

RECEIVED
U.S. E.P.A.
UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2006 AUG -4 AM 7:41
REGIONAL HEARING
CLERK

IN THE MATTER OF:

José López-Roig
President
Estancias de Siervas de
Maria, Inc.
MSC 1006, HC-04 Box 44374
Bo. San Salvador
Caguas, PR 00725

PRU200900
Respondent

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

ENVIRONMENTAL APPEALS BOARD
PROCEEDING TO ASSESS A CLASS
ADMINISTRATIVE PENALTY

DOCKET NO.
CWA-02-2006-3415

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

I. Statutory Authority and Jurisdiction

1. This Administrative Complaint, Findings of Violation, Notice of Proposed Assessment of an Administrative Penalty, and Notice of Opportunity to Request a Hearing (Complaint) is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 309(g)(2)(B) of the Clean Water Act (Act or CWA), 33 U.S.C. §1319(g)(2)(B). The Administrator has delegated this authority to the Regional Administrator of EPA, Region 2, who in turn has delegated it to the Director, Division of Enforcement and Compliance Assistance ("DECA") of EPA, Region 2 (Complainant).
2. Pursuant to Section 309(g)(2)(B) of the Act, 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 CFR Part 22, a copy of which is attached, Complainant hereby requests that the Regional Administrator assess a civil penalty against José López Roig ("Respondent") as a result of Complainant's determination that Respondent

In the matter of: Estancias de Siervas de Maria, Inc.
CWA-02-2006-3415

discharged industrial storm water associated with construction activities into the Rio Grande de Loiza River, without a National Discharge Elimination Permit ("NPDES") permit, in violation of Section 301 and 402 of the Act, 33 U.S.C. §1301 and §1342.

3. Section 301(a) of the Act, 33 U.S.C. §1311(a), provides in part that "Except as in compliance with this section and sections [...] 1342, and 1344 [402, and 404] of the Act, the discharge of any pollutant by any person shall be unlawful."
4. "Navigable waters" include the waters of the United States pursuant to Section 502(7) of the Act, 33 U.S.C. §1362(7). "Waters of the United States" include, but are not limited to, waters which are currently used or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide and including wetlands, rivers, streams. See 40 CFR §122.2.
5. "Pollutant" includes solid waste, dredged spoil, rock, sand, cellar dirt, sewage, sewage sludge [...] and industrial, municipal and agricultural waste discharged into water, pursuant to Section 502(6) of the Act, 33 U.S.C. §1362(6).
6. "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, [...] pursuant to Section 502 (14) of the Act, 33 U.S.C. §1362(14).
7. "Discharge of a pollutant" means any addition of any pollutant to navigable waters from any point source, pursuant to Section 502(12) of the Act, 33 U.S.C. §1362(12).
8. "Person" includes an individual, corporation, partnership or association, pursuant to Section 502(5) of the Act, 33 U.S.C. §1362(5).
9. Section 402 of the Act, 33 U.S.C. §1342(a)(1), provides that "... the Administrator may, after opportunity for public hearing, issue a permit for the discharge of any pollutant ..."
10. Section 402(p) of the Act, 33 U.S.C. § 1342(p), requires a permit with respect to a discharge associated with industrial activity.

11. 40 C.F.R. §122.26(b)(14)(x) defines "storm water discharge associated with industrial activity" to include construction activity including clearing, grading and excavation activities, that results in the disturbance of more than one acre of land.
12. EPA issued the "NPDES General Permit for Discharges from Large and Small Construction Activities" (Permit No. PRR100000) ("CGP") on July 1, 2003. This permit was published in the Federal Register (68 FR 39087). It became effective on July 1, 2003 and it expires on July 1, 2008. Prior to the issuance of the 2003 CGP, the 1998 CGP, published in the Federal Register on February 17, 1998 was effective.

II. Findings of Violation

13. Mr. José López Roig ("Respondent") is the president of Estancias Siervas de María, Inc., a corporation duly registered in the Commonwealth of Puerto Rico ("PR").
14. At all relevant times, Respondent owned, operated, and engaged in construction activity of a residential housing development at a construction site ("the Site"), known as "Estancias de Siervas de María".
15. Respondent's Site is located at PR State Road 931, Km. 4.3, Navarro Ward, Gurabo, Puerto Rico.
16. Respondent commenced construction activity at the Site on or before May 2000.
17. On March 17, 2005, EPA conducted a Compliance Evaluation Inspection (CEI) at the Site and observed that Respondent was still engaging in the construction activity described in paragraphs 14 and 15, above.
18. The construction activity at Respondent's Site described in paragraphs 14 and 15, above, involved earth clearing, grading and excavation activities which resulted in the disturbance of no less than five acres of total land area.
19. At all relevant times, Respondent discharged industrial storm water associated with construction activity from the Site into the Rio Grande de Loiza River.
20. At all relevant times, with respect to the storm water discharges described in paragraph 19, above, Respondent did not apply for or obtain a NPDES permit.
21. Respondent is a "person" within the meaning of Section 502(5) of the CWA, 33 U.S.C. §1362(5).

22. Storm water discharges from Respondent's Site, as described in paragraph 20, above, are a "discharge of a pollutant" within the meaning of Section 502(12) of the Act, 33 U.S.C. §1362(12).
23. The Rio Grande de Loiza River, located in the Commonwealth of Puerto Rico, and which discharges into the Atlantic Ocean, is a navigable water of the United States within the meaning of Section 502(7) of the Act, 33 U.S.C. §1362(7).
24. Based on the above Findings of Violation, EPA finds that the Respondent discharged industrial storm water associated with construction activities into the Rio Grande de Loiza River, without a NPDES permit, in violation of Sections 301 and 402 of the Act, 33 U.S.C. §1301 and §1342.

III. 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 Act, 33 U.S.C. §1319(g), and the Debt Collection Improvement Act of 1996, EPA, Region 2 hereby proposes to issue a Final Order Assessing Administrative Penalties (Final Order) to Respondent assessing a penalty of **\$97,000**. EPA determined the proposed penalty after taking into account the applicable factors identified at Section 309(g)(3) of the Act, 33 U.S.C. §1319(g)(3). EPA has taken account of the nature, circumstances, extent and gravity of the violation (or violations), Respondent's prior compliance history, degree of culpability, economic benefit or savings accruing to Respondent by virtue of the violations, and Respondent's ability to pay the proposed penalty. Based on the Findings set forth above, Respondent has been found to have violated the Act.

IV. Notice of Opportunity to Request a Hearing

1. Respondent may, within thirty (30) days of receipt of this Complaint and as part of any Answer filed in this matter, request a Hearing on the proposed civil penalty assessment and at the Hearing may contest the factual allegations set forth in the Findings of Violation contained in Section II above, and the appropriateness of any penalty amount. The procedures for the Hearing, if one is requested, are set out in the CROP, including Subpart I thereof.

2. Be aware that should Respondent 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 Act, 33 U.S.C. §1319(g)(4)(B), to be heard and to present evidence on the

appropriateness of the penalty assessment. Should Respondent 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.

V. Filing an Answer

1. If Respondent wishes to avoid being found in default, Respondent must file a written Answer to this Complaint with the Regional Hearing Clerk no later than thirty (30) days from the date of receipt of this Complaint. EPA may make a motion pursuant to §22.17 of the CROP seeking a default order thirty (30) days after Respondent's receipt of the Complaint unless Respondent files an Answer within that time. If a default order is entered, the entire proposed penalty may be assessed without further proceedings.

2. The Answer must clearly and directly admit, deny or explain each of the factual allegations contained in the Complaint with respect to which Respondent has knowledge or clearly state that Respondent has no knowledge as to particular factual allegations in the Complaint. The Answer also shall state:

- (A) The circumstances or arguments which are alleged to constitute grounds of any defense;
- (B) The facts which Respondent disputes;
- (C) The basis for opposing the proposed relief;
- (D) Whether a Hearing is requested.

3. Failures of Respondent to admit, deny, or explain any material factual allegations in this Complaint shall constitute admission of the allegation.

VI. Filing of Documents

1. 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

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

Eduardo J. Gonzalez, Esq.
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency
290 Broadway, 16th Floor
New York, NY 10007-1866

VII. Instructions for Paying Penalty

1. As set forth in §22.18 of the CROP, Respondent may resolve these proceedings by payment of the proposed penalty in full, and by filing with the Regional Hearing Clerk, at the address provided below, a copy of the check or other instrument of payment. Pursuant to §22.45(c)(3) of the CROP, opportunity for such resolution of these proceedings is available to Respondent no sooner than 10 days after the close of the 30-day public comment period which commences upon publication of the Public Notice of this proposed action.

2. To pay the proposed penalty in full, Respondent shall send a cashier's check or certified check in the amount of \$157,500.00, payable to the "Treasurer of the United States of America". The check shall be identified with a notation of the name and docket number of this case, set forth in the caption on the first page of this document.

Such check shall be mailed to:

EPA, Region 2 (Regional Hearing Clerk)
P.O. Box 360188M
Pittsburgh, Pennsylvania 15251

Respondent shall also send copies of such payment to:

Regional Hearing Clerk
U.S. Environmental Protection Agency
290 Broadway, 16th Floor
New York, New York 10007

and to:

Eduardo J. Gonzalez, Esq.
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency
290 Broadway, 16th Floor
New York, New York 10007-1866

3. Upon receipt of payment in full, a Final Order shall be issued. Payment by Respondent shall constitute a waiver of Respondent's rights to contest the allegations and to appeal the Final Order.

VIII. General Provisions

1. Respondent has 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 Act, regulations promulgated thereunder, or any applicable permit.
3. Neither assessment nor payment of an administrative civil penalty pursuant to Section 309(g) of the Act, 33 U.S.C. §1319(g), will affect Respondent's continuing obligation to comply with the Act, and with any separate Compliance Order issued under Section 309(a) of the Act, 33 U.S.C. §1319(a), for the violations alleged herein.

ISSUED THIS 3rd DAY OF August, 2006.

DLuM

Dore LaPosta, Director
Division of Enforcement and Compliance
Assistance
U. S. Environmental Protection Agency
Region 2
290 Broadway
New York, New York 10007

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

-----X
IN THE MATTER OF :
 :
 :
 José López-Roig, President :
 Estancias de Siervas de Maria, Inc. : Proceeding to Assess a Class II
 MSC 1006, HC-04 Box 44374 : Administrative Penalty
 Bo. San Salvador :
 Caguas, PR 00725 :
 :
 : Docket No.
 PRU200900 : CWA-02-2006-3415
 Respondent :
 :
 :
 Proceeding Pursuant to §309(g) of the :
 Clean Water Act, 33 U.S.C. §1319(g) :
 -----X

CERTIFICATE OF SERVICE

I certify that, on the date noted below, I caused to be mailed, by certified mail, return receipt requested, a copy of the foregoing "ADMINISTRATIVE COMPLAINT" and a copy of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits," (40 Code of Federal Regulations Part 22 (July 1, 2000)) to the following persons at the addresses listed below:

Jose Lopez-Roig, President
Estancias de Siervas de Maria Inc.
MSC 1006, HC-04 Box 44374
Bo. San Salvador
Caguas, Puerto Rico 00725

Eng. Wanda E. Garcia Hernandez, Director
Water Quality Area
Environmental Quality Board
P.O. Box 11488
Santurce, PR 00910

I [hand carried / mailed] the original and a copy of the foregoing Complaint to the office of the Regional Hearing Clerk, United States Environmental Protection Agency, Region 2.

Date: 8/3/06
New York, New York

Marie S. Gerow
[Signature of Sender]
[NOTE: must be over 18]



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

AUG - 3 2006

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Article Number: 7003 2260 0000 3250 5986

Wanda E. Garcia Hernández, Director
Water Quality Area
Environmental Quality Board
1308 Ponce de León Avenue, PR-8838
Sector El Cinco
Río Piedras, PR 00928

Re: In the matter of José López Roig, President, Estancias de Siervas de Maria, Inc.
Proceeding to Assess a Class II Civil Administrative Penalty
Under Section 309(g) of the Clean Water Act, 33 U.S.C. §1319(g)
NPDES No. PRU200900
Docket No. CWA-02-2006-3415

Dear Ms. Garcia:

Enclosed is a copy of the "Administrative Complaint, Findings of Violation, Notice of Proposed Assessment of a Civil Penalty, and Notice of Opportunity to Request a Hearing Thereon", hereinafter referred to as the "Complaint", which the United States Environmental Protection Agency (EPA) has issued to José López Roig, President, Estancias de Siervas de Maria, Inc. pursuant to §309(g) of the Clean Water Act (Act), 33 U.S.C. §1319(g). EPA has issued the Complaint to begin the process to assess administratively a Class II civil penalty of \$97,000 against Respondent for violations of the Act. Because the violations have occurred in the Commonwealth of Puerto Rico, EPA is offering an opportunity for you to confer with us regarding the proposed assessment.

You may confer with me at (212) 637-4000. A copy of 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" (40 C.F.R. Part 22), is enclosed for your reference.

Sincerely,

Dore LaPosta, Director
Division of Enforcement and Compliance Assistance

Enclosures

bcc: Karen Maples, Regional Hearing Clerk (w/o enclosures)
Teresita Rodriguez, CEPD/ESB (w/o enclosures)
Caribbean Sect File (w/o enclosures)
Eduardo Gonzalez, ORC (w/o enclosures)
Christy Arvizu (w/o enclosures)

G:\USER\SHARE\DECADIV\DECA-WCB\COMPLIANCE SECTION\2006 Administrative
Orders\Estancias de Siervas de Maria\Estancias de Siervas de Maria APO letter 7.27.06.doc



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

AUG - 3 2006

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Article Number: 7003 2260 0000 3250 5979

José López Roig, President
Estancias de Siervas de Maria, Inc.
MSC 1006
HC-04 Box 44374
Bo. San Salvador
Caguas, PR 00725

Re: In the matter of José López Roig, President, Estancias de Siervas de Maria, Inc.
Proceeding to Assess a Class II Civil Administrative Penalty
Under Section 309(g) of the Clean Water Act, 33 U.S.C. §1319(g)
Docket No. CWA-02-2006-3415

Dear Mr. Roig:

Enclosed is a document entitled "Administrative Complaint, Findings of Violation, Notice of Proposed Assessment of an Administrative Penalty, and Notice of Opportunity to Request a Hearing" (Complaint). The United States Environmental Protection Agency (EPA) has issued this Complaint against you as a result of our determination that you violated Section 301 of the Clean Water Act (Act), 33 U.S.C. §1311, for failure to obtain a National Pollutant Discharge Elimination System (NPDES) Permit for storm water discharges associated with construction activities at PR 931, Km. 4.3, Navarro Ward, Gurabo, Puerto Rico. This Complaint is filed pursuant to the authority contained in §309(g) of the Act, 33 U.S.C. §1319(g). The Complaint proposes that a penalty of \$97,000.00 be assessed against you for the violations.

The Complaint has been filed with the EPA, Region 2, Regional Hearing Clerk. Also enclosed is a copy of 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 CFR Part 22, which describes the procedures which EPA will follow in this penalty assessment proceeding.

This Complaint includes a Proposed Civil Administrative Penalty and a Notice of Opportunity to Request a Hearing. You have the right to request a hearing to contest any allegations set forth in the Complaint or to contest the appropriateness of the proposed penalty. Please pay particular attention to the section in the Complaint entitled "Notice of Opportunity to Request a Hearing," and the requirements for filing an Answer to the Complaint in §22.15. You have the right to be represented by an attorney, or to represent yourself at any stage of these proceedings. Any hearing will be conducted in accordance with the CROP. If you wish to contest the allegations in the Complaint or the penalty proposed in the Complaint, you must file a Response within thirty

(30) days of receipt of the enclosed Complaint to the EPA Regional Hearing Clerk at the following address:

Regional Hearing Clerk
U.S. Environmental Protection Agency
290 Broadway - 16th Floor
New York, New York 10007-1866

If you do not file an Answer by the applicable deadline, you will waive your right to a hearing and EPA may file a motion for a default judgment against you. Each allegation in the Complaint will be deemed to be admitted as true by you, and you will have waived your right to be notified of any Agency proceedings that occur before a civil penalty may be imposed. If a default order is entered, the entire penalty may be assessed without further proceedings.

If you wish to resolve this proceeding by paying the penalty proposed in the Complaint in full, please follow the Instructions for Paying Penalty in Section VII of the Complaint. Please be informed that EPA may not accept payment in full in resolution of this proceeding until at least 10 days after the close of the public comment period for this proceeding. Such date will be 40 days after publication of a legal notice of this proceeding.

Whether or not you request a formal hearing, you may informally confer with EPA concerning the alleged violations and the amount of the proposed penalty. EPA encourages all parties against whom it files a Complaint to pursue the possibility of settlement as a result of such informal settlement conference with the Agency. An attorney from the Agency's Office of Regional Counsel will normally be present at any informal conference. Please note that a request for an informal conference does not substitute for a written Answer or affect what a Respondent may choose to say in an Answer, nor does it extend the thirty (30) days by which a Respondent must file an Answer requesting a hearing. Any hearing held in this matter will be conducted in accordance with the CROP. The EPA also encourages the use of Supplemental Environmental Projects (SEPs), where appropriate, as part of the settlement. Enclosed is a copy of the Final EPA Supplemental Environmental Projects Policy (May 1, 1998) for your consideration.

For your information, I am enclosing an Information Sheet which may be helpful if you are a small business as defined at 13 C.F.R. 121.201, in obtaining compliance assistance or if you wish to comment on this action to the Small Business and Agriculture Regulatory Enforcement Ombudsman and Regional Fairness Board.

Should you have any questions concerning this matter, please feel free to contact Murray Lantner at (212) 637-3976.

Sincerely,



Dore LaPosta, Director
Division of Enforcement and Compliance Assistance

Enclosures

1. Complaint
2. Consolidated Rules of Practice
3. Supplemental Environmental Projects
4. Information for Small Business

cc: Wanda E. Garcia Hernández, Director, Water Quality Area, EQB

bcc: Karen Maples, Regional Hearing Clerk (w/original complaint and enclosures)
Patrick Harvey, DECA/CAPS (w/enclosures) and PCS Coding Sheet
Eduardo Gonzalez, ORC (w/enclosures)
Teresita Rodriguez, CEPD (w/enclosures)
WCB File (w/ enclosures)
C. Arvizu (w/enclosures)

G:\USER\SHARE\DECADIV\DECA-WCB\COMPLIANCE SECTION\2006 Administrative
Orders\Estancias de Siervas de Maria\Estancias de Siervas de Maria APO letter 7.27.06.doc

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 2
WATER COMPLIANCE BRANCH

MEMORANDUM

DATE: AUG 3 2006

SUBJECT: Administrative Penalty Assessment - Class II
Case Name – José López Roig, President, Estancias de Siervas de Maria, Inc.
Docket Number - CWA-02-2006-3415
Unauthorized Discharge Permit PRU200900

FROM: Christy Arvizu, Environmental Scientist *CAA*
Water Compliance Branch

TO: Case File

(A) Facility Description

1. Facility – Estancias de Siervas de Maria
2. Location – PR-931 Km. 4.3 in Gurabo, Puerto Rico
3. Standard Industrial Classification (SIC) Code - SIC code 1520
4. Owner – José López Roig, President
Estancias de Siervas de Maria, Inc.
5. Operator – José López Roig, President
Estancias de Siervas de Maria, Inc.
6. Receiving water – Rio Grande de Loiza

I have determined an appropriate proposed penalty for assessment against José López Roig, President, Estancias de Siervas de Maria, Inc. (“Respondent”) for violations of the Clean Water Act (“Act” or “CWA”) for discharges of storm water associated with construction activities at PR 931, Km. 4.3, Navarro Ward, Puerto Rico. Respondent owns and operates a construction site (“the site”) entitled “Estancias de Siervas de María Residential Project” (“the project”) which discharges storm water into the Rio Grande de Loiza. The project involves the construction of a residential housing development on approximately 19.5 acres (20 Cuerdas) of land. Respondent failed to obtain a NPDES permit for discharges of storm water at the site in violation of Section 301 of the Clean Water Act (CWA). The proposed penalty was determined using the following application of the statutory factors in §309(g) of the Act.

(B) Nature, Circumstances, Extent and Gravity of the Violation

EPA conducted a Compliance Evaluation Inspection (“CEI”) at the site on March 17, 2005. As a result of the CEI, EPA determined that Respondent failed to obtain coverage under the “NPDES General Permit for Discharges from Large and Small Construction Activities” (Permit No. PRR100000) (“CGP”) for discharges of storm water associated with construction activities at the site. Respondent commenced construction activity at the site prior to May 2000. To date, Respondent has not obtained a NPDES permit for discharges of storm water at the site.

Pursuant to Sections 308 and 309(a) of the Act, 33 U.S.C. §§1318 and 1319(a), on May 18, 2005, EPA issued an Administrative Order and Request for Information (CWA-02-2005-3216) (AO) to Respondent and to T&T Engineering, hired by Estancias de Siervas de Maria to serve as a project engineer, as a representative from T&T was present at the site during EPA's inspection on March 17, 2005. The AO required the following with respect to the construction site: that a Notice of Intent (NOI) to be covered under the CGP be submitted; that a storm water pollution prevention plan (SWPPP) be developed, submitted and implemented; and that additional information regarding the construction site be provided.

In a letter to EPA dated June 20, 2005, Respondent stated that the AO should not have been issued to him.

On September 8, 2005, EPA issued an Order to Show Cause, CWA-02-2005-3243, to Respondent. The Order required Respondent to meet with EPA on October 12, 2005.

EPA spoke with Respondent via telephone on October 3, 2005 in regard to the Administrative Order CWA-02-2005-3216 and the Show Cause Order CWA-02-2005-3243. As a follow-up to the call, Respondent sent a letter to EPA dated October 5, 2005, acknowledging receipt of the Show Cause Order and certified that as of June 2004, no clearing, grading, or excavation activities had taken place at the site. Respondent also indicated that a copy of the Storm Water Pollution Prevention Plan (SWPPP) would be submitted within ten days, and that a NOI would be submitted within three days of certifying that the SWPPP had been implemented. Respondent requested that EPA postpone the Show Cause meeting to allow them to gather the materials needed to prepare accordingly.

By letter dated October 18, 2005, Respondent enclosed a copy of the site's Sedimentation and Erosion Control Program. However, this document is not equivalent to the required Storm Water Pollution Prevention Plan. Furthermore, EPA has photographs of the site which demonstrate that there were periods of time in which there were loose erodible soils adjacent to the stream and there were no storm water erosion controls in place.

By letter dated November 2, 2005, EPA informed Respondent that the Show Cause meeting was rescheduled to November 17, 2005. EPA informed Respondent that there were deficiencies with Respondent's submittals and that EPA had not yet received a copy of the Storm Water Pollution Prevention Plan (SWPPP). On November 17, 2005, Respondent notified EPA that he was unable to come to the Show Cause meeting due to illness. There was no further follow-up from the Respondent.

On March 9, 2006, EPA spoke with Mr. Jesus Fontanes of T&T Engineering regarding the status of the site. T&T Engineering indicated that it was not involved with the construction activity at the site; it was involved with some permitting issues only. T&T Engineering informed EPA that the grading work was done by the Respondent and that the general contractor for construction of the homes on the property is Royal Construction.

To date, Respondent has not fully complied with all of the requirements of the Order. However, construction at the site is over 90% completed (per conversation with Mr. Jesus Fontanes of T&T Engineering on March 9, 2006).

Gravity (Seriousness of the Violation)

Respondent's failure to comply with the CWA, NPDES regulations, the Administrative Order and Show Cause Order demonstrates the Respondent's recalcitrance and hinders the implementation of the NPDES program and negates the benefits of this program, such as protecting the water quality of the Rio Grande de Loiza, which is a public water supply. Respondent's violations are serious and have an indirect effect on human health and direct effect on the environment. EPA's requirement that certain industrial facilities obtain permits is designed to reduce or minimize the discharge of pollutants which impair or degrade the water quality of receiving waters. Furthermore, Respondent's failure to comply with the Administrative Order (AO) and Request for Information and Order to Show Cause impedes implementation of the NPDES program and EPA's ability to carry out its duties to protect the environment.

Storm water can wash nutrients, metals, oils, and other substances associated with construction activities into surface waters. The concentration of contaminants in this runoff depends on the extent of the source, the type of contaminant, the intensity and duration of a storm, and the timing between storms. Highest contaminant concentrations are generally found in the first flush of runoff that is generated at the beginning of a storm. This could increase the loadings of pollutants to the receiving water. High suspended solids in streams can disturb nesting sites for fish and aquatic invertebrates, increase turbidity and limit the growth of aquatic plants.

A SWPPP must be developed for each construction site covered by the CGP. The SWPPP is tailored to site-specific conditions and designed with the goal of controlling the amount of pollutants in storm water discharges from the site. The permit requires that the SWPPP contain a description of potential pollutant sources and a description of the measures and controls used to prevent or minimize pollution of storm water.

Storm water runoff becomes polluted by picking up soil particles and other pollutants from construction materials as it flows over surfaces where construction activities are occurring. Requiring certain construction sites to apply for NPDES storm water permits provides a way for States and EPA Regions to monitor and manage these discharges, and reduce or ultimately eliminate the amount of pollutants present in them. Thus, Respondent's lack of obtaining a Permit and implementing storm water erosion controls posed a potential harm to the Rio Grande de Loiza.

Proposed Gravity Component

Based on the above and taking into consideration the length of the violations, the threats to the receiving water and human health, the importance of compliance and seriousness of the violations, as well as the Respondent's demonstrated recalcitrance by not adequately responding to the Administrative Order and the Show Cause Order, I have determined that a gravity component of \$84,322 should be assessed against the Respondent.

(C) Prior History of Such Violations

EPA is not aware of previous violations of the CWA by Respondent.

(D) Degree of Culpability

Respondent should have been aware of the requirement to obtain a permit prior to the commencement of construction activities at the Site. Respondent was informed of the need to obtain coverage under the Construction General Permit and to develop a SWPPP during EPA's March 2005 inspection and again in the Administrative Order issued to Respondent in May of 2005 and the Show Cause Order issued in September 2005. EPA contacted Respondent in September, October and November 2005 and further informed him of the requirement to obtain a permit and develop a SWPPP.

(E) Economic Benefit

Respondent incurred an economic benefit of \$12,678 as a result of Respondent's failure to obtain permit coverage for the site.

Table 1: Summary of Economic Benefit Calculations
Data based on Information Provided by EPA's CEI Report dated 4/26/05

Description of Project	Cost of Projects	Noncompliance Date	Compliance Date	Type of Cost	BEN	Source of Info
SWPPP & Site Map	\$7,500.00	6/1/2001	5/8/2006	One Time		BPJ
BMP Implementation	\$5,000.00	6/1/2001	5/8/2006	Capital		BPJ
Failure to do site inspections & install/maintain BMPs	\$3,000.00	6/1/2001	5/8/2006	Annual		BPJ
BEN Result					\$12,678.00	

Dates of non-compliance were based on EPA's March 17, 2005 CEI. Respondent did not provide cost information as required, so the cost data was derived by Best Professional Judgment, based on information at other construction sites.

(F) Litigation Considerations

No adjustments for litigation considerations are being made at this time.

(G) Ability to Pay

Presently, EPA possesses no information related to Respondent's inability to pay.

(H) Recommendations

In conclusion, the application of the statutory factors in §309(g) fully supports the proposed penalty of \$97,000.

bcc: Karen Maples, Regional Hearing Clerk
Doug McKenna, Branch Chief DECA-WCB
Henry Mazzucca, DECA-WCB
Eduardo Gonzalez, ORC
Murray Lantner, DECA-WCB
Christy Arvizu, DECA-WCB

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

AUG 3 2006

DATE:

SUBJECT: Public Notice

FROM: Douglas McKenna, Chief
Water Compliance Branch



TO: Patrick J. Harvey, Chief
Compliance Assistance and Program Support Branch

Please provide a Public Notice number for the attached Public Notice for the Proposed Administrative Penalty Assessment and Opportunity to Comment for José López Roig, President, Estancias de Siervas de Maria, Inc., CWA-02-2006-3415, to ensure that this is public noticed appropriately on the EPA web site.

Should you have any questions, please feel free to contact Murray Lantner at 212-637-3976.

Attachment

bcc: Karen Maples, Regional Hearing Clerk
Hank Mazzucca, DECA-WCB
Christy Arvizu, DECA-WCB
NPDES Team Enforcement Reading File

G:\USER\SHARE\DECADIV\DECA-WCB\COMPLIANCE SECTION\2006
ADMINISTRATIVE ORDERS\ESTANCIAS DE SIERVAS DE
MARIA\ESTANCIAS_PUBLIC NOTICE_UPDATED_ML.DOC

PUBLIC NOTICE:

NOTICE OF PROPOSED ADMINISTRATIVE PENALTY ASSESSMENTS AND OPPORTUNITY TO COMMENT

AGENCY: United States Environmental Protection Agency (EPA)
Region 2
290 Broadway
New York, NY 10007

ACTION: Notice of Proposed Administrative Penalty Assessments and Opportunity to Comment

SUMMARY: EPA is providing notice of a proposed administrative penalty assessment for alleged violations of the Clean Water Act (Act). EPA is also providing notice of opportunity to comment on the proposed penalty assessment.

Under 33 U.S.C. §1319(g), EPA is authorized to issue Orders assessing civil penalties for various violations of the Act. EPA may issue such Orders after the commencement of a Class I or Class II penalty proceeding. EPA provides Public Notice of the proposed assessment pursuant to 33 U.S.C. §1319(g)(4)(A).

Administrative civil penalty proceedings are conducted under EPA's "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", 40 CFR Part 22. The procedures through which the public may submit written comment on a proposed administrative penalty action or participate in an administrative penalty proceeding, and the procedures by which a Respondent may request a Hearing, are set forth in the Consolidated Rules. The deadline for submitting public comment on this administrative civil penalty proceeding is thirty (30) days after issuance of this Public Notice.

On date identified below, EPA commenced the following administrative action for the assessment of administrative civil penalties: In the matter of **Jose Lopez Roig, President, Estancias de Siervas de Maria, Inc**, MSC 1006, NC-04 Box 4374, Barrio San Salvador, Caguas, Puerto Rico 00725, The Owner and Operator of a residential construction site. Docket No. CWA-02-2006-3415; Filed on _____ with Regional Hearing Clerk Karen Maples, EPA Region 2, 290 Broadway, 16th Floor, New York, New York 10007 (212) 637-3110; Proposed Penalty: **\$97,000** for failure to obtain the required NPDES General Permit for Storm Water Discharges from Construction Activities pursuant to Sections 301 and 402 of the Act at the 19.5 acre, Estancias de Siervas de Maria, single family home construction site located at PR-931 Km. 4.3, Gurabo, PR.

