

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

In the Matter of:

THE CLIFF CORP.

P. O. Box 116

Victoria Station

Aguadilla, Puerto Rico 00605

and

GRUPO CARIBE, LLC

P. O. Box 367197

San Juan, Puerto Rico 00936-7197

**THE CLIFF VILLAS HOTEL AND COUNTRY CLUB
CONSTRUCTION PROJECT**

PR-4458 Road, Intersection with PR-111 Road

Borinquen Ward

Aguadilla, Puerto Rico

NPDES Tracking Numbers: PRR1000DV / PRR1000EP



RESPONDENTS

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

**CONSENT AGREEMENT
AND FINAL ORDER**

**DOCKET NUMBER
CWA-02-2025-3351**

I. PRELIMINARY STATEMENT



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1. This is a civil administrative proceeding for the assessment of a civil penalty instituted pursuant to Section 309(g) of the Clean Water Act ("CWA" or "the Act"), 33 U.S.C. § 1319(g). The issuance of this Consent Agreement and attached Final Order simultaneously commences and concludes this proceeding. 40 C.F.R. §§ 22.13(b) and 22.18(b)(2)-(3).
2. The Complainant in this matter is the United States Environmental Protection Agency (EPA). The Administrator has delegated the authority to take this action to the Regional Administrator of Region 2 of the EPA, which authority has been duly delegated to the undersigned Director of the Caribbean Environmental Protection Division ("CEPD").
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3. The Respondents in this matter are The Cliff Corp. ("The Cliff") and Grupo Caribe, LLC ("Grupo Caribe"), both incorporated under the laws of the Commonwealth of Puerto Rico.
4. The Complainant and Respondents (collectively, the Parties), having agreed to settle this action, consent to the issuance of the attached Final Order ratifying this Consent Agreement before taking testimony and without adjudication of any issues of law and fact herein, and agree to comply with the terms of this Consent and Agreement and Final Order ("CA/FO").



II. JURISDICTION

5. This Consent Agreement is entered into under Section 309(g) of the Act, 33 U.S.C. § 1319(g), and 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" as codified in 40 C.F.R. Part 22 ("CROP").
6. The CROP provides that where the parties agree to the settlement of one or more causes of action before the filing of a complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a CA/FO. 40 C.F.R. §22.13(b) and § 22.18 (b)(2) and (3).

III. STATEMENTS OF FACTS AND CONCLUSIONS OF LAW



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7. The Cliff is a "person" pursuant Section 502(5) of the Act, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.
 8. The Cliff is the owner of a property located in Aguadilla, Puerto Rico, identified with the Commonwealth of Puerto Rico Tax Parcel 023-055-165-35 and located at approximate coordinates 18.448184 North and 67.159583 West (the "The Cliff Property").
 9. The Cliff Property has an area of approximately 9.5 acres.
 10. Pursuant to a lease agreement, The Cliff is the lessee of a property located in Aguadilla, Puerto Rico, identified with the Commonwealth of Puerto Rico Tax Parcel 023-065-165-20-901, and located at approximate coordinates 18.446184 North and 67.158335 West ("Leased Property").
 11. The Leased Property has an area of approximately 4.6 acres.
 12. The owner and landlord of the Leased Property is Aguadilla Pier Corp.
 13. The Cliff Property and Leased Property (collectively, the "Site") are adjoining to each other and share an access road from PR-4458 Road in Aguadilla, Puerto Rico.

