

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION II

IN THE MATTER OF:

Municipality of Mayagüez

RESPONDENT

PREHEARING EXCHANGE

DOCKET NUMBER

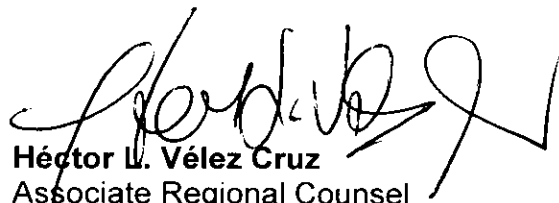
CWA-02-2011-3453

U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION II
PREHEARING EXCHANGE
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COMPLAINANT'S INITIAL PREHEARING EXCHANGE

Pursuant to the request made by Honorable Susan L. Biro, Chief Administrative Law Judge, on the Prehearing Order dated July 17, 2012, the Complainant hereby files its Initial Prehearing Exchange for the above captioned matter.

Respectfully submitted, in San Juan, Puerto Rico this 25th day of October of 2012.



Héctor L. Vélez Cruz
Associate Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
Centro Europa Building, Suite 417
1492 Ponce de León Ave.
San Juan, PR 00907-4127
phone: (787) 977-5850
facsimile: (787) 729-7748
velez.hector@epa.gov

1. Pursuant to Section 22.19(a) of the Rules, each party shall file with the Regional hearing Clerk and shall serve on the opposing party and on the Presiding Judge:
 - a. The names of any expert and other witnesses intended to be called at hearing, identifying each as a fact witness or expert witness, with a brief narrative summary of their expected testimony, and a curriculum vitae or resume for each identified expert witness, or a statement that no witnesses will be called;

Complainant expects to call the following persons as witnesses at the hearing:

- i. **Yolianne Maclay**
Multimedia Permit and Compliance Branch
U.S. Environmental Protection Agency
Caribbean Environmental Protection Division
Storm Water Program Specialist

Mrs. Yolianne Maclay has been working with EPA, Region 2, CEPD since February 17, 2008, as an Environmental Engineer handling NPDES inspections in the Multimedia Permit and Compliance Branch. Mrs. Maclay holds a B.S. in Environmental Engineering from the Polytechnic University of Puerto Rico where she graduated in 2004. Mrs. Maclay has worked in ETAG Corporation and URS Corporation as an environmental consultant.

Mrs. Maclay will testify about the NPDES storm water permit application regulations, the NPDES General Permit for Discharges from Small Municipal Separate Storm Sewer Systems (MS4) requirements and how it applies to Respondent's facility. She will also testify about the: factual and legal aspects of this case, the violations of the Clean Water Act (the "Act" or "CWA") and the pertinent regulations; the calculation of the assessed penalty included in the complaint (which she performed), and the reasoning behind the calculation of said assessed penalty and the appropriateness of the penalty.

Mrs. Maclay will also testify about the: Administrative Compliance Order (ACO), Docket No. CWA-02-2008-3120, dated February 11, 2008, to Respondent, ordering Respondent to comply with the storm water discharge permit regulations.

- ii. **Sergio Bosques**
Environmental Engineer
Regional Storm Water Coordinator
Environmental Management Branch
Caribbean Environmental Protection Division
U.S. Environmental Protection Agency, Region 2
San Juan, Puerto Rico

Mr. Sergio Bosques has been working with the EPA since July 14, 1991, where he started as an Environmental Engineer in the Water Permits and Compliance Branch, Water Management Division, New York, Region 2. Mr. Bosques is currently an Environmental Engineer at the EPA Region 2 Caribbean Environmental Protection Division, Multimedia Permit and Compliance Branch, where he started on May 10, 1998. Mr. Bosques holds a degree in B.S. in Chemical Engineering from the University of Puerto Rico where he graduated in 1991.

Mr. Bosques may testify as to the numerous NPDES Storm water seminars he has conducted in Puerto Rico over the years, and will discuss the NPDES General Permit for Discharges from Small MS4s for systems located in the Commonwealth of Puerto Rico (the "Small MS4 Permit"), dated November 6, 2006, and how it applies to Respondent's facility.

Complainant reserves the right, and nothing herein is intended or is to be construed to prejudice or waive any such right, to call or not to call any of the aforementioned potential witnesses, and to expand or otherwise modify the scope, extent and/or areas of the testimony of any of the above-named potential witnesses, where appropriate. In addition, Complainant reserves the right to list and to call additional potential hearing witnesses, including expert witnesses, to answer and/or rebut evidence (testimonial or documentary) listed by Respondent in its prehearing exchange or on matters arising as a consequence of such evidence.

- b. **Copies of all documents and exhibits intended to be introduced into evidence, identified as "Complainant's" or "Respondent's" exhibit, as appropriate, and numbered with Arabic numerals:**

- i. ***Complainant's Exhibit 1 - Administrative Complaint***, Docket No. CWA-02-2010-3453, dated December 28, 2010, with letters addressed to Hon. José G. Rodríguez, Mayor of the Municipality of Mayagüez, dated December 28, 2010, ***Complainant's Exhibit 1a.***