FOR FURTHER INFORMATION: Persons wishing to receive a copy of EPA's Consolidated Rules, or review documents filed in these proceedings, comment upon the proposed assessments, or otherwise participate in any of the proceedings, should contact the Regional Hearing Karen Maples, EPA Region 2, 290 Broadway, 16th Floor, New York, New York 10007 (212) 637-3110. Unless otherwise noted, the administrative record for these proceedings is located in the EPA Regional Office identified above, and the files will be open for public inspection during normal business hours. All information submitted by the Respondent is available as part of the administrative record, subject to provisions of law restricting public disclosure of confidential information.

Dated: **Dore Laposta, Director**
 Division of Enforcement and
 Compliance Assistance

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

RECEIVED
U.S. E. REGIONAL HEARING CLERK
2007 JUN 23 AM 11:36
U.S. ENVIRONMENTAL PROTECTION AGENCY-REG. II

IN THE MATTER OF:

**José López-Roig,
President,**

and

Estancias de Siervas de María, Inc.

MSC 1006, HC-04 Box 44374
Bo. San Salvador
Caguas, Puerto Rico 00725

Respondent.

Proceeding to Assess A Class II
Administrative Penalty

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

Docket NO. CWA-02-2006-3415

**MOTION FOR ENTRY OF DEFAULT AND INITIAL DECISION OF PRESIDING
OFFICER**

Counsel for the United States Environmental Protection Agency (“EPA” or “Complainant”), respectfully submits the instant Motion for Entry of Default and Initial Decision Of Presiding Officer against Estancias de Siervas de María, Inc. and its president Mr. José López-Roig (“Respondents”).

I. Introduction

1. On August 3, 2006, Complainant issued to the Estancias de Siervas de María, Inc. and Jose Lopez-Roig (“Respondents”) a Complaint, Findings of Violation, Notice of Proposed Assessment of a Civil Penalty, and Notice of Opportunity to Request a Hearing (“Complaint”)¹ proposing the assessment of an administrative penalty of Ninety-Seven Thousand Dollars (\$97,000) for Respondent’s failure to comply with the Clean Water Act (“CWA” or the “Act”), 33 U.S.C. §§ 1251 *et al.*
2. The Complaint specifically charges Respondent with discharging industrial storm water associated with construction activities into the Rio Grande de Loiza River, in Puerto Rico, without a National Pollution Discharge Elimination System (“NPDES”) permit, in violation of Sections 301 and 402 of the Act, 33 U.S.C. §1301 and §1342.

II. Statutory and Regulatory Authority

3. Section 301(a) of the CWA, 33.S.C. § 1311(a), prohibits the discharge of pollutants by

¹ Please see Attachment 1, copy of the Complaint.

any person into navigable waters except in compliance with, among other things, a NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

4. "Discharge of a pollutant" means any addition of any pollutant to navigable waters from any point source, pursuant to Section 502(12) of the Act, 33 U.S.C. §1362(12).
5. "Person" includes an individual, corporation, partnership or association, pursuant to Section 502(5) of the Act, 33 U.S.C. §1362(5).
6. "Pollutant" includes solid waste, dredged spoil, rock, sand, cellar dirt, sewage, sewage sludge [...] and industrial, municipal and agricultural waste discharged into water, pursuant to Section 502(6) of the Act, 33 U.S.C. §1362(6).
7. "Navigable waters" include the waters of the United States pursuant to Section 502(7) of the Act, 33 U.S.C. §1362(7). "Waters of the United States" include, but are not limited to, waters which are currently used or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide and including wetlands, rivers, streams (including intermittent streams). See 40 CFR §122.2.
8. "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, [...] pursuant to Section 502 (14) of the Act, 33 U.S.C. §1362(14).
9. Section 402(a) of the CWA, 33 U.S.C. § 1342(a) provides the Administrator of the EPA ("Administrator") with authority to issue a NPDES permit that authorizes the discharge of pollutants into waters of the United States, provided that all discharges meet the applicable requirements of Section 301 of the CWA, 33 U.S.C. § 1311, or such other conditions as the Administrator determines are necessary to carry out the provisions of the CWA.
10. Section 402(p) of the Act, 33 U.S.C. § 1342(p), requires a permit with respect to stormwater discharges associated with industrial activity.
11. Under Section 402 of the CWA, 33 U.S.C. §§ 1342, on November 15, 1990, the Administrator promulgated regulations relating to the control of storm water discharges, at 40 C.F.R. § 122.26.
12. Under 40 C.F.R. § 122.26 (a)(1)(ii) and (c)(1) dischargers of storm water associated with industrial activity are required to apply for an individual permit or seek coverage under a promulgated storm water general permit.
13. 40 CFR 122.26(b)(14)(x) defines "storm water discharge associated with industrial activity" to include construction activity including clearing, grading and excavating

activities, that result in the disturbance of more than five acres of land.

14. EPA issued the "NPDES General Permit for Discharges from Large and Small Construction Activities" (Permit No. PRR100000) ("CGP") on July 1, 2003. This permit was published in the Federal Register (68 FR 39087). It became effective on July 1, 2003 and it expires on July 1, 2008. Prior to the issuance of the 2003 CGP, the 1998 CGP, published in the Federal Register on February 17, 1998 was effective.

III. Findings of Fact

15. Mr. José López-Roig is the president of Estancias Siervas de María, Inc., a corporation doing business in the Commonwealth of Puerto Rico.
16. From August 1, 2001 through July 25, 2006 Respondents owned a construction site ("the Site") of approximately 19.5 acres which was located at PR State Road 931, Km. 4.3, Navarro Ward, Gurabo, Puerto Rico.²
17. At the Site, Respondents operated and engaged in the construction activity consisting of a residential housing development known as "Estancias de Siervas de María".
18. The Respondents' construction activity referenced in paragraph 17 above involved earth clearing, grading and excavation activities which resulted in the disturbance of more than five acres of total land area.
19. On March 17, 2005, EPA conducted a Compliance Evaluation Inspection (CEI) at the Site and found that:
 - a. The Respondents were engaged in the construction activity described in paragraphs 16 and 17, above; and,
 - b. The Respondents did not have a NPDES permit for its stormwater discharges associated with industrial activity.³
20. The Site is adjacent to an unnamed stream which discharges into the Rio Grande de Loiza river, which then discharges into the Atlantic Ocean, a navigable waters of the U.S.⁴
21. From August 1, 2001 through July 25, 2006, all relevant times, Respondents did not

² Please see attachment 2, copy of EPA's Memorandum dated November 16, 2007 at page 1.

³ Please see attachment 3, copy of EPA's Water Compliance Inspection Report.

⁴ Please see attachment 2, copy of EPA's Memorandum dated November 16, 2007 at page 1.

apply for or obtain a NPDES permit for the construction activity at the Site.⁵

IV. Findings of Violation

22. Respondents are "persons" within the meaning of Section 502(5) of the CWA, 33 U.S.C. §1362(5).
23. Respondents' construction activity disturbed more than five acres of total land area at the Site, and therefore falls within the purview of 40 C.F.R. §122.26(b)(14)(x).
24. The construction activity at the Site created storm water discharges which constitute a "discharge of a pollutant" within the meaning of Section 502(12) of the Act, 33 U.S.C. §1362(12).
25. Respondents' discharges are and were at all relevant times, a point source as defined in Section 502(14) of the CWA, 33 U.S.C. § 1362(14).
26. The Rio Grande de Loiza River, located in the Commonwealth of Puerto Rico, and which discharges into the Atlantic Ocean, is a navigable waters of the United States within the meaning of Section 502(7) of the Act, 33 U.S.C. §1362(7).
27. Respondents conducted an industrial activity at the Site without complying with Section 402(p) of the Act, 33 U.S.C. § 1342(p), which requires obtaining a NPDES permit for construction activity that disturbs more than five acres of total land area, as required by 40 C.F.R. §122.26 (b)(14)(x).
28. Respondents' discharge of stormwater associated with industrial activity without a NPDES permit constituted an unlawful discharge of pollutants in violation of Section 301(a) of the Act, 33 U.S.C. §1311(a).
29. Respondents' failure to obtain permit coverage for its storm water discharges and failure to operate pursuant to such permit violated 40 C.F.R. § 122.26 and Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342.

V. Grounds for Entry of Default

30. The allegations of Paragraphs 1 through 29, above, are realleged and fully incorporated herein by reference.

⁵ Please see Attachment 4, copy of print out of EPA's NPDES database that indicates no results for Respondents' application for a NPDES permit.

First Service of the Complaint

31. On August 3, 2006 EPA issued the Complaint, based on the aforementioned findings of violations.
32. Respondent was served with a copy of the Complaint by certified mail return receipt requested.⁶
33. Respondents received the Complaint in Caguas, Puerto Rico on August 11, 2006.⁷
34. Respondents had 30 days from the date on which they received the Complaint, to file their answer.⁸
35. Pursuant to 40 C.F.R. Part 22.15, Respondents were required to file their answer to the Complaint on or before September 11, 2006 (30 days after August 11, 2006).
36. Respondents failed to respond to the Complaint, within the 30-day period provided by 40 C.F.R. Part 22.15.

Second Service of the Complaint

37. On November 7, 2006, Complainant once again forwarded the Complaint to Respondents, advising Respondents that:
 - (a) they had the right to request a hearing to contest any allegations set forth in the Complaint or to contest the appropriateness of the proposed penalty;
 - (b) the Complaint had a section regarding the requirements for filing an Answer to the Complaint;
 - (c) they had the right to be represented by an attorney, or to represent themselves at any stage of the proceedings; and that,

⁶ Please see Attachment 5, copy of the Complaint's Certificate of Service; and, see Attachment 6 Copy of EPA's cover letter addressing the Complaint to the Respondents.

⁷ EPA obtained confirmation that the U.S. Postal Service delivered the Complaint. Please see Attachment 7, copy of the print out of the Track & Confirm system, provided by the U.S. Postal Service.

⁸ Please see 40 C.F.R. Parts 22.7 (c) and 22.15 (Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and Revocations, Termination or Suspension of Permits" (CROP), 40 C.F.R. Part 22.)

(d) any hearing would be conducted in accordance with the CROP, 40 CFR Part 22.⁹

38. On November 14, 2006, the aforementioned letter was delivered in Caguas, Puerto Rico.¹⁰
39. Complainant twice duly notified Respondents of its right to file an answer within 30 days after service of the Complaint. Complainant provided notice to Respondent through:
- A. The cover letter attached to the Complaint;
 - B. the Complaint;
 - C. a copy of the CROP, 40 C.F.R. Part 22.

VI. Relief Requested

40. The allegations of Paragraphs 1 through 39, above, are realleged and fully incorporated herein by reference.
41. EPA seeks that the Respondents be found in default because Respondents failed to file a timely answer to the Complaint as provided in 40 C.F.R. §22.17(a).
42. 40 C.F.R. §22.17(a) provides in part: "A party may be found to be in default: after motion, upon failure to file a timely answer to the complaint..."
43. Pursuant to 40 CFR §22.17, Complainant seeks:
- a. that the Presiding Officer find the Respondents to be in default and therefore that a Default Order against Respondents be entered;
 - b. that the allegations in the Complaint be admitted as facts which shall not be subject to challenge by Respondents¹¹; and,
 - c. that the Presiding Officer issue an Initial Decision resolving all issues and claims in the instant proceeding including the assessment of a penalty in the amount of

9 Please see Attachment 8, letter dated November 7, 2006.

10 Please see Attachment 9, copy of the the U.S. Postal Service return-receipt which confirms delivery of the November 7, 2006 letter and copy of the print out of the Track & Confirm system, provided by the U.S. Postal Service.

11 Pursuant to 40 CFR §22.17(a), "Default by respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the complaint and a waiver of Respondent's right to contest such factual allegations."

Ninety-Seven Thousand Dollars (\$97,000.00) as proposed in the Complaint.¹²

VII. Grounds for Imposition of Administrative Penalty

44. EPA determined the proposed penalty after taking into account the statutory factors set forth in Section 309(g)(3) of the Act, 33 U.S.C. §1319(g)(3) which include: the seriousness of the violation(s), the prior history of such violation(s), the degree of willfulness and/or negligence, the economic benefit obtained through non-compliance, and the Respondent's ability to pay in light of the information available at the time of the issuance of the Complaint.¹³
45. *Seriousness of the Violation/Risk to Public Health:* Storm water can wash nutrients, metals, oils, and other substances associated with construction activities into surface waters. Requiring certain construction sites to apply for NPDES storm water permits provides a way for States and EPA Regions to monitor and manage these discharges, and reduce or ultimately eliminate the amount of pollutants present in them. EPA's requirement that certain industrial facilities obtain permits is designed to reduce or minimize the discharge of pollutants which impair or degrade the water quality of receiving waters. On May 18, 2005, EPA issued Respondents an Administrative Order which required Respondents to submit a Notice of Intent to obtain coverage under the NPDES permit.¹⁴ On September 8, 2005, EPA issued Respondents an Order to Show Cause requiring Respondent to meet with EPA.¹⁵ Respondents failed to comply with the Administrative Order and Show Cause Order. Respondents recalcitrance hinders the implementation of the NPDES program and negates the benefits of this program, such as protecting the water quality of the Rio Grande de Loiza, which is a public water supply. Respondent's violations are serious and have an indirect effect on human health and direct effect on the environment. Furthermore, Respondent's failure to comply with the AO and Request for Information and Order to Show Cause impedes implementation of the NPDES program and EPA's ability to carry out its duties to protect the environment.
46. *Prior History of Violation:* Respondent has a prior violation of the CWA, at the same construction Site. On January 30, 2003, Respondent and EPA executed a Consent Order which concerned the discharge of fill material into the unnamed stream adjacent to the Site. The EPA found the Respondents to be in violation of Section 301 of the Act for the

12 Pursuant to 40 CFR §22.17(c), "...If the order resolves all outstanding issues and claims in the proceeding, it shall constitute the initial decision under these Consolidated Rules of Practice. The relief proposed in the complaint or the motion for default shall be ordered unless the requested relief is clearly inconsistent with the record of the proceeding or the Act."

13 Please see attachment 2, copy of EPA's Memorandum dated November 16, 2007 at page 1.

14 Please see attachment 2, copy of EPA's Memorandum dated November 16, 2007 at page 2.

15 Please see attachment 2, copy of EPA's Memorandum dated November 16, 2007 at page 2.

discharge of pollutants consisting of earthen fill material into waters of the U.S. without a permit pursuant to Section 404 of the Act.¹⁶

47. *Degree of Willfulness/Negligence of the Respondents:* Respondents should have been aware of the requirement to obtain a permit prior to the commencement of construction activities at the Site. Respondents were informed of the need to obtain coverage under the Construction General Permit and to develop a Storm Water Pollution Prevention Plan ("SWPPP") during EPA's March 2005 inspection, in the AO issued to Respondent in May 2005, and in the Show Cause Order issued in September, 2005. Furthermore, EPA contacted Respondents in September, October, and November, 2005 and further informed them of the requirement to obtain a permit and develop a SWPPP. Respondent has chosen to remain in non-compliance.¹⁷
48. *Economic Benefit:* The Respondent has an obligation under the law to obtain a NDPEs permit for storm water discharges which are considered a "discharge of a pollutant" within the meaning of Section 502(12) of the Act, 33 U.S.C. §1362(12). The EPA's enforcement officer determined that Respondent incurred an economic benefit of Twelve Thousand Six Hundred and Seventy Eight Dollars (\$12,678) as a result of its failure to obtain permit coverage for the site. The Respondent did not provide cost information as required, so the cost data was derived by Best Professional Judgment, based on information at other construction sites.¹⁸
49. *Ability to Pay:* Presently, EPA does not possess any information that is indicative of an inability of the Respondent to pay the assessed penalty.

VIII. Prayer

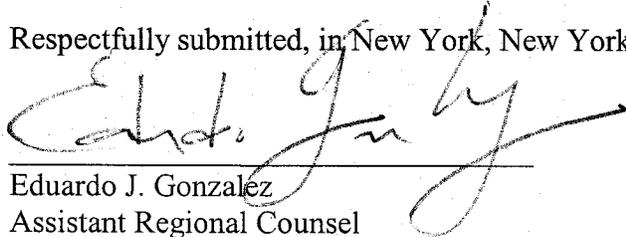
50. The Complainant hereby submits the instant Motion and requests that the Presiding Officer enter a Default Order and an Initial Decision providing the following:
- (a) Finding the Respondents in default in the instant proceeding;
 - (b) Resolving all outstanding issues and claims in the instant proceeding.
 - (c) Assessing a penalty for Ninety-Seven Thousand Dollars (\$97,000.00) as proposed in the Complaint .

16 *Please see attachment 2, copy of EPA's Memorandum dated November 16, 2007 at page 6.*

17 *Please see attachment 2, copy of EPA's Memorandum dated November 16, 2007 at page 6.*

18 *Please see attachment 2, copy of EPA's Memorandum dated November 16, 2007 at page 5.*

Respectfully submitted, in New York, New York this 20th day of December, 2007.

A handwritten signature in black ink, appearing to read "Eduardo J. Gonzalez", written over a horizontal line.

Eduardo J. Gonzalez
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Fl.
New York, NY 10007
Tel. 212-637-3223, Fax. 212-637-3202
Email address: gonzalez.eduardoj@epa.gov

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF:

José López-Roig
President
Estancias de Siervas de María, INC.

MSC 1006, HC-04 Box 44374
Bo. San Salvador
Caguas, Puerto Rico 00725

Respondent.

Proceeding to Assess A Class II
Administrative Penalty

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

Docket NO. CWA-02-2006-3415

CERTIFICATE OF SERVICE

I certify that, on the date noted below, I caused to be mailed a copy of the foregoing "Motion for Entry of Default" to the following persons, at the addresses listed below and in the following manner:

Copy by Hand:

Helen S. Ferrara
Regional Judicial Officer
U.S. Environmental Protection Agency
Region II
290 Broadway
New York, NY 10007-1866

Original and Copy by Hand:

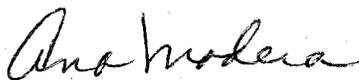
Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region II
290 Broadway
New York, NY 10007-1866

Copy by Certified Mail/

Return Receipt Requested:

Estancias de Siervas de Maria, Inc.
Attn: José Lopez-Roig
MSC 10066 HC 04
Box 44374
Bo. San Salvador
Caguas, PR 00725

Date: Dec. 20, 2007



New York, New York
Office of Regional Counsel

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

Attachment 1
U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2006 AUG -4 AM 7:41
REGIONAL HEARINGS
CLERK

IN THE MATTER OF:

José López-Roig
President
Estancias de Siervas de
Maria, Inc.
MSC 1006, HC-04 Box 44374
Bo. San Salvador
Caguas, PR 00725

PRU200900
Respondent

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

PROCEEDING TO ASSESS A CLASS
ADMINISTRATIVE PENALTY

DOCKET NO.
CWA-02-2006-3415

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

I. Statutory Authority and Jurisdiction

1. This Administrative Complaint, Findings of Violation, Notice of Proposed Assessment of an Administrative Penalty, and Notice of Opportunity to Request a Hearing (Complaint) is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 309(g)(2)(B) of the Clean Water Act (Act or CWA), 33 U.S.C. §1319(g)(2)(B). The Administrator has delegated this authority to the Regional Administrator of EPA, Region 2, who in turn has delegated it to the Director, Division of Enforcement and Compliance Assistance ("DECA") of EPA, Region 2 (Complainant).
2. Pursuant to Section 309(g)(2)(B) of the Act, 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 CFR Part 22, a copy of which is attached, Complainant hereby requests that the Regional Administrator assess a civil penalty against José López Roig ("Respondent") as a result of Complainant's determination that Respondent

In the matter of: Estancias de Siervas de Maria, Inc.
CWA-02-2006-3415

discharged industrial storm water associated with construction activities into the Rio Grande de Loiza River, without a National Discharge Elimination Permit ("NPDES") permit, in violation of Section 301 and 402 of the Act, 33 U.S.C. §1301 and §1342.

3. Section 301(a) of the Act, 33 U.S.C. §1311(a), provides in part that "Except as in compliance with this section and sections [...] 1342, and 1344 [402, and 404] of the Act, the discharge of any pollutant by any person shall be unlawful."
4. "Navigable waters" include the waters of the United States pursuant to Section 502(7) of the Act, 33 U.S.C. §1362(7). "Waters of the United States" include, but are not limited to, waters which are currently used or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide and including wetlands, rivers, streams. See 40 CFR §122.2.
5. "Pollutant" includes solid waste, dredged spoil, rock, sand, cellar dirt, sewage, sewage sludge [...] and industrial, municipal and agricultural waste discharged into water, pursuant to Section 502(6) of the Act, 33 U.S.C. §1362(6).
6. "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, [...] pursuant to Section 502 (14) of the Act, 33 U.S.C. §1362(14).
7. "Discharge of a pollutant" means any addition of any pollutant to navigable waters from any point source, pursuant to Section 502(12) of the Act, 33 U.S.C. §1362(12).
8. "Person" includes an individual, corporation, partnership or association, pursuant to Section 502(5) of the Act, 33 U.S.C. §1362(5).
9. Section 402 of the Act, 33 U.S.C. §1342(a)(1), provides that "... the Administrator may, after opportunity for public hearing, issue a permit for the discharge of any pollutant ..."
10. Section 402(p) of the Act, 33 U.S.C. § 1342(p), requires a permit with respect to a discharge associated with industrial activity.

11. 40 C.F.R. §122.26(b)(14)(x) defines "storm water discharge associated with industrial activity" to include construction activity including clearing, grading and excavation activities, that results in the disturbance of more than one acre of land.
12. EPA issued the "NPDES General Permit for Discharges from Large and Small Construction Activities" (Permit No. PRR100000) ("CGP") on July 1, 2003. This permit was published in the Federal Register (68 FR 39087). It became effective on July 1, 2003 and it expires on July 1, 2008. Prior to the issuance of the 2003 CGP, the 1998 CGP, published in the Federal Register on February 17, 1998 was effective.

II. Findings of Violation

13. Mr. José López Roig ("Respondent") is the president of Estancias Siervas de María, Inc., a corporation duly registered in the Commonwealth of Puerto Rico ("PR").
14. At all relevant times, Respondent owned, operated, and engaged in construction activity of a residential housing development at a construction site ("the Site"), known as "Estancias de Siervas de María".
15. Respondent's Site is located at PR State Road 931, Km. 4.3, Navarro Ward, Gurabo, Puerto Rico.
16. Respondent commenced construction activity at the Site on or before May 2000.
17. On March 17, 2005, EPA conducted a Compliance Evaluation Inspection (CEI) at the Site and observed that Respondent was still engaging in the construction activity described in paragraphs 14 and 15, above.
18. The construction activity at Respondent's Site described in paragraphs 14 and 15, above, involved earth clearing, grading and excavation activities which resulted in the disturbance of no less than five acres of total land area.
19. At all relevant times, Respondent discharged industrial storm water associated with construction activity from the Site into the Rio Grande de Loiza River.
20. At all relevant times, with respect to the storm water discharges described in paragraph 19, above, Respondent did not apply for or obtain a NPDES permit.
21. Respondent is a "person" within the meaning of Section 502(5) of the CWA, 33 U.S.C. §1362(5).

22. Storm water discharges from Respondent's Site, as described in paragraph 20, above, are a "discharge of a pollutant" within the meaning of Section 502(12) of the Act, 33 U.S.C. §1362(12).
23. The Rio Grande de Loiza River, located in the Commonwealth of Puerto Rico, and which discharges into the Atlantic Ocean, is a navigable water of the United States within the meaning of Section 502(7) of the Act, 33 U.S.C. §1362(7).
24. Based on the above Findings of Violation, EPA finds that the Respondent discharged industrial storm water associated with construction activities into the Rio Grande de Loiza River, without a NPDES permit, in violation of Sections 301 and 402 of the Act, 33 U.S.C. §1301 and §1342.

III. 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 Act, 33 U.S.C. §1319(g), and the Debt Collection Improvement Act of 1996, EPA, Region 2 hereby proposes to issue a Final Order Assessing Administrative Penalties (Final Order) to Respondent assessing a penalty of \$97,000. EPA determined the proposed penalty after taking into account the applicable factors identified at Section 309(g)(3) of the Act; 33 U.S.C. §1319(g)(3). EPA has taken account of the nature, circumstances, extent and gravity of the violation (or violations), Respondent's prior compliance history, degree of culpability, economic benefit or savings accruing to Respondent by virtue of the violations, and Respondent's ability to pay the proposed penalty. Based on the Findings set forth above, Respondent has been found to have violated the Act.

IV. Notice of Opportunity to Request a Hearing

1. Respondent may, within thirty (30) days of receipt of this Complaint and as part of any Answer filed in this matter, request a Hearing on the proposed civil penalty assessment and at the Hearing may contest the factual allegations set forth in the Findings of Violation contained in Section II above, and the appropriateness of any penalty amount. The procedures for the Hearing, if one is requested, are set out in the CROP, including Subpart I thereof.
2. Be aware that should Respondent 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 Act, 33 U.S.C. §1319(g)(4)(B), to be heard and to present evidence on the

appropriateness of the penalty assessment. Should Respondent 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.

V. Filing an Answer

1. If Respondent wishes to avoid being found in default, Respondent must file a written Answer to this Complaint with the Regional Hearing Clerk no later than thirty (30) days from the date of receipt of this Complaint. EPA may make a motion pursuant to §22.17 of the CROP seeking a default order thirty (30) days after Respondent's receipt of the Complaint unless Respondent files an Answer within that time. If a default order is entered, the entire proposed penalty may be assessed without further proceedings.

2. The Answer must clearly and directly admit, deny or explain each of the factual allegations contained in the Complaint with respect to which Respondent has knowledge or clearly state that Respondent has no knowledge as to particular factual allegations in the Complaint. The Answer also shall state:

- (A) The circumstances or arguments which are alleged to constitute grounds of any defense;
- (B) The facts which Respondent disputes;
- (C) The basis for opposing the proposed relief;
- (D) Whether a Hearing is requested.

3. Failures of Respondent to admit, deny, or explain any material factual allegations in this Complaint shall constitute admission of the allegation.

VI. Filing of Documents

1. 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

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

In the matter of: Estancias de Siervas de Maria, Inc.
CWA-02-2006-3415

Eduardo J. Gonzalez, Esq.
 Assistant Regional Counsel
 Office of Regional Counsel
 U.S. Environmental Protection Agency
 290 Broadway, 16th Floor
 New York, NY 10007-1866

VII. Instructions for Paying Penalty

1. As set forth in §22.18 of the CROP, Respondent may resolve these proceedings by payment of the proposed penalty in full, and by filing with the Regional Hearing Clerk, at the address provided below, a copy of the check or other instrument of payment. Pursuant to §22.45(c)(3) of the CROP, opportunity for such resolution of these proceedings is available to Respondent no sooner than 10 days after the close of the 30-day public comment period which commences upon publication of the Public Notice of this proposed action.

2. To pay the proposed penalty in full, Respondent shall send a cashier's check or certified check in the amount of \$157,500.00, payable to the "Treasurer of the United States of America". The check shall be identified with a notation of the name and docket number of this case, set forth in the caption on the first page of this document.

Such check shall be mailed to:

EPA, Region 2 (Regional Hearing Clerk)
 P.O. Box 360188M
 Pittsburgh, Pennsylvania 15251

Respondent shall also send copies of such payment to:

Regional Hearing Clerk
 U.S. Environmental Protection Agency
 290 Broadway, 16th Floor
 New York, New York 10007

and to:

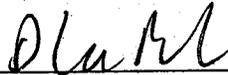
Eduardo J. Gonzalez, Esq.
 Assistant Regional Counsel
 Office of Regional Counsel
 U.S. Environmental Protection Agency
 290 Broadway, 16th Floor
 New York, New York 10007-1866

3. Upon receipt of payment in full, a Final Order shall be issued. Payment by Respondent shall constitute a waiver of Respondent's rights to contest the allegations and to appeal the Final Order.

VIII. General Provisions

1. Respondent has 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 Act, regulations promulgated thereunder, or any applicable permit.
3. Neither assessment nor payment of an administrative civil penalty pursuant to Section 309(g) of the Act, 33 U.S.C. §1319(g), will affect Respondent's continuing obligation to comply with the Act, and with any separate Compliance Order issued under Section 309(a) of the Act, 33 U.S.C. §1319(a), for the violations alleged herein.

ISSUED THIS 3rd DAY OF August, 2006.



Dore LaPosta, Director
Division of Enforcement and Compliance
Assistance
U. S. Environmental Protection Agency
Region 2
290 Broadway
New York, New York 10007

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 2
WATER COMPLIANCE BRANCH

MEMORANDUM

DATE: November 16, 2007

SUBJECT: Administrative Penalty Assessment - Class II
Case Name – José López Roig, President, Estancias de Siervas de Maria, Inc.
Docket Number - CWA-02-2006-3415
Unauthorized Discharge Permit PRU200900

FROM: Christy Arvizu, Environmental Scientist *cmk*
Water Compliance Branch

TO: Case File

This memorandum serves to recommend an Administrative Class II penalty pursuant to Section 309(g)(2)(B) of the Clean Water Act (the "Act"), 33 U.S.C. §1319(g)(2)(B), against José López Roig, President, Estancias de Siervas de Maria, Inc. ("Respondent") after taking into account statutory factors in Section 309(g)(3) of the Act, 33 U.S.C. §309(g)(3).

Section 309(g)(3) of the Act states that EPA shall take into account the nature, circumstances, extent, and gravity of the violation, or violations, and, with respect to the violator, 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. In addition, EPA's General Enforcement policies known as GM21 and GM22, provide guidance on how to develop a medium specific penalty.

A. Facility Description

Respondent owned and operated a construction site ("the site") commercially known as "Estancias de Siervas de María Residential Project" ("the project") which discharged storm water into the Rio Grande de Loiza. The project involved the construction of a residential housing development on approximately 19.5 acres (20 Cuerdas) of land at PR-931 Km. 4.3 in Gurabo, Puerto. The site is adjacent to an unnamed stream which discharges into the Rio Grande de Loiza, which then discharges into the Atlantic Ocean, a water of the United States.

B. Calculation of the Proposed Penalty with Respect to the Violation

1. Gravity
 - a. Nature – Respondent violated Sections 301, 308 and 402 of the Act.

José López Roig, President, Estancias de Siervas de Maria, Inc.