14. The Cliff is the owner of an ongoing construction project at The Cliff Property known as "The Cliff Villas Hotel and Country Club Construction Project" (the "Project").
15. The construction activities at the The Cliff Property include, among others, earth movement activities (i.e., grubbing, clearing, grading and excavation) at 9.5 acres, and construction of 86 villas, a country club, two tennis courts, and internal roads with access roads from the Leased Property. Some of the Project's supporting construction activities are conducted in the Leased Property.
16. The Site has discharge points, which are "point sources" within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14), and 40 C.F.R. § 122.2.
17. The Site is a "point source" pursuant to Section 502(14) of the CWA, 33 U.S.C. § 1362(14), and 40 C.F.R. § 122.2.
18. Grupo Caribe is a "person" pursuant to Section 502(5) of the Act, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.
19. The Cliff hired Grupo Caribe as the general contractor to perform construction activities at the Project.
20. At all relevant times, The Cliff was the "owner" and "operator" of the Project, as defined in 40 C.F.R. § 122.2, and Appendix A of the 2017 and 2022 National Pollutant Discharge Elimination System ("NPDES") General Permit for Discharges from Construction Activities ("2017 CGP" and "2022 CGP").
21. At all relevant times, Grupo Caribe was the "operator" of the Project, as defined in 40 C.F.R. § 122.2, and Appendix A of the 2017 CGP and 2022 CGP.
22. At all relevant times, Respondents were engaged in construction activities at The Cliff Property, including earth movement activities, such as clearing, grading and excavation.
23. Grupo Caribe began construction activities at The Cliff Property on or about February 21, 2022.
24. At all relevant times, Respondents had control over the Project's construction plans and specifications, including the ability to make modifications to those plans and specifications.
25. At all relevant times, Respondents had day-to-day operational control over the construction activities being conducted at The Cliff Property.
26. At all relevant times, Respondents had control over the design, installation, maintenance and inspection of storm water run-on and runoff controls to minimize the discharge of pollutants in stormwater runoff from the Site into the Atlantic Ocean.

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27. At all relevant times during construction activity at the Site, Respondents discharged storm water runoff containing "pollutants," as defined in 40 C.F.R. § 122.2, from the Site into the Atlantic Ocean.
28. The Atlantic Ocean is a "water of the United States" pursuant to Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and 40 C.F.R. §§ 120.2 and 122.2.
29. Section 301(a) of the Act, 33 U.S.C. § 1311(a), provides in part that "[e]xcept as in compliance with [CWA § 402], the discharge of any pollutant by any person shall be unlawful."
30. Section 402(p) of the Act, 33 U.S.C. § 1342(p), authorizes the Administrator of EPA to issue permits under the NPDES for the discharge of pollutants subject to certain requirements of the Act and conditions which the Administrator determines are necessary.
31. Section 402(p)(2)(B) of the Act, 33 U.S.C. § 1342(p)(2)(B), authorizes the Administrator of EPA to issue a permit for storm water discharges associated with industrial activity.
32. The Administrator of EPA promulgated regulations at 40 C.F.R. §§ 122.26(a)(1)(ii) and 122.26(b)(14), which require that an NPDES permit shall be obtained for storm water discharges associated with industrial activity.
33. The EPA regulations at 40 C.F.R. § 122.26(b)(14)(x) included storm water discharges from construction activity.
-  34. Pursuant to 40 C.F.R. § 122.26(b)(14)(x), construction activity, including clearing, grading and excavation, is considered to be engaging in industrial activity.
35. Pursuant to 40 C.F.R. § 122.26(b)(14)(x), operators are required to obtain an NPDES permit for their storm water discharges from construction activity.
36. Respondents are subject to the provisions of the CWA, 33 U.S.C. § 1251, et seq., and the applicable NPDES permit application regulations found at 40 C.F.R. §§ 122, 124, and 350.
37. Respondents were required to apply for and obtain NPDES permit coverage for their discharges of pollutants from the Site into waters of the United States pursuant to Sections 402(a)(1) and 402(p) of the CWA, 33 U.S.C. §§ 1342(a)(1) and 1342(p), and the applicable NPDES permit application regulations found at 40 C.F.R. § 122.
38. Pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, on January 19, 2017, EPA issued the 2017 CGP, which became effective on February 16, 2017. The 2017 CGP was modified, and the modification became effective on June 27, 2019. The 2017 CGP expired on February 16, 2022. 82 Fed. Reg. 6,534 (January 19, 2017) and 84 Fed. Reg. 24,503 (May 28, 2019), respectively.

39. Pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, on January 18, 2022, EPA issued the 2022 CGP, which became effective on February 17, 2022, and replaced the 2017 CGP. 87 Fed. Reg. 3,522 (January 24, 2022).
40. The 2017 CGP and 2022 CGP established requirements and conditions, including among others, development of Storm Water Pollution Prevention Plans ("SWPPP"); submittal of Notice of Intent ("NOI") forms; design, installation, and maintenance of storm water controls (i.e., Best Management Practices"; performance and documentation of inspections, and implementation and documentation of corrective actions.
41. Respondents had a duty to comply with terms and conditions of the 2017 CGP and 2022 CGP pursuant to Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342, and 40 C.F.R. § 122.41(a).
42. Part 1.4 of the 2022 CGP requires all operators associated with a construction site seeking 2022 CGP coverage, who meet the eligibility requirements in Part 1.1 of the 2022 CGP, to submit to EPA a complete and accurate electronic Notice of Intent ("eNOI") prior to commencing construction activities.
43. Part 1.4.3 and Table 1 of the 2022 CGP requires operators of new site to submit an eNOI for 2022 CGP coverage at least fourteen (14) calendar days before commencing construction activities.
44. Part 2.1.3 of the 2022 CGP requires permittees to complete installation of stormwater controls by the time each phase of construction activities has begun.
45. Part 2.1 of the 2022 CGP requires operators to design, install, and maintain stormwater controls required in Parts 2.2 and 2.3 of the 2022 CGP, to minimize the discharge of pollutants in stormwater from construction activities.
46. Part 2.2 of the 2022 CGP requires operators to implement erosion and sediment controls in accordance with the requirements established in the 2022 CGP, to minimize the discharge of pollutants in stormwater from construction activities.
47. Part 2.3 of the 2022 CGP requires operators to implement pollution prevention controls in accordance with specific requirements to minimize the discharge of pollutants in stormwater and to prevent the discharge of pollutants from spilled or leaked materials from construction activities.
48. Part 5 of the 2022 CGP requires operators to take and document corrective actions to address any of the conditions identified therein at the construction project.
49. Part 7.1 of the 2022 CGP requires all operators associated with a construction site to develop a SWPPP consistent with the requirements in Part 7 prior to their submittal of the NOI. The SWPPP

must be kept up to date throughout coverage under this permit. Where there are multiple operators associated with the same site, they may develop a group SWPPP instead of multiple individual SWPPPs. Regardless of whether there is a group SWPPP or multiple individual SWPPPs, each operator is responsible for compliance with the permit's terms and conditions. In addition, all operators must ensure, either directly or through coordination with other operators, that their activities do not cause a violation or compromise any other operators' controls and/or any shared controls.

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50. On April 29, 2022, Mr. Carlos R. Román, president of The Cliff, signed and certified a SWPPP for the Project prepared on March 25, 2022.
51. On April 29, 2022, The Cliff submitted an eNOI for the Project under the 2022 CGP after construction had begun. EPA placed on "HOLD" the eNOI on May 4, 2022, at the request of the National Marine Fisheries Service ("NMFS") of the National Oceanographic and Atmospheric Administration ("NOAA").
52. On June 23, 2022, EPA granted The Cliff coverage under the 2022 CGP for the Project.
53. On May 5, 2022, EPA issued a Request for Information letter (the "RFI Letter") to The Cliff requesting information about the Project pursuant to the authority vested in the Administrator of EPA by Section 308(a) of the CWA, 33 U.S.C. § 1318(a).
54. On May 20, 2022, The Cliff submitted a partial response to the RFI Letter (the "1st Response"). EPA's preliminary review of the 1st Response revealed, among other information, that the Site Map included in the SWPPP developed for the Project identified five (5) stormwater discharge outfalls, and that Grupo Caribe had not developed a SWPPP for the Project.¹
55. On June 9, 2022, EPA performed an NPDES Stormwater Inspection (the "June 2022 Inspection") of the construction activities at The Cliff Property. EPA issued an Inspection Report, dated June 23, 2022, with findings related to the installation of erosion and sediment controls at the west perimeter of the Site; Grupo Caribe's failure to obtain NPDES permit coverage for the stormwater discharges associated with construction activity; and lack of soil stabilization and dust controls, among others.
56. On June 10, 2022, Grupo Caribe submitted to EPA a copy of weekly Inspection Reports prepared for the Project between February 28, 2022, and June 9, 2022.
57. On June 27, 2022, EPA issued an Administrative Compliance Order, Docket Number CWA-02-2015-3105 ("ACO"), against Respondents pursuant to Section 309(a) of the CWA, U.S.C. § 1319(a). The AOC required a Plan of Action to achieve compliance with Sections 301(a) and 402(p) of the CWA, its implementing regulations and the 2022 CGP, among other requirements.