- ii. ***Complainant's Exhibit 2*** - Letter addressed to Roberto Ayala, Director of the Water Quality Bureau, PR Environmental Quality Board (EQB), dated December 28, 2010.
- iii. ***Complainant's Exhibit 3*** – Respondent's Answer to the Administrative Complaint and Request for Hearing, dated May 23, 2011.
- iv. ***Complainant's Exhibit 4*** – Penalty Memorandum dated December 21, 2010, prepared by Mrs. Yolianne Maclay.
- v. ***Complainant's Exhibit 5*** - EPA February 11, 2008 letter addressed to Hon. José G. Rodríguez, Mayor of the Municipality of Mayagüez, notifying violations of the CWA, with Certified Mail Receipt, and with the Administrative Compliance Order, Docket Number CWA-02-2008-3120, ***Complainant's Exhibit 5a.***
- vi. ***Complainant's Exhibit 6*** - EPA February 11, 2009 letter, addressed to Hon. José G. Rodríguez, Mayor of the Municipality of Mayagüez, acknowledging receipt of the Municipality's Notice of Intent (NOI) form under the National Pollutant Discharge Elimination System (NPDES) General Permit for Stormwater Discharges from Small Municipal Separate Storm Sewer Systems (MS4s) within an Urbanized Area, and assigning NPDES number PRR040043 for its NOI form, along with certificates of service and return receipts.
- vii. ***Complainant's Exhibit 7.*** - EPA January 8, 2010 letter addressed to Hon. José G. Rodríguez, Mayor of the Municipality of Mayagüez, informing the Municipality's non-compliance status with the NPDES General Permit for Discharges from Small MS4s for systems located in the Commonwealth of Puerto Rico (the "Small MS4 Permit") and the Administrative Compliance Order, Docket Number CWA-02-2008-3120, along with certificates of service and return receipts.

- viii. ***Complainant's Exhibit 8*** - - Municipality of Mayagüez's September 3, 2010 letter addressed to Mr. Carl A. Soderberg, former Director of the EPA Region 2 Caribbean Environmental Division, informing the Municipality was engaged in hosting the XXI Central American and Caribbean Games and devoted most of its personnel assigned to address the matters of concern in the Administrative Compliance Order, Docket Number CWA-02-2008-3120, therefore, they had been unable to timely prepare and submit the Storm Water Management Plan as required by the order.
- ix. ***Complainant's Exhibit 9*** - NPDES General Permit for Discharges from Small MS4s for systems located in the Commonwealth of Puerto Rico (the "Small MS4 Permit"), dated November 6, 2006.
- x. ***Complainant's Exhibit 10*** - Municipality of Mayagüez's January 12, 2011 letter addressed to EPA Region 2's Regional Hearing Clerk, providing details regarding the status of the development of the Storm Water Management Plan.

Complainant reserves the right, and nothing herein is intended or should be construed to prejudice such right, to supplement or add, subject to notice to the Court and Respondent, documentary evidence to Complainant's prehearing exchange submission in order to respond to and/or rebut, or otherwise to address an issue arising as a consequence of, evidence Respondent submits in its prehearing exchange or otherwise to update this prehearing exchange.

- c. **statement expressing its view as to the place for the hearing and the estimated amount of time needed to present its direct case. See Sections 22.21(d) and 22.19(d) of the Rules of Practice. Also, state whether translation services are necessary in regard to the testimony of any witness(es), and, if so, state the language to be translated.**

Pursuant to 40 C.F.R. §§ 22.21(d) and 22.19(d), the hearing should be held in the county where the Respondent conducts business which the hearing concerns, in the city in which the relevant Environmental Protection Agency Regional office is located, or in Washington, D.C. Complainant requests that the hearing be held in San Juan, where the relevant Environmental Protection Agency Regional office is located. This location is convenient for both parties and witnesses than the Municipality where the events that gave rise to this action occurred. The Complainant can assist by providing the Regional

Hearing Clerk with information on facilities which may be available for purposes of holding the hearing. Complainant estimates it will need one day to present its direct case.

2. In addition, Complainant shall submit the following as part of its Initial Prehearing Exchange:

a. A brief narrative statement, and a copy, of any documents in support, explaining in detail the factual and/or legal bases for the allegations in Paragraphs 3, 21, 22, 27, and 29-31 of the Complaint, to the extent Respondent denied those allegations in its Answer:

See *Complainant's Exhibits 1, 3, 4, 5, 5a., and 7.*

b. A copy of all documents referenced in Paragraphs 20 and 22-28 of the Complaint;

See *Complainant's Exhibits 5, 5a., 6, 7 and 8.*

c. A copy of any reports, notes, or other pertinent documentation produced as a result of the review referred to in Paragraph 22 of the Complaint;

See *Complainant's Exhibits 5 and 5a.*

d. A copy of the General Permit referred to throughout the Complaint; and

See *Complainant's Exhibit 9.*

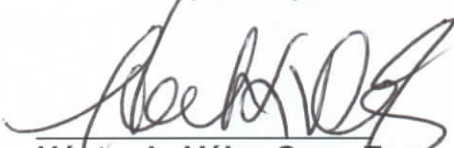
e. All factual information and supporting documentation relevant to the assessment of a penalty, and a copy, or a statement of the internet address (URL), of any policy or guidance intended to be relied on by Complainant in calculating a proposed penalty.

The proposed civil penalty for this case has been determined 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 into account the nature, circumstances, extent and gravity of the violations, and Respondent's prior history of violations, degree of culpability, economic benefit or savings accruing to Respondent by virtue of the violations, and Respondent's ability to pay the proposed penalty. EPA has also taken into account the

particular facts and circumstances of this case. The particular facts and circumstances of this case are based on a series of compliance evaluations performed on EPA records and communications between EPA and Respondent.

The Complainant proposes, subject to receipt and evaluation of further relevant information from the Respondent, that the Respondent is assessed a civil penalty in the amount of \$95,000.00 for the violations alleged in the Complaint. A penalty memorandum and narrative explanation supporting the penalty figure for the violations cited in the Complaint is included in **Complainant's Exhibit 4**.

Respectfully submitted. In San Juan, Puerto Rico, October 25, 2012.



Héctor L. Vélez Cruz, Esq.

Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 2
Office of Regional Counsel – Caribbean Team
Centro Europa Bldg., Suite 417
1492 Ponce de León Ave.
San Juan, PR 00907-4127
phone: (787) 977-5850
facsimile: (787) 729-7748
e-mail: velez.hector@epa.gov

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION II

IN THE MATTER OF:

Municipality of Mayagüez

RESPONDENT

PREHEARING EXCHANGE

DOCKET NUMBER

CWA-02-2011-3453

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing **Prehearing Exchange**, dated October 25, 2012, and bearing the above-referenced docket number, in the following manner to the respective addressees below:

Original and copy by facsimile, **Overnight Mail** to:

Karen Maples
Regional Hearing Clerk
Region II
U.S. Environmental Protection Agency
290 Broadway, 16th Floor
New York, NY 10007-1866
Fax (212) 637-3202.

Copy by email, **Certified Mail/Return Receipt** to:

Attorney for Respondent, Municipality of Mayagüez
Luis J. Sánchez Mercado, Esq.
Sánchez Mercado Law Offices, P.S.C.
P. O. Box 6551
Mayagüez, P.R. 00681-6551
Tel: (939) 717-9886 / (787) 374-2976
Fax: (866) 395-8215
sanchezmercadolaw@gmail.com

Copy by facsimile, **Overnight Mail** to:

Chief Administrative Law Judge
Honorable Susan L. Biro
Office of Administrative Law Judges
U.S. Environmental Protection Agency
1099 14th Street, N.W., Suite 350
Washington, D.C. 20005
Fax (202) 565-0044.

Date

10/25/2012

Signature





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

In the Matter of:

MUNICIPALITY OF MAYAGÜEZ
P. O. Box 447
Mayagüez, Puerto Rico 00681

RESPONDENT

Proceeding pursuant to Section 309(g)(2)(B) of
the Clean Water Act, 33 U.S.C. § 1319(g)

**PROCEEDING TO ASSESS A
CLASS II CIVIL PENALTY**

**DOCKET NUMBER
CWA-02-2011-3453**

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

I. STATUTORY PROVISIONS AND AUTHORITY

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 United States Environmental Protection Agency ("EPA") by Section 309(g)(2)(B) of the Clean Water Act (the "Act" or "CWA"), 33 U.S.C. § 1319(g)(2)(B). The Administrator of EPA has delegated this authority to the Regional Administrator of EPA, Region 2, who in turn has delegated it to the Director, Caribbean Environmental Protection Division of EPA, Region 2 ("Complainant").
2. Section 309(g)(1)(A) of the Act, 33 U.S.C. § 1319(g)(1)(A), provides in part that when the Administrator of EPA finds that any person has violated any permit condition or limitation implementing any of such sections in a permit issued under Section 402 of the Act, 33 U.S.C. § 1342, the Administrator of EPA, may, after consultation with the State in which the violation occurs, assess a class I civil penalty or a class II civil penalty.
3. Pursuant to Section 309(g)(2)(A) 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 the Municipality of Mayagüez (Respondent), as a result of Complainant's determination that the Respondent is in violation of Sections 301 and 402 of the Act, 33 U.S.C. §§ 1311 and 1342, respectively, for its failure to prepare, implement and enforce a Storm Water Management Program (SWMP) designed to reduce the discharge of pollutants from its small municipal separate storm sewer system and its failure to submit to EPA a hard and electronic copy of the SWMP pursuant to Part 4 of the National Pollutant Discharge Elimination System General Permit for Discharges from Small Municipal Separate Storm Sewer System for the Commonwealth of Puerto Rico.

4. Section 402 of the Act, 33 U.S.C. § 1342, defines the National Pollutant Discharge Elimination System (NPDES) as the national program for, among other things, issuing and enforcing permits.
5. Section 402 of the Act, 33 U.S.C. § 1342, authorizes the Administrator of EPA to issue a NPDES permit for the discharge of any pollutant, or combination of pollutants, subject to certain requirements of the Act and such conditions as the Administrator determines are necessary.
6. The Act and its implementing regulations contain the following definitions: The Act and its implementing regulations and applicable NPDES permit contain the following definitions:
 - a. "Municipality" as including, among others, a city, town, borough, county, parish, district, association, or other public body created by or pursuant to State law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or a designated and approved management agency under Section 208 of the Act. Section 502(4) of the Act, 33 U.S.C. § 1362(4), and 40 CFR § 122.2;
 - b. "Person" as an individual, corporation, partnership or association. Section 502(5) of the Act, 33 U.S.C. § 1362(5), and 40 CFR § 122.2;
 - c. "Pollutant" as including, among others, solid waste, dredged spoil, rock, sand, cellar dirt, sewage, sewage sludge and industrial, municipal and agricultural waste discharged into water. Section 502(6) of the Act, 33 U.S.C. § 1362(6), and 40 CFR § 122.2;
 - d. "Navigable waters" as the waters of the United States, including the territorial seas. Section 502(7) of the Act, 33 U.S.C. § 1362(7); "Waters of the United States" means all waters such as lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, among others, and their tributaries. 40 CFR § 122.2;

- e. "Discharge of a pollutant" as any addition of any pollutant to navigable waters and/or waters of the United States from any point source. Section 502(12) of the Act, 33 U.S.C. § 1362(12), and 40 CFR § 122.2;
- f. "Point source" as any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. Section 502(14) of the Act, 33 U.S.C. § 1362(14), and 40 CFR § 122.2;
- g. "Facility," as any NPDES point source or any other facility or activity (including land or appurtenances thereto) that is subject to the regulations of the NPDES program. 40 CFR § 122.2;
- h. "Owner" or "operator" as the owner or operator of any facility or activity subject to regulation under the NPDES program. 40 CFR § 122.2; and
- i. "Municipal separate storm sewer" is defined by 40 CFR §§ 122.2 and 122.26(b)(8) as a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains):
 - i. Owned or operated by a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States;
 - ii. Designed or used for collecting or conveying storm water;
 - iii. Which is not a combined sewer; and
 - iv. Which is not part of a Publicly Owned Treatment Works (POTW) as defined at 40 CFR 122.2.
- j. "Small municipal separate storm sewer system" or "Small MS4" means all separate storm sewers, pursuant to 40 CFR § 122.26(b)(16), that are:
 - i. Owned or operated by the United States, a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over

disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under Section 208 of the CWA that discharges to waters of the United States.