Docket Number - CWA-02-2006-3415

Page - 1 -

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 2
WATER COMPLIANCE BRANCH

MEMORANDUM

DATE: November 16, 2007

SUBJECT: Administrative Penalty Assessment - Class II
Case Name – José López Roig, President, Estancias de Siervas de Maria, Inc.
Docket Number - CWA-02-2006-3415
Unauthorized Discharge Permit PRU200900

FROM: Christy Arvizu, Environmental Scientist *cmk*
Water Compliance Branch

TO: Case File

This memorandum serves to recommend an Administrative Class II penalty pursuant to Section 309(g)(2)(B) of the Clean Water Act (the "Act"), 33 U.S.C. §1319(g)(2)(B), against José López Roig, President, Estancias de Siervas de Maria, Inc. ("Respondent") after taking into account statutory factors in Section 309(g)(3) of the Act, 33 U.S.C. §309(g)(3).

Section 309(g)(3) of the Act states that EPA shall take into account the nature, circumstances, extent, and gravity of the violation, or violations, and, with respect to the violator, 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. In addition, EPA's General Enforcement policies known as GM21 and GM22, provide guidance on how to develop a medium specific penalty.

A. Facility Description

Respondent owned and operated a construction site ("the site") commercially known as "Estancias de Siervas de María Residential Project" ("the project") which discharged storm water into the Rio Grande de Loiza. The project involved the construction of a residential housing development on approximately 19.5 acres (20 Cuerdas) of land at PR-931 Km. 4.3 in Gurabo, Puerto. The site is adjacent to an unnamed stream which discharges into the Rio Grande de Loiza, which then discharges into the Atlantic Ocean, a water of the United States.

B. Calculation of the Proposed Penalty with Respect to the Violation

1. Gravity
 - a. Nature – Respondent violated Sections 301, 308 and 402 of the Act.

i. *Violations Related to Storm Water Discharges*

Claim 1 – Respondent failed to timely apply and comply with the National Pollutant Discharge Elimination System (NPDES) storm water permit application regulations at 40 CFR §§122.21 and 122.26(b)(15), and Section 308(a) of the Act, 33 U.S.C. §1318(a).

b. Circumstances

Respondent began earthmoving disturbance activities at the site on or prior to May 2000. As site was greater than 5 acres, Respondent should have applied for and obtained coverage under the “NPDES General Permit for Discharges from Large and Small Construction Activities.”

On March 17, 2005, EPA conducted a Compliance Evaluation Inspection (“CEI”). As a result of the CEI, EPA determined that Respondent failed to obtain coverage under the “NPDES General Permit for Discharges from Large and Small Construction Activities” (Permit No. PRR100000) (“CGP”) for discharges of storm water associated with construction activities at the site. To date, Respondent has not obtained a NPDES permit for discharges of storm water at the site. *See Attachment 1, copy of print out of EPA’s Electronic NOI Applications database.*

On May 18, 2005, pursuant to Sections 308 and 309(a) of the Act, 33 U.S.C. §§1318 and 1319(a), EPA issued an Administrative Order and Request for Information (CWA-02-2005-3216) (AO) to Respondent and to T&T Engineering, hired by Estancias de Siervas de Maria to serve as a project engineer. The AO required from the Respondents the following with respect to the construction site: to submit a Notice of Intent (NOI) to be covered under the CGP; to develop, submit and implement a storm water pollution prevention plan (SWPPP) ; and to provide additional information regarding the construction site. *See Attachment 2, copy of EPA’s Administrative Order and Request for Information (CWA-02-2005-3216).*

In a letter to EPA dated June 20, 2005, Respondent stated that the AO should not have been issued to him. *See Attachment 3, copy of Respondent’s June 20, 2005 letter.*

On September 8, 2005, EPA issued an Order to Show Cause, CWA-02-2005-3243, to Respondent. The Order required Respondent to meet with EPA on October 12, 2005. *See Attachment 4, copy of EPA’s Order to Show Cause, CWA-02-2005-3243.*

On October 3, 2005 EPA spoke with Respondent via telephone in regard to the Administrative Order CWA-02-2005-3216 and the Show Cause Order CWA-02-2005-3243. As a follow-up to the call, Respondent sent a letter to EPA dated October 5, 2005, acknowledging receipt of the Show Cause Order and certified that as of June 2004, no clearing, grading, or excavation activities had taken place at the site. Respondent also indicated that a copy of the Storm Water Pollution Prevention Plan (SWPPP) would be submitted within ten days, and that a NOI would be submitted within three days of certifying that the SWPPP had been implemented. Respondent requested that EPA postpone the Show Cause meeting to allow them to gather the materials needed to prepare accordingly.

By letter dated October 18, 2005, Respondent enclosed a copy of the site's Sedimentation and Erosion Control Program. However, this document is not equivalent to the required Storm Water Pollution Prevention Plan. *See Attachment 5, copy of Respondent's October 18, 2005 letter.*

Furthermore, EPA has photographs of the site which demonstrate that there were periods of time in which there were loose erodible soils adjacent to the stream and there were no storm water erosion controls in place. *See Attachment 6, copies of photographs taken by EPA personnel of the Respondent's site during construction activity.*

By letter dated November 2, 2005, EPA informed Respondent that the Show Cause meeting was rescheduled to November 17, 2005. EPA informed Respondent that there were deficiencies with Respondent's submittals and that EPA had not yet received a copy of the Storm Water Pollution Prevention Plan (SWPPP). *See Attachment 7, copy of EPA's November 2, 2005 letter rescheduling the meeting.*

On November 16, 2005, Respondent notified EPA that he was unable to come to the Show Cause meeting due to illness. *See Attachment 8, copy of Respondent's November 16, 2005 letter.* EPA did not receive further follow-up from the Respondent.

On March 9, 2006, EPA spoke via telephone with Mr. Jesus Fontanes of T&T Engineering regarding the status of the site. T&T Engineering indicated that it was not involved with the construction activity at the site; it was involved with some permitting issues only. T&T Engineering informed EPA that the grading work was done by the Respondent and that the general contractor for construction of the homes on the property is Royal Construction.

Respondent's lack of permit coverage for storm water discharges resulted in violations of the NPDES regulations at 40 CFR §122, and Sections 301 and 308 of the Act.

To date, Respondent has not fully complied with all of the requirements of the Administrative Order CWA-02-2005-3216. However, per conversation with Mr. Jesus Fontanes of T&T Engineering on March 9, 2006, construction at the site was over 90% completed.

c. Extent

Claim 1 – The period of violations used to calculate this penalty is: from August 1, 2001 through July 25, 2006 (for a total of 1819 days of violation)¹

d. Seriousness of the Violation

Storm water can wash nutrients, metals, oils, and other substances associated with construction activities into surface waters. The concentration of contaminants in this runoff depends on the extent of the source, the type of contaminant, the intensity and duration of a storm, and the timing between storms. Highest contaminant concentrations are generally found in the first flush of runoff that is generated at the beginning of a storm. This could increase the loadings of pollutants to the receiving water. High suspended solids in streams can disturb nesting sites for fish and aquatic invertebrates, increase turbidity and limit the growth of aquatic plants.

A SWPPP must be developed for each construction site covered by the CGP. The SWPPP is tailored to site-specific conditions and designed with the goal of controlling the amount of pollutants in storm water discharges from the site. The permit requires that the SWPPP contain a description of potential pollutant sources and a description of the measures and controls used to prevent or minimize pollution of storm water.

Storm water runoff becomes polluted by picking up soil particles and other pollutants from construction materials as it flows over surfaces where construction activities are occurring. Requiring certain construction sites to apply for NPDES storm water permits provides a way for States and EPA Regions to monitor and manage these discharges, and reduce or ultimately eliminate the amount of pollutants present in them. Thus, Respondent's lack of obtaining a Permit and implementing storm water erosion controls posed a potential harm to the Rio Grande de Loiza.

¹ The complaint in this case was issued on August 3, 2006, therefore the litigation team chose July 2006 as the last month of violation asserted in the complaint. Based on a 5 year statute of limitations, working backwards from July 2006, the first month of violation becomes August 2001. Notwithstanding the Statute of limitations, EPA has evidence that the Respondent had been operating the site since approximately May of 2000.

The project involved the construction of a residential housing development on approximately 19.5 acres (20 Cuerdas) of land at PR-931 Km. 4.3 in Gurabo, Puerto. The site is adjacent to an unnamed stream which discharges into the Rio Grande de Loiza, which then discharges into the Atlantic Ocean, a water of the United States.

The Respondent's failure to comply with the CWA, NPDES regulations, the Administrative Order and Show Cause Order demonstrates the Respondent's recalcitrance and hinders the implementation of the NPDES program and negates the benefits of this program, such as protecting the water quality of the Rio Grande de Loiza, which is a public water supply. Respondent's violations are serious and have an indirect effect on human health and direct effect on the environment. EPA's requirement that certain industrial facilities obtain permits is designed to reduce or minimize the discharge of pollutants which impair or degrade the water quality of receiving waters. Furthermore, Respondent's failure to comply with the Administrative Order (AO) and Request for Information and Order to Show Cause impedes implementation of the NPDES program and EPA's ability to carry out its duties to protect the environment.

e. Proposed Gravity Component

Based on the above findings, and my professional experience, a substantial penalty is necessary to deter Respondents and others from violating the Act. A gravity penalty of \$ 84,322.00 is being proposed after taking into consideration the length of the violations, the harm to the receiving waters, and threats to human health, the importance of compliance and the seriousness of the violations, as well as the Respondent's demonstrated recalcitrance by not adequately responding to the Administrative Order and the Show Cause Order.

2. Economic Benefit or Savings

Based on my professional experience, Respondent incurred an economic benefit of \$12,678 for the violation noted above.

Table 1: Summary of Economic Benefit Calculations
Data based on Information Provided by EPA's CEI Report dated 4/26/05

Description of Project	Cost of Projects	Noncompliance Date	Compliance Date	Type of Cost	BEN	Source of Info
SWPPP & Site Map	\$7,500.00	6/1/2001	5/8/2006	One Time		BPJ
BMP Implementation	\$5,000.00	6/1/2001	5/8/2006	Capital		BPJ
Failure to do site inspections & install/maintain BMPs	\$3,000.00	6/1/2001	5/8/2006	Annual		BPJ
BEN Result					\$12,678.00	

Dates of non-compliance were based on EPA's March 17, 2005 CEI. Respondent did not provide cost information as required, so the cost data was derived by Best Professional Judgment, based on information at other construction sites.

C. Calculation of the Penalty Adjustment Factors with respect to the Violator

1. Prior history of Violations (Recalcitrance)

Respondent has previously violated the CWA. On January 30, 2003, Respondent and EPA executed a Consent Order which concerned the discharge of fill material into the perennial stream channel in the southern portion of the Estancias de Siervas de Maria site. The EPA found Respondent to be in violation of Section 301 of the Act for the discharge of pollutants consisting of earthen fill material into approximately 160 linear feet of waters of the U.S. without authorization by the Secretary of the Army as provided by Section 404 of the Act. Pursuant to the Consent Order, the Respondent agreed to execute a Mitigation Plan at the site, create a Mitigation Area Preservation, and file an application to the Corps seeking after-the-fact authorization for the illegal fill. *See Attachment 9, EPA's Consent Order Docket # CWA-02-2003-3500.* EPA has already factored into the gravity portion of this penalty the Respondent's prior history of violations, as described herein.

2. Degree of Culpability

Respondent should have been aware of the requirement to obtain a permit prior to the commencement of construction activities at the Site. Respondent was informed of the need to obtain coverage under the Construction General Permit and to develop a SWPPP during EPA's March 2005 inspection and again in the Administrative Order issued to Respondent in May of 2005 and the Show Cause Order issued in September 2005. EPA contacted Respondent in September, October and November 2005 and further informed him of the requirement to obtain a permit and develop a SWPPP.

3. Ability to Pay

Presently, EPA possesses no information related to Respondent's inability to pay.

D. Final Proposed Penalty

The final calculated penalty is \$97,000, which is comprised of an economic benefit of \$12,678 and a gravity factor of \$84,322.

E. Recommendations

I recommend that Respondent be assessed a Complaint for the amount of **\$97,000**. This recommendation is consistent with my application of the statutory factors in §309(g) which fully supports the recommended penalty.



U.S. Environmental Protection Agency

National Pollutant Discharge Elimination System (NPDES)

[Recent Additions](#) | [Contact Us](#) | [Print Version](#) Search NPDES:

[EPA Home](#) > [OW Home](#) > [OWM Home](#) > [NPDES Home](#) > [Stormwater](#) > [NOI Application Results](#)

Construction Activities
-2003 Construction
General Permit
-Oil and Gas

[NPDES Topics](#)

[Alphabetical Index](#)

[Glossary](#)

[About NPDES](#)

Industrial Activity
-Multi-Sector General Permit

NOI Application Search Results

*Attachment
1*

Municipal MS4s
-Large & Medium
-Small

Permit Search Parameters:

Owner Name contains (JOSE LOPEZ ROIG).....Owner Name contains (JOSE LOPEZ ROIG).....Owner State = Puerto Rico.....Owner State = Puerto Rico.....Facility Name contains (ESTANCIAS DE SIERVAS DE MARIA).....Facility Name contains (ESTANCIAS DE SIERVAS DE MARIA).....Facility State = Puerto Rico.....Facility State = Puerto Rico.....Permit Type = All.....

Stormwater Outreach Materials

Record Count: 0

Phase I & Phase II
-Menu of BMPs
-Urbanized Area Maps

Sorry, no applications were found!

[Stormwater Home](#)

[Back to Search](#)

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

Attachment
2

In the Matter of:

T&T Engineering
1150 Américo Miranda
Caparra Terrace, PR 00921

And

Estancias de Siervas de Maria
MSC 1006
HC-04 Box 44374, Bo. San Salvador
Caguas, PR 00725

PR-931, Km 4.3, Gurabo, Puerto Rico

NPDES Tracking Number PRU200900
ICIS No. 2658622

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

**ADMINISTRATIVE
COMPLIANCE ORDER**

CWA-02-2005-3216

AUTHORITY

The following ORDER is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") by the Clean Water Act ("CWA"), 33 U.S.C. §1251 *et seq.*, which authority has been duly delegated to the Regional Administrator of Region 2, EPA, and since further redelegated to the Director of the Division of Enforcement and Compliance Assistance, Region 2, EPA.

DEFINITIONS AND STATUTORY PROVISIONS

1. a. Section 301(a) of the CWA, 33 U.S.C. §1311(a), provides, in part, that "Except 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."
- b. Section 402(a)(1) of the CWA, 33 U.S.C. §1342(a)(1), provides that "... the Administrator may, after opportunity for public hearing, issue a permit for the discharge of any pollutant ..."
- c. Section 402(p) of the CWA, 33 U.S.C. §1342(p) sets forth the requirements for

the discharges of storm water.

- d. Section 404 of the CWA, 33 U.S.C. §1344, authorizes the Secretary of the Army to authorize discharges of dredged or fill material into navigable waters of the United States.
- e. The term "navigable waters" includes the waters of the United States pursuant to Section 502(7) of the CWA, 33 U.S.C. §1362(7).
- f. The term "pollutant" includes, among other things, solid waste, dredged spoil, rock, sand, cellar dirt, sewage, sewage sludge and industrial, municipal and agricultural waste discharged into water, pursuant to Section 502(6) of the CWA, 33 U.S.C. §1362(6). Dredged or fill material constitutes a "pollutant" within the meaning of Section 502(6) of the Act, U.S.C. §1362(6).
- g. The term "discharge of a pollutant" means any addition of any pollutant to navigable waters from any point source, pursuant to Section 502(12) of the CWA, 33 U.S.C. §1362(12).
- h. The term "person" includes an individual, corporation, partnership, association or municipality, pursuant to Section 502(5) of the CWA, 33 U.S.C. §1362(5).
- i. The terms "construction general permit" or "CGP" mean the "NPDES General Permit for Discharges from Large and Small Construction Activities" issued by EPA on July 1, 2003, and published in the Federal Register (68 FR 39087). The current CGP (PRR100000) became effective on July 1, 2003 and expires on July 1, 2008.
- j. The CGP - Appendix A- Definitions and Acronyms defines "commencement of construction activities" to mean the initial disturbance of soils associated with clearing, grading, excavation activities or other construction activities.
- k. The term "NPDES" means National Pollutant Discharge Elimination System.
- l. The CGP - Appendix A- Definitions and Acronyms defines the term "Operator" for the purpose of the NPDES storm water general permit for construction activities and in the context of storm water associated with construction activity, to mean any party associated with a construction project that meets either of the following two (2) criteria:
 - i. The party has operational control over construction plans and specifications including the ability to make modifications to those plans and specifications; or
 - ii. The party has day-to-day operational control of those activities at a project which are necessary to ensure compliance with a storm water pollution

prevention plan for the site or other permit conditions.

FINDINGS

2. T&T Engineering and Estancias de Siervas de Maria (Collectively "T&T/Estancias") is a person within the meaning of Section 502(5) of the CWA, 33 U.S.C. §1362(5).
3. T&T/Estancias operates a construction site on or about PR-931 Km. 4.3 Gurabo, Puerto Rico. Photographs of the construction site ("project", "site", or "facility") can be seen in the attached USEPA Compliance Evaluation Inspection Report ("CEI").
4. T&T/Estancias has conducted, among other things, clearing, grading and excavation activities at the site.
5. T&T/Estancias is an operator as defined in paragraph 1.1. above.
6. The Administrator of EPA has promulgated regulations, 40 CFR §122.26(a)(1)(ii) and §122.26(b)(14), which require operators to obtain an NPDES permit for storm water discharges associated with industrial activity. The regulations at 40 CFR §122.26(b)(14)(x) and 40 CFR §122.26(b)(15)(i) regulate storm water discharges associated with industrial activity from construction sites which include clearing, grading and excavation activities that result in the disturbance of one (1) or more acres of total land area.
7. Representatives of T&T/Estancias stated, during an EPA Compliance Evaluation Inspection ("CEI") on March 17, 2005, that the site was approximately 20 Cuerdas (19.44 acres).
8. The NPDES permit application regulations for storm water discharges at 40 CFR §122.26(b)(14)(x) are applicable to this site since clearing, grading and/or excavation activities are equal or greater than one (1) acre of total land area.
9. Operators regulated under 40 CFR §122.26(b)(14)(x) or 40 CFR §122.26(b)(15)(i) may seek CGP coverage by filing a Notice of Intent ("NOI") form under the terms and conditions of Parts 1 and 2 of the CGP.
10. Sections 2.1 and 2.3 of the CGP authorize coverage provided that the operators file a completed NOI form. Coverage under the CGP begins within seven (7) calendar days of EPA confirmation of receipt of the NOI form as posted on the EPA Web Site:
<http://www.epa.gov/npdes/stormwater/cgp>
11. There was no NOI submitted for this site.
12. Storm water runoff from the site either discharges or has the potential to discharge to waters of the United States.

13. Therefore, on the basis of the findings cited in the paragraphs above, T&T/Estancias is in violation of §301 of the CWA.
14. On January 30, 2003, EPA issued a Consent Order In the matter of José López Roig, President, Estancias de Siervas de Maria, Inc (CWA-02-2003-3500), pursuant to §309(a) of the CWA, 33 U.S.C. §1319(a), to resolve a violation of §301 of the CWA involving discharge of fill material into navigable waters at the site without authorization from the Secretary of the Army as required by Section 404 of the CWA, 33 U.S.C. §1344.

ORDERED PROVISIONS

In consideration of the above FINDINGS, and pursuant to the provisions of Sections 308 and 309(a) of the CWA, 33 U.S.C. §1318 and §1319(a), EPA has determined that compliance with the following requirements is reasonable.

IT IS HEREBY ORDERED

1. Immediately upon receipt of the original copies of this Order, a responsible official of T&T/Estancias shall complete the acknowledgment of receipt of one of the originals of the Order and return said original to the Chief, Compliance Section, Water Compliance Branch, Division of Enforcement and Compliance Assistance, in the enclosed envelope to the address listed below.

Cease and Desist

2. Immediately upon receipt of this Order, T&T/Estancias and any other contractors shall cease and desist the clearing, grading and/or excavation activities at the site. T&T/Estancias shall submit a certification stating that clearing, grading and excavation activities at the site have ceased as of the date of receipt of this ORDER. The certification shall be submitted to EPA no later than five (5) calendar days from the date of receipt of this ORDER.

T&T/Estancias, and any other contractors, are authorized to carry out activities required by this ORDER, including but not limited to the following, unless it fails to comply with the CGP, or risks or harms a threatened or endangered species as described in Part 6 of the CGP:

- a. Provide temporary stabilization to slopes and other areas where clearing, grading and/or excavation activities have temporarily ceased as required by the CGP.
- b. Provide final stabilization to slopes and other areas where clearing, grading and/or excavation activities will no longer be performed as required by the CGP.
- c. Construct and/or install erosion and storm water management controls as required by the CGP.

- d. Continue construction that does not involve clearing, excavation or grading activities.
3. T&T/Estancias may re-commence construction once EPA receives written certification that the site is in full compliance with the CGP and has fully complied with Ordered Provisions 4-7 below, and provided that construction involves no discharge of dredged or fill material into navigable waters without prior authorization from the Secretary of the Army as required by Section 404 of the CWA, 33 U.S.C. §1344, and is in compliance with EPA Consent Order CWA-02-2003-3500.

Storm Water Pollution Prevention Plan

4. That within twenty (20) calendar days of receipt of this ORDER, T&T/Estancias shall develop and submit to EPA for review, a complete and thorough Storm Water Pollution Prevention Plan ("SWPPP") for the site. The SWPPP shall be based on the best engineering practices for the control of erosion at the site and for protection of waters of the United States. The SWPPP shall comply with all conditions and requirements of the CGP.

If EPA notifies T&T/Estancias of SWPPP deficiencies, within seven (7) calendar days of such notification (or as otherwise provided in the notification), T&T/Estancias shall make the required changes to the SWPPP and shall submit to EPA the following certification:

"I certify under penalty of law that "name of operator" made the requested changes to the SWPPP document in accordance with the SWPPP measures, controls and schedules, under my direction or supervision."

5. Within thirty (30) calendar days of receipt of this ORDER, T&T/Estancias shall:
 - a. implement the controls and measures as established and scheduled in the SWPPP; and
 - b. submit a written certification of SWPPP implementation stating the following:

"I certify under penalty of law that "name of operator" is implementing the SWPPP in accordance with the Construction General Permit and the specified and required controls, measures, and schedules, under my direction or supervision on [insert date]."

Notice of Intent Form

6. Within five (5) calendar days of providing certification of SWPPP Implementation, T&T/Estancias shall submit a completed NOI form to seek coverage under the CGP to EPA's NOI Processing Center electronically or via mail. A copy of the NOI form, and documentation that T&T/Estancias is in compliance with the Endangered Species provisions contained in Part 1.3.C.6 of the CGP shall be submitted to EPA and EQB.

NOI forms and electronic submittal are available at the EPA Web Site:

<http://cfpub.epa.gov/npdes/stormwater/cgp.cfm>. An NOI form is enclosed with this Order.

The mailing addresses for EPA's NOI Processing Center

Regular U.S. Mail Delivery:

Storm Water Notice Processing Center, Mail Code 4203M
U.S. EPA, 1200 Pennsylvania Avenue, NW, Washington, DC 20460

For Overnight/Express Mail Delivery:

Storm Water Notice Processing Center, Room 7420
U.S. EPA, 1201 Constitution Avenue, NW
Washington, DC 20004

7. Once T&T/Estancias is authorized to discharge under the CGP, as described in Parts 1 and 2 of the CGP, T&T/Estancias shall comply with all terms and conditions of the CGP, and within five (calendar) days of being authorized to discharge, submit a written certification stating, "I certify under penalty of law that "name of operator" is in compliance with the Construction General Permit on [insert date]", and may resume construction. T&T/Estancias can check the status of the Permits by accessing the NOI Web Site at <http://cfpub2.epa.gov/npdes/stormwater/noi/noisearch.cfm>

Provide Information

8. Within fifteen (15) calendar days of receipt of this ORDER, submit the following:
 - a. the name, address, and telephone number of the owner of the site and the name, address, and phone number of all contractors or parties involved in construction activity at the site.
 - b. the dates in which T&T/Estancias started and completed or will complete construction activity at the site.
9. a. Within thirty (30) calendar days of receipt of this Order provide EPA with a list of sites greater or equal to 1 acre owned or operated by T&T Engineering and/or T&T/Estancias that are under construction, have not undergone final stabilization, or are under contract for construction in Puerto Rico. This list should include the following:
 - i. the site name, street/location, city, and zip code;
 - ii. the area of each site (in acres);
 - iii. whether a NOI has been submitted for the site and has coverage under the CGP (if so list the Permit Tracking Number);

- iv. whether a SWPPP has been developed and implemented and the dates that the SWPPP was developed and implemented;
 - v. the name(s), address, telephone and contact person for each of the operators or owners of the construction site.
 - vi. The date that the construction project began and the date that construction is expected to be completed;
 - vii. the name of the receiving body or bodies of water for the storm water discharges;
- b. For each construction site identified pursuant to paragraph 9. a, above, Estancias and/or T&T Engineering shall submit to EPA a copy of the individual permit application and/or NOI form, and a copy of the storm water pollution prevention plan developed pursuant to the requirements of the CGP. If NOIs for these sites have not been submitted to the NOI Processing Center, Estancias/T&T must also submit an NOI to the NOI Processing Center. NOI forms and electronic submittal are available at the EPA Web Site.
<http://cfpub2.epa.gov/npdes/stormwater/cgp.cfm>
10. Within forty five (45) calendar days after receipt of this ORDER, T&T/Estancias shall submit a report containing the amount of time and associated costs (including but not limited to storm water management controls, labor, operations and maintenance, installation, etc.) which were required to:
- a. prepare the site map;
 - b. provide temporary and final stabilization to the entire site (also submit the date that temporary and final stabilization has been completed and/or is expected to be completed);
 - c. develop and fully implement the SWPPP;
 - d. conduct inspections and prepare corresponding reports, and
 - e. prepare and submit the NOI form.

CERTIFICATION

11. Any documents to be submitted by T&T/Estancias as part of this ORDER shall be sent by certified mail or its equivalent and shall be signed by an authorized representative of the respective entity (see 40 CFR §122.22), and shall include the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my

knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Any questions concerning this ORDER should be directed to Mr. Henry Mazzucca, P.E. of the Compliance Section, Water Compliance Branch at (212) 637-4229.

All information required to be submitted by this ORDER shall be sent by certified mail or its equivalent to the following addresses:

Henry Mazzucca, P.E., Chief
Compliance Section
Water Compliance Branch
Division of Enforcement and Compliance Assistance
290 Broadway, 20th Floor
New York, NY 10007-1866

Carlos O'Neill, P.E., Chief
Enforcement and Superfund Branch
Caribbean Environmental Protection Division
U.S. Environmental Protection Agency, Region 2
Edificio Centro Europa, Suite 417
1492 Avenida Ponce de León
San Juan, Puerto Rico 00907-4127

Rubén González, Director
Water Quality Area
Puerto Rico Environmental Quality Board
P.O. Box 11488
Santurce, Puerto Rico 00910

This ORDER does not constitute a waiver from compliance with or a modification of the effective terms and conditions of the CWA, its implementing regulations, and the CGP, which remain in full force and effect. This ORDER is an enforcement action taken by EPA to ensure swift compliance with the CWA. Issuance of an Administrative Order shall not be deemed an election by EPA to forego any civil or criminal actions which would seek penalties, fines, or other appropriate relief under the CWA.

This ORDER shall become effective upon the date of execution by the Director, Division of Enforcement and Compliance Assistance.

Dated: MAY 13, 2005

Signed: _____

Dore LaPosta, Director
Division of Enforcement and Compliance Assistance



United States Environmental Protection Agency
Washington, D.C. 20460
Water Compliance Inspection Report

Form Approved.
OMB No. 2040-0057
Approval expires 8-31-98

Section A: National Data System Coding (i.e., PCS)

Transaction Code 1 N 2 5 3 P R U 2 0 0 9 0 0 11	NPDES 12 0 5 0 3 1 7 17	yr/mo/day	Inspection Type 18 C	Inspector 19 R	Fac Type 20 2
Remarks					
Inspection Work Days 3 1 69	Facility Self-Monitoring Evaluation Rating 70 1	B1 71	QA 72	Reserved 73 74	7 80

Section B: Facility Data

Name and Location of Facility Inspected (for industrial users discharging to POTW, also include POTW name and NPDES permit number) Estancias de Siervas de Maria, State Road PR-931 Km. 4.3, Gurabo P.R. Mailing Address M r. Jose Lopez Roig, MSC 1006, HC-04 Box 44374, Bo. San Salvador, Caguas, PR 00725	Entry Time/Date 3/17/05, 9:00 AM	Permit Effective Date No Permit
	Exit Time/Date 9:55 AM	Permit Expiration Date
Name(s) of On-Site Representative(s)/Title(s)/Phone and Fax Number(s) Jesús F. Fontanes, Vice President, T&T Engineering Design and Development Corp., 1150 Americo Miranda, Caparra Terrace 00921 (787) 707-0420	Other Facility Data FRS 110014408612 ICIS 2658622 Admin Order, CWA-02-2003-3500, 1/30/2003	
Name, Address of Responsible Official/Title/Phone and Fax Number(s) M r. Jose Lopez Roig, MSC 1006, MC-04 Box 44374, Bo. San Salvador, Caguas, PR 00725	SIC Code 1521 - General Building Contractors, Residential	
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Contacted		

Section C: Areas Evaluated During Inspection (Check only those areas evaluated)

<input type="checkbox"/> Permit	<input type="checkbox"/> Flow Measurement	<input type="checkbox"/> Operations & Maintenance	<input type="checkbox"/> CSO/SSO (Sewer Overflow)
<input type="checkbox"/> Records/Reports	<input type="checkbox"/> Self-Monitoring Program	<input type="checkbox"/> Sludge Handling/Disposal	<input checked="" type="checkbox"/> Pollution Prevention
<input checked="" type="checkbox"/> Facility Site Review	<input type="checkbox"/> Compliance Schedules	<input type="checkbox"/> Pretreatment	<input checked="" type="checkbox"/> Multimedia
<input checked="" type="checkbox"/> Effluent/Receiving Water	<input type="checkbox"/> Laboratory	<input checked="" type="checkbox"/> Storm Water	<input type="checkbox"/> Other:

Section D: Summary of Findings/Comments (Attach additional sheets of narrative and checklists as necessary)

The facility is a residential home construction site that was said to be approximately 20 Cuerdas (19.44 acres). No Notice of Intent for Coverage under EPA's Construction General Permit was submitted as required. The facility began construction activity in 2000 and is conducting construction activity without a permit. Section 301 of the Clean Water Act and 40CFR 122.26(b)(14)(x) require that this site be covered under the Construction General Permit.

See Photographs in Attachment 1.