¹ The SWPPP developed by The Cliff identifies Grupo Caribe as a sub-contractor.

58. Respondents were required to include in the Plan of Action ("POA") at a minimum, a detailed description of actions to be taken and an implementation schedule to address the modification and re-certification of the SWPPP developed for the Project; accurate modification of the eNOI that The Cliff submitted for the Project; Grupo Caribe's submittal of a complete and accurate eNOI for the Project; and specific tasks to be performed for the design and installation of stormwater controls in accordance with good engineering practices, including applicable design specifications, are among others. Respondents were required to implement the POA as quickly as possible, but no later than August 28, 2022.
59. On June 28, 2022, Respondents' representatives signed and certified an updated SWPPP for the Project.
60. On June 30, 2022, Grupo Caribe submitted an eNOI for the Project under the 2022 CGP after construction had begun. On July 14, 2022, EPA granted Grupo Caribe coverage under the 2022 CGP for the Project.
61. On July 1 and 19, 2022, Respondents' counsel notified Respondents' intention to confer with EPA.
62. On July 14, 2022, EPA granted Grupo Caribe coverage under the 2022 CGP for the Project, under tracking number PRR1000EP.
63. On July 28, 2022, Respondents submitted the POA to EPA.
64. On August 17 and 18, 2022, Grupo Caribe sent to EPA a copy of weekly Inspection Reports prepared for the Project between June 20, 2022, and August 16, 2022.
65. On August 18, 2022, Respondents and EPA conferred to discuss Respondents' actions to comply with the ACO and 2022 CGP. Per EPA's request, Respondents agreed to amend the POA, the latest Updated SWPPP and site plans and drawings.
66. On September 1, 2022, Respondents submitted an amended POA, a Monthly Progress Report, an amended SWPPP and an updated site plan and erosion and sediment control plan for the Project.
67. On February 23, 2023, an EPA official conducted an NPDES Stormwater Inspection at The Cliff Property (the "February 2023 Inspection") to determine The Cliff's and Grupo Caribe's compliance with the 2022 ACO and the 2022 CGP.
69. EPA issued an Inspection Report of the February 2023 Inspection, dated April 21, 2023, with findings related to keeping the SWPPP updated as required by Part 7 of the 2020 CGP; installation and/or maintenance of erosion and sediment controls; and conducting and documenting inspections and corrective actions, as required by Parts 4 and 5.1 respectively, of the 2022 CGP Permit, among others.

70. On February 23, 2023, EPA conducted an NPDES Stormwater Inspection (the "Aguadilla Pier Inspection") at the Leased Property to determine compliance with the CWA and 2022 CGP.
71. EPA issued an Inspection Report of the Aguadilla Pier Inspection, dated April 21, 2023, with findings that included, among others, the detection of five (5) outfalls at the Leased Property conveying stormwater runoff from the Project and Leased Property into the Atlantic Ocean; construction support activities at the Leased Property storage and lack of pollution prevention controls at construction support activities areas, as required by Part 2.3 of the 2022 CGP.
72. For the purposes of this CA/FO, Respondents allege that at the time of the February 2023 Inspection and Aguadilla Pier Inspection and until June 2023, interest groups were holding demonstrations near and/or at the Site.
73. On May 24, July 13, and August 23, 2023, Respondents and EPA conferred to discuss the 2022 ACO, the Inspection Reports and Respondents' proposed actions to address the findings of the February 2023 Inspection and the Aguadilla Pier Inspection.
74. On July 7, 2023, The Cliff and Aguadilla Pier Corp submitted their responses to the February 2023 Inspection Report and the Aguadilla Pier Inspection Report. The responses included information on certain corrective actions taken at the Project and areas where construction support activities are conducted at the Leased Property.
75. On September 13, 2023, EPA and Respondents entered in an Administrative Order on Consent, Docket Number CWA-02-2023-3108 ("AOC"), pursuant to Section 309(a) of the CWA. The AOC required Respondents to among other things, amend and submit the updated SWPPP and submit Change NOIs for the Project. The AOC also required Respondents to prepare and submit Monthly Progress Reports until termination of the AOC.
76. On November 28, 2023, Respondents submitted a monthly report alleging that all activities required under the AOC have been completed.