- ii. Not defined as "large" or "medium" municipal separate storm sewers pursuant to paragraphs 40 CFR §§ 122.26(b)(4) and (b)(7), or designated under paragraph 40 CFR § 122.26(a)(1)(v).
 - iii. This term includes systems similar to separate storm sewer systems in municipalities, such as systems at military bases, large hospital or prison complexes, and highways and other thoroughfares. The term does not include separate storm sewers in very discrete areas, such as individual buildings.
7. Section 402(p)(6) of the Act, 33 U.S.C. § 1342(p)(6), authorized EPA to issue storm water regulations and permits to Small MS4s.
 8. On December 8, 1999, EPA issued the NPDES Regulations for Revision of the Water Pollution Control Program Addressing Storm Water Discharges, Phase II. 64 Fed. Reg. 68,722 (Dec. 8, 1999), the NPDES storm water permit regulations for Small MS4s.
 9. On November 6, 2006, EPA issued and published the NPDES General Permit for Discharges from Small MS4s for systems located in the Commonwealth of Puerto Rico (the "Small MS4 Permit").
 10. The Small MS4 Permit became effective on November 6, 2006, and will expire on November 6, 2011.
 11. Section 2 of the Small MS4 Permit establishes application requirements, through a Notice of Intent (NOI) filing process, and application deadlines.
 12. Regulated Small MS4s in Puerto Rico, who intended to obtain coverage under the Small MS4 Permit, should have submitted the NOI form on or before February 5, 2007.
 13. The Small MS4 Permit also established that permittees must submit to EPA a hard and electronic copy of a Storm Water Management Program (SWMP) by August 6, 2007.

II. Jurisdictional Findings

14. Respondent is a municipality pursuant to Section 502(4) of the CWA, 33 U.S.C. § 1362(4).
15. Respondent owns and operates a Small MS4 in an urbanized area of town of Mayagüez.
16. Respondent's Small MS4 is a point source within the meaning of Section 502(14) of the Act, 33 U.S.C. § 1362(14).
17. Respondent discharges storm water from its Small MS4 into the "Rio Yaguez" and the "Bahía de Mayagüez".
18. The "Rio Yaguez" and "Bahía de Mayagüez" are waters of the United States pursuant to Section 502(7) of the Act, 33 U.S.C. § 1362(7).

III. Findings of Violations

19. Complainant re-alleges and incorporates by reference paragraphs 1-18 above.
20. Pursuant to Section 308 of the Act, on July 06, 2007, EPA issued a request for information letter to Respondent requesting evidence demonstrating it had filed for an individual NPDES permit or a NOI form seeking coverage under the Small MS4 Permit for operation of its Small MS4.
21. EPA never received an answer to the July 6, 2007 request for information letter from Respondent.
22. On February 11, 2008, an EPA official conducted a review of EPA's NPDES files (EPA Review) in order to determine if Respondent had filed for NPDES permit coverage. The EPA Review revealed that as of such date Respondent had not filed a NOI form seeking coverage under the Small MS4 Permit nor had it filed an individual NPDES permit to obtain authorization to discharge storm water from its Small MS4 into waters of the United States.
23. Based on the findings of the EPA Review, Administrative Compliance Order CWA-02-2008-3120 ("Compliance Order" or "Order"), dated February 11, 2008, was issued against Respondent to address the violations mentioned above. The Compliance Order incorporated findings of violations, and ordered Respondent to:
 - a. prepare and file a NOI form seeking coverage under the Small MS4 Permit within ten (10) days from receipt of the Compliance Order;

- b. prepare, implement and enforce a SWMP to reduce the discharge of pollutants from its Small MS4 to protect water quality and to submit to EPA a copy of the SWMP within ninety (95) days from receipt of the Compliance Order; and
 - c. prepare a cost report detailing the amount of time and costs associated with the filing of the NOI form, the development and implementation of the SWMP (the "Compliance Cost Report") within one hundred twenty (120) days from receipt of the Compliance Order; among other.
24. Respondent received the Compliance Order on February 13, 2008, therefore, it had to: file a NOI form seeking coverage under the Small MS4 Permit by February 23, 2008; prepare, implement and enforce a SWMP and to submit a hard and electronic copy of it to EPA by May 18, 2008; and submit to EPA the Compliance Cost Report by June 12, 2008.
25. In a letter dated December 16, 2008, Respondent filed the NOI form seeking coverage under the Small MS4 Permit. EPA received this letter on December 17, 2008.
26. EPA sent a letter to Respondent, dated February 11, 2009, acknowledging receipt of Respondent's NOI form. Respondent was issued with Permit Number PRR040043. In the letter EPA also reminded Respondent that pursuant to the Compliance Order Respondent should have prepared, implemented and enforced the SWMP and also submitted a hard and electronic copy of it to EPA by the May 18, 2008 deadline.
27. In a letter dated January 8, 2010, EPA notified Respondent that it continued to be in violation of the Act, Small MS4 Permit and Compliance Order. EPA ordered Respondent to immediately submit the SWMP and the Cost Report. Respondent received the letter on January 12, 2010.
28. In a letter dated September 3, 2010, Respondent informed EPA that it would have the SWMP within ninety (90) days. However, the SWMP has not been received to date.
29. As of the date of issuance of this Complaint, Respondent continues to be in violation of the Act, Small MS4 Permit and the Compliance Order for the violations cited above.
30. Based on the Findings in Paragraph 19-29 above, Respondent violated Sections 301 and 402 of the Act, 33 U.S.C. §§ 1311 and 1342, by failing to prepare, implement and enforce a SWMP and submit a copy of the plan to EPA by the May 18, 2008 deadline.
31. The period of violations alleged in this Complaint is from May 18, 2008 (deadline to prepare, implement, enforce and submit to EPA the SWMP as ordered in the

Compliance Order) to December 21, 2010, (date of issuance of the Complaint), a total of 947 days.