Name(s) and Signature(s) of Inspector(s) Murray Lantner, P.E., Environmental Engineer	Agency/Office/Phone and Fax Numbers EPA/WCB/CS(212) 637-3976/ FAX: 637-4211	Date 4/26/05
Signature of Management or A Reviewer Henry Mazzucca, P.E., Chief, Compliance Section	Agency/Office/Phone and Fax Numbers EPA/WCB/CS (212) 637-4229	Date 4/26/05

INSTRUCTIONS

Section A: National Data System Coding (I.e., PCS)

Transaction Code: Use N, C, or D for New, Change, or Delete. All inspections will be *new* unless there is an error in entered.

3-11: NPDES Permit No. Enter the facility's NPDES permit number. (Use the Remarks columns to record the State permit necessary.)

12-17: Inspection Date. Insert the date entry was made into the facility. Use the year/month/day format (e.g., 94/06/30 0, 1994).

8: Inspection Type. Use one of the codes listed below to describe the type of inspection:

Performance Audit	L	Enforcement Case Support	2	IU Sampling Inspection
Compliance Biomonitoring	M	Multimedia	3	IU Non-Sampling Inspection
Compliance Evaluation (non-ing)	P	Pretreatment Compliance Inspection	4	IU Toxics Inspection
Compliance Evaluation (ing)	R	Reconnaissance	5	IU Sampling Inspection with Pretreatment
Compliance Evaluation (ing) of Engineers Inspection	S	Compliance Sampling	6	IU Non-Sampling Inspection with Pretreatment
Compliance Evaluation (ing) of Engineers Inspection	U	IU Inspection with Pretreatment Audit	7	IU Toxics with Pretreatment
Compliance Evaluation (ing) of Engineers Inspection	X	Toxics Inspection		
Compliance Evaluation (ing) of Engineers Inspection	Z	Sludge		

9: Inspector Code. Use one of the codes listed below to describe the lead agency in the inspection.

Inspector Code	N	NEIC Inspectors
Inspector Code	R	EPA Regional Inspector
Inspector Code	S	State Inspector
Inspector Code	T	Joint State/EPA Inspectors—State lead

10: Facility Type. Use one of the codes below to describe the facility.

10-1: Municipal. Publicly Owned Treatment Works (POTWs) with 1987 Standard Industrial Code (SIC) 4952.

10-2: Industrial. Other than municipal, agricultural, and Federal facilities.

10-3: Agricultural. Facilities classified with 1987 SIC 0111 to 0971.

10-4: Federal. Facilities identified as Federal by the EPA Regional Office.

21-66: Remarks. These columns are reserved for remarks at the discretion of the Region.

17-69: Inspection Work Days. Estimate the total work effort (to the nearest 0.1 work day), up to 99.9 days, that were complete the inspection and submit a QA reviewed report of findings. This estimate includes the accumulative effort of all inspectors; any effort for laboratory analyses, testing, and remote sensing; and the billed payroll time for travel and inspection preparation. This estimate does not require detailed documentation.

18: Facility Evaluation Rating. Use information gathered during the inspection (regardless of inspection type) to evaluate the facility self-monitoring program. Grade the program using a scale of 1 to 5 with a score of 5 being used for very satisfactory self-monitoring programs, 3 being satisfactory, and 1 being used for very unreliable programs.

19: Biomonitoring Information. Enter D for static testing. Enter F for flow through testing. Enter N for no biomonitoring.

20: Quality Assurance Data Inspection. Enter Q if the inspection was conducted as followup on quality assurance sample inspection. Enter N otherwise.

23-80: These columns are reserved for regionally defined information.

Section B: Facility Data

Section B is self-explanatory except for "Other Facility Data," which may include new information not in the permit or PCS (e.g., changes in receiving waters, new ownership, and other updates to the record).

Section C: Areas Evaluated During Inspection

Mark those areas evaluated by marking the appropriate box. Use Section D and additional sheets as necessary. Support the findings, in a brief narrative report. Use the headings given on the report form (e.g., Permit, Records/Reports) when describing the areas evaluated during the inspection. The heading marked "Multimedia" may indicate medias such as CAA, RCRA, etc. The heading marked "Other" may indicate activities such as SPCC, BMPs, and concerns that are not covered elsewhere.

Section D: Summary of Findings/Comments

Summarize the inspection findings. This summary should abstract the pertinent inspection findings, not replace the narrative report. Reference a list of attachments, such as completed checklists taken from the NPDES Compliance Inspection Manuals and other guidance documents, including effluent data when sampling has been done. Use extra sheets as necessary.

NPDES
Form



United States Environmental Protection Agency
Washington, DC 20460

Notice of Intent (NOI) for Storm Water Discharges Associated with
Construction Activity Under an NPDES General Permit

Submission of this Notice of Intent (NOI) constitutes notice that the party identified in Section II of this form requests authorization to discharge pursuant to the NPDES Construction General Permit (CGP) permit number identified in Section I of this form. Submission of this NOI also constitutes notice that the party identified in Section II of this form meets the eligibility requirements of the CGP for the project identified in Section III of this form. Permit coverage is required prior to commencement of construction activity until you are eligible to terminate coverage as detailed in the CGP. To obtain authorization, you must submit a complete and accurate NOI form. Refer to the instructions at the end of this form.

I. Permit Number

II. Operator Information

Name: _____

IRS Employer Identification Number (EIN): _____ - _____

Mailing Address:

Street: _____

City: _____ State: _____ Zip Code: _____ - _____

Phone: _____ - _____ - _____ Fax (optional): _____ - _____ - _____

E-mail (optional): _____

III. Project/Site Information

Project/Site Name: _____

Project Street/Location: _____

City: _____ State: _____ Zip Code: _____ - _____

County or similar government subdivision: _____

Latitude/Longitude (Use one of three possible formats, and specify method)

- | | | | |
|----------|---|-----------|---|
| Latitude | 1. _____° _____' _____" N (degrees, minutes, seconds) | Longitude | 1. _____° _____' _____" W (degrees, minutes, seconds) |
| | 2. _____° _____' _____" N (degrees, minutes, decimal) | | 2. _____° _____' _____" W (degrees, minutes, decimal) |
| | 3. _____° N (decimal) | | 3. _____° W (decimal) |

Method: U.S.G.S. topographic map EPA web site GPS Other:
• If you used a U.S.G.S. topographic map, what was the scale: _____

Project Located in Indian country? Yes No
If so, name of Reservation or if not part of a Reservation, put "Not Applicable": _____

Estimated Project Start Date: _____ / _____ / _____ Estimated Project Completion Date: _____ / _____ / _____
Month Date Year Month Date Year

Estimated Area to be Disturbed (to the nearest quarter acre): _____

Instructions for Completing EPA Form 3510-9

Notice of Intent (NOI) for Storm Water Discharges Associated with
Construction Activity Under an NPDES General Permit

NPDES Form

This Form Replaces Form 3510-9 (8/98)

Form Approved OMB Nos. 2040-0188 and 2040-0211

Who Must File an NOI Form

Under the provisions of the Clean Water Act, as amended (33 U.S.C. 1251 et seq.; the Act), federal law prohibits storm water discharges from certain construction activities to waters of the U.S. unless that discharge is covered under a National Pollutant Discharge Elimination System (NPDES) Permit. Operator(s) of construction sites where one or more acres are disturbed, smaller sites that are part of a larger common plan of development or sale where there is a cumulative disturbance of at least one acre, or any other site specifically designated by the Director, must submit an NOI to obtain coverage under an NPDES general permit. Each person, firm, public organization, or any other entity that meets either of the following criteria must file this form: (1) they have operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications; or (2) they have day-to-day operational control of those activities at the project necessary to ensure compliance with SWPPP requirements or other permit conditions. If you have questions about whether you need an NPDES storm water permit, or if you need information to determine whether EPA or your state agency is the permitting authority, refer to www.epa.gov/npdes/stormwater/cgp or telephone the Storm Water Notice Processing Center at (866) 352-7755.

Where to File NOI Form

See the applicable CGP for information on where to send your completed NOI form.

Completing the Form

Obtain and read a copy of the appropriate EPA Storm Water Construction General Permit for your area. To complete this form, type or print, using uppercase letters, in the appropriate areas only. Please place each character between the marks (abbreviate if necessary to stay within the number of characters allowed for each item). Use one space for breaks between words, but not for punctuation marks unless they are needed to clarify your response. If you have any questions on this form, refer to www.epa.gov/npdes/stormwater/cgp or telephone the Storm Water Notice Processing Center at (866) 352-7755. Please submit original document with signature in ink - do not send a photocopied signature.

Section I. Permit Number

Provide the number of the permit under which you are applying for coverage (see Appendix B of the general permit for the list of eligible permit numbers).

Section II. Operator Information

Provide the legal name of the person, firm, public organization, or any other entity that operates the project described in this

application. An operator of a project is a legal entity that controls at least a portion of site operations and is not necessarily the site manager. Provide the employer identification number (EIN from the Internal Revenue Service; IRS), also commonly referred to as your taxpayer ID. If the applicant does not have an EIN enter "NA" in the space provided. Also provide the operator's mailing address, telephone number, fax number (optional) and e-mail address (if you would like to be notified via e-mail of NOI approval when available). Correspondence for the NOI will be sent to this address.

Section III. Project/Site Information

Enter the official or legal name and complete street address, including city, state, zip code, and county or similar government subdivision of the project or site. If the project or site lacks a street address, indicate the general location of the site (e.g., Intersection of State Highways 61 and 34). Complete site information must be provided for permit coverage to be granted.

The applicant must also provide the latitude and longitude of the facility either in degrees, minutes, seconds; degrees, minutes, decimal; or decimal format. The latitude and longitude of your facility can be determined in several different ways, including through the use of global positioning system (GPS) receivers, U.S. Geological Survey (U.S.G.S.) topographic or quadrangle maps, and EPA's web-based siting tools, among others. Refer to www.epa.gov/npdes/stormwater/cgp for further guidance on the use of these methodologies. For consistency, EPA requests that measurements be taken from the approximate center of the construction site. Applicants must specify which method they used to determine latitude and longitude. If a U.S.G.S. topographic map is used, applicants are required to specify the scale of the map used.

Indicate whether the project is in Indian country, and if so, provide the name of the Reservation. If the project is in Indian Country Lands that are not part of a Reservation, indicate "not applicable" in the space provided.

Enter the estimated construction start and completion dates using four digits for the year (i.e., 05/27/1998). Enter the estimated area to be disturbed including but not limited to: grubbing, excavation, grading, and utilities and infrastructure installation. Indicate to the nearest quarter acre. Note: 1 acre = 43,560 sq. ft.

Section IV. SWPPP Information

Indicate whether or not the SWPPP was prepared in advance of filing the NOI form. Check the appropriate box for the location where the SWPPP may be viewed. Provide the name,

Instructions for Completing EPA Form 3510-9

Notice of Intent (NOI) for Storm Water Discharges Associated with
Construction Activity Under an NPDES General Permit

NPDES Form

This Form Replaces Form 3510-9 (8/98)

Form Approved OMB Nos. 2040-0188 and 2040-0211

fax number (optional), and e-mail address (optional) of the contact person if different than that listed in Section II of the NOI form.

Section V. Discharge Information

Enter the name(s) of receiving waterbodies to which the project's storm water will discharge. These should be the first bodies of water that the discharge will reach. (Note: If you discharge to more than one waterbody, please indicate all such waters in the space provided and attach a separate sheet if necessary.) For example, if the discharge leaves your site and travels through a roadside swale or a storm sewer and then enters a stream that flows to a river, the stream would be the receiving waterbody. Waters of the U.S. include lakes, streams, creeks, rivers, wetlands, impoundments, estuaries, bays, oceans, and other surface bodies of water within the confines of the U.S. and U.S. coastal waters. Waters of the U.S. do not include man-made structures created solely for the purpose of wastewater treatment. U.S. Geological Survey topographical maps may be used to make this determination. If the map does not provide a name, use a format such as "unnamed tributary to Cross Creek". If you discharge into a municipal separate storm sewer system (MS4), you must identify the waterbody into which that portion of the storm sewer discharges. That information should be readily available from the operator of the MS4.

Indicate whether your storm water discharges from construction activities will be consistent with the assumptions and requirements of applicable EPA approved or established TMDL(s). To answer this question, refer to www.epa.gov/npdes/stormwater/cgp for state- and regional-specific TMDL information related to the construction general permit. You may also have to contact your EPA regional office or state agency. If there are no applicable TMDLs or no related requirements, please check the "yes" box in the NOI form.

Section VI. Endangered Species Information

Indicate for which criterion (i.e., A, B, C, D, E, or F) of the permit the applicant is eligible with regard to protection of federally listed endangered and threatened species, and designated critical habitat. See Part 1.3.C.6 and Appendix C of the permit. If you select criterion F, provide the permit tracking number of the operator under which you are certifying eligibility. The permit tracking number is the number assigned to the operator by the Storm Water Notice Processing Center after EPA acceptance of a complete NOI.

Section VII. Certification Information

All applications, including NOIs, must be signed as follows:
For a corporation: By a responsible corporate officer. For the purpose of this Section, a responsible corporate officer means:

(i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

For a partnership or sole proprietorship: By a general partner or the proprietor, respectively; or

For a municipality, state, federal, or other public agency: By either a principal executive officer or ranking elected official. For purposes of this Part, a principal executive officer of a federal agency includes (i) the chief executive officer of the agency, or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrator of EPA).

Include the name and title of the person signing the form and the date of signing. An unsigned or undated NOI form will not be considered eligible for permit coverage.

Paperwork Reduction Act Notice

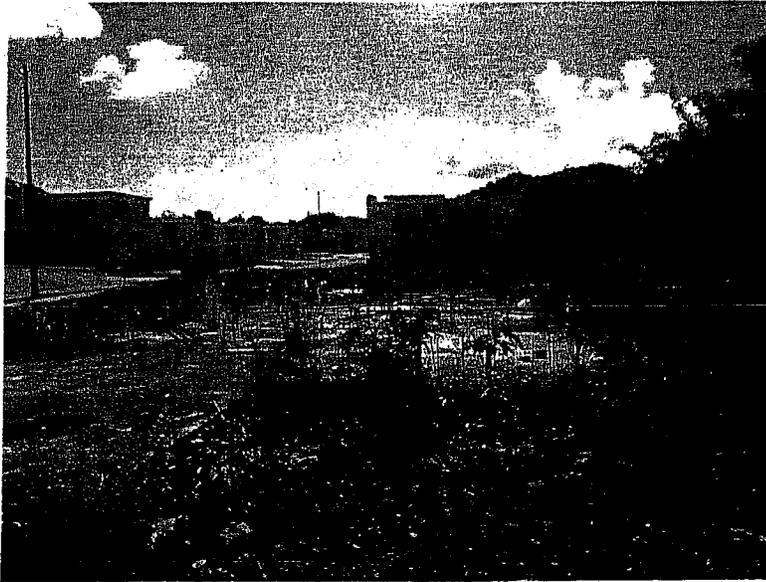
Public reporting burden for this application is estimated to average 3.7 hours. This estimate includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Send comments regarding the burden estimate, any other aspect of the collection of information, or suggestions for improving this form, including any suggestions which may increase or reduce this burden to: Chief, Information Policy Branch 2136, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, D.C. 20460. Include the OMB control number on any correspondence. Do not send the completed form to this address.

ATTACHMENT 1

Estancias de Siervas de Maria, State Road PR-931 Km. 4.3, Gurabo P.R.

NPDES Unauthorized Discharge Permit No. (PRU200900)

Photographs taken by Murray Lantner, P.E. Environmental Engineer, USEPA, With Nikon Coolpix 5400 Digital Camera, March 17, 2005

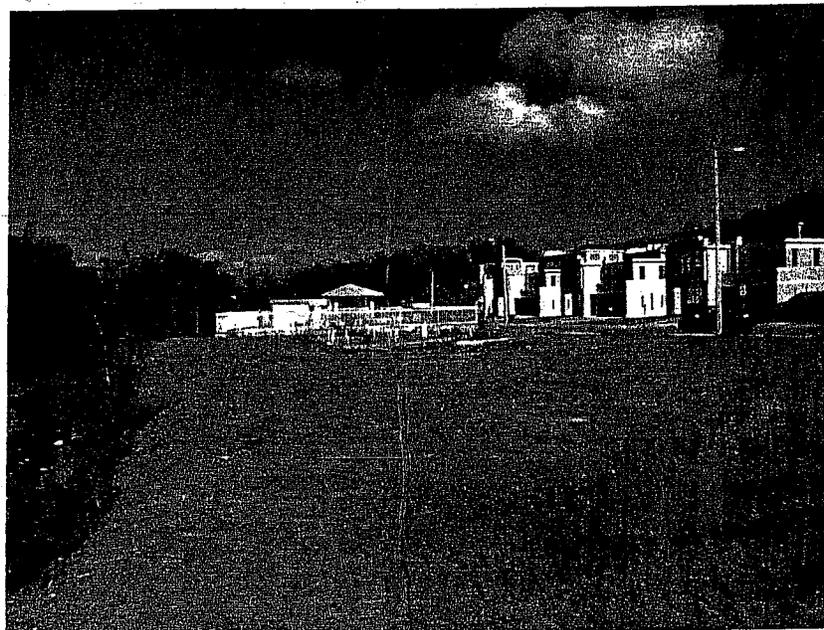


1, 2. The foreground is part of the construction site that has not undergone stabilization. This area is required to be stabilized. Construction was said to have been stopped due to a Wetlands Action. In the background are homes that were already constructed on the site.

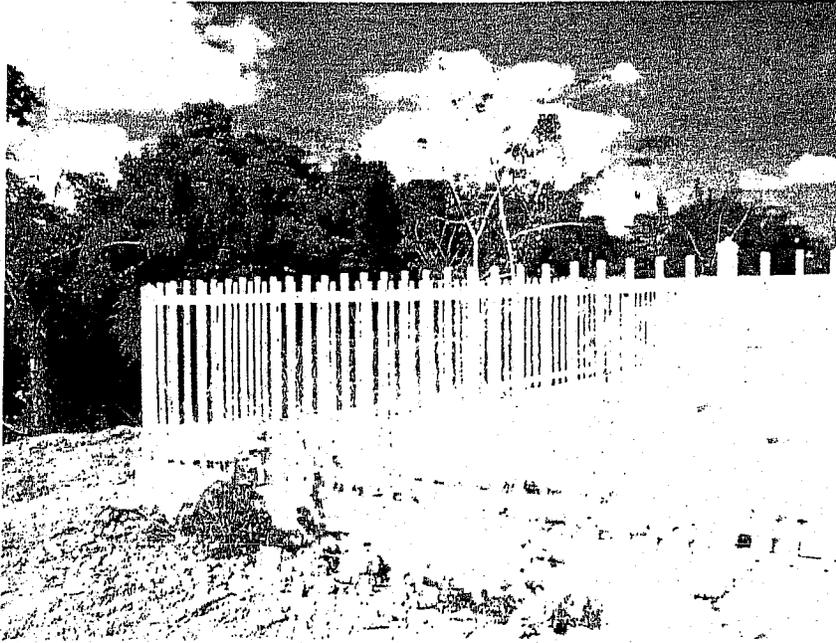




3. In the foreground is part of the construction site that has not undergone stabilization. This area is required to be stabilized. Construction was said to have been stopped due to a Wetlands Action. In the background are homes that were already constructed on the site. On the right is the stream that borders the site.



4. Stream seen on the left side of the picture, area bare of vegetation and pool complex in the background. This is the same area in photos 1-3 that requires stabilization.



5. Closeup of the pool area, unstabilized soils are adjacent to the stream.



6. Front lawn areas, some of the homes, the front and backyards have vegetation, other homes do not. The soils in front of the yellow home have not been stabilized.



7. Front lawn areas, some of the homes, the front and backyards have vegetation, other homes do not. The soils in front of the yellow home have not been stabilized



8. Areas behind the houses which has bare erodible soils and has not been stabilized. The berm/high ground on the right is sloped away from the river.



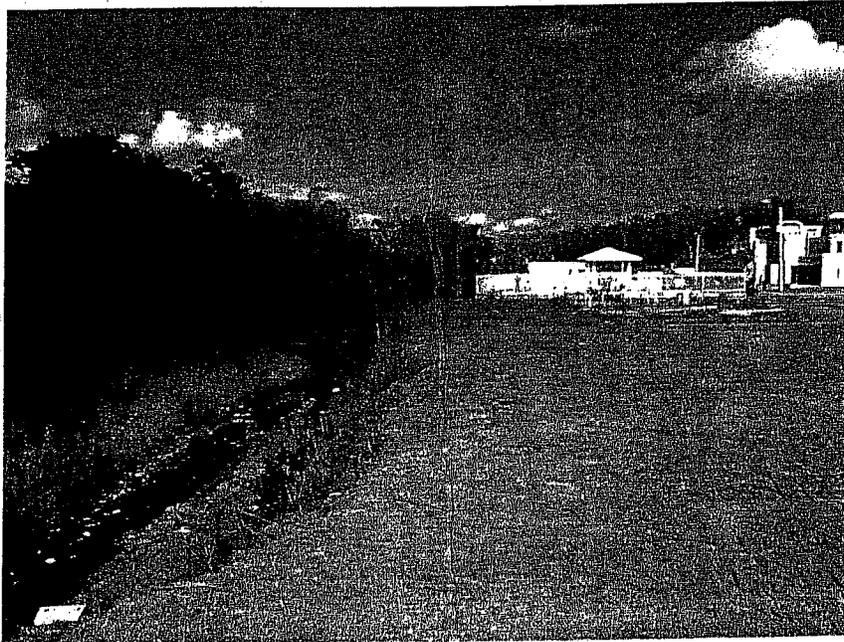
9. Water on street flowing toward a catch basin. The source of the water is unknown.



10. Catch basin near the pool area, had a build up of sediment within it. Catch basins must be routinely cleaned out.



11, 12 Stream seen on the left side of the picture, area bare of vegetation and pool complex in the background.





13,14. Closeup of stream adjacent to the area show in photographs 11 and 12.



ESTANCIAS S RVAS DE MARIA

MSC 1006 HC 04
Box 44374
Bo. San Salvador
Caguas, PR 00725
787-707-0420

Attachment
3

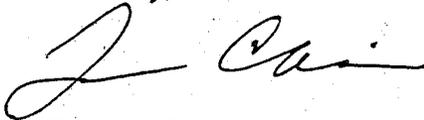
June 20, 2005

Chief, Water Compliance Branco
U.S. Environmental Protection Agency
Region 2
290 Broadway-20th Floor
New York, NY 10007-1866

To Whom It May Concern:

Enclosed you will find Administrative Compliance Order sent by mistake to our company.

Cordially,



Frances Cascio
Administrative Assistant

SHIPPING & RECEIVING
05 JUN 22 PM 3:22
DECA-WATER COMPL. BR

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

Attachment
4

In the Matter of:

Estancias de Siervas de Maria
MSC 1006
HC-04 Box 44374, Bo. San Salvador
Caguas, PR 00725

And

T&T Engineering
1150 Américo Miranda
Caparra Terrace, PR 00921

Construction Site: PR-931, Km 4.3, Gurabo, Puerto Rico

NPDES Tracking Number PRU200900
ICIS No. 2658622

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

RESPONDENTS

**ORDER TO
SHOW CAUSE**

CWA-02-2005-3243

AUTHORITY

The following ORDER is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") by the Clean Water Act ("Act" or "CWA"), 33 U.S.C. §1251 *et seq.*, which authority has been duly delegated to the Regional Administrator of Region 2, EPA, and since further redelegated to the Director of the Division of Enforcement and Compliance Assistance, Region 2, EPA.

DEFINITIONS AND STATUTORY PROVISIONS

1. a. Section 301(a) of the CWA, 33 U.S.C. §1311(a), provides, in part, that "Except 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."
- b. Section 402(a)(1) of the CWA, 33 U.S.C. §1342(a)(1), provides that "... the Administrator may, after opportunity for public hearing, issue a permit for the discharge of any pollutant ..."

- c. Section 402(p) of the CWA, 33 U.S.C. §1342(p) sets forth the requirements for the discharges of storm water.
- d. Section 404 of the CWA, 33 U.S.C. §1344, authorizes the Secretary of the Army to authorize discharges of dredged or fill material into navigable waters of the United States.
- e. The term "navigable waters" includes the waters of the United States pursuant to Section 502(7) of the CWA, 33 U.S.C. §1362(7).
- f. The term "pollutant" includes, among other things, solid waste, dredged spoil, rock, sand, cellar dirt, sewage, sewage sludge and industrial, municipal and agricultural waste discharged into water, pursuant to Section 502(6) of the CWA, 33 U.S.C. §1362(6). Dredged or fill material constitutes a "pollutant" within the meaning of Section 502(6) of the CWA, U.S.C. §1362(6).
- g. The term "discharge of a pollutant" means any addition of any pollutant to navigable waters from any point source, pursuant to Section 502(12) of the CWA, 33 U.S.C. §1362(12).
- h. The term "person" includes an individual, corporation, partnership, association or municipality, pursuant to Section 502(5) of the CWA, 33 U.S.C. §1362(5).
- i. The terms "construction general permit" or "CGP" mean the "NPDES General Permit for Discharges from Large and Small Construction Activities" issued by EPA on July 1, 2003, and published in the Federal Register (68 FR 39087). The current CGP (PRR100000) became effective on July 1, 2003 and expires on July 1, 2008.
- j. The CGP - Appendix A- Definitions and Acronyms defines "commencement of construction activities" to mean the initial disturbance of soils associated with clearing, grading, excavation activities or other construction activities.
- k. The term "NPDES" means National Pollutant Discharge Elimination System.
- l. The CGP - Appendix A- Definitions and Acronyms defines the term "Operator" for the purpose of the NPDES storm water general permit for construction activities and in the context of storm water associated with construction activity, to mean any party associated with a construction project that meets either of the following two (2) criteria:
 - i. The party has operational control over construction plans and specifications including the ability to make modifications to those plans and specifications; or
 - ii. The party has day-to-day operational control of those activities at a project which are necessary to ensure compliance with a storm water pollution prevention plan for the site or other permit conditions.

FINDINGS

2. T&T Engineering and Estancias de Siervas de Maria (Collectively "T&T/Estancias") is a person within the meaning of Section 502(5) of the CWA, 33 U.S.C. §1362(5).
3. T&T/Estancias operates a construction site on or about PR-931 Km. 4.3 Gurabo, Puerto Rico.
4. T&T/Estancias has conducted, among other things, clearing, grading and excavation activities at the site.
5. T&T/Estancias is an operator as defined in paragraph 1.1. above.
6. The Administrator of EPA has promulgated regulations, 40 CFR §122.26(a)(1)(ii) and §122.26(b)(14), which require operators to obtain a NPDES permit for storm water discharges associated with industrial activity. The regulations at 40 CFR §122.26(b)(14)(x) and 40 CFR §122.26(b)(15)(i) regulate storm water discharges associated with industrial activity from construction sites which include clearing, grading and excavation activities that result in the disturbance of one (1) or more acres of total land area.
7. Representatives of T&T/Estancias stated, during an EPA Compliance Evaluation Inspection ("CEI") on March 17, 2005, that the site was approximately 20 Cuerdas (19.44 acres).
8. The NPDES permit application regulations for storm water discharges at 40 CFR §122.26(b)(14)(x) are applicable to this site since clearing, grading and/or excavation activities are equal or greater than one (1) acre of total land area.
9. Operators regulated under 40 CFR §122.26(b)(14)(x) or 40 CFR §122.26(b)(15)(i) may seek CGP coverage by filing a Notice of Intent ("NOI") form under the terms and conditions of Parts 1 and 2 of the CGP.
10. Sections 2.1 and 2.3 of the CGP authorize coverage provided that the operators file a completed NOI form. Coverage under the CGP begins within seven (7) calendar days of EPA confirmation of receipt of the NOI form as posted on the EPA Web Site:
<http://www.epa.gov/npdes/stormwater/cgp>
11. There was no NOI submitted for this site.
12. Storm water runoff from the site either discharges or has the potential to discharge to waters of the United States.

FAILURE TO RESPOND TO ADMINISTRATIVE ORDER

13. EPA issued Administrative Order CWA-02-2005-3216 to T &T Engineering and Estancias de Siervas de Maria on May 18, 2005 for the violations listed in the Findings

above. As verified by the Certified Return Receipt Green Cards (Certified Mail No. 7003 2260 0000 3245 2426 and 7003 2260 0000 3245 2433), both Estancias de Siervas de Maria (Mr. Roig) and T&T Engineering (Mr. Fontanes), respectively, received this Administrative Order on May 23, and May 24, 2005.

14. A telephone conversation between Mr. Murray Lantner of EPA and Mr. Fontanes of T&T Engineering on August 3, 2005, also confirmed that this Administrative Order had been received by T&T Engineering. Mr. Fontanes explained that T&T has the responsibility for engineering services, design and supervision of construction. Mr. Fontanes of T&T Engineering was also the facility representative that accompanied Mr. Lantner, the EPA inspector during the March 17, 2005 CEI. During August 3, 2005 phone call Mr. Lantner of EPA explained to Mr. Fontanes, that Estancias and T&T had not complied with any of the Ordered Provisions.
15. A letter from Estancias Siervas de Maria to EPA dated June 20, 2005, also confirmed receipt of the Order and stated that the Order was sent by mistake to Estancias. A follow up phone call to Ms. Cascio at Estancias on August 3 indicated that the Order was sent to and received by the proper parties, Estancias and T&T Engineering. Review of the Estancias web site http://www.tierranueva.com/proyectos/siervas/estancias_siervas.htm indicates that one of the addressees for the Order, Mr. Lopez Roig is the Desarrollador (Developer) for Estancias.
16. Responses to the Ordered Provisions of the Administrative Order were due within 5, 15, 20, 30, and 60 calendar days of receipt of the Administrative Order. As of August 23, 2005, EPA had not received any response from T&T and only received the June 20, 2005 letter from Estancias that contained no information required by the Order. T&T and Estancias failed to comply with Administrative Order CWA-02-2005-3216 and are in violation of Section 309 of the CWA.
17. Therefore, on the basis of the findings cited in the paragraphs above, T&T/Estancias is in violation of §301 and §309 of the CWA.

ORDERED PROVISIONS

In consideration of the above FINDINGS, and pursuant to the provisions of Sections 308 and 309(a) of the CWA, 33 U.S.C. §1318 and §1319(a), EPA has determined that compliance with the following requirements is reasonable.

IT IS HEREBY ORDERED

1. Immediately upon receipt of the original copies of this Order, a responsible official of T&T/Estancias shall complete the acknowledgment of receipt of one of the originals of the Order and return said original to the Chief, Compliance Section, Water Compliance Branch, Division of Enforcement and Compliance Assistance, in the enclosed envelope to the address listed below.