IV. ALLEGED VIOLATIONS

77. EPA alleges violation of Sections 301(a) and 402(p) of the CWA, 33 U.S.C. §§ 1311(a) and 1342(p), as follows:
- a. Claim 1 – EPA alleges that Respondents failed to timely apply for and obtain NPDES permit coverage for the Project. Respondents did not submit an individual NPDES permit application, as required by 40 C.F.R. § 122.21, nor did they timely file a complete and accurate eNOI seeking coverage under 2022 CGP.

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- 1) For The Cliff, EPA alleges the period of violation is between February 21, 2022 (14 days prior to first rain event at the Site equal or greater than 0.25 inches) and April 28, 2022 (date before the date when The Cliff eNOI was submitted).
 - 2) For Grupo Caribe, EPA alleges the period of violation is between February 21, 2022 (14 days prior to first rain event at the Site equal or greater than 0.25 inches) and June 28, 2022 (date before the date when Grupo Caribe eNOI was submitted).
- b. Claim 2 – EPA alleges that Respondents discharged storm water associated with industrial activities (construction activity) containing pollutants from the Project into a water of the United States without NPDES permit coverage.
- 1) Storm events of 0.25 inches or greater occurred at the Site on eight (8) instances during the period between February 21, 2022, and June 28, 2022.
 - 2) EPA alleges that, for the period between February 21, 2022, and June 22, 2022, the number of days The Cliff have discharged pollutants from the Site into a water of the United States without NPDES permit coverage was 2 days.
 - 3) EPA alleges that, for the period between February 21, 2022, and June 28, 2022, the number of days Grupo Caribe have discharged pollutants from the Site into a water of the United States without NPDES permit coverage was 8 days.
- c. Claim 3 – EPA alleges EPA alleges Respondents failed to modify the SWPPP for the Project, as required in Part 7.4.1 of the 2022 CGP and paragraph 86 of the ACO.
- 1) EPA alleges a period of violation between July 29, 2022, and May 24, 2023.
- d. Claim 4 – EPA alleges that Respondents failed to install and maintain erosion and sediment controls at the Site, as required in Part 2.2 of the 2022 CGP and paragraphs 86 and 88 of the AOC.
- 1) EPA alleges a period of violation between February 23 and July 13, 2023.
- e. Claim 5 – EPA alleges that EPA alleges Respondents failed to conduct inspections and to document inspections at the Project, as required in Parts 4.2 and 4.7 of the 2022 CGP.
- 1) EPA alleges The Cliff did not conduct inspections and document inspections for the period between August 22, 2022, and February 23, 2023.
 - 2) EPA alleges Grupo Caribe did not conduct inspections and document inspections between November 14, 2022, and February 23, 2023.

3) EPA alleges Respondents failed to conduct two inspections in November 2022, four inspections in December 2022, two inspections in January 2023, and two inspections in February 2023.

78. Based upon the statements of facts and conclusions of law set forth above, EPA has jurisdiction over the subject matter of this action, pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g), and over the Respondents.

V. CONSENT AGREEMENT

79. Paragraphs 1 through 78 are re-alleged and incorporated herein by reference.

80. EPA and Respondents have negotiated this CA/FO in good faith, agreeing that it is fair, reasonable, and consistent with the goals of the CWA.

81. EPA and Respondents agree, by entering into this CA/FO, that settlement of the allegations contained herein upon the terms set forth in this CA/FO is an appropriate means of resolving this case without further litigation.