32. The EPA will notify the Commonwealth of Puerto Rico regarding this proposed action by mailing a copy of this Complaint and Notice and offering an opportunity for the Commonwealth to confer with EPA on the proposed penalty assessment.

IV. Notice of Proposed Order Assessing a Civil Penalty

Based on the foregoing Findings of Violation, and pursuant to the authority of Section 309(g) of the 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 Respondents assessing a penalty of **\$95,000.00**. 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 is required to take in consideration the nature, circumstances, extent and gravity of the violation (or violations), and Respondents' prior compliance history, degree of culpability, economic benefit or savings accruing to 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 in numerous occasions the NPDES regulations and the Act. Respondent failed to prepare, implement and enforce a complete and adequate storm water management program and submit a hard and electronic copy of it to EPA as required by the Small MS4 Permit. Respondent is culpable for the violation. EPA took into account Respondent's knowledge of the NPDES regulations, the Small MS4 Permit, and the risks to human health and the environment posed by the uncontrolled discharges of storm water runoff from Respondent's Small MS4 into the Río Yaguez and Bahía de Mayagüez, both waters of the United States.

The violations discussed in this Complaint are serious since Respondent's failure to develop, implement and enforce a SWMP for its storm water discharges from its Small MS4 into waters of the United States caused a significant amount of pollutants to reach surface water that could cause direct and indirect negative effects on human health and the environment. Respondent knew of its obligation under the Act, the NPDES regulations and the Small MS4 Permit. Respondent does not have a prior history of violations under the NPDES program. EPA may issue a final Order Assessing Administrative Penalties thirty (30) days after Respondent's receipt of this Notice, unless Respondent, within that time, files an answer to the Complaint and, requests a hearing on this Notice pursuant to the following section.

V. Procedures Governing This Administrative Litigation

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

A. Answering the Complaint

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

**Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, New York 10007-1866.**

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

Respondent's Answer to the Complaint must clearly and directly admit, deny, or explain each of the factual allegations that are contained in the Complaint and with regard to which Respondent has any knowledge. 40 C.F.R. § 22.15(b). Where Respondent lacks knowledge of a particular factual allegation and so states in its Answer, the allegation is deemed denied. 40 C.F.R. § 22.15(b). The Answer shall also set forth: (1) the circumstances or arguments that are alleged to constitute the grounds of defense, (2) the facts that Respondent disputes (and thus intends to place at issue in the proceeding), (3) the basis for opposing the proposed relief, and (4) whether Respondent requests a hearing. 40 C.F.R. § 22.15(b).

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

B. Opportunity to Request a Hearing

If requested by Respondent in the Answer, a hearing upon the issues raised by the Complaint and Answer may be held. 40 C.F.R. § 22.15(c). If, however, Respondent does not request a hearing, the Presiding Officer (as defined in 40 C.F.R. § 22.3) may

hold a hearing if the Answer raises issues appropriate for adjudication. 40 C.F.R. § 22.15(c).

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

Should 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.

C. Failure to Answer

If Respondent fails in the Answer to admit, deny, or explain any material factual allegation contained in the Complaint, such failure constitutes an admission of the allegation. 40 C.F.R. § 22.15(d). If Respondent fails to file a timely [i.e., in accordance with the 30-day period set forth in 40 C.F.R. § 22.15(a)] Answer to the Complaint, Respondent may be found in default upon motion. 40 C.F.R. § 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. 40 C.F.R. § 22.17(a). Following a default by Respondent for a failure to timely file an Answer to the Complaint, any order issued therefore shall be issued pursuant to 40 C.F.R. § 22.17(c).

Any penalty assessed in the default order shall become due and payable by Respondent without further proceedings thirty (30) days after the Default Order becomes final pursuant to 40 C.F.R. § 22.27(c). 40 C.F.R. § 22.17(d). If necessary, EPA may then seek to enforce such Final Order of Default against Respondent, and to collect the assessed penalty amount, in federal court.

VI. Informal Settlement Conference

Whether or not Respondent requests a formal hearing, EPA encourages settlement of this proceeding consistent with the provisions of the Act and its applicable regulations. 40 C.F.R. § 22.18(b). At an informal conference with a representative(s) of Complainant, Respondent may comment on the charges made in this complaint, and Respondent may also provide whatever additional information that it believes is relevant to the disposition of this matter, including: (1) actions Respondent has taken to correct

any or all of the violations herein alleged, (2) any information relevant to Complainant's calculation of the proposed penalty, (3) the effect the proposed penalty would have on Respondent's ability to continue in business, and/or (4) any other special facts or circumstances Respondent wishes to raise.

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

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

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

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

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

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

VII. Resolution of this Proceeding Without Hearing or Conference

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

**Regional Hearing Clerk
U. S. Environmental Protection Agency, Region 2
PO Box 360188
Pittsburgh, Pennsylvania 15251.**

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

VIII. Filing of Documents

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

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

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

Héctor L. Vélez Cruz, Esq.
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
1492 Ponce de León Ave., Suite 417
San Juan, Puerto Rico 00907-4127
Telephone: (787) 977-5850
Fax: (787) 729-7748.

IX. 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 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 15 DAY OF December, 2010.