Cease and Desist

2. Immediately upon receipt of this Order, T&T/Estancias and any other contractors shall cease and desist the clearing, grading and/or excavation activities at the site. T&T/Estancias shall submit a certification stating that clearing, grading and excavation activities at the site have ceased as of the date of receipt of this ORDER. The certification shall be submitted to EPA no later than five (5) calendar days from the date of receipt of this ORDER.

T&T/Estancias, and any other contractors, are authorized to carry out activities required by this ORDER, including but not limited to the following, unless it fails to comply with the CGP, or risks or harms a threatened or endangered species as described in Part 6 of the CGP:

- a. Provide temporary stabilization to slopes and other areas where clearing, grading and/or excavation activities have temporarily ceased as required by the CGP.
 - b. Provide final stabilization to slopes and other areas where clearing, grading and/or excavation activities will no longer be performed as required by the CGP.
 - c. Construct and/or install erosion and storm water management controls as required by the CGP.
 - d. Continue construction that does not involve clearing, excavation or grading activities.
3. T&T/Estancias may re-commence construction once EPA receives written certification that the site is in full compliance with the CGP and has fully complied with Ordered Provisions 4-7 in CWA-02-2005-3216 (enclosed), and provided that construction involves no discharge of dredged or fill material into navigable waters without prior authorization from the Secretary of the Army as required by Section 404 of the CWA, 33 U.S.C. §1344, and is in compliance with EPA Consent Order CWA-02-2003-3500 issued on January 30, 2003.

Comply with the MSGP, CGP and Administrative Order CWA-02-2005-3212

4. Immediately upon receipt of this Order, shall comply with all conditions of the CGP and within fifteen (15) calendar days of receipt of this Order fulfill all of the requirements of Administrative Order, CWA-02-2005-3216 and submit all of the information and reports required by Administrative Order CWA-02-2005-3216.

Show Cause Meeting

5. A responsible official of T&T Engineering and a responsible official of Estancias shall at 1:00 PM on Wednesday, October 12, 2005 appear at the following address:

U.S. Environmental Protection Agency
Water Compliance Branch
290 Broadway, 20th Floor
New York, New York 10007-1866

to show cause before the Regional Administrator or her designee, why EPA should not refer the permittee to the United States Department of Justice for the commencement of civil and/or criminal penalties as provided for by Section 309 of the CWA, 33 U.S.C. §1319.

CERTIFICATION

6. Any documents to be submitted by T&T/Estancias as part of this ORDER shall be sent by certified mail or its equivalent and shall be signed by an authorized representative of the respective entity (see 40 CFR §122.22), and shall include the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Any questions concerning this ORDER should be directed to Mr. Henry Mazzucca, P.E. of the Compliance Section, Water Compliance Branch at (212) 637-4229.

All information required to be submitted by this ORDER shall be sent by certified mail or its equivalent to the following addresses:

Henry Mazzucca, P.E., Chief
Compliance Section
Water Compliance Branch
Division of Enforcement and Compliance Assistance
290 Broadway, 20th Floor
New York, NY 10007-1866

Carlos O'Neill, P.E., Chief
Enforcement and Superfund Branch
Caribbean Environmental Protection Division
U.S. Environmental Protection Agency, Region 2
Edificio Centro Europa, Suite 417
1492 Avenida Ponce de León
San Juan, Puerto Rico 00907-4127

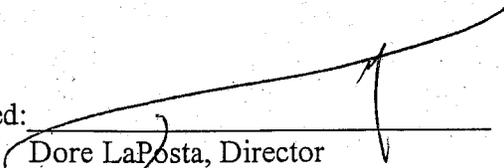
Rubén González, Director
Water Quality Area
Puerto Rico Environmental Quality Board
P.O. Box 11488
Santurce, Puerto Rico 00910

This ORDER does not constitute a waiver from compliance with or a modification of the effective terms and conditions of the CWA, its implementing regulations, and the CGP, which remain in full force and effect. This ORDER is an enforcement action taken by EPA to ensure swift compliance with the CWA. Issuance of an Administrative Order shall not be deemed an election by EPA to forego any civil or criminal actions which would seek penalties, fines, or other appropriate relief under the CWA.

This ORDER shall become effective upon the date of execution by the Director, Division of Enforcement and Compliance Assistance.

Dated: SEPTEMBER 7 2005

Signed:


Dore LaPosta, Director

Division of Enforcement and Compliance Assistance

ESTADOS UNIDOS DE AMERICA

1150 Ave. Américo Miranda
San Juan, PR 00921

Attachment
5

October 18, 2005

Henry Mazzuca, P.E. Chief
Compliance Section
Water Compliance Branch
Division of Enforcement and Compliance Assistance
290 Broadway, 20th Floor
New York, NY 10007-1866

RE: CWA-02-2005-3243
Attention: MR. MURRAY LATNER

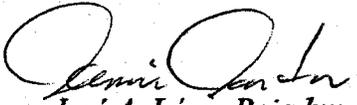
Enclosed you will find Plan CES for Sedimentation and Erosion Control Program regarding the case in reference.

The following documents pertinent to this Plan are attached:

- 1- Application
- 2- Approval
- 3- Implementation
- 4- Set of Plans

In case you may need any additional information, please contact the undersigned at your earliest convenience.

Cordially,


José A. López Roig by: Fermín Fontauzi

JALR/jc

ENCLOSURES

ENVIRONMENTAL PROTECTION
AGENCY
05 OCT 20 PM 3:05
DECA-WATER COMPL. BR



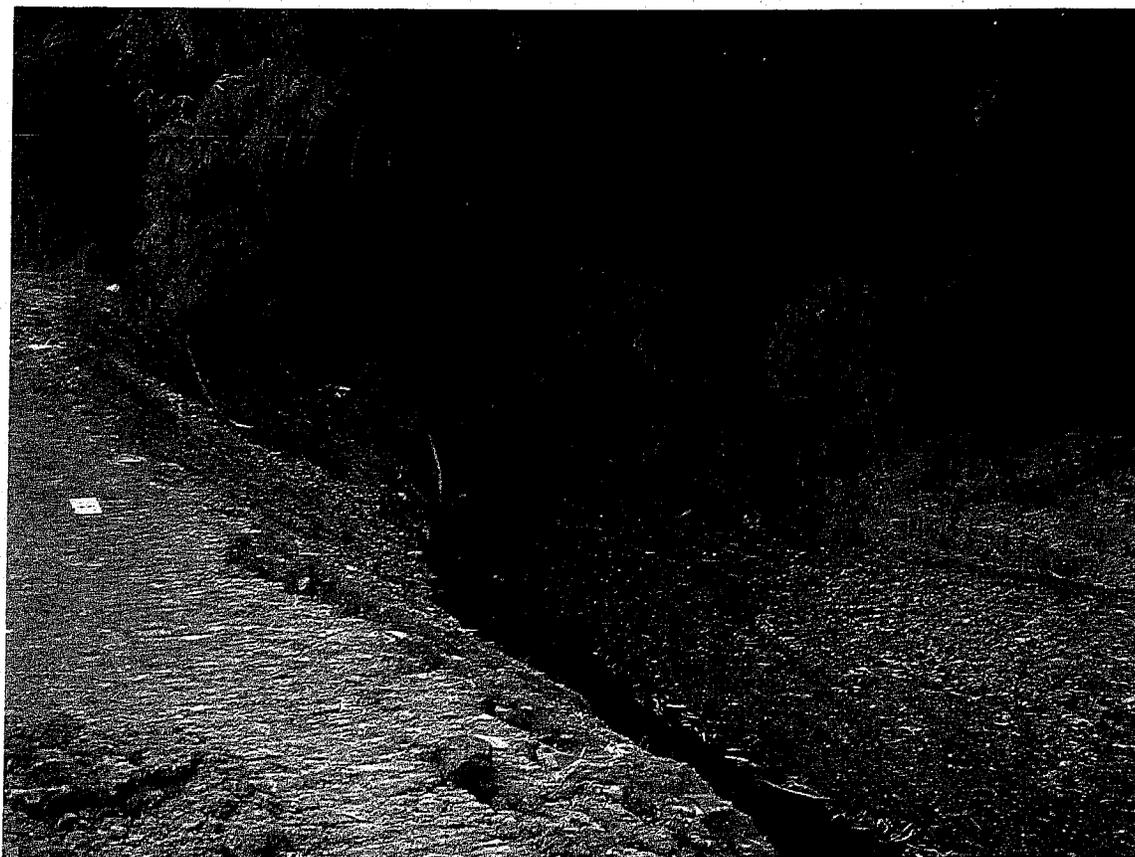
SITE INSPECTION VISIT : ESTANCIAS DE SIERVAS DE MARÍA, GURABO, PUERTO RICO
DATE : 27 JUNE 2001