82. Based upon the foregoing and pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g), and the CROP, it is hereby agreed by and between EPA and Respondents, and Respondents voluntarily and knowingly agree as follows:

VI. TERMS OF SETTLEMENT

83. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondents:


- a. admit the jurisdictional allegations of this CA/FO;
- b. neither admit nor deny the factual allegations and alleged violations contained herein;
- c. waive any right to contest the allegations, a judicial or administrative hearing, and to appeal this CA/FO;
- d. waive any rights or defenses that Respondents have or may have for this matter to be resolved in federal court, including but not limited to any right to a jury trial, and waives any right to challenge the lawfulness of the final order accompanying the CA/FO; and
- e. shall pay a civil penalty in the amount of fifty thousand (\$50,000), as stated in Section VII, below.

VII. PAYMENT OF CIVIL PENALTY

84. The Respondents hereby agree to settle this action by paying a civil penalty of fifty thousand dollars (\$50,000) ("Assessed Penalty"). Based on Respondent's documented inability to pay claim, and in accordance applicable laws, EPA conducted an analysis of Respondent's financial documentation (i.e. signed, certified statement submitted by Respondents, dated September 30, 2024, in which Respondents certify its inability to pay the full civil penalty within thirty (30) days of the Effective Date without experiencing an undue financial hardship) and determined that the Assessed Penalty is an appropriate amount to settle this action, which Respondent consents to pay as follows:

a. The Assessed Penalty will be paid in two equal installments, in order to complete payment of the entire Assessed Penalty and interest, which is assessed at the paragraph 87.e. Including the Assessed Penalty and interest, the total amount that will be paid upon completion of all payments will be fifty thousand five hundred (\$50,500). The first payment is due within thirty (30) days after the date the Final Order ratifying this Agreement is filed with the "Regional Hearing Clerk" ("Filing Date"). Respondent's subsequent payment shall thereafter be due in 90 days from said Filing Date.

b. Respondent shall make payments in accordance with the following schedule:



| Payment | Payment shall be made no later than | Principal Amount | Interest Amount | Total Payment Amount |
|---------|-------------------------------------|------------------|-----------------|----------------------|
| 1 | 30 days after the Filing Date. | \$25,000.00 | \$0.00 | \$25,000.00 |
| 2 | 90 days after the Filing Date. | \$25,000.00 | \$500.00 | \$25,500.00 |

c. Notwithstanding Respondents' agreement to pay the Assessed Penalty in accordance with the installment schedule set forth above, Respondent may pay the entire Assessed Penalty of \$50,000 within thirty (30) days of the Filing Date and, thereby, avoid the payment of interest pursuant to 40 C.F.R. § 13.11(a). In addition, Respondent may, at any time after commencement of payments under the installment schedule, elect to pay the entire principal balance remaining, together with any interest and other charges accrued up to the date of such full payment.

85. Respondents shall pay the Assessed Penalty and any interest, fees, and other charges due using any method, or combination of appropriate methods, as provided on the EPA website: <https://www.epa.gov/financial/makepayment>. For additional instructions see: <https://www.epa.gov/financial/additional-instructions-making-payments-epa>.

86. When making a payment, Respondents shall:

a. Identify every payment with Respondents' name and the docket number of this Agreement

- a. (In Re: The Cliff Corp. and Grupo Caribe, LLC, CWA-02-2025-3351).
- b. Concurrently with any payment or within 24 hours of any payment, Respondents shall serve proof of such payment to the following person(s):

Karen Maples
Regional Hearing Clerk
maples.karen@epa.gov

José A. Rivera
Team Leader
Clean Water Act Team
Multimedia Permits and Compliance Branch
Caribbean Environmental Protection Division
rivera.jose@epa.gov

and

U.S. Environmental Protection Agency
Cincinnati Finance Center
CINWD_AcctsReceivable@epa.gov

“Proof of payment” means, as applicable, a copy of the check, confirmation of credit card or debit card payment, or confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with the appropriate docket number and Respondents’ names.