CARL-AXEL P. SODERBERG, P.E.
Director,
Caribbean Environmental Protection Division
United States Environmental Protection Agency - Region 2
1492 Ponce de León Ave., Suite 417
San Juan, Puerto Rico 009y-07-4127

To: **Hon. José Guillermo Rodríguez**
Mayor
Municipality of Mayagüez
P. O. Box 447
Mayagüez, Puerto Rico 00681

cc: **Roberto Ayala**
Director
Water Quality Area
PR Environmental Quality Board
P. O. Box 11488
San Juan, PR 00910

IN THE MATTER OF

MUNICIPALITY OF MAYAGÜEZ

P.O. Box 447
Mayaguez, Puerto Rico 00681

RESPONDENT

Proceeding pursuant to Section
309(g)(2)(B) of the Clean Water Act,
33 U.S.C. §1319(g)

**PROCEEDING TO ASSESS A
CLASS II CIVIL PENALTY**

Docket Number CWA-02-2011-3453

CERTIFICATE OF SERVICE

I certify that the foregoing Administrative Complaint was sent to the following persons in the manner specified, on the date below

Original & Copy UPS

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

**CERTIFIED MAIL
RETURN RECEIPT**

Ion Jose Guillermo Rodriguez
Mayor
Municipality of Mayaguez
P.O. Box 447
Mayaguez, Puerto Rico 00681

Roberto Ayala
Director
Water Quality Area
PR Environmental Quality Board
P.O. Box 11488
San Juan, PR 00910



122311

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
CARIBBEAN ENVIRONMENTAL PROTECTION DIVISION
CENTRO EUROPA BUILDING, SUITE 417
192 PONCE DE LEON AVENUE, STOP 22
SAN JUAN, PR 00907-4127

EXHIBIT
Complaints
1a.

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Honorable José G. Rodríguez
Mayor
Municipality of Mayagüez
P. O. Box 447
Mayagüez, Puerto Rico 00681

**Re: Notice of Proposed Assessment of a Civil Penalty
Municipality of Mayagüez
Permit Number PRR040043
Docket Number CWA-02-2011-3453**

Dear Mayor Rodríguez:

Enclosed is a Complaint which the United States Environmental Protection Agency ("EPA" or "Agency") is issuing to the Municipality of Mayagüez ("Respondent"), for its failure to submit a Storm Water Management Program ("SWMP") for a National Pollutant Discharge Elimination System ("NPDES") permit for its storm water discharges from the municipal separate storm sewer systems ("MS4s") into waters of the United States. This constitutes a violation of Sections 301 and 402 of the Clean Water Act ("CWA or the "Act"), 33 U.S.C. §§ 1311 and 1342.

This Complaint is filed pursuant to the authority contained in Section 309(g) of the Act, 33 U.S.C. § 1319(g). The Complaint proposes that a penalty of **\$95,000.00** be assessed against Respondent for the violations.

Respondent has the right to a hearing to contest the factual allegations of the Complaint. If Respondent admits the allegations, or they are found to be true after there has been an opportunity for a hearing on them, Respondent has the right to contest the penalty proposed in the Complaint. Please refer to 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"), which EPA follows in cases of this kind. The CROP is codified at 40 CFR Part 22.

Please note the requirements for an Answer at § 22.15 of the CROP. If Respondent wishes to contest the allegations in the Complaint or the penalty proposed in the Complaint, Respondent must file an original and a copy of a written Answer within thirty (30) calendar days of the Respondents' receipt of the enclosed Complaint to the EPA Regional Hearing Clerk at the following address:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, New York 10007-1866

If Respondent does not file an Answer within thirty (30) calendar days of receipt of this Complaint, Respondent may be judged to have defaulted (see § 22.17 of the CROP). If a default order is entered, the entire proposed penalty may be assessed without further proceedings.

Whether or not Respondent requests a formal hearing, Respondent 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 conference with the Agency. The Agency also encourages the use of Supplemental Environmental Projects (SEPs), where appropriate, as part of the settlement. Enclosed is a copy of the EPA Supplemental Environmental Projects Policy for your consideration. Respondent may represent itself or be represented by an attorney at any stage of the proceedings, including any informal discussions, whether in person or by telephone. 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 effect what Respondent may choose to say in an Answer, nor does it extend the thirty (30) calendar days by which Respondent must file an Answer requesting a hearing. Any hearing held in this matter will be conducted in accordance with the CROP.

If you have any questions or wish to discuss a settlement of this matter with EPA in an informal conference, please immediately contact:

Héctor Vélez, Esq.
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
1492 Ponce de Leon Avenue, Suite 417
San Juan, PR 00907
Telephone (787) 977-5850
Fax: (787) 729-7748

Complaint - Municipality of Mayagüez
Docket Number CWA-02-2011-3453
Page 3 of 3

We urge your prompt attention to this matter.

Sincerely,



Carl-Axel P. Soderberg
Director
Caribbean Environmental Protection Division

Enclosures

cc: Roberto Ayala, EQB (w/o enclosures)

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Municipal of Mayaguez Complaint GWAE02

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Total Postage & Fees	\$ 7.51

122810
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Street, Apt. No.,
or PO Box No. P.O. Box 447
City, State, ZIP+4
Mayaguez, PR 00681



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- Delivered, January 04, 2011, 9:06 am, MAYAGUEZ, PR 00680
- Notice Left, December 30, 2010, 9:50 am, MAYAGUEZ, PR 00681
- Arrival at Unit, December 30, 2010, 9:45 am, MAYAGUEZ, PR 00682

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Municip. of Mayaguez, Complaint CWA-02

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Return Receipt Fee (postage required)	
Restricted Delivery Fee (postage required)	
Total Postage & Fees	\$ 7.00

122310

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Hon. Jose G. Rodriguez
 Street, Apt. No.,
 or PO Box No. P.O. Box 447
 City, State, ZIP+4
 Mayaguez, PR 00681

Form 3800, August 2008 See Reverse for Instructions



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
CARIBBEAN ENVIRONMENTAL PROTECTION DIVISION
CENTRO EUROPA BUILDING, SUITE 417
1992 PONCE DE LEON AVENUE, SUITE 417
SAN JUAN, PR 00917



122810

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Roberto Ayala
Director
Water Quality Area
PR Environmental Quality Board
P. O. Box 11488
San Juan, PR 00910

**Re: Notice of Proposed Assessment of a Civil Penalty
Municipality of Mayagüez
Permit Number PRR040043
Docket Number CWA-02-2011-3453**

Dear Mr. Ayala:

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) proposes to issue to the Municipality of Mayagüez (Respondent) pursuant to Section 309(g) of the Clean Water Act (the "Act"), 33 U.S.C. § 1319(g). EPA proposes to issue the Complaint to begin the process to assess administratively a Class II civil penalty of \$95,000.00 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 this matter.