N 6th ↑

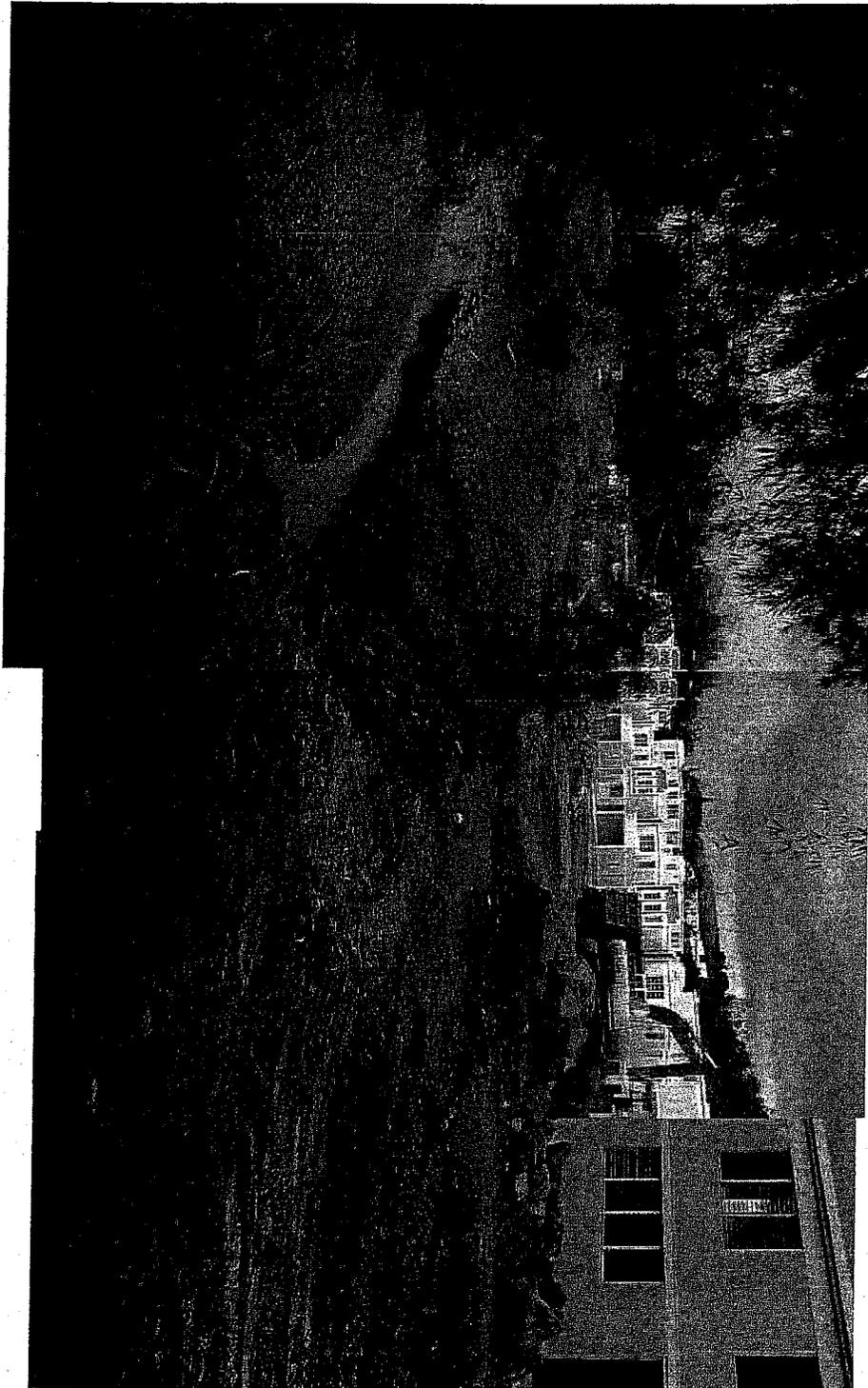


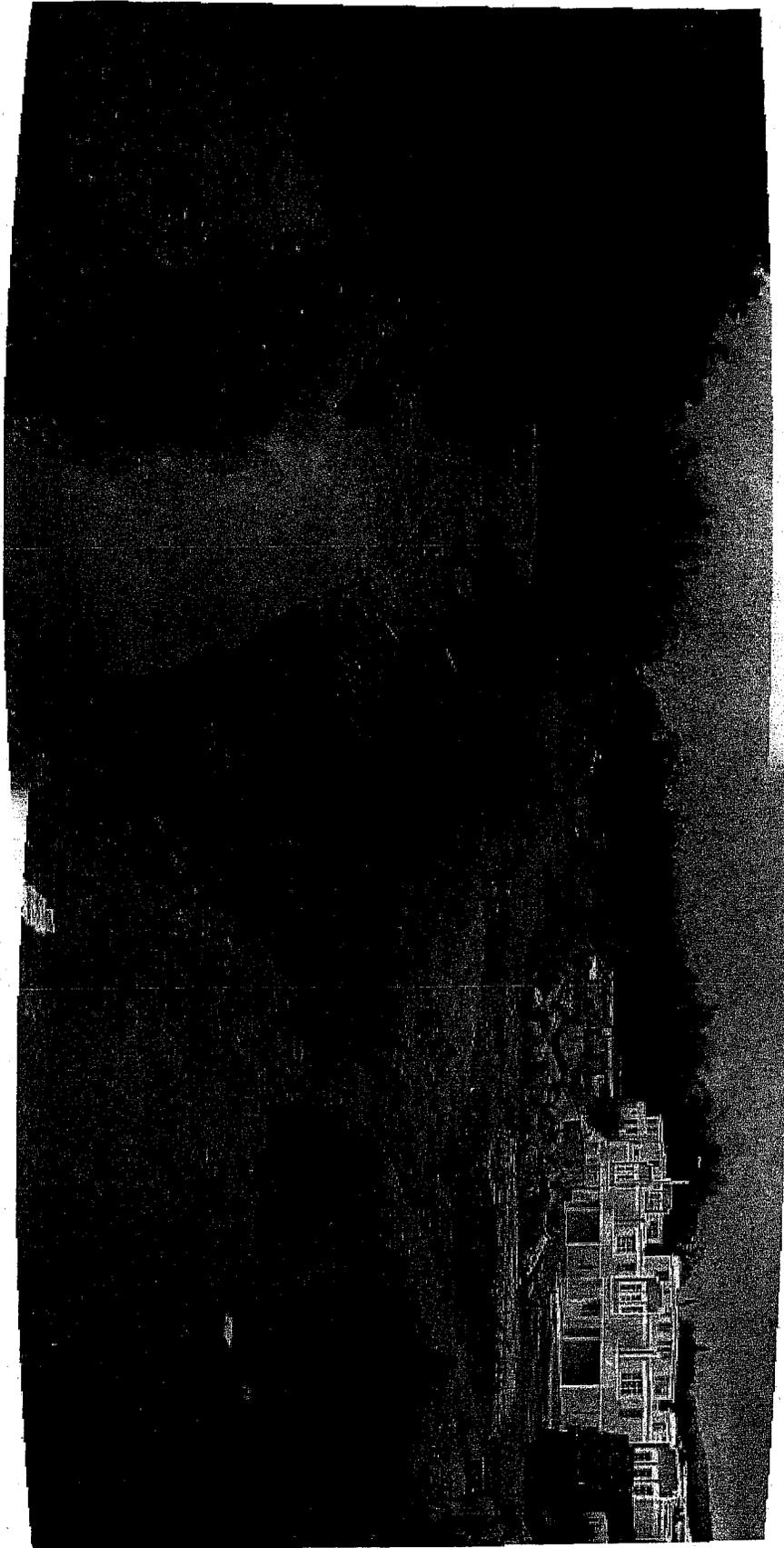
June 2002, above
January 2004, below





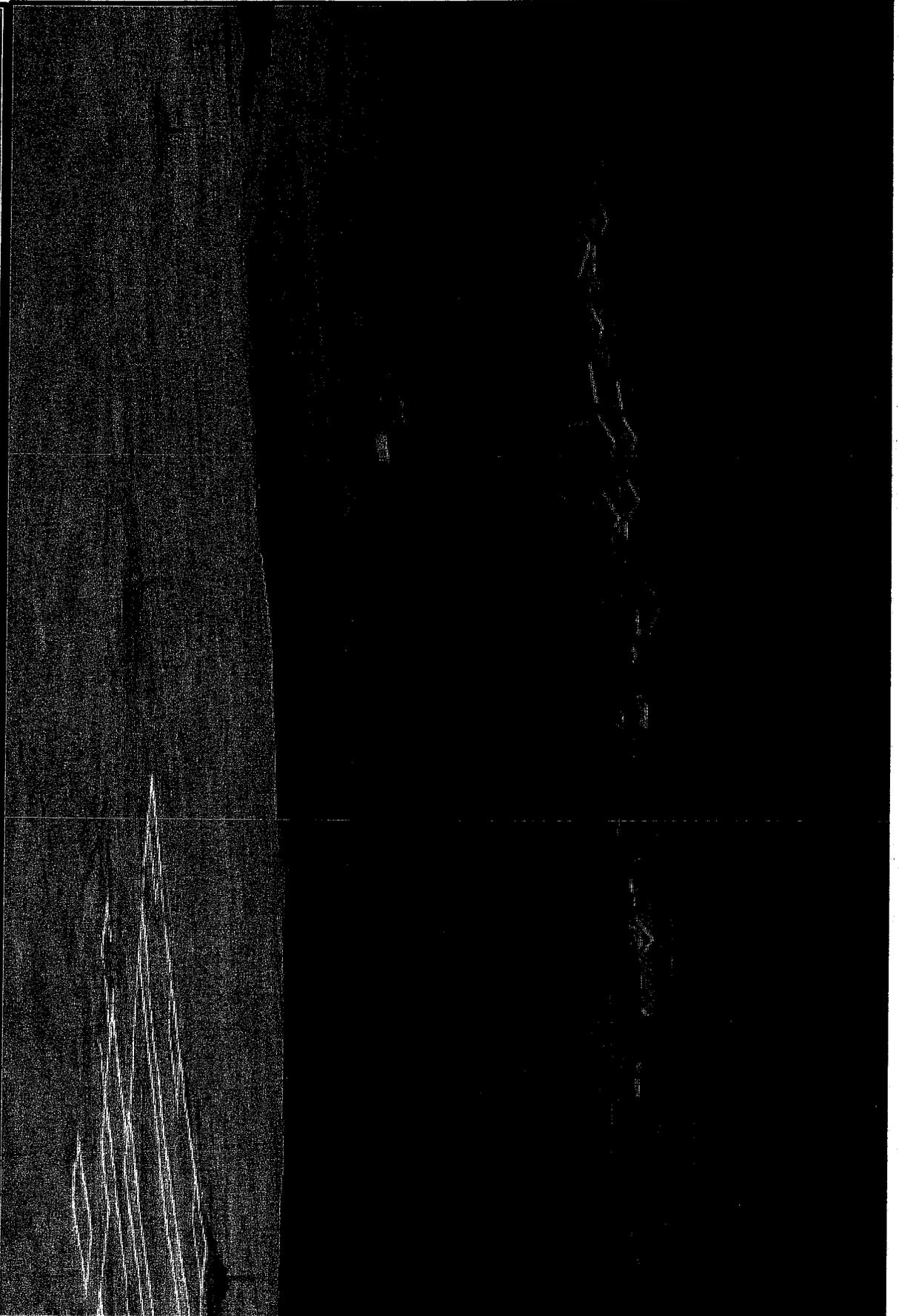
← Z







SITE INSPECTION VISIT : ESTANCIAS DE SIERVAS DE MARÍA, GURABO, PUERTO RICO
DATE: 27 JUNE 2001





North
↑

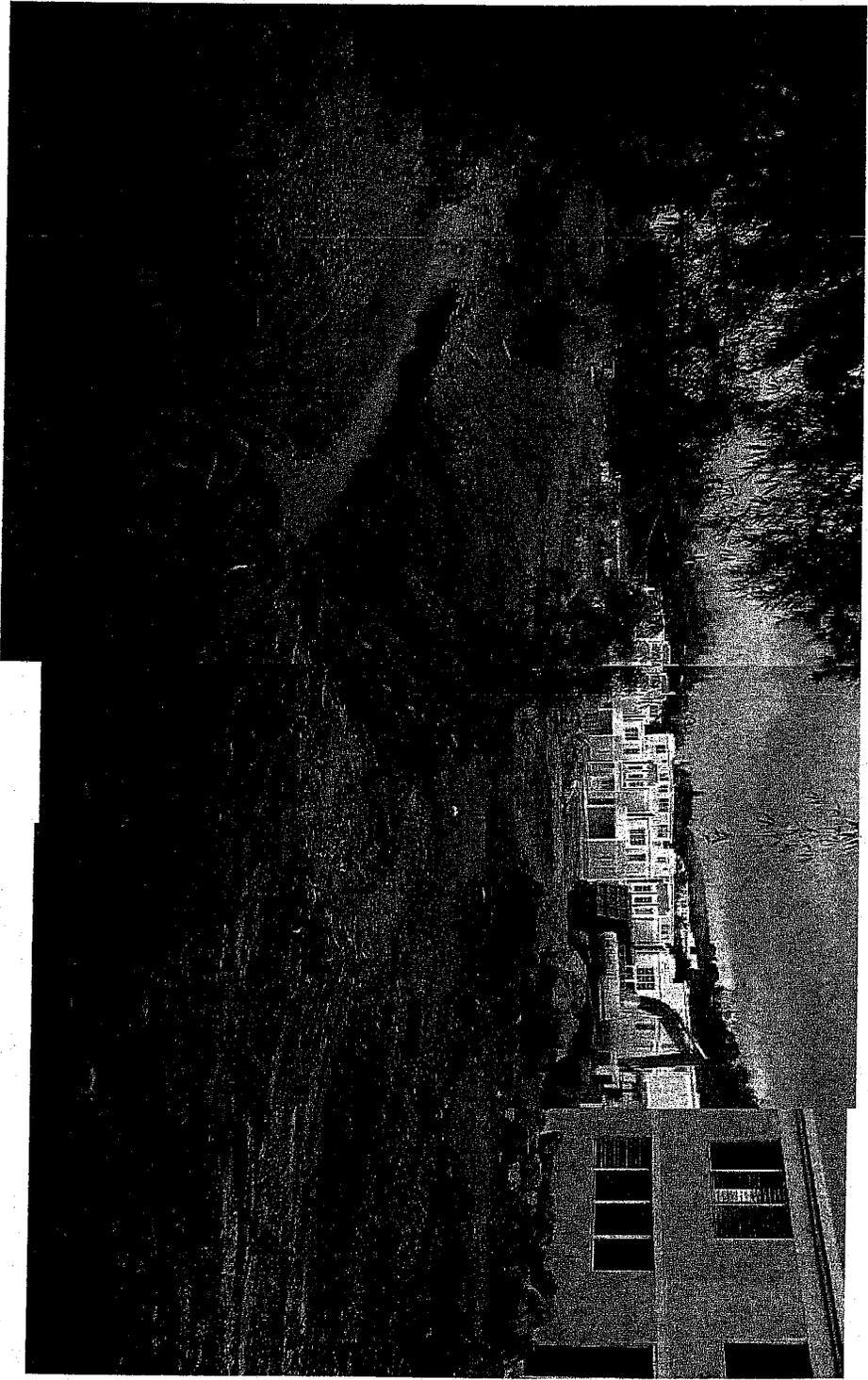


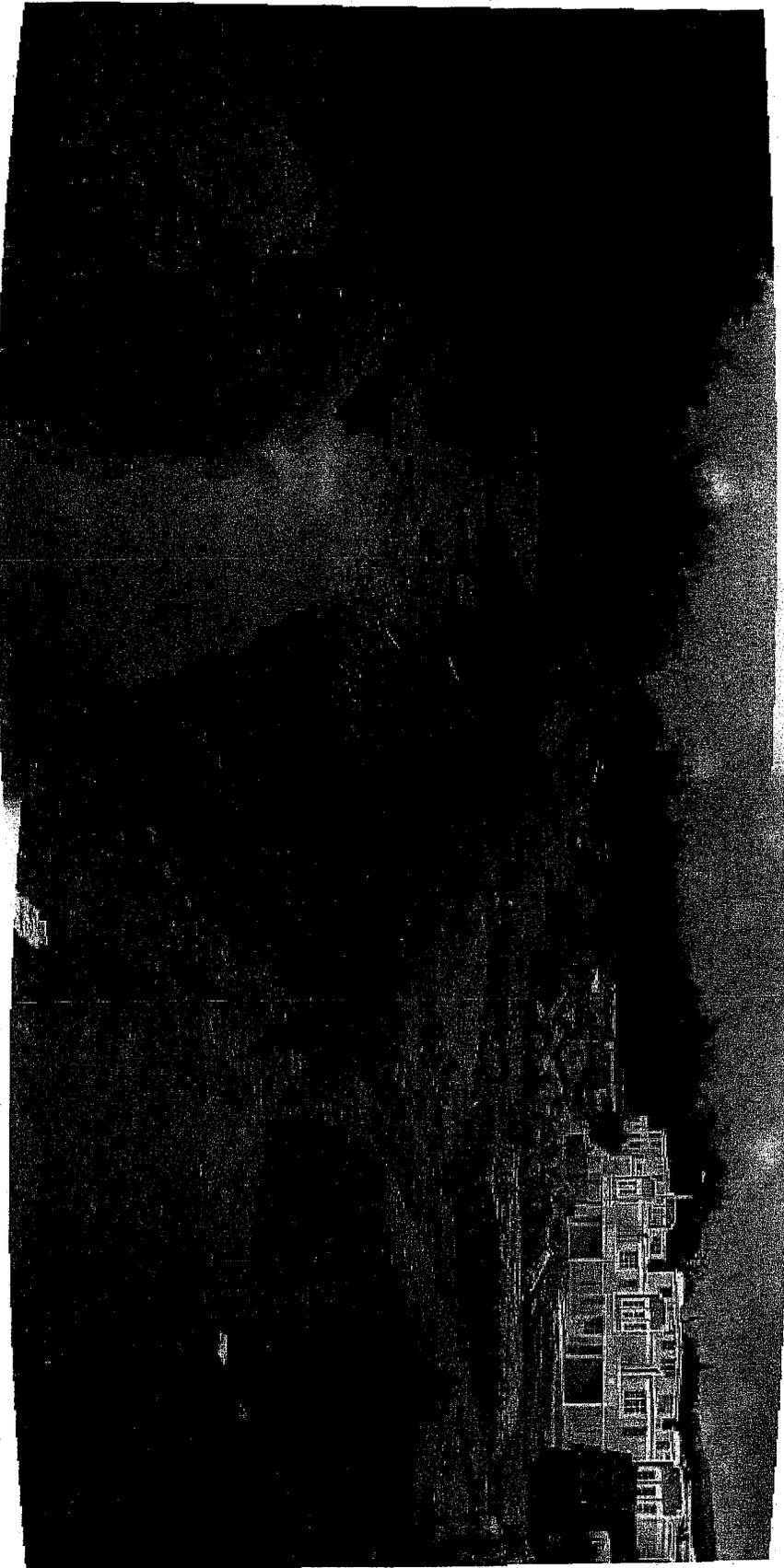
June 2002, above
January 2004, below

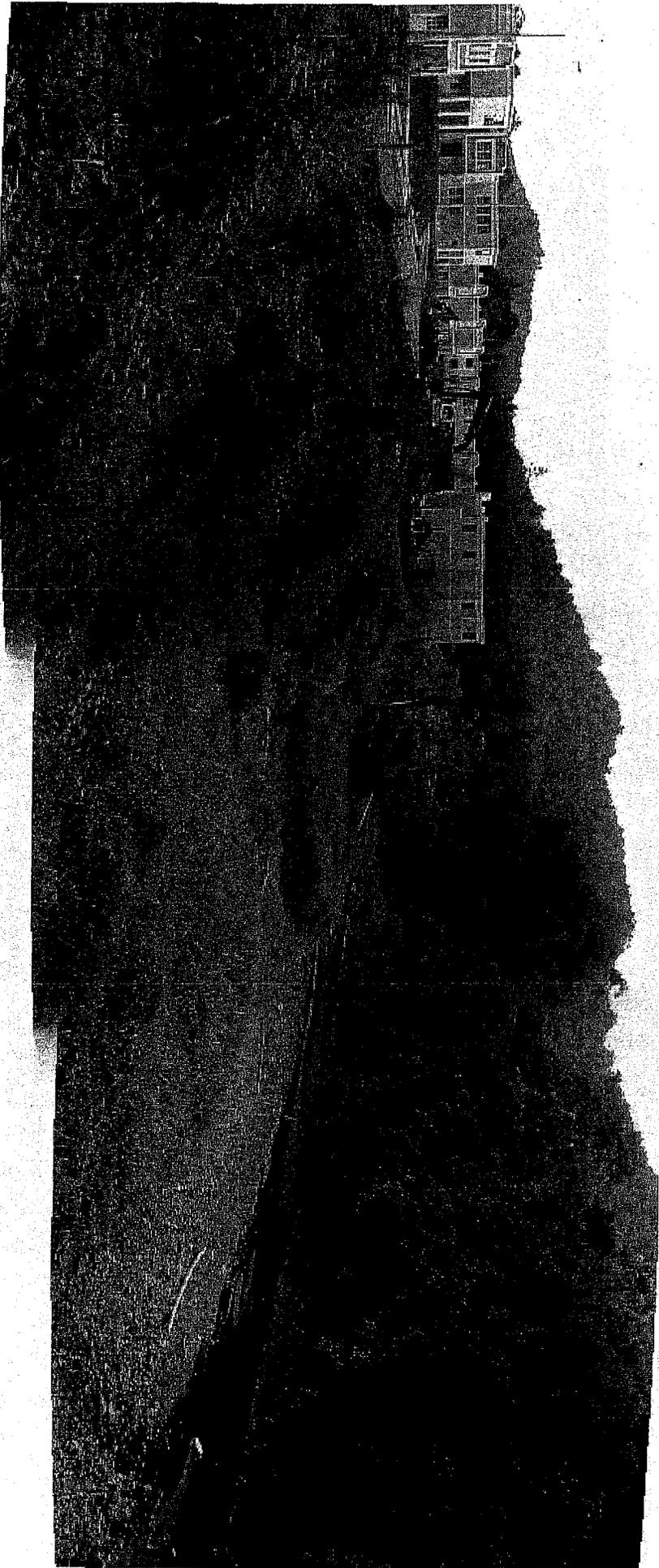


← Z

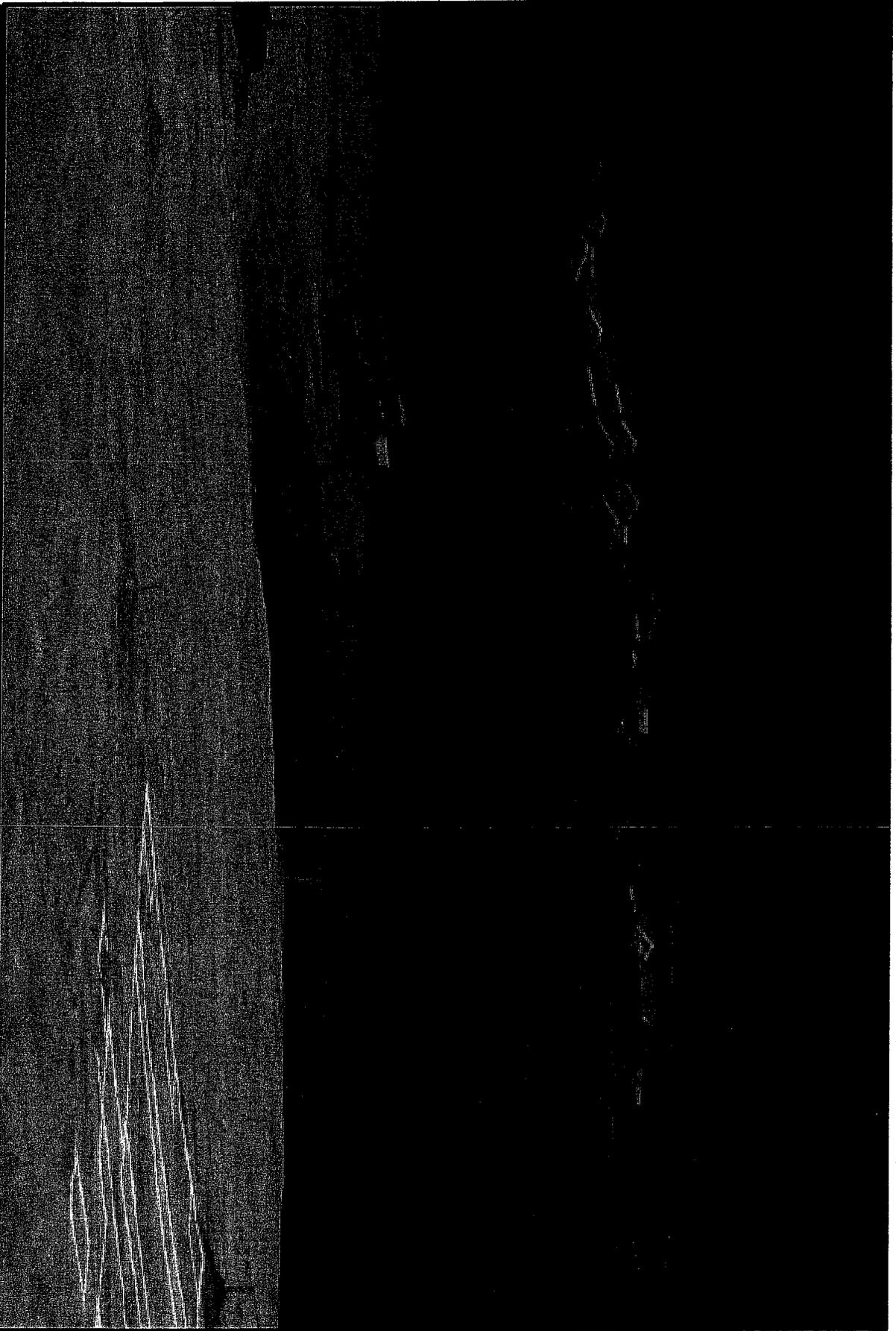








SITE INSPECTION VISIT : ESTANCIAS DE SIERVAS DE MARÍA, GURABO, PUERTO RICO
DATE: 27 JUNE 2001





North
↑

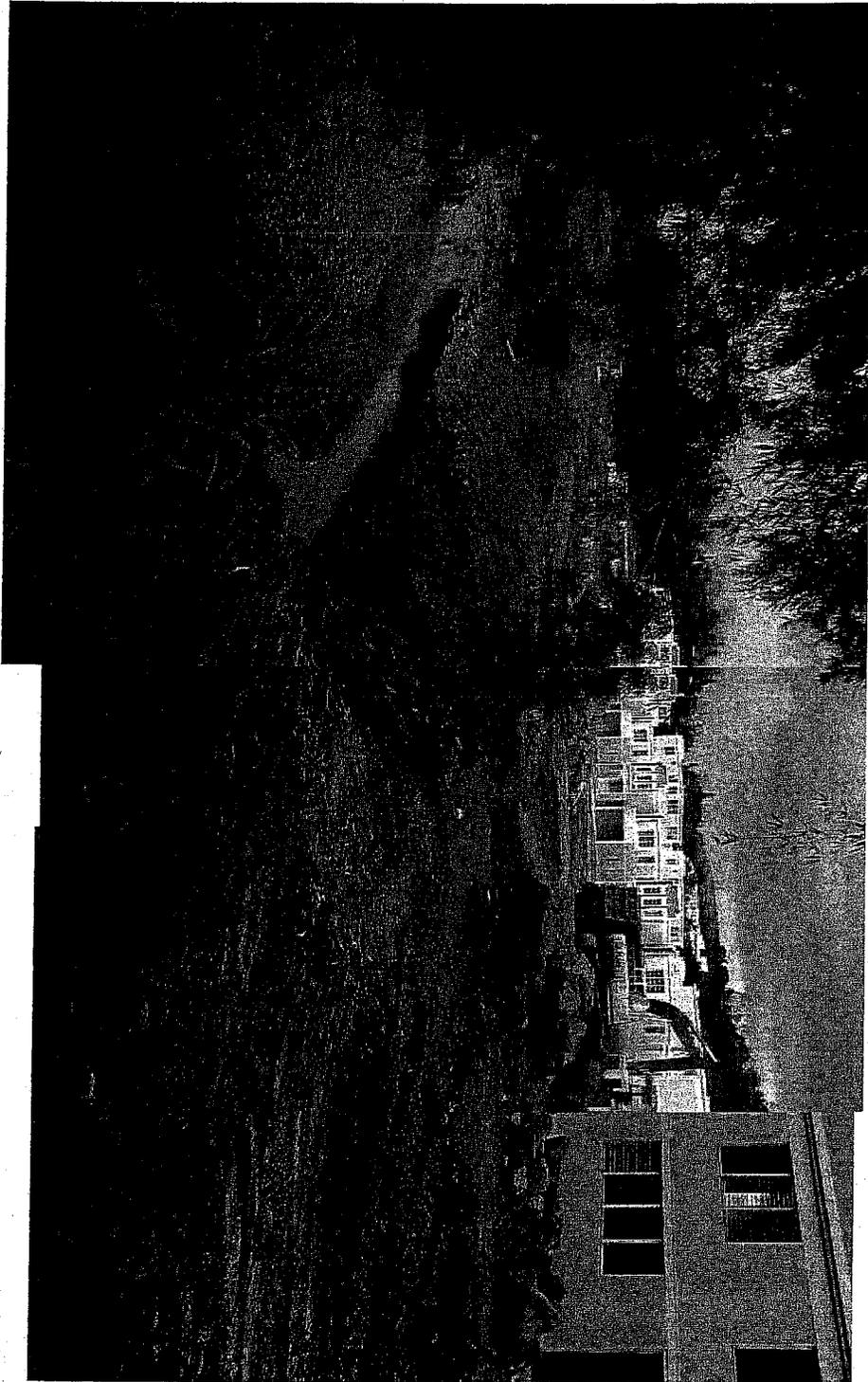


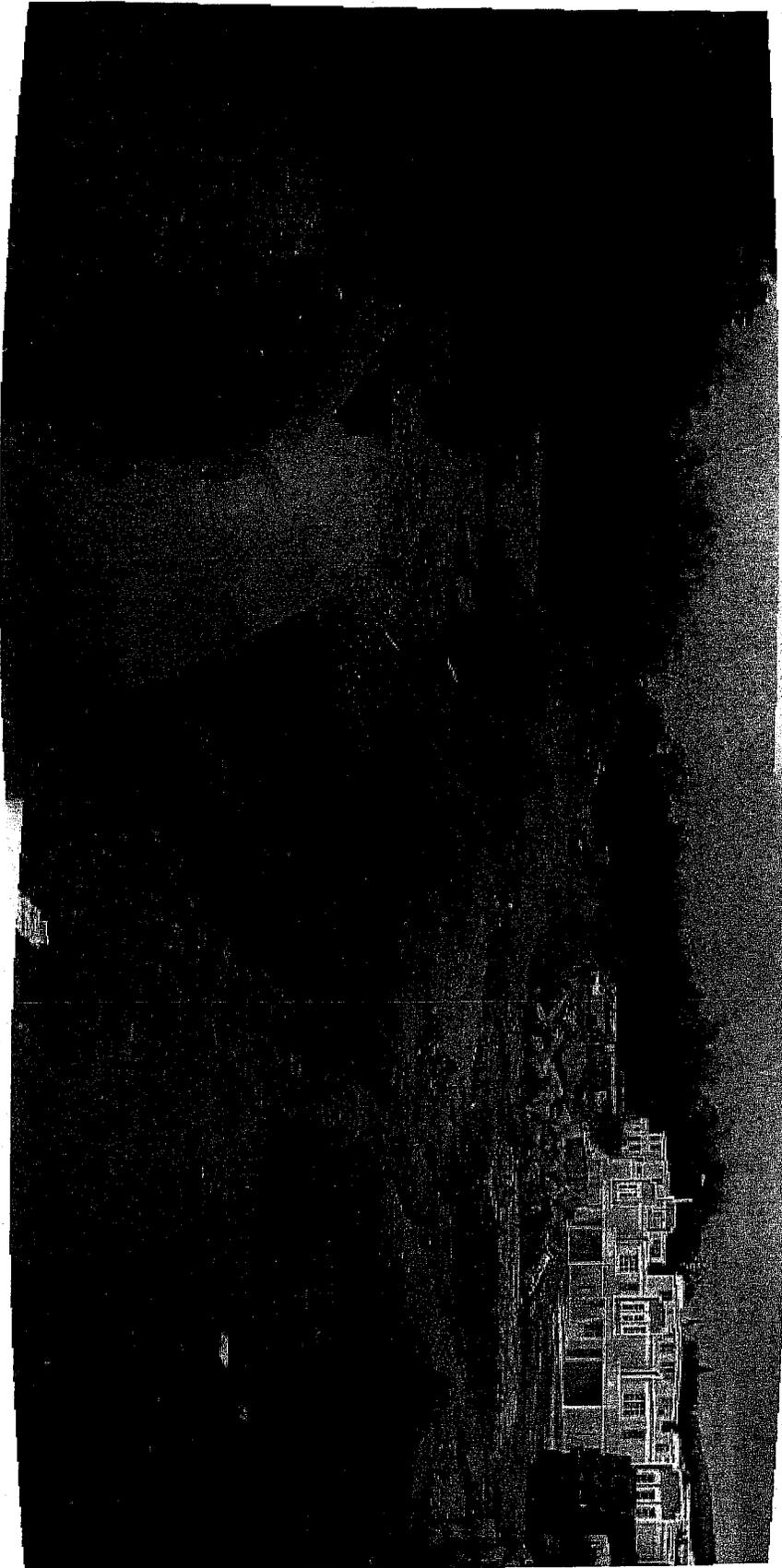
June 2002, above
January 2004, below





← Z









UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

Attachment
7

NOV 2 - 2005

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Article Numbers: 7003 2260 0000 3242 2856 7003 2260 0000 3242 2863

Mr. Jose Lopez Roig
Estancias de Siervas de Maria
MSC 1006
HC-04 Box 44374
Barrio San Salvador
Caguas, PR 00725

Jesús F. Fontanés
T&T Engineering
1150 Américo Miranda
Caparra Terrace, PR 00921

Re: **Administrative Order and Request for Information CWA-02-2005-3216 and CWA-02-2005-3243**
Estancias de Siervas de Maria, State Road PR-931 Km. 4.3, Gurabo P.R.
Unauthorized Discharge Permit Number PRU200900

Dear Messrs. Lopez and Fontanés:

EPA has received submittals from Estancias dated October 5, 2005, and October 18, 2005. This letter provides EPA's responses to your letters and inquiries during telephone conversations between Messrs. Lantner and Lopez on October 3, 7, and 17, 2005.

EPA's Show Cause Order (CWA-02-2005-3243), paragraph no. 4 (of the Order portion), makes reference to Administrative Order CWA-02-2005-3212. This should read CWA-02-2005-3216.

On October 6, 2005, EPA received documents from Estancias Siervas de Maria dated October 5, 2005, the following are comments on these submittals:

- a. the acknowledgement of receipt of the Order to Show Cause, CWA-02-2005-3243 was received without a copy of the Order to Show Cause. The signed acknowledgment of receipt ("blue back") should also contain one copy of the Show Cause Order. Please resend the enclosed blue back with a copy of the Show Cause Order.
- b. the written certification that clearing, grading, and/or excavation activities have ceased since June 2004 was submitted without the required certification statement. This written certification must be resubmitted with the certification language contained in paragraph 6 of the Show Cause Order. This certification language is repeated below.

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

c. the letter indicates that the construction activities at the site will end no later than October 2005. Once construction activity is completed, and either final stabilization has been completed, or for residential construction, temporary stabilization has been completed and the residence has been transferred to the homeowner, submit a completed Notice of Termination (enclosed), to this office. See the attached web-site for the NOI form <http://www.epa.gov/npdes/pubs/cgp_appendixf.pdf>.

d. the letter from Mr. Lopez and the October 3, 2005 phone call between Mr. Lantner of EPA and Mr. Lopez indicated that an emergency storm sewer replacement project would occur the week of October 10th to alleviate flooding problems. This construction activity is not authorized because Estancias did not submit a Notice of Intent for its construction activity at the Estancias site. Mr. Lantner of EPA requested that Estancias provide documentation in writing and diagrams showing the storm water Best Management Practices ("BMPs") that would be employed during the emergency sewer line construction. Estancias' submittal dated October 18, 2005 did not contain information on storm water BMPs for the emergency storm sewer replacement project.

Estancias' letter dated October 5, 2005 and received by EPA on October 6, 2005 states that past due information will be submitted as follows:

a. a copy of the Storm Water Pollution Prevention Plan ("SWPPP") will be submitted within 10 days (on or before October 15th, 2005);

b. A Notice of Intent form will be submitted within 3 days of certification of SWPPP implementation;

c. A copy of the reports required by CWA-02-2005-3216 will be submitted within 30 days (on or before November 4th, 2005).

Estancias Siervas de María, Inc.

ENVIRONMENTAL PROTECTION
ACT

05 NOV 28 PM 2:14

DECA-WATER COMPLI. BR

**MSC 1006 Box 44374
Bo. San Salvador
Caguas, PR 00725**

*Attachment
8*

November 16, 2005

CERTIFIED MAIL-RETURNED RECEIPT

Article Numbers: 7004 2510 0001 3208 1640

*Mr. Murray Latner
Environmental Protection Agency
Compliance Section
Water Compliance Branch
Division of Enforcement and Compliance Assistance
290 Broadway, 20th Floor
New York, NY 10007-1866*

RE: CWA-02-2005-3216

Dear Mr. Latner:

I am writing to you in an effort to comply with the requirements in the Administrative Order in reference and also, to clarify the various circumstances involved, which have created a big confusion all around.

Estancias Siervas de María was referred by the Corp of Engineers to your agency for a violation of the Clear Water Act consisting in changing the course of a 30" wide creek in a section approximately of 566 ft. long.

In order not to complicate your understanding of our present situation, we will not go into the merits of the Corp of Engineering Judgment.

Estancias accepted mitigation plan from EPA, consisting of removing 8,000 cubic meters of sand from the creek and opening a new channel of close to 40 ft. from the original 30" wide creek. The cost of this mitigation is over \$150,000. We have been waiting for EPA's final acceptance of our mitigation plan for the last 1½ years and with this acceptance file the permit to the Corp of Engineers, so we can sell two lots in our project (aprox. \$600,000.), which at present are frozen by an order from the Corp of Engineers, until completion of the accepted mitigation.

I was ready to go to New York tomorrow as scheduled and bring this matters to you personally however, I am under medical supervision due to an asthma attack and was advised not to travel to New York until the temperature reaches tropical-like levels.

Estancias at present, is working in a classified position with the bank; all houses have been completely finished; also the roads and all the infrastructure.

Estancias Siervas de María has no executive employees at present, I have tried my best with the small resources still available to me to answer all your inquiries and do as best as I can to comply; please understand that Estancias is financially unable to hire anyone to help us at the present time. We have been considering various alternatives for the project.

At present I'm working for T&T Engineering, Design and Development Inc. as is Mr. Fermín Fontanés, therefore, there is no official relationship with T&T Engineering and Estancias Siervas de María, Inc. It is very important to differentiate the two companies, since T&T Engineering is my present job.

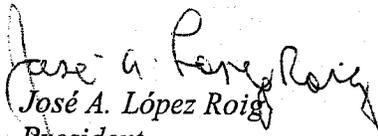
Mr. Fontanés thought, when he spoke to you at the project, that he was talking about another aspect of the mitigation case and since we are very good friends and work together in T&T, he was only trying to be helpful, however, T&T is neither a representative or in any way connected with Estancias Siervas de María, Inc. I am the sole representative of Estancias Siervas de María available, but due to the financial situation, I was forced to do other work. I am willing to cooperate with you however, for financial and health reasons I will have to do it through a representative in Puerto Rico.

Our attorneys are at present trying to schedule a meeting with EPA in the matter of the mitigation to see if we can finally solve this matter.

We will be sending you pictures and details of all work being done at the project to comply with your Order.

Thanking you in advance for all the assistance that you can provide to me, regarding this matter.

Sincerely,


José A. López Roig
President

NPDES
Form



United States Environmental Protection Agency
Washington, DC 20460

Notice of Intent (NOI) for Storm Water Discharges Associated with
Construction Activity Under an NPDES General Permit

Submission of this Notice of Intent (NOI) constitutes notice that the party identified in Section II of this form requests authorization to discharge pursuant to the NPDES Construction General Permit (CGP) permit number identified in Section I of this form. Submission of this NOI also constitutes notice that the party identified in Section II of this form meets the eligibility requirements of the CGP for the project identified in Section III of this form. Permit coverage is required prior to commencement of construction activity until you are eligible to terminate coverage as detailed in the CGP. To obtain authorization, you must submit a complete and accurate NOI form. Refer to the instructions at the end of this form.

I. Permit Number

II. Operator Information

Name: ESTANCIAS SIEDRAS DE MARIA

IRS Employer Identification Number (EIN): _____

Mailing Address:

Street: Msc 1006 HC-04 Box 44374 Bo. SAN SALVADOR

City: CAGUAS State: PR Zip Code: 00725

Phone: 787 - 286 - 0002 Fax (optional): 787 - 706 - 8897

E-mail (optional): _____

III. Project/Site Information

Project/Site Name: ESTANCIAS SIEDRAS DE MARIA

Project Street/Location: PR 931 KM 4.3

City: GUZABO State: PR Zip Code: 00778

County or similar government subdivision: MAUARRO WARD

Latitude/Longitude (Use one of three possible formats, and specify method)

- | | | | |
|----------|---|-----------|---|
| Latitude | 1. 18° 13' 27" N (degrees, minutes, seconds) | Longitude | 1. 65° 59' 37" W (degrees, minutes, seconds) |
| | 2. _____° _____' _____" N (degrees, minutes, decimal) | | 2. _____° _____' _____" W (degrees, minutes, decimal) |
| | 3. _____° N (decimal) | | 3. _____° W (decimal) |

Method: U.S.G.S. topographic map EPA web site GPS Other:
• If you used a U.S.G.S. topographic map, what was the scale: 1:20,000

Project Located in Indian country? Yes No
If so, name of Reservation or if not part of a Reservation, put "Not Applicable": _____

Estimated Project Start Date: _____ / _____ / _____ Estimated Project Completion Date: _____ / _____ / _____
Month Date Year Month Date Year

Estimated Area to be Disturbed (to the nearest quarter acre): 00.75

IV. SWPPP Information

Has the SWPPP been prepared in advance of filing this NOI? Yes No

Location of SWPPP for viewing: Address in Section II Address in Section III Other

If Other:

SWPPP Street: _____

City: _____

State: _____ Zip Code: _____ - _____

SWPPP Contact Information (if different than that in Section II):

Name: _____

Phone: 787 - 286 - 0002 Fax (optional): 787 - 796 - 8897

E-mail (optional): _____

V. Discharge Information

Identify the name(s) of waterbodies to which you discharge. Rio Grande de Loiza

Is this discharge consistent with the assumptions and requirements of applicable EPA approved or established TMDL(s)?

Yes No

VI. Endangered Species Information

Under which criterion of the permit have you satisfied your ESA eligibility obligations?

A B C D E F

• If you select criterion F, provide permit tracking number of operator under which you are certifying eligibility:

VII. Certification Information

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Print Name: Jose A. Lopez

Print Title: President

Signature: Jose A. Lopez

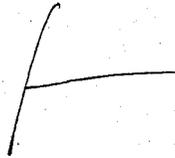
Date: 11/6/05

As of today, EPA has not received the SWPPP which was to be submitted by October 15th 2005.. Estancias' October 18, 2005 submittal contained a site map, but it did not contain a SWPPP.

EPA has agreed to postpone the Show Cause Meeting scheduled to take place on October 12, 2005 until Thursday November 17, 2005 at 1:30 PM. The Show Cause meeting will take place at EPA's New York offices, 290 Broadway, 20th Floor, New York, New York 10007. EPA is also willing to meeting with Estancias/T&T prior to November 17, 2005 on a mutually agreed upon date.

If you have any questions regarding this matter, please feel free to contact Mr. Henry Mazzucca, Chief, Compliance Section at (212) 637-4229 or Murray Lantner at (212) 637-3976.

Sincerely,



Henry Mazzucca, P.E. Chief
Compliance Section

Enclosures

cc: Ruben Gonzalez, Director Water Quality Area, EQB w/enclosure
Carlos O'Neill, USEPA-CEPD w/enclosure
Sindulfo Castillo, Section Chief, USACE, Antilles Regulatory Office w/enclosure

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

In the Matter of:

Estancias de Siervas de Maria
MSC 1006
HC-04 Box 44374, Bo. San Salvador
Caguas, PR 00725

And

T&T Engineering
1150 Americo Miranda
Caparra Terrace, PR 00921

NPDES Tracking Number PRU200900

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

ORDER

EPA-CWA-IT-2005-3243

United States Environmental Protection
Agency - Region 2
290 Broadway
New York, New York 10007-1866

What are My Options For Meeting the "Final Stabilization" Criteria? In most cases, you can terminate permit coverage as soon as the portion(s) of the project for which you are an operator are finally stabilized. A definition of "Final Stabilization" is in Appendix A of the CGP. For the purpose of these discussions, "structure" is used not only in the more traditional sense of "buildings," but also refers to other things that would remain in a non-vegetated condition after construction has ended. Examples of "structures" include: buildings; parking lots; roads; gravel equipment pads, sidewalks, runways, etc. All other disturbed areas must be finally stabilized by either vegetative or non-vegetative practices, except disturbed areas on lands that will be returned to an agricultural use such as cropland, rangeland, or silviculture need only be returned to the preexisting condition (e.g., tilled land, grass rangeland, agricultural buffer strip, etc). **Where a residential homeowner has decided to install their lawn themselves, only temporary stabilization is required.** Perennial vegetation could include grasses, ground covers, trees, shrubs, etc. Vegetative final stabilization requires 70 percent coverage of the "natural" vegetative cover in that part of the country. If the natural vegetation in your area covers 50 percent of the land, final stabilization is achieved when coverage of 35 percent or more of the land is achieved (70 percent of 50 percent). Non-vegetative stabilization could include rip-rap, gravel, gabions, etc. Impervious cover such as concrete or asphalt should be avoided as a final stabilization technique. Long-term, semi-permanent erosion control practices combined with seeds that would establish vegetative stabilization (e.g., properly secured seed impregnated erosion control mats, etc.) could also be used as "final stabilization." To qualify as "long-term," the erosion control practice must be selected, designed, and installed so as to provide at least three years of erosion control.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

Attachment
9

JAN 30 2003

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Mr. José López Roig, President
Estancias de Siervas de Maria, Inc.
P.R. 931, Km. 4.3, Navarro Ward
Gurabo, Puerto Rico 00778

Re: In the matter of José López Roig
Proceeding Pursuant to §309(a) of the Clean Water Act, 33 U.S.C. §1319(a)
Docket CWA-02-2003-3500

Dear Mr. López:

Enclosed please find one executed original of the Consent Order related to the above-referenced matter. The Consent Order concerns fill discharged into a perennial stream channel in the southern portion of your property at the Estancias de Siervas de Maria residential development, located at PR-931, Km 4.3, in Navarro Ward, Municipality of Gurabo, Puerto Rico. The U.S. Army Corps of Engineers ("the Corps") issued a Cease and Desist Order to you on April 11, 2001, regarding the discharge of fill into the stream. The Corps file number for this case is 200101545 (CD-VG). The fill was discharged in violation of Section 301 of the Clean Water Act ("the Act") because it was not authorized by a permit from the Corps pursuant to Section 404 of the Act.

Please note that the Consent Order requires that you create and preserve 0.77 *cuerda* (0.79 acre) of herbaceous wetland from upland along the stream channel in the southwest corner of the property, as depicted in the survey plan which you submitted to us on October 8, 2002. It is EPA's opinion that this wetland creation and preservation, if completed as described in this Consent Order, will provide for more than twice the aquatic resource functions and values in replacement for impacts resulting from your unauthorized filling of approximately 160 linear feet of a perennial stream channel. Please take special note that this Consent Order requires that you submit a detailed Mitigation Plan to EPA within thirty (30) days of execution of the Consent Order, and that you submit applications for necessary Federal, local and Commonwealth authorizations for implementation of the Mitigation Project within thirty(30) days of receipt of

EPA's approval of the Mitigation Plan. You must obtain all necessary authorizations from Federal, Commonwealth, and local agencies with jurisdiction over the work prior to commencement of any construction for the Mitigation Project. "Commencement of construction" includes, but is not limited to, discharges of fill of a temporary nature for road-crossings to access the wetlands creation area. The Corps has discretion to require a permit for the Mitigation Project pursuant to Section 404 of the Act since it will involve discharge of dredged or fill material below the ordinary high water mark within the perennial stream. A Nationwide Permit No. 27 ("Stream and Wetland Restoration Activities") may apply to the Mitigation Project. Please also note that this Consent Order requires that you apply to the Corps for an after-the-fact permit for the fill which you discharged into the perennial stream channel, and which you wish to construct houses on. It is EPA's opinion that Nationwide Permit No. 32 ("Completed Enforcement Actions") may apply to this fill provided that you comply with all requirements and conditions of this Consent Order, and with any further conditions or requirements set by the Corps.

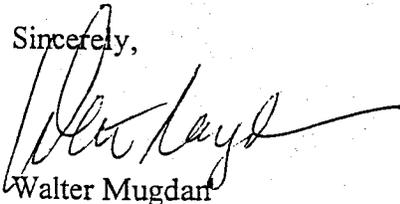
Successful implementation of this Consent Order would be contingent upon your obtaining the necessary Federal, Commonwealth, and local authorizations for the Mitigation Project. Should you fail to obtain such authorizations, the Consent Order may become null and void due to your inability to execute its terms and conditions.

Provided that you promptly comply with all terms and conditions of this Consent Order, EPA will not seek a penalty for the unauthorized discharge of fill in the perennial stream channel. As you are aware, EPA has been considering seeking a civil administrative penalty for this violation pursuant to Section 309(g) of the Act because you continued filling despite a Cease and Desist Order.

Please be aware that issuance of this Consent Order by EPA does not legalize the unauthorized stream channel fill. Your compliance with the terms and conditions of this Consent Order will only resolve the injunctive relief element of the subject violation. Housing lots which you propose to develop on the fill over the alignment of the former stream channel will be situated on illegal fill unless the discharge is authorized through a Corps permit.

We appreciate your cooperation in this matter. If you have any questions or need further information, please contact David Pohle at (212) 637-3824.

Sincerely,



Walter Mugdan

Director

Division of Environmental Planning and Protection

Enclosure

cc: Lieutenant Colonel Dennis Gassert
Deputy District Engineer
U.S. Army Corps of Engineers
Antilles Office

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 Broadway
New York, New York 10007-1866

In the Matter of

José López Roig, President
Estancias de Siervas de Maria, Inc.
P.R. 931, Km. 4.3, Navarro Ward
Gurabo, Puerto Rico 00778

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

ORDER

ON

CONSENT

CWA-02-2003-3500

I. STATUTORY AUTHORITY

The following Findings are made and Order issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") by the Clean Water Act, as amended, 33 U.S.C. §1251 et seq. ("the Act"), and in particular, Section 309(a) of the Act, 33 U.S.C. §1319(a). This authority has been duly delegated by the Administrator to the Regional Administrator of Region 2 of EPA, which authority has been duly re-delegated to the undersigned Director of the Division of Environmental Planning and Protection of Region 2 of EPA.

II. STIPULATIONS AND FINDINGS

1. Mr. José López Roig ("Respondent") is a "person" as defined under Section 502 of the Act, 33 U.S.C. §1362. Respondent is the president of Estancias Siervas de María, Inc.
2. Respondent is the owner and developer of property ("the Site") entitled "Estancias de Siervas de María Residential Project," located at PR 931, Km. 4.3, Navarro Ward, Gurabo, Puerto Rico (see Exhibit A).