70. Interest, Charges, and Penalties on Late Payments. Pursuant to 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondents fail to make any payment in accordance with the schedule set forth above and the terms of this Agreement, the entire unpaid balance of the Assessed Penalty and all accrued interest shall become immediately due and owing, and EPA is authorized to recover the following amounts.

- a. Interest. Interest begins to accrue from the Filing Date. If the Assessed Penalty is paid in full within thirty (30) days, interest accrued is waived. If the Assessed Penalty is not paid in full within thirty (30) days, interest will continue to accrue until any unpaid portion of the Assessed Penalty as well as any interest, penalties, and other charges are paid in full. To protect the interests of the United States the rate of interest is set at the Internal Revenue Service standard underpayment rate, any lower rate would fail to provide Respondents adequate incentive for timely payment.

- b. Handling Charges. Respondents will be assessed monthly a charge to cover EPA's costs of processing and handling overdue debts. If Respondents fail to pay the Assessed Penalty in accordance with this Agreement, EPA will assess a charge to cover the costs of handling any unpaid amounts for the first thirty (30) day period after the Filing Date. Additional handling charges will be assessed every thirty (30) days, or any portion thereof, until the unpaid portion of the Assessed Penalty as well as any accrued interest, penalties, and other charges are paid in full.
- c. Late Payment Penalty. A late payment penalty of six percent (6%) per annum, will be assessed monthly on all debts, including any unpaid portion of the Assessed Penalty, interest, penalties, and other charges, that remain delinquent more than ninety (90) days. Any such amounts will accrue from the Filing Date.

88. In addition to the amounts described in the prior Paragraph, if Respondents fail to timely pay any portion of the Assessed Penalty, interest, or other charges and penalties per this Agreement, EPA may take additional actions. Such actions EPA may take include, but are not limited to, the following.

- a. Refer the debt to a credit reporting agency or a collection agency, per 40 C.F.R. §§ 13.13 and 13.14.
- b. Collect the debt by administrative offset (i.e., the withholding of money payable by the United States government to, or held by the United States government for, a person to satisfy the debt the person owes the United States government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, per 40 C.F.R. Part 13, Subparts C and H.
- c. Suspend or revoke Respondents' licenses or other privileges or suspend or disqualify Respondents from doing business with EPA or engaging in programs EPA sponsors or funds, per 40 C.F.R. § 13.17.
- d. Refer this matter to the United States Department of Justice for litigation and collection, per 40 C.F.R. § 13.33.



89. Allocation of Payments. Pursuant to 31 C.F.R. § 901.9(f) and 40 C.F.R. § 13.11(d), a partial payment of debt will be applied first to outstanding handling charges, second to late penalty charges, third to accrued interest, and last to the principal that is the outstanding Assessed Penalty amount.

90. Tax Treatment of Penalties. Penalties, interest, and other charges paid pursuant to this Agreement shall not be deductible for purposes of federal taxes.

VIII. GENERAL PROVISIONS

91. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, EPA is required to send to the Internal Revenue Service ("IRS") annually, a completed IRS Form 1098-F ("Fines, Penalties, and Other Amounts") with respect to any court order or settlement agreement (including administrative settlements), that requires a payor to pay an aggregate amount that EPA reasonably believes will be equal to, or in excess of, \$50,000 for the payor's violation of any law or the investigation or inquiry into the payor's potential violation of any law, including amounts paid for "restitution or remediation of property" or to come "into compliance with a law." EPA is further required to furnish a written statement, which provides the same information provided to the IRS, to each payor (i.e., a copy of IRS Form 1098-F). Failure to comply with providing IRS Form W-9 or Tax Identification Number ("TIN"), as described below, may subject Respondents to a penalty, per 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and 26 C.F.R. § 301.6723-1. In order to provide EPA with sufficient information to enable it to fulfill these obligations, EPA herein requires, and Respondents herein agree, that:
- a. Respondents shall complete an IRS Form W-9 ("Request for Taxpayer Identification Number and Certification"), which is available at <https://www.irs.gov/pub/irs-pdf/fw9.pdf>;
 - b. Respondents shall therein certify that their completed IRS Form W-9 includes Respondents correct TIN or that Respondents have applied and is waiting for issuance of a TIN;
 - c. Respondents shall email their completed Form W-9 to EPA's Cincinnati Finance Center at wise.milton@epa.gov, within thirty (30) calendar days after the Final Order ratifying this Agreement is filed with the Regional Hearing Clerk, and EPA recommends encrypting IRS Form W-9 email correspondence; and
 - d. In the event that Respondents certified in their completed IRS Form W-9 that they have applied for a TIN and that TIN has not been issued to Respondents within thirty (30) days after the Effective Date, then Respondents, using the same email address identified in the preceding sub-paragraph, shall further:
 - 1. notify EPA's Cincinnati Finance Center of this fact, via email, within thirty (30) days after the Effective Date of the Final Order located at the end of this CAFO; and
 - 2. provide EPA's Cincinnati Finance Center with Respondents TIN, via email, within five (5) days of Respondents' issuance and receipt of the TIN.
92. The provisions of this CA/FO shall be binding upon Respondents, their officers, directors, agents, servants, authorized representatives and successors or assigns, including but not limited to, subsequent purchasers. No transfer of ownership or operation shall relieve Respondents of their obligation to comply with this CA/FO.
93. By signing this Consent Agreement, Respondents waive any rights or defenses that Respondents