If you have any questions concerning this matter, you may confer with me at (787) 977-5801

Sincerely,

Erre Rodriguez, Chief
Multimedia Permits and Compliance Branch

Enclosures

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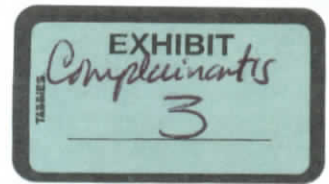
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Munic of Mayaguez Complaint CWA-02-201

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Return Receipt Fee (Endorsement Required)		
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Total Postage & Fees	\$	

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Roberto Ayala
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 City, State, ZIP+4

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UNITED STATES OF AMERICA
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF:

Municipality of Mayagüez
PO Box 447
Mayagüez, PR 00681

RESPONDENT

Proceeding pursuant to Section
309(g) (2) (B) of the
Clean Water Act, 33 U.S.C. §1319(g)

PROCEEDING TO ASSES A
CLASS II CIVIL PENALTY

DOCKET NUMBER
CWA 02-2011-3453

ANSWER TO COMPLAINT

TO THE HONORABLE GOVERNMENT AGENCY:

Representing the Municipality of Mayagüez appearing as counsel of this case attorney Luis J. Sánchez Mercado who respectfully plead the following:

I. Statutory Provisions and Authority

1. Plead number one don't requires allegation in response because constitutes the legal basis according to the complaint.
2. Plead number two don't require allegation in response because constitutes the legal basis according to the complaint.
3. We deny plead number three pursuant to sections 301 and 402 of the Act 33 USC 1311 and 1342. The Municipality of Mayagüez notice the intention, prepare and submit to the plaintiff the description of the measurable goals for each of the chosen best management practices along with the (SWMP) Storm Water Management Program and we still waiting the final approval.
4. We admit pleading number 4.
5. We admit pleading number 5.

6. We admit pleading number 6.
7. We admit pleading number 7.
8. We admit pleading number 8.
9. We admit pleading number 9.
10. We admit pleading number 10.
11. We admit pleading number 11.
12. We admit pleading number 12.
13. We admit pleading number 13.

II. Jurisdictional Findings

14. We admit pleading number 14.
15. We admit pleading number 15.
16. We admit pleading number 16.
17. We admit pleading number 17.
18. We admit pleading number 18.

III. Findings of Violations

19. Plead number 19 don't requires responsive allegations.
20. We admit plead number 20.
21. We denied plead number 21. Autonomous Municipality of Mayagüez submitted the Notice of Intent on December 3, 2008.
22. We denied plead number 22. Autonomous Municipality of Mayagüez submitted the Notice of Intent on December 3, 2008 according to the letter of compliance.
23. We admit plead number 23.
24. We admit plead number 24.

25. We admit plead number 25.
26. We admit plead number 26.
27. We denied pleading number 27 because on January 3, 2010 the SWMP was submitted to EPA offices at San Juan, PR.
28. We admit pleading number 28.
29. We denied pleading number 29. The Municipality of Mayagüez and their experts on contract (University of Puerto Rico Mayagüez Campus Water Studios Division) are working with the Compliance of Law and the NPDS Program.
30. We denied pleading number 30 on the form that the complaint was redacted.
31. We denied in part pleading number 31.
32. Pleading number 32 don't require a responsive allegation.

Affirmatives Defenses

1. The Autonomous Municipality of Mayagüez submitted the documents in compliment of the NPDS.
2. On January 12, 2011 the Municipality numbered the following tasks for the accomplishment:
 - December 16, 2008 (Received by US EPA on December 17, 2008) – The Municipality submitted the Notice of Intent (NOI).
 - February 11, 2009 – The US EPA acknowledged the submittal of the NOI and a NPDES Permit number was assigned.
 - March 5, 2009 – As requested by the US EPA, we submitted a description of the measurable goals for each of the chosen Best Management Practices.
 - July 2009 – The Puerto Rico Water Resources and Environmental Research Institute started working on the SWMP.
 - January 3, 2010 – The Storm Water Management Program was personally submitted to the US EPA, Caribbean Environmental Protection Division.
 - To this date we are waiting for the revision and approval of the Program.

This information was submitted to EPA officials by our contractor in this matter.

3. The Municipality of Mayagüez is committed to fully comply the SWMP and all requirements in Sections 301 and 402 of the Clean Water Act (CWA), 33 U.S.C. 1311 and 1342. They asked to reevaluate the complaint and proposed any assessment to the civil penalty.

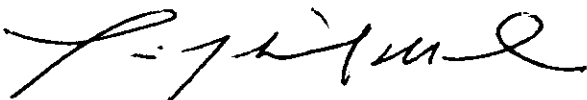
Therefore they respectfully submitted for the acceptance of the SWMP submitted on January 3, 2011; for dismiss the proposed assessment of a civil penalty, and let us continue working in the implementation phase of our SWMP. That will be on contract with our experts from The Water Studios Division of the University of Puerto Rico, Mayaguez Campus and Dean and Director Jorge Rivera Santos P.E.

4. Respondent requests a informal hearing. EPA encourages settlement of this proceeding consistent with the provisions of the Act and its applicable regulations. 40C F.R. § 22.18 (b).