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 Broadway
New York, New York 10007-1866

In the Matter of

José López Roig, President
Estancias de Siervas de Maria, Inc.
P.R. 931, Km. 4.3, Navarro Ward
Gurabo, Puerto Rico 00778

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

ORDER

ON

CONSENT

CWA-02-2003-3500

I. STATUTORY AUTHORITY

The following Findings are made and Order issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") by the Clean Water Act, as amended, 33 U.S.C. §1251 et seq. ("the Act"), and in particular, Section 309(a) of the Act, 33 U.S.C. §1319(a). This authority has been duly delegated by the Administrator to the Regional Administrator of Region 2 of EPA, which authority has been duly re-delegated to the undersigned Director of the Division of Environmental Planning and Protection of Region 2 of EPA.

II. STIPULATIONS AND FINDINGS

1. Mr. José López Roig ("Respondent") is a "person" as defined under Section 502 of the Act, 33 U.S.C. §1362. Respondent is the president of Estancias Siervas de María, Inc.
2. Respondent is the owner and developer of property ("the Site") entitled "Estancias de Siervas de María Residential Project," located at PR 931, Km. 4.3, Navarro Ward, Gurabo, Puerto Rico (see Exhibit A).

3. Respondent purchased the Site in May 1999, from Blator, Inc., a development company that had local and Commonwealth-approved plans for the construction of 72 houses, two of which were proposed for development within a location where a perennial stream channel was situated.
4. Respondent commenced discharge of fill material into the perennial stream channel in February 2001.
5. The U.S. Army Corps of Engineers ("the Corps") conducted a site visit on March 1, 2001, and observed the presence of fill material in the perennial stream channel. The Corps informed Respondent of his responsibility to obtain a Department of the Army permit prior to the commencement of construction activities, notwithstanding the approval of construction plans by local and state agencies.
6. The Corps issued a Cease and Desist Order to Respondent on April 11, 2001, for the unauthorized work.
7. By letter dated April 23, 2001, Respondent informed the Corps that the placement of fill in the perennial stream was for purposes of straightening its path, and that the original design for the development (including stream straightening projections) had been approved by local and Commonwealth Agencies.
8. By letter dated May 18, 2001, the Corps informed Respondent of his option to resolve the violation by either removing all unauthorized fill material from the Site, or applying for an "after-the-fact" permit for the work.
9. Respondent did not apply for an "after-the-fact" permit.
10. The Corps conducted a second site visit on June 27, 2001, and found that further straightening and filling of the perennial stream had occurred since the time of the Corps inspection on March 1, 2001.
11. The Corps sent a letter dated July 9, 2001 to Respondent, reminding him that the Cease and Desist Order remained in effect, and warning him not to continue the straightening and filling of the perennial stream at the Site.
12. On August 30, 2001 the Corps transferred enforcement authority for the case to EPA, pursuant to the terms of the

nationwide Memorandum of Agreement concerning Federal enforcement for Section 404 of the Act.

13. On December 20, 2001, EPA issued a Request for Information letter to Respondent pursuant to Section 308 of the Act, 33 U.S.C. §1318, to which Respondent replied by letter dated January 23, 2001.
14. In his reply, Respondent claimed that approximately 160 linear feet of perennial stream channel had been filled with earthen material during the period from February 2001 to June 2001 for the purpose of straightening the stream and re-routing its path along the southern boundary of the proposed residential development.
15. On April 30, 2002, and again on June 24, 2002, EPA inspected the Site and confirmed that approximately 160 linear feet of perennial stream channel had been impacted by discharge of fill consisting of earthen material, dirt and soil.
16. The perennial stream channel referenced above is part of an unnamed tributary to the Rio Grande de Loiza, a river which flows to the Atlantic Ocean.
17. The perennial stream channel is a water of the United States, which came under the jurisdiction of the EPA and the Corps effective September 1, 1976. The Act's jurisdiction encompasses "navigable waters" which are defined as "waters of the United States" (33 U.S.C. §1362(7)).
18. Section 301(a) of the Act, 33 U.S.C. §1311(a), prohibits the discharge of pollutants into waters of the United States except as in compliance with Sections 301, 306, 307, 318, 402 and 404 of the Act.
19. The fill material which was discharged in the waters of the United States constitutes a "pollutant" within the meaning of Section 502(6) of the Act, U.S.C. §1362(6). The placement of fill material into the waters of the United States constitutes a "discharge of pollutants" as defined by Section 502(12) of the Act, 33 U.S.C. §1362(12).
20. The discharge of fill material into navigable waters of the United States without authorization from the Secretary of the Army as provided by Section 404 of the Act is unlawful under Section 301(a) of the Act, 33 U.S.C. §1311(a).

21. The Secretary of the Army has not issued authorization pursuant to Section 404 of the Act for the discharge described above.
22. Based on the above Findings, EPA finds Respondent to be in violation of Section 301 of the Act, 33 U.S.C. §1311, for the discharge of pollutants consisting of earthen fill material into approximately 160 linear feet of waters of the United States without authorization by the Secretary of the Army as provided by Section 404 of the Act.
23. Each day that the subject activity remains unauthorized by the Corps pursuant to Section 404 of the Act, 33 U.S.C. §1344, constitutes an additional day of violation of Section 301 of the Act, 33 U.S.C. §1311.
24. On October 8, 2002, Respondent submitted to EPA a survey plan for creation and preservation of 0.77 cuerda (0.79 acre) of herbaceous riparian wetland along the south side of the relocated stream channel (the "Mitigation Project").

III. ORDERED PROVISIONS

Based upon the foregoing Stipulations and Findings, and pursuant to the provisions of Section 309(a) of the Act, 33 U.S.C. §1319(a), EPA hereby orders and Respondent hereby consents that:

1. Respondent shall cause no further discharges of dredged or fill material into waters of the United States except as authorized by a valid permit issued by the Corps pursuant to Section 404 of the Act, 33 U.S.C. §1344.

Mitigation Project Planning, Approval, and Construction

2. Within thirty (30) days of execution of this Consent Order, Respondent shall submit to EPA for review and approval a detailed description ("Mitigation Plan") of the Mitigation Project, involving creation of 0.77 cuerda (0.79 acre) of herbaceous riparian wetland along the south side of the relocated stream channel. The Mitigation Plan must be in the form of a bound report which includes the following information:
 - (A) A narrative description of all proposed work, including the manner in which it will be conducted, the equipment to be used, and the time

sequence for the construction (Note: Excavation must commence at the point farthest from the stream channel, and move channel-ward, thus maintaining a zone of dry ground [i.e., a berm or berm-like area] between the excavation and the stream channel during most of the construction period. Also note: Any proposals for temporary road-crossings of the existing channel must be described.);

- (B) A timeline for the construction beginning with "Day One" of the project, and proceeding forward;
 - (C) An 8"x 11" overview diagram which depicts the mitigation area and the work proposed;
 - (D) Separate 8" x 11" diagrams depicting four or more north-to-south, cross-sectional diagrams through the mitigation area, depicting both the current and final ground elevations;
 - (E) A description of the measures which will be implemented to control sedimentation and erosion during construction (Note: The area where wetlands are to be created must be separated from the relocated stream channel via silt curtains or haybales at all times during construction);
 - (F) A description of engineering devices which will be used (e.g., gabions or riprap) to permanently control erosion of the stream channel banks;
 - (G) A description of the vegetation to be planted in the mitigation area, including species to be planted and the planting array; and
 - (H) A schedule for monitoring the completed mitigation.
3. Within 30 days of receipt of the Mitigation Plan, or submission of a modified Mitigation Plan, EPA shall approve or deny said plan in writing. If the plan is denied, EPA shall request and Respondent shall submit a modified plan based on EPA's comments. Respondent shall submit the modified plan to EPA within 15 calendar days of receiving EPA's written request and comments. Respondent shall not be granted more than

two opportunities to submit a modified removal and restoration plan for EPA approval. Failure on the part of Respondent to submit a Mitigation Plan which EPA finds approvable within 120 days of execution of this Consent Order, may, after written notice by EPA to Respondent, void this agreement and result in further enforcement action pursuant to Section 309 of the Act, 33 U.S.C.

4. Within thirty(30) days of receipt of EPA's approval of the Mitigation Plan, Respondent shall submit applications for necessary local, Commonwealth, and Federal authorizations for implementation of the Mitigation Project, including, but not limited to, authorization from the Puerto Rico Department of Natural and Environmental Resources, a water quality certificate or waiver thereof from the Puerto Rico Environmental Quality Board, and authorization from the Corps.
5. Any modifications or revisions to the Mitigation Plan requested or required by local, Commonwealth, or Federal agencies will require resubmittal of the Mitigation Plan for EPA review and approval.
6. Within forty-five (45) days of receipt of all necessary authorizations, or as soon as proper weather conditions allow following receipt of all necessary authorizations, Respondent shall commence construction of the Mitigation Project.
7. The project shall be commenced during a period of low flow in the stream.
8. Respondent shall notify EPA via fax or telephone at least ten (10) days prior to commencement of construction of the Mitigation Project so that EPA may arrange to have an inspector visit the Site during construction.
9. The Mitigation Project must be completed within the time period set forth in the Mitigation Plan, as approved by EPA.
10. Finished project dimensions must reflect the location, area, and elevations represented in the Mitigation Plan which is approved by EPA. No over-excavation of the mitigation area shall be allowed.

11. Immediately upon completion of construction, Respondent shall notify EPA of completion, and submit a report with photographs of the completed work to EPA.
12. EPA shall inform Respondent in writing as to whether the work has been completed adequately, or further construction (e.g., to adjust elevation levels) is necessary.

Mitigation Area Preservation

13. Within thirty (30) days following receipt of a letter from EPA stating that the Mitigation Project has been adequately constructed, Respondent shall file with the Puerto Rico Department of Justice, Registry of Property, the following four attachments to the deed for the property: (1) a copy of this Consent Order, (2) a copy of the approved Mitigation Plan, (3) a copy of the letter from EPA stating that the Mitigation Project has been adequately constructed, and (4) a statement of permanent preservation. The statement of permanent preservation must contain the following language: "The mitigation area covering 0.77 cuerda in the southwest corner of the *Estancias de Siervas de Maria* residential development, located at Route 931, Km 4.3, Navarro Ward, Municipality of Gurabo, Puerto Rico, as depicted in the attached Mitigation Plan, is hereby preserved in perpetuity, in accordance with the attached EPA Order CWA-02-2003-3500, as an area of wetland to provide wildlife habitat, floodwater storage, and pollution removal. Any alteration of this area, including excavation, filling, or use for construction, storage of materials, or disposal of waste, is strictly prohibited, except with written consent of the Director of the Division of Environmental Protection and Planning, U.S. Environmental Protection Agency, Region 2, or his/her assign." A copy of these documents and evidence of filing must be provided to EPA within ten (10) days of filing.

Corps Authorization of Stream Channel Fill

14. Within thirty (30) days following filing of required documents with the Puerto Rico Department of Justice, Registry of Property, Respondent shall submit an application to the Corps seeking after-the-fact authorization for the illegal fill which remains in the stream channel.

15. Failure to submit an application to the Corps seeking after-the-fact authorization for the illegal fill, within the specified time period, shall be deemed a failure on the part of Respondent to fully comply with the provisions of this Order and may, after written notice by EPA to Respondent, void this agreement and result in further enforcement action pursuant to Section 309 of the Act, 33 U.S.C. §1319, against Respondent for the subject violation.

Mitigation Monitoring

16. Once per year for five years, beginning twelve months following receipt of a letter from EPA stating that the Mitigation Project has been adequately constructed, Respondent shall submit a report ("Annual Monitoring Report") to EPA with photographs of the Mitigation Project area, and a description of the vegetation species growing there.
17. Subsequent to submittal of each Annual Monitoring Report, Respondent shall undertake any re-excavation, planting, erosion-control measures, or similar alterations to the Mitigation Project area and/or the bordering uplands, which EPA may instruct him to undertake, for the purpose of ensuring development of wetlands within the Mitigation Project area, within the time-period instructed by EPA.
18. The Mitigation Project shall be deemed fully successful by EPA when at least 85% of the Mitigation Project area is densely-vegetated with wetlands vegetation in a healthy state for a period of at least two consecutive years.
19. EPA may instruct Respondent to continue monitoring of the Mitigation Project area, and excavation or planting of such, for a period beyond five years if fully successful restoration is not achieved within five years.
20. EPA or its designated representative(s) may inspect the Mitigation Project area periodically to assess compliance with this Consent Order and to evaluate the degree of success of the Mitigation Project until such time as EPA deems the Mitigation Project fully successful.

Other Ordered Provisions

21. Commonwealth and local authorizations for the Mitigation Project must be obtained, and the Mitigation Project must be constructed to EPA's satisfaction, within one year following execution of this Consent Order.
22. If Respondent cannot comply with any of the deadlines or requirements in this Consent Order, Respondent shall immediately notify EPA via faxed message or overnight mail. Such notification shall include a description of the nature of the cause for non-compliance, the measures proposed to be taken by Respondent to come into compliance, and a timetable by which Respondent intends to implement these measures. EPA may, at its sole discretion, approve modifications to the requirements of this Consent Order, at the request of Respondent, for the purpose of Respondent's coming into compliance with this Consent Order. Such modifications shall be made by letter to Respondent signed by the Chief of the Water Programs Branch or his assign.
23. This Consent Order is an agreement between Respondent and EPA to resolve the injunctive relief issues related to the violation of Section 301 of the Act, 33 U.S.C. §1311, set forth in the Stipulations and Findings, above. Any failure on the part of Respondent to fully comply with the provisions of this Order may, after written notice by EPA to Respondent, void this agreement and result in further enforcement action pursuant to Section 309 of the Act, 33 U.S.C. §1319, against Respondent for the subject violation.
24. All written information required to be submitted to EPA pursuant to this Consent Order shall be sent via certified mail (return-receipt requested) or overnight mail to:

Mr. Walter Andrews, Chief
Water Programs Branch
U.S. Environmental Protection Agency, Region 2
290 Broadway - 24th Floor
New York, New York 10007-1866

Copies of written information may be faxed to Mr. David Pohle, Wetlands Enforcement Coordinator, at fax number: (212) 637-3889.

25. Any questions concerning this Consent Order should be directed to Mr. Pohle at the above address, fax number, and/or telephone (212) 637-3824.

GENERAL PROVISIONS

1. The provisions of this Consent Order shall be binding upon Respondent, and his agents, servants, employees and successors or assigns.
2. This Agreement is not and shall not be interpreted to be a permit under Section 404 of the Act for any dredge or fill activity in wetlands, nor shall it in any way relieve Respondent of any obligation to comply with any provision of the Act, its implementing regulations, or any other local, Commonwealth, or Federal law. This Consent Order does not constitute a waiver, suspension or modification of the requirements of the Act, 33 U.S.C. §1252 et seq., or any regulations promulgated thereunder, or any Commonwealth or local law or regulation. This action is an enforcement action taken by EPA to ensure swift compliance with the Act. By this agreement, EPA accepts compensatory mitigation in the form of wetlands creation as replacement for aquatic resources impacted as a result of the subject violation. Issuance of this Consent Order is not an election by EPA to forego any civil or any criminal action otherwise authorized by the Act, including issuance of penalties pursuant to Section 309(g) of the Act, 33 U.S.C. §1319(g), for the subject violation.
3. Mitigation provided pursuant to this Consent Order shall not be offered by Respondent or any other person for consideration as mitigation for any other fill.

EFFECTIVE DATE

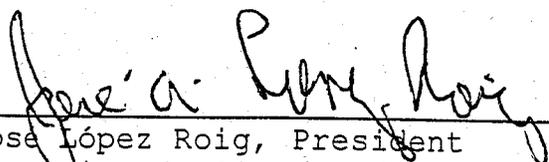
This Consent Order shall become effective upon the date of execution by the Director, Division of Environmental Planning and Protection, of EPA, Region 2.

In the matter of

José López Roig, President, Estancias de Siervas de Maria, Inc.
P.R. 931, Km. 4.3, Navarro Ward
Gurabo, Puerto Rico 00778

Proceeding Pursuant to §309(a) of the Clean Water Act, 33
U.S.C. §1319(a)
Docket CWA-02-2003-3500

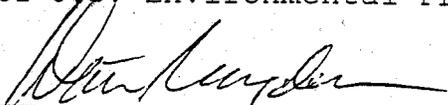
For Respondent:



Jose Lopez Roig, President
Estancias de Siervas de Maria, Inc.

Jan 14 2003
Date

For U.S. Environmental Protection Agency, Region 2

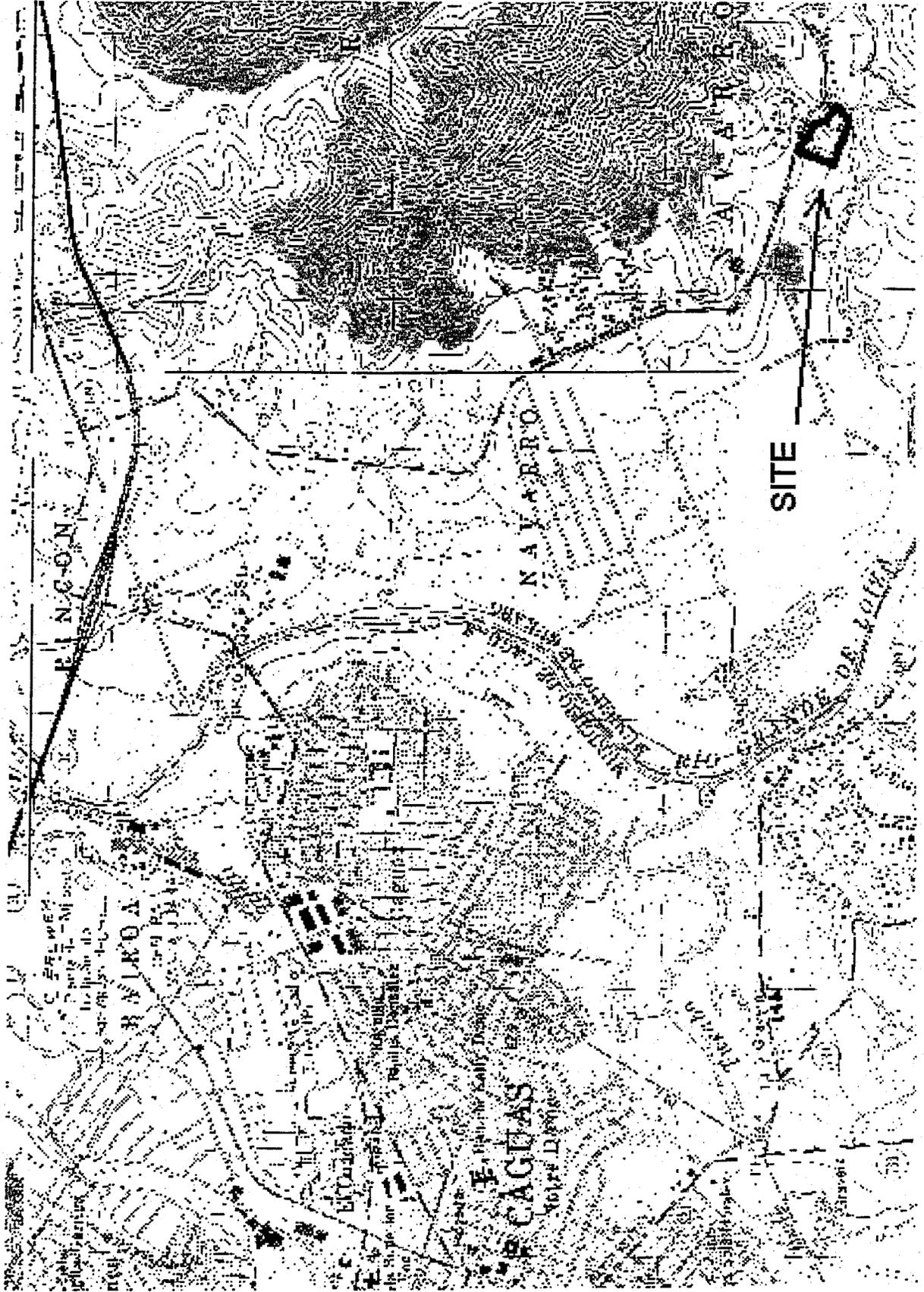


Walter Mugdan, Director
Division of Environmental Planning
and Protection

1/30/03
Date

Exhibit A (Location of the Site)

**Re: In the matter of José López Roig
Proceeding Pursuant to §309(a) of the Clean Water Act, 33 U.S.C. §1319(a)
Docket CWA-02-2003-3500**





United States Environmental Protection Agency
Washington, D.C. 20460
Water Compliance Inspection Report

Form Approved.
OMB No. 2040-0057
Approval expires 8-31-98

Section A: National Data System Coding (i.e., PCS)

Transaction Code 1 N 2 5 3 P R U 2 0 0 9 0 0 11	NPDES 12 0 5 0 3 1 7 17	yr/mo/day	Inspection Type 18 C	Inspector 19 R	Fac Type 20 2
Remarks					
Inspection Work Days 5 1 69	Facility Self-Monitoring Evaluation Rating 70 1	B1 71	QA 72	Reserved 73 74	80

Section B: Facility Data

Name and Location of Facility Inspected (for industrial users discharging to POTW, also include POTW name and NPDES permit number) Estancias de Siervas de Maria, State Road PR-931 Km. 4.3, Gurabo P.R. Mailing Address M r. Jose Lopez Roig, MSC 1006, HC-04 Box 44374, Bo. San Salvador, Caguas, PR 00725	Entry Time/Date 3/17/05, 9:00 AM	Permit Effective Date No Permit
	Exit Time/Date 9:55 AM	Permit Expiration Date
Name(s) of On-Site Representative(s)/Title(s)/Phone and Fax Number(s) Jesús F. Fontanes, Vice President, T&T Engineering Design and Development Corp., 1150 Americo Miranda, Caparra Terrace 00921 (787) 707-0420	Other Facility Data FRS 110014408612 ICIS 2658622 Admin Order, CWA-02-2003-3500, 1/30/2003	
Name, Address of Responsible Official/Title/Phone and Fax Number(s) M r. Jose Lopez Roig, MSC 1006, MC-04 Box 44374, Bo. San Salvador, Caguas, PR 00725	SIC Code 1521 - General Building Contractors, Residential	
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Contacted		

Section C: Areas Evaluated During Inspection (Check only those areas evaluated)

<input type="checkbox"/> Permit	<input type="checkbox"/> Flow Measurement	<input type="checkbox"/> Operations & Maintenance	<input type="checkbox"/> CSO/SSO (Sewer Overflow)
<input type="checkbox"/> Records/Reports	<input type="checkbox"/> Self-Monitoring Program	<input type="checkbox"/> Sludge Handling/Disposal	<input checked="" type="checkbox"/> Pollution Prevention
<input checked="" type="checkbox"/> Facility Site Review	<input type="checkbox"/> Compliance Schedules	<input type="checkbox"/> Pretreatment	<input checked="" type="checkbox"/> Multimedia
<input checked="" type="checkbox"/> Effluent/Receiving Water	<input type="checkbox"/> Laboratory	<input checked="" type="checkbox"/> Storm Water	Other:

Section D: Summary of Findings/Comments (Attach additional sheets of narrative and checklists as necessary)

The facility is a residential home construction site that was said to be approximately 20 Cuerdas (19.44 acres). No Notice of Intent for Coverage under EPA's Construction General Permit was submitted as required. The facility began construction activity in 2000 and is conducting construction activity without a permit. Section 301 of the Clean Water Act and 40CFR 122.26(b)(14)(x) require that this site be covered under the Construction General Permit.

See Photographs in Attachment 1.

Name(s) and Signature(s) of Inspector(s) Murray Lantner, P.E. Environmental Engineer	Agency/Office/Phone and Fax Numbers EPA/WCB/CS(212) 637-3976/ FAX: 637-4211	Date 4/26/05
Signature of Management or A Reviewer Henry Mazzucca, P.E., Chief, Compliance Section	Agency/Office/Phone and Fax Numbers EPA/WCB/CS (212) 637-4229	Date 4/26/05



U.S. Environmental Protection Agency National Pollutant Discharge Elimination System (NPDES)

[Recent Additions](#) | [Contact Us](#) | [Print Version](#) Search NPDES:

[EPA Home](#) > [OW Home](#) > [OWM Home](#) > [NPDES Home](#) > [Stormwater](#) > [NOI Application Results](#)

Construction Activities
-2003 Construction
General Permit
-Oil and Gas

[NPDES Topics](#)

[Alphabetical Index](#)

[Glossary](#)

[About NPDES](#)

NOI Application Search Results

Industrial Activity
-Multi-Sector General
Permit

Permit Search Parameters:

Owner Name contains (JOSE LOPEZ ROIG).....Owner Name contains (JOSE LOPEZ ROIG).....Owner State = Puerto Rico.....Owner State = Puerto Rico.....Facility Name contains (ESTANCIAS DE SIERVAS DE MARIA).....Facility Name contains (ESTANCIAS DE SIERVAS DE MARIA).....Facility State = Puerto Rico.....Facility State = Puerto Rico.....Permit Type = All.....

Municipal MS4s
-Large & Medium
-Small

Stormwater Outreach
Materials

Record Count: 0

Phase I & Phase II
-Menu of BMPs
-Urbanized Area Maps

Sorry, no applications were found!

[Stormwater Home](#)

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

-----X
IN THE MATTER OF :

José López-Roig, President :
Estancias de Siervas de Maria, Inc. :
MSC 1006, HC-04 Box 44374 :
Bo. San Salvador :
Caguas, PR 00725 :

PRU200900 :
Respondent :

Proceeding Pursuant to §309(g) of the :
Clean Water Act, 33 U.S.C. §1319(g) :
-----X

Proceeding to Assess a Class II
Administrative Penalty

Docket No.
CWA-02-2006-3415

CERTIFICATE OF SERVICE

I certify that, on the date noted below, I caused to be mailed, by certified mail, return receipt requested, a copy of the foregoing "ADMINISTRATIVE COMPLAINT" and a copy of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits," (40 Code of Federal Regulations Part 22 (July 1, 2000)) to the following persons at the addresses listed below:

Jose Lopez-Roig, President
Estancias de Siervas de Maria Inc.
MSC 1006, HC-04 Box 44374
Bo. San Salvador
Caguas, Puerto Rico 00725

Eng. Wanda E. Garcia Hernandez, Director
Water Quality Area
Environmental Quality Board
P.O. Box 11488
Santurce, PR 00910

I [hand carried / mailed] the original and a copy of the foregoing Complaint to the office of the Regional Hearing Clerk, United States Environmental Protection Agency, Region 2.

Date: 8/3/06
New York, New York

Marie St. Germain
[Signature of Sender]
[NOTE: must be over 18]



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

AUG - 3 2006

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Article Number: 7003 2260 0000 3250 5979

José López Roig, President
Estancias de Siervas de Maria, Inc.
MSC 1006
HC-04 Box 44374
Bo. San Salvador
Caguas, PR 00725

Re: In the matter of José López Roig, President, Estancias de Siervas de Maria, Inc.
Proceeding to Assess a Class II Civil Administrative Penalty
Under Section 309(g) of the Clean Water Act, 33 U.S.C. §1319(g)
Docket No. CWA-02-2006-3415

Dear Mr. Roig:

Enclosed is a document entitled "Administrative Complaint, Findings of Violation, Notice of Proposed Assessment of an Administrative Penalty, and Notice of Opportunity to Request a Hearing" (Complaint). The United States Environmental Protection Agency (EPA) has issued this Complaint against you as a result of our determination that you violated Section 301 of the Clean Water Act (Act), 33 U.S.C. §1311, for failure to obtain a National Pollutant Discharge Elimination System (NPDES) Permit for storm water discharges associated with construction activities at PR 931, Km. 4.3, Navarro Ward, Gurabo, Puerto Rico. This Complaint is filed pursuant to the authority contained in §309(g) of the Act, 33 U.S.C. §1319(g). The Complaint proposes that a penalty of \$97,000.00 be assessed against you for the violations.

The Complaint has been filed with the EPA, Region 2, Regional Hearing Clerk. Also enclosed is a copy of 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 CFR Part 22, which describes the procedures which EPA will follow in this penalty assessment proceeding.

This Complaint includes a Proposed Civil Administrative Penalty and a Notice of Opportunity to Request a Hearing. You have the right to request a hearing to contest any allegations set forth in the Complaint or to contest the appropriateness of the proposed penalty. Please pay particular attention to the section in the Complaint entitled "Notice of Opportunity to Request a Hearing," and the requirements for filing an Answer to the Complaint in §22.15. You have the right to be represented by an attorney, or to represent yourself at any stage of these proceedings. Any hearing will be conducted in accordance with the CROP. If you wish to contest the allegations in the Complaint or the penalty proposed in the Complaint, you must file a Response within thirty

(30) days of receipt of the enclosed Complaint to the EPA Regional Hearing Clerk at the following address:

Regional Hearing Clerk
U.S. Environmental Protection Agency
290 Broadway - 16th Floor
New York, New York 10007-1866

If you do not file an Answer by the applicable deadline, you will waive your right to a hearing and EPA may file a motion for a default judgment against you. Each allegation in the Complaint will be deemed to be admitted as true by you, and you will have waived your right to be notified of any Agency proceedings that occur before a civil penalty may be imposed. If a default order is entered, the entire penalty may be assessed without further proceedings.

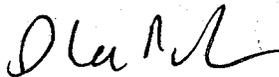
If you wish to resolve this proceeding by paying the penalty proposed in the Complaint in full, please follow the Instructions for Paying Penalty in Section VII of the Complaint. Please be informed that EPA may not accept payment in full in resolution of this proceeding until at least 10 days after the close of the public comment period for this proceeding. Such date will be 40 days after publication of a legal notice of this proceeding.

Whether or not you request a formal hearing, you may informally confer with EPA concerning the alleged violations and the amount of the proposed penalty. EPA encourages all parties against whom it files a Complaint to pursue the possibility of settlement as a result of such informal settlement conference with the Agency. An attorney from the Agency's Office of Regional Counsel will normally be present at any informal conference. Please note that a request for an informal conference does not substitute for a written Answer or affect what a Respondent may choose to say in an Answer, nor does it extend the thirty (30) days by which a Respondent must file an Answer requesting a hearing. Any hearing held in this matter will be conducted in accordance with the CROP. The EPA also encourages the use of Supplemental Environmental Projects (SEPs), where appropriate, as part of the settlement. Enclosed is a copy of the Final EPA Supplemental Environmental Projects Policy (May 1, 1998) for your consideration.

For your information, I am enclosing an Information Sheet which may be helpful if you are a small business as defined at 13 C.F.R. 121.201, in obtaining compliance assistance or if you wish to comment on this action to the Small Business and Agriculture Regulatory Enforcement Ombudsman and Regional Fairness Board.

Should you have any questions concerning this matter, please feel free to contact Murray Lantner at (212) 637-3976.