have or may have for this matter to be resolved in federal court, including but not limited to any right to a jury trial, and waive any right to challenge the lawfulness of the final order accompanying the consent agreement.

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94. Respondents waive any right it may have pursuant to 40 C.F.R. § 22.8 to be present during discussions with or to be served with and to reply to any memorandum or communication addressed to the Director or the Regional Administrator where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the accompanying Final Order.
95. Nothing in this agreement shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondents' violation of this agreement or of the statutes and regulations upon which this agreement is based, or for Respondents' violation of any applicable provision of law.
96. This CA/FO shall not relieve Respondents of their obligation to comply with all applicable provisions of the CWA and the regulations implementing it, nor shall it be construed as the issuance of a permit or a ruling on, or determination of, any issues related to any federal, state or local law, regulation or permit.
97. Full payment of the civil penalty shall only resolve Respondents' liability for federal civil penalties for the violations and facts alleged herein. Full payment of this penalty shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.
98. Each undersigned representative of the parties to this CA/FO certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this CA/FO and to execute and legally bind that party to it.
99. Each party shall bear its own costs and attorney's fees in this matter.
100. Pursuant to Part IX of this Consent Agreement, the Effective Date of the Final Order shall be the date of filing with the Regional Hearing Clerk, U.S. EPA Region 2, New York, New York.

FOR RESPONDENT THE CLIFF CORP.:

BY:



JUAN LÓPEZ VICENTE

Shareholder/ Director

The Cliff Corp.

P. O. Box 116

Aguadilla, Puerto Rico 00605

DATE:

10/1/2024

FOR RESPONDENT GRUPO CARIBE, LLC:

BY:



JUAN LÓPEZ VICENTE

Shareholder/ Director

Grupo Caribe, LLC

P. O. Box 367197

San Juan, Puerto Rico 00936-7197

DATE:

10/1/2024

FOR THE COMPLAINANT UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

BY: *Carmen R. Guerrero Perez*

DATE: December 19, 2024

CARMEN R. GUERRERO PÉREZ

Director

Caribbean Environmental Protection Division

United States Environmental Protection Agency, Region 2

City View Plaza II

48 CARR 165 STE 7000

Guaynabo, PR 00968-8073


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IX. FINAL ORDER

The Director of the Caribbean Environmental Protection Division of the United States Environmental Protection Agency, Region 2, ratifies the foregoing Consent Agreement. The Consent Agreement entered by the parties is hereby approved, incorporated herein, and issued as an Order. The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, United States Environmental Protection Agency, Region 2.

Carmen R. Guerrero Perez

CARMEN R. GUERRERO PÉREZ

Director

Caribbean Environmental Protection Division

United States Environmental Protection Agency, Region 2

City View Plaza II

48 CARR 165 STE 7000

Guaynabo, PR 00968-8073

DATE:

December 19, 2024

CRG