and paragraphs 82 and 83 of the Order.

The period of violation for this claim is from May 20, 2025 (the date of the Inspection) through July 30, 2025 (date in which certain BMPs included in the CAP were implemented), which are seventy-one **(71) days**.

79. 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 eighty-six thousand, five hundred seventy-eight **(\$86,578.00)**.

Pursuant to Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3), in determining the penalty assessed, EPA took into account the nature, circumstances, extent and gravity of the violations, and with respect to the Respondents, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and such other matters as justice may require. Accordingly, EPA considered the 2022 CGP, and the risks to human health and the environment posed by the uncontrolled discharges of storm water runoff from the construction activities at the Site into the Piletas Creek and the Caribbean Sea, which are waters of the United States. EPA also considered the Federal Civil Penalties Inflation Adjustment Act of 2015, 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, EPA has found Respondents in violation of the CWA and its implementing NPDES regulations by Respondent A&M’s failure to apply for NPDES permit coverage for its discharges of pollutants from the Project/Site, for its discharges of pollutants from the Project/Site into a water of the United States without NPDES permit coverage, and for Respondent DYI’s failure to submit a Change NOI form and to comply with requirements and conditions of an NPDES permit issued under Section 402 of the CWA, 33 U.S.C. § 1342.

The violations discussed in this Complaint are serious since Respondents’ failure to design, implement/install, and maintain controls to comply with the requirements of the 2022 CGP, such as technology-based effluent limitations and water quality-based effluent limitations, cause the discharges of pollutants into surface waters affecting water quality and the surrounding environment.

EPA may issue a final Order Assessing Administrative Penalties thirty (30) days after Respondents' receipt of this Notice, unless Respondents, within that time files 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.

80. 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, 17th floor
New York, New York 10007-1866
Email: Region2_RegionalHearingClerk@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 with regard to 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.

81. 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.

82. 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 they believe 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 84, 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 them 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 waive 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 their 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 resolve this proceeding at any time by paying the specific proposed penalty in full within thirty (30) days after receipt of the Complaint and by filing with the Regional Hearing Clerk, Region 2 (at the address noted below). See, 40 C.F.R. § 22.18(a). Payment of the penalty assessed should be made using any method, or combination of appropriate methods, as provided on the EPA website: <https://www.epa.gov/financial/makepayment>. For additional instructions see: <https://www.epa.gov/financial/additional-instructions-making-payments-epa>. When making a payment, Respondents shall identify the payment with Respondents' names and the Docket Number

CWA-02-2025-3451, and concurrently with any payment or within twenty-four (24) hours of any payment, Respondents shall serve proof of such payment to the EPA Assistant Regional Counsel (at the address noted below).

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

83. 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, 16th Floor
New York, New York 10007-1866
Email: Region2_RegionalHearingClerk@epa.gov

84. 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
Telephone Number: (787) 977-5822

IX. General Provisions

85. Respondents have a right to be represented by an attorney at any stage of these proceedings.
86. This Complaint does not constitute a waiver, suspension, or modification of the requirements of the CWA, regulations promulgated thereunder, or any applicable permit.

87. 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 30 DAY OF SEPTEMBER 2025.

CARMEN R. GUERRERO PÉREZ
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 Ponce de León Avenue
San Juan, Puerto Rico 00926