Sincerely,



Dore LaPosta, Director
Division of Enforcement and Compliance Assistance



[Home](#) | [Help](#)

Track & Confirm

Track & Confirm

Search Results

Label/Receipt Number: 7003 2260 0000 3250 5979
Status: Delivered

Your item was delivered at 10:42 am on August 11, 2006 in CAGUAS, PR 00727. A proof of delivery record may be available through your local Post Office for a fee.

Additional information for this item is stored in files offline.

[Restore Offline Details >](#)



[Return to USPS.com Home >](#)

Track & Confirm

Enter Label/Receipt Number.

[Site Map](#) [Contact Us](#) [Forms](#) [Gov't Services](#) [Jobs](#) [Privacy Policy](#) [Terms of Use](#) [National & Premier Accounts](#)

Copyright © 1999-2007 USPS. All Rights Reserved. No FEAR Act EEO Data FOIA



The Ad Campaign
Marketing Solutions



Information
Marketing Solutions

7
11/17/07



"U.S. Postal Service"
 <U.S. Postal_Service@usps.com>

08/11/2006 02:40 PM

To Christy Arvizu/R2/USEPA/US@EPA

cc

bcc

Subject USPS Shipment Info for 7003 2260 0000 3250 5979

History: This message has been forwarded.

This is a post-only message. Please do not respond.

Christy Arvizu has requested that you receive a Track & Confirm update, as shown below.

Track & Confirm e-mail update information provided by the U.S. Postal Service.

Label Number: 7003 2260 0000 3250 5979

Service Type: Certified

Shipment Activity	Location	Date & Time
Delivered 10:42am	CAGUAS PR 00727	08/11/06
Arrival at Unit 8:12am	CAGUAS PR 00725	08/11/06
Acceptance 6:26pm	NEW YORK NY 10007	08/04/06

Reminder: Track & Confirm by email

Date of email request: 08/11/06

Future activity will continue to be emailed for up to 2 weeks from the Date of Request shown above. If you need to initiate the Track & Confirm by email process again at the end of the 2 weeks, please do so at the USPS Track & Confirm web site at <http://www.usps.com/shipping/trackandconfirm.htm>

USPS has not verified the validity of any email addresses submitted via its online Track & Confirm tool.

For more information, or if you have additional questions on Track & Confirm services and features, please visit the Frequently Asked Questions (FAQs) section of our Track & Confirm site at <http://www.usps.com/shipping/trackandconfirmfaqs.htm>



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

NOV - 7 2006

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Article Number: 7005 3110 0000 5972 9809

José López-Roig, President
Estancias de Siervas de Maria, Inc.
MSC 1006, HC-04 Box 44374
Bo. San Salvador
Caguas, PR 00725

Re: In the Matter of José López-Roig, President, Estancias de Siervas de Maria, Inc.
Proceeding pursuant to Section 309(a) of the Clean Water Act, 33 U.S.C. §1319(a), to
Assess a Class II Administrative Penalty
Docket No. CWA-02-2006-3415

Dear Mr. Roig:

On August 3, 2006, the Environmental Protection Agency ("EPA"), Region 2, issued a document entitled "Administrative Complaint, Findings of Violation, Notice of Proposed Assessment of an Administrative Penalty, and Notice of Opportunity to Request a Hearing" (Complaint). The EPA issued this Complaint against you as a result of our determination that you violated Section 301 of the Clean Water Act (Act), 33 U.S.C. §1311, for failure to obtain a National Pollutant Discharge Elimination System (NPDES) Permit for storm water discharges associated with construction activities at PR 931, Km. 4.3, Navarro Ward, Gurabo, Puerto Rico. This Complaint was filed pursuant to the authority contained in §309(g) of the Act, 33 U.S.C. §1319(g). The Complaint proposes that a penalty of \$97,000.00 be assessed against you for the violations.

Please be advised that this Complaint includes a Proposed Civil Administrative Penalty and a Notice of Opportunity to Request a Hearing. You have the right to request a hearing to contest any allegations set forth in the Complaint or to contest the appropriateness of the proposed penalty. Please pay particular attention to the section in the Complaint entitled "Notice of Opportunity to Request a Hearing," and the requirements for filing an Answer to the Complaint in §22.15. You have the right to be represented by an attorney, or to represent yourself at any stage of these proceedings. Any hearing will be conducted 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 CFR Part 22, a copy of which is attached.

Pursuant to the CROP, in order to contest the allegations in the Complaint or the penalty proposed in the Complaint, you were entitled to file a Response within thirty (30) days of receipt of the enclosed Complaint to the EPA Regional Hearing Clerk at the following address:

Internet Address (URL) • <http://www.epa.gov>

Recycled/Recyclable • Printed with Vegetable Oil Based Inks on Recycled Paper (Minimum 50% Postconsumer content)

EXHIBIT

Regional Hearing Clerk
U.S. Environmental Protection Agency
290 Broadway - 16th Floor
New York, New York 10007-1866

Confirmation from the U.S. Postal Service demonstrates that on August 11, 2006, EPA's mailing of the Complaint was delivered in Caguas, Puerto Rico. Accordingly, your Response to the Complaint should have been mailed to EPA no later than September 11, 2006.

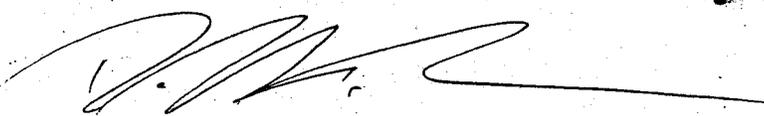
To this date, however, EPA has not received a Response or Answer to the Complaint on your behalf. Moreover, to this date more than 60 days have elapsed since the date of delivery of the Complaint without receipt by EPA of your Response.

EPA hereby advises you that it is granting you an additional 15 days from the date of receipt of this letter for you to file your Response, prior to EPA exercising its rights pursuant to the CROP and the CWA, which include the referral of this matter to the United States Department of Justice.

Please be advised that if you do not file an Answer by the aforementioned deadline, EPA may interpret such failure to mean that you waive your right to a hearing and file a motion for a default judgment against you. Each allegation in the Complaint will be deemed to be admitted as true by you, and you will have waived your right to be notified of any Agency proceedings that occur before a civil penalty may be imposed. If a default order is entered, the entire penalty may be assessed without further proceedings.

Should you have any questions concerning this matter, please feel free to contact Eduardo J. Gonzalez, Esq. from our Office of Regional Counsel at (212) 637-3223.

Sincerely,



Douglas McKenna, Chief
Water Compliance Branch

Enclosures

1. Complaint
2. Consolidated Rules of Practice

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

José López-Roig, President
Estancias de Siervas de María, Inc.
MSC 1006, HC-04 Box 44374
Bo. San Salvador
Caguas, PR 00725

CWA-02-2006-3415

2. Article Number
(Transfer from service label)

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent
X José Roig Addressee

B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1? Yes
If YES, enter delivery address below: No

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

7005 3110 0000 5972 9809

PS Form 3811, August 2001

Domestic Return Receipt

102595-02-M-1540

EXHIBIT
9

Track & Confirm

Search Results

Label/Receipt Number: 7005 3110 0000 5972 9809

Detailed Results:

- Delivered, November 14, 2006, 11:01 am, CAGUAS, PR 00727
- Acceptance, November 07, 2006, 11:58 am, NEW YORK, NY 10278

[< Back](#)

[Return to USPS.com Home >](#)

Track & Confirm

Enter Label/Receipt Number.

[Go >](#)

RECEIVED
U.S. E.P.A.

JUN 23 AM 10:29

CERTIFICATE OF SERVICE

ENVIR. APPEALS BOARD

I hereby certify that the **Default Order and Initial Decision** by Regional Judicial Officer Helen S. Ferrara in the matter of **Jose Lopez-Roig, President Estancias de Siervas de Maria, Inc., Docket No. CWA-02-2006-3415**, was served on the parties as indicated below:

Certified Mail –
Return Receipt Requested

Estancias de Siervas de Maria, Inc.
MSC 1006, HC-04 Box 44374
Bo. San Salvador
Caguas, Puerto Rico 00725
Attn: Jose Lopez-Roig

Federal Express -

Environmental Appeals Board
U.S. Environmental Protection Agency
Colorado Building, Suite 600
1341 G. Street, N.W.
Washington, D.C. 20005

Pouch Mail -

Assistant Administrator for
Enforcement & Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2201A)
Washington, D.C. 20460

Inter Office Mail -

Eduardo J. Gonzalez, Esq.
Office of Regional Counsel
USEPA - Region II
290 Broadway, 16th Floor
New York, New York 10007-1866



Karen Maples
Regional Hearing Clerk
USEPA - Region II

Dated: June 18, 2009

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 Broadway
New York, NY 10007

IN THE MATTER OF:

José López-Roig, President
Estancias de Siervas de Maria, Inc.
MSC 1006, HC-04 Box 44374
Bo. San Salvador
Caguas, PR 00725

Respondent.

Docket No. CWA-02-2006-3415

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

DEFAULT ORDER AND INITIAL DECISION

By Motion for Entry of Default and Initial Decision of the Presiding Officer (“Motion for Default”), the Complainant, the Director of the Division of Enforcement and Compliance Assistance (“DECA”) of Region 2 of the United States Environmental Protection Agency (“EPA”), has moved for a Default Order and Initial Decision finding the Respondent, José López-Roig, President, Estancias de Siervas de Maria, Inc., liable for the violation of Sections 301 and 402 of the Clean Water Act (“CWA” or the “Act”), 33 U.S.C. §§ 1311 and 1342. The Complainant requests assessment of a civil penalty in the amount of Ninety Seven Thousand Dollars (\$97,000), as proposed in the Complaint.

Pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties (“Consolidated Rules”), 40 CFR Part 22, and based upon the record in this matter and the following Findings of Fact, Conclusions of Law, and Determination of Penalty,

Complainant's Motion for Default is hereby GRANTED. The Respondent is hereby found in default and a civil penalty is assessed against it in the amount of \$97,000.

BACKGROUND

This is a proceeding under Section 309(a) of the Clean Water Act, 33 U.S.C. § 1319(a), governed by the Consolidated Rules. Complainant initiated this proceeding by issuing a Complaint, Findings of Violation, Notice of Proposed Assessment of a Civil Penalty, and Notice of Opportunity to Request a Hearing ("Complaint") on August 3, 2006 against Respondent. In its Complaint, the Complainant alleged that Respondent discharged industrial storm water associated with construction activities into the Rio Grande de Loiza River without a National Discharge Elimination Permit ("NPDES") in violation of Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342.

The Complaint explicitly states on page 5, in the section entitled *Filing an Answer*, that

1. If Respondent wishes to avoid being found in default, Respondent must file a written Answer to this Complaint with the Regional Hearing Clerk no later than thirty (30) days from the date of receipt of this Complaint. EPA may make a motion pursuant to § 22.17 of the CROP seeking a default order thirty (30) days after Respondent's receipt of the Complaint unless Respondent files an Answer within that time. If a default order is entered, the proposed penalty, in its entirety, may be assessed without further proceedings....

3. Failures of Respondent to admit, deny, or explain any material factual allegations in this Complaint shall constitute admission of the allegation.

Service of the Complaint by certified mail return receipt requested was completed on August 11, 2006. On November 7, 2006, the Complainant forwarded the Complaint a second time to Respondent. Service of the Complaint by certified mail return receipt requested was

completed for the second time on November 14, 2006. To date, an Answer has not been filed by the Respondent.

On December 20, 2007, Complainant issued a Motion for Default. It was served on Respondent by certified mail return receipt requested. To date, the Respondent has not filed a response to the Motion for Default.

STATUTORY AND REGULATORY AUTHORITY

1. Section 301(a) of the CWA, 33.U.S.C. § 1311(a), prohibits the discharge of pollutants by any person into navigable waters except in compliance with, among other things, a National Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.
2. "Discharge of a pollutant" means any addition of any pollutant to navigable waters from any point source, pursuant to Section 502(12) of the Act, 33 U.S.C. § 1362(12).
3. "Person" includes an individual, corporation, partnership or association, pursuant to Section 502(5) of the Act, 33 U.S.C. § 1362(5).
4. "Pollutant" includes solid waste, dredged spoil, rock, sand, cellar dirt, sewage, sewage sludge, and industrial, municipal and agricultural waste discharged into water, pursuant to Section 502(6) of the Act, 33 U.S.C. § 1362(6).
5. "Navigable waters" include the waters of the United States pursuant to Section 502(7) of the Act, 33 U.S.C. §1362(7). "Waters of the United States" include, but are not limited to, waters which are currently used or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide. This

term also encompasses wetlands, rivers, streams (including intermittent streams). See 40 CFR § 122.2.

6. "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, pursuant to Section 502 (14) of the Act, 33 U.S.C. § 1362(14).
7. Section 402(a) of the CWA, 33 U.S.C. § 1342(a) provides the Administrator of the EPA ("Administrator") with authority to issue a NPDES permit that authorizes the discharge of pollutants into waters of the United States, provided that all discharges meet the applicable requirements of Section 301 of the CWA, 33 U.S.C. § 1311, or such other conditions as the Administrator determines are necessary to carry out the provisions of the CWA.
8. Section 402(p) of the Act, 33 U.S.C. § 1342(p), requires a permit with respect to stormwater discharges associated with industrial activity.
9. Under Section 402 of the CWA, 33 U.S.C. § 1342, on November 15, 1990, the Administrator promulgated regulations at 40 CFR § 122.26 relating to the control of storm water discharges.
10. Under 40 CFR § 122.26 (a)(1)(ii) and (c)(1), dischargers of storm water associated with industrial activity are required to apply for an individual permit or seek coverage under a promulgated storm water general permit.

11. 40 CFR § 122.26(b)(14)(x) defines “storm water discharge associated with industrial activity” to include construction activity including clearing, grading and excavating activities, that result in the disturbance of more than five acres of land.
12. EPA issued the “NPDES General Permit for Discharges from Large and Small Construction Activities” (Permit No. PRR100000) (“CGP”) on July 1, 2003. This permit was published in the Federal Register (68 FR 39087). It became effective on July 1, 2003. Prior to the issuance of the 2003 CGP, the 1998 CGP, published in the Federal Register on February 17, 1998 was effective.

FINDINGS OF FACT

Based on a review of the record in this proceeding and pursuant to 40 CFR § 22.27(a), the Undersigned makes the following findings of fact:

13. José López-Roig is the President of Estancias Siervas de María, Inc, a corporation doing business in the Commonwealth of Puerto Rico.
14. From August 1, 2001 through July 25, 2006, Respondent owned a construction site (“the Site”) of approximately 19.5 acres which was located at PR State Road 931, Km. 4.3, Navarro Ward, Gurabo, Puerto Rico.
15. At the Site, Respondent operated and engaged in the construction activity consisting of a residential housing development known as “Estancias de Siervas de María”.
16. The Respondent’s construction activity referenced in paragraph 15 above involved earth clearing, grading and excavation activities which resulted in the disturbance of more than five acres of total land area.

17. On March 17, 2005, EPA conducted a Compliance Evaluation Inspection (“CEI”) at the Site and found that the Respondent was engaged in the construction activity described in paragraphs 15 and 16, above, and that the Respondent did not have a NPDES permit for its stormwater discharges associated with industrial activity.¹
18. The Site is adjacent to an unnamed stream which discharges into the Rio Grande de Loiza River, which then discharges into the Atlantic Ocean, a navigable water of the United States.
19. From August 1, 2001 through July 25, 2006, at all relevant times, Respondent did not apply for or obtain a NPDES permit for the construction activity at the Site, as indicated by the print out of EPA’s NPDES database that indicates ‘no results’ for Respondent’s application for a NPDES permit.²
20. Respondent is a “person” within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).
21. Respondent’s construction activity disturbed more than five acres of total land area at the Site, and therefore falls within the purview of 40 CFR § 122.26(b)(14)(x).
22. The construction activity at the Site created storm water discharges which constitute a “discharge of a pollutant” within the meaning of Section 502(12) of the Act, 33 U.S.C. § 1362(12).
23. Respondent’s discharges are, and were at all relevant times, from a point source as defined in Section 502(14) of the CWA, 33 U.S.C § 1362(14).

¹ See EPA’s *Water Compliance Inspection Report*, Attachment 3 to Motion for Default.

² See EPA’s *NOI Application Search Results*, Attachment 4 to Motion for Default

24. The Rio Grande de Loiza River, located in the Commonwealth of Puerto Rico, and which discharges into the Atlantic Ocean, is a navigable water of the United States within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7).
25. Respondent conducted an industrial activity at the Site without complying with Section 402(p) of the Act, 33 U.S.C. § 1342(p), which requires obtaining a NPDES permit for construction activity that disturbs more than five acres of total land area, as required by 40 CFR § 122.26 (b)(14)(x).
26. Respondent's discharge of stormwater associated with industrial activity without a NPDES permit constituted an unlawful discharge of pollutants in violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).
27. Respondent's failure to obtain permit coverage for its storm water discharges and failure to operate pursuant to such permit violated 40 CFR § 122.26 and Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342.
28. On May 18, 2005, pursuant to Sections 308 and 309(a) of the CWA, 33. U.S.C. §§ 1318 and 1319(a), EPA issued an Administrative Compliance Order and Request for Information ("Administrative Order")³, Docket No. CWA-02-2005-3216, to Respondent, requiring the following: submission of a Notice of Intent (NOI) to be covered under the CGP; development, submission and implementation of a storm water pollution prevention plan (SWPPP); and submission of additional information.
29. On September 8, 2005, EPA issued an Order to Show Cause⁴, CWA-02-2005-3243,

³ Attachment 2 to *EPA's Penalty Memorandum*, Attachment 2 to Motion for Default.

⁴ Attachment 4 to *EPA's Penalty Memorandum*, Attachment 2 to Motion for Default.

requiring Respondent to meet with EPA on October 12, 2005.

30. By letter dated October 18, 2005, Respondent enclosed a copy of the site's Sedimentation and Erosion Control Program.
31. By letter dated November 2, 2005, EPA informed Respondent that the Show Cause meeting was rescheduled to November 17, 2005, and that there were deficiencies with Respondent's submittals.
32. By letter dated November 16, 2005, Respondent informed EPA that he was unable to attend the scheduled Show Cause meeting due to illness. EPA did not receive any subsequent communications from Respondent.
33. As set forth above, Complainant found that Respondent has violated Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342. For these violations, Complainant filed a Complaint dated August 3, 2006 against Respondent, appended to the Motion for Default as Attachment 1, pursuant to Section 309(a) of the CWA, 33 U.S.C. § 1319(a), seeking an administrative penalty of Ninety Seven Thousand Dollars (\$97,000).
34. Respondent was served with a copy of the Complaint by certified mail return receipt requested.⁵
35. According to confirmation of delivery of the Complaint from the United States Postal Service ("USPS"), Respondent received the Complaint in Caguas, Puerto Rico on August 11, 2006.⁶

⁵ Motion for Default, Attachment 5, *Certificate of Service*, and Attachment 6, EPA's cover letter addressing the Complaint to the Respondent.

⁶ Motion for Default, Attachment 7, print out of the *Track & Confirm* system provided by the USPS.

36. Pursuant to 40 CFR §§ 22.7(c) and 22.15, Respondent had thirty (30) days from the date on which it received the Complaint to file its answer.
37. Pursuant to 40 CFR Part 22.15, Respondent was required to file its answer to the Complaint on or before September 11, 2006 (thirty days after August 11, 2006).
38. Respondent failed to respond to the Complaint within the thirty-day period provided by 40 CFR § 22.15.
39. On November 7, 2006, Complainant again forwarded the Complaint to Respondent, advising Respondent that: Respondent had the right to request a hearing to contest any allegations set forth in the Complaint or to contest the appropriateness of the proposed penalty; the Complaint included a section regarding the requirements for filing an Answer to the Complaint; Respondent had the right to be represented by an attorney, or to represent itself, at any stage of the proceedings; and that any hearing would be conducted in accordance with the Consolidated Rules, 40 CFR Part 22.
40. On November 14, 2006, the aforementioned letter, together with the Complaint, was delivered in Caguas, Puerto Rico.⁷
41. Complainant twice duly notified Respondent of its right to file an answer within thirty days after service of the Complaint. Complainant provided notice to Respondent through: the cover letter attached to the Complaint; the Complaint; and a copy of the Consolidated Rules, 40 CFR Part 22.
42. Respondent has failed to answer the Complaint.

⁷ Motion for Default, Attachment 9, USPS return-receipt which confirms delivery of the November 7, 2006 letter and copy of the print out of the *Track & Confirm* system provided by the USPS.

43. On December 20, 2007, Complainant issued a Motion for Default.⁸ It was served on Respondent by certified mail return receipt requested.
44. To date, the Respondent has failed to respond to the Motion for Default.

CONCLUSIONS OF LAW

1. Jurisdiction is conferred by Section 309(a) of the CWA, 33 U.S.C. § 1319(a).
2. Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), as amended by the Debt Collection Act of 1996, implemented by the Civil Monetary Penalty Inflation Adjustment Rule, 40 CFR Part 19, provides that any person who violates, or fails or refuses to comply with, the CWA shall be liable to the United States for a civil penalty up to, in the case of a class II penalty, \$157,500.⁹
3. The Complaint in this action was served upon Respondent in accordance with 40 CFR § 22.5(b)(1).
4. Respondent's failure to file an Answer to the Complaint, or otherwise respond to the Complaint, constitutes a default by Respondent pursuant to 40 CFR § 22.17(a).
5. Respondent's default constitutes an admission of the allegations set forth in the

⁸ The undersigned notes that the caption on the Complaint reads "José López-Roig, President, Estancias de Seirvas de Maria, Respondent" and paragraph 2 of the Complaint requests an assessment of a penalty against "José López-Roig ("Respondent")". However, the Motion for Default's caption reads "José López-Roig, President, and Estancias de Siervas de Maria, Inc, Respondent" and paragraph 1 refers to Estancias de Seirvas de Maria, Inc and José López-Roig ("Respondents"). Of course, jurisdiction over the Respondent(s) must be established before a default order is issued and that proper service of the Complaint on the Respondent(s) named in the Complaint is necessary to obtain jurisdiction in a subsequent default proceeding. Based on the record, I determine that, in this proceeding, there is jurisdiction over one Respondent, identified as José López-Roig, President, Estancias de Seirvas de Maria, as stated in the Complaint.

⁹ The Debt Collection Improvement Act of 1996 requires EPA to periodically adjust its civil monetary penalties for inflation. On December 31, 1996 and February 13, 2004, EPA adopted regulations entitled *Adjustment of Civil Monetary Penalties for Inflation*, 40 CFR Part 19, which provide that the maximum class II penalty should be adjusted up to \$137,500 for each violation that occurred on or after January 30, 1997, and up to \$157,500 for violations which occurred on or after March 15, 2004.

Complaint and a waiver of the Respondent's right to a hearing on such factual allegations. 40 CFR §§ 22.17(a) and 22.15(d).

6. Pursuant to 40 CFR § 22.17(a), Respondent's failure to file a timely Answer or otherwise respond to the Complaint is grounds for the entry of a Default Order and Initial Decision against the Respondent assessing a civil penalty for the aforementioned violations.
7. As described in the penalty calculation below, I find that the Complainant's proposed civil penalty of \$97,000 is properly based on the statutory requirements of Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3).

DETERMINATION OF PENALTY

As set forth above, Section 309(g)(2)(B) of CWA, U.S.C. § 1319(g)(2)(B), as amended by the Debt Collection Act of 1996, provides that any person who violates, or fails or refuses to comply with the CWA, shall be liable to the United States for a civil penalty up to, in the case of a class II penalty, \$157,500.

In both its Complaint and its Motion for Default, the Complainant seeks a civil penalty of \$97,000, based upon the statutory factors set forth in Section 309(g)(3) of the Act, 33 U.S.C. § 1319(g)(3), and in accordance with the Agency's General Enforcement Policies (GM-21 and GM-22), as outlined in the Motion for Default and Attachment 2 thereto, a November 16, 2007 signed memorandum to the case file from Christy Arvizu, Environmental Scientist with EPA Region 2's Water Compliance Branch, entitled Administrative Penalty Assessment – Class II and setting forth the case name and docket number (“EPA's Penalty Memorandum”). The statutory factors under Section 309(g)(3) of the Act include: the nature, circumstances, extent and seriousness of the violation(s), and, with respect to the violator, the prior history of such

violation(s), the degree of culpability, the economic benefit obtained through non-compliance, the Respondent's ability to pay in light of the information available at the time of the issuance of the Complaint, and such other matters as justice may require.

In concluding that the proposed penalty is reasonable, the undersigned took the following findings into consideration:

Calculation of Gravity Component:

Nature: As established by the record, Respondent violated Sections 301 and 402 of the CWA.

Circumstances: The circumstances of the violations have been described in detail in the Findings of Fact section, above.

Extent: The period of violations used to calculate this penalty is from August 1, 2001 through July 25, 2006, for a total of 1819 days of violation.¹⁰

Seriousness of the Violation: Storm water can wash nutrients, metals, oils, and other substances associated with construction activities into surface waters. Requiring certain construction sites to apply for NPDES storm water permits provides a way for States and EPA Regions to monitor and manage these discharges, and reduce or ultimately eliminate the amount of pollutants present in them. EPA's requirement that certain industrial facilities obtain permits is designed to reduce or minimize the discharge of pollutants which impair or degrade the quality of receiving waters. On May 18, 2005, EPA issued Respondent an Administrative Order which required Respondent to submit a

¹⁰ The Complaint in this case was issued on August 3, 2006, and the Complainant therefore chose July 2006 as the last month of violation to be asserted in the Complaint. Based on a five year statute of limitations, working backwards from July 2006, the first month of violation is August 2001. However, notwithstanding the statute of limitations, Complainant appears to have evidence that the Respondent has been operating the site since May of 2000 (Complaint, Attachment 1 to Motion for Default).

Notice of Intent to obtain coverage under the NPDES permit. On September 8, 2005, EPA issued Respondent an Order to Show Cause requiring Respondent to meet with EPA. Respondent failed to comply with the Administrative Order and Show Cause Order. Respondent's violations are serious and have an indirect effect on human health and direct effect on the environment. Respondent's failure to comply with the Administrative Order, Request for Information and Order to Show Cause impedes implementation of the NPDES program and negates the benefits of this program, such as protecting the water quality of the Rio Grande de Loiza, which is a public water supply. Respondent's recalcitrance also hinders EPA's ability to carry out its duties to protect the environment.

Proposed Gravity Component: Based on the considerations set forth above, the Complainant proposed a gravity penalty of \$84,322.00 after considering the length of the violations, the harm to the receiving waters, the threats to human health, the importance of compliance and the seriousness of the violations, as well as Respondent's demonstrated recalcitrance. Further, the Complainant believes that a substantial penalty is necessary to deter Respondent and others from violating the Act.

Calculation of Economic Benefit: The Respondent has an obligation under the law to obtain a NPDES permit for storm water discharges which are considered a "discharge of a pollutant" within the meaning of Section 502(12) of the Act, 33 U.S.C. § 1362(12). The EPA's enforcement officer determined that Respondent incurred an economic benefit of Twelve Thousand Six Hundred and Seventy Eight Dollars (\$12,678) as a result of its failure to obtain permit coverage for the site. The Complainant calculated the cost of

each project which the Respondent would have had to undertake to comply with the applicable statutes and implementing regulations. The calculation of the economic benefit realized by Respondent is broken down in a table entitled *Summary of Economic Benefit Calculations Data based on Information Provided by EPA's CEI Report dated 4/26/05*, found on page 5 of EPA's Penalty Memorandum (Attachment 2 to the Motion for Default). EPA explains that, because the Respondent did not provide cost information as required, the cost data was derived by best professional judgment, based on information at other construction sites.

Calculation of Penalty Adjustment Factors:

Prior History of Violation: Respondent has previously violated the CWA at the same construction Site. On January 30, 2003, Respondent and EPA executed an Order on Consent¹¹ which concerned the discharge of fill material into the unnamed stream adjacent to the Site. The EPA found the Respondent to be in violation of Section 301 of the Act for the discharge of pollutants consisting of earthen fill material into waters of the United States without a permit pursuant to Section 404 of the Act. EPA did not add an additional component for this prior violation, stating that it had factored the Respondent's prior history of violations into the gravity portion of its penalty calculation.

Degree of Culpability: Respondent should have been aware of the requirement to obtain a permit prior to the commencement of construction activities at the Site. Respondent was informed of the need to obtain coverage under the CGP and to develop a SWPPP during EPA's March 2005 inspection, in the Administrative Order issued to Respondent in May 2005, and in the Show Cause Order issued in September 2005.

¹¹ Attachment 9 to *EPA's Penalty Memorandum*, Attachment 2 to Motion for Default.

Furthermore, EPA contacted Respondent in September, October, and November, 2005, reiterating and reinforcing the requirement that Respondent obtain a permit and develop a SWPPP. Respondent has chosen to remain in non-compliance.

Ability to Pay: Presently, EPA states that it does not possess any information that is indicative of an inability of the Respondent to pay the assessed penalty.

Therefore, the final penalty proposed by the Complainant is \$97,000, comprised of an economic benefit of \$12,678 and a gravity factor of \$84,322, which, in summary, is fully supported by the application of the statutory factors for determining a civil penalty in Section 309(g)(3) of the CWA, the Agency policies on civil penalties, and the record. Therefore, a penalty of \$97,000 is hereby imposed against Respondent.

DEFAULT ORDER

Pursuant to the Consolidated Rules at 40 CFR Part 22, including 40 CFR § 22.17, a Default Order and Initial Decision is hereby ISSUED and Respondent is ordered to comply with all the terms of this Order:

- (1) Respondent is assessed and ordered to pay a civil penalty in the amount of Ninety Seven Thousand Dollars (\$97,000.00).
- (2) Respondent shall pay the civil penalty by certified or cashier's check payable to the "Treasurer of the United States of America" within thirty (30) days after this default order has become a final order pursuant to 40 CFR § 22.27(c). The check shall be identified with a notation of the name and docket number of this case, set forth in the caption on the first page of this document. Such payment shall be remitted to:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

A copy of the payment shall be mailed to:

Regional Hearing Clerk
EPA Region 2
290 Broadway, 16th Floor
New York, New York 10007

(3) This Default Order constitutes an Initial Decision pursuant to 40 CFR § 22.17(c).

Pursuant to 40 CFR § 22.27(c), this Initial Decision shall become a final order forty-five (45) days after its service upon the parties unless (1) a party moves to reopen the hearing, (2) a party appeals the initial decision to the Environmental Appeals Board, (3) a party moves to set aside the default order, or (4) the Environmental Appeals Board chooses to review the initial decision sua sponte.

IT IS SO ORDERED.

Dated: June 17, 2009



Helen S. Ferrara
Presiding Officer