We desire to have an informal conference with a representative(s) of Complaint, Respondent may comment on the charges made in this complaint, and Respondent may also provide whatever additional information that it believes is relevant to the disposition of this matter, including: (1) actions Respondent has taken to correct any or all of the violations herein alleged, (2) any information relevant to Complainant's calculation of the proposed penalty, (3) the effect the proposed penalty would have on Respondent's ability to continue in business, and/or (4) any other special facts or circumstances Respondent wishes to raise.

The financial situation of our operational budget along with our previous record in enforcing the State and Federal Law put our Municipality in a positive situation for the cooperation from EPA in this assessment and finish the public implementation of the framed plan.

At Mayagüez, Puerto Rico, this 23 day of May, 2012.



LUIS J. SÁNCHEZ MERCADO, ESQ.
SÁNCHEZ MERCADO LAW OFFICES
PO Box 6551
Mayagüez, PR 00681-6551
Email: sanchezmercdolaw@gmail.com

To: **Carl-Axel P. Soderberg, P.E.**
Director,

Caribbean Environmental Protection Division
United States Environmental Protection Agency – Region 2
1492 Ponce de León Ave., Suite 417
San Juan, PR 00907-4127

Héctor L. Vélez Cruz, Esq.
Office of Regional Counsel
United States Environmental Protection Agency Region 2
1492 Ponce de León Ave., Suite 417
San Juan, PR 00907-4127

C/c: **Roberto Ayala**
Director
Water Quality Area
PR Environmental Quality Board
PO Box 11488
San Juan, PR 00910

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

IN THE MATTER OF:

**Municipality of Mayagüez
PO Box 447
Mayagüez, PR 00681**

RESPONDENT

**Proceeding pursuant to Section
309(g) (2) (B) of the
Clean Water Act, 33 U.S.C. §1319(g)**

**PROCEEDING TO ASSES A
CLASS II CIVIL PENALTY**

**DOCKET NUMBER
CWA 02-2011-3453**

CERTIFICATE OF SERVICE

I certify that the foregoing Answer to Complaint was sent to the following persons, in the manner specified, on the date below:

**CERTIFIED MAIL
RETURN RECEIPT**

Original & Copy

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

Carl-Axel P. Soderberg, P.E.
Director,
Caribbean Environmental Protection Division
United States Environmental Protection Agency – Region 2
1492 Ponce de León Ave., Suite 417
San Juan, PR 00907-4127

Héctor L. Vélez Cruz, Esq.
Office of Regional Counsel
United States Environmental Protection Agency Region 2
1492 Ponce de León Ave., Suite 417
San Juan, PR 00907-4127

Roberto Ayala
Director
Water Quality Area
PR Environmental Quality Board
PO Box 11488
San Juan, PR 00910

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 2
Caribbean Environmental Protection Division
Multimedia Permits and Compliance Branch

MEMORANDUM

DATE: December 21, 2010
Yolianne Maclay
SUBJECT: Determination of Proposed Penalty Amount pursuant to § 309(g)(4) of
the Clean Water Act for the Municipality of Mayagüez
Docket Number CWA-02-2011-3453
FROM: Yolianne Maclay
Environmental Engineer
TO: Case File

This memorandum serves to determine and recommend a Proposed Administrative Penalty to the subject municipality after taking into consideration the statutory factors in Section 309(g)(4) of the Clean Water Act ("CWA" or the "Act"), 33 U.S.C. § 1319(g)(4).

A. Facility Description

This case is about a small municipal separate storm sewer system (Small MS4) owned and operated by the Municipality of Mayagüez that discharges pollutants (storm water) into the Río Yaguez and the Bahía de Mayagüez.

1. Name – small municipal separate storm sewer system (Small MS4)
2. NPDES Permit Number— PRR040043
3. Location - urban area of the Municipality of Mayagüez
4. Standard Industrial Classification (SIC) Code - 9199
5. Owner/Operator – Municipality of Mayagüez
6. Receiving Waters – Río Yaguez and the Bahía de Mayagüez.
7. Hydrographic System – The system is mainly comprised of Río Yaguez which flows from the Central Mountain Region and discharges into "Bahía de Mayagüez."

Respondent is a municipality within the meaning of Section 502(4) of the Act, 33 U.S.C. § 1362(4). Respondent owns and operates Small MS4 located in an urbanized area of the town of Mayagüez. The Small MS4 is a system of conveyances used for collecting or conveying storm water. The Small MS4 was and is, at all relevant times, a "point source" within the meaning of Section 502(14) of the Act, 33 U.S.C. § 1362(14).

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

[Section 309(g)(3), 33 U.S.C.A. § 309(g)(3), states that the agency 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 #GM21 and #GM22, provide guidance to the user on how to develop a medium specific penalty.]

1. Gravity

a. Nature

Claim 1 – Respondent failed to prepare, implement and enforce a Storm Water Management Program (SWMP) and failed to submit to EPA a hard and electronic copy of the SWMP.

Respondent violated Sections 301 and 402 of the Act and Part 4 of the National Pollutant Discharge Elimination System General Permit for Discharges from Small Municipal Separate Storm Sewer System for the Commonwealth of Puerto Rico (Small MS4 Permit) by failing to:

- prepare, implement and enforce a SWMP designed to reduce the discharge of pollutants from its Small MS4, and
- submit to EPA a hard and electronic copy of the SWMP by the May 18, 2008 deadline as required in the Administrative Compliance Order CWA-02-2008-3120 ("Compliance Order" or "Order"), dated February 11, 2008.

b. Circumstances

On November 6, 2006, EPA issued and published the Small MS4 Permit. Regulated Small MS4s in Puerto Rico, who intended to obtain coverage under the Small MS4 Permit, had to submit a NOI form by February 5, 2007, and had to prepare, implement and enforce a SWMP and also submit a hard and electronic copy of the SWMP by August 6, 2007.

Pursuant to Section 308 of the Act, on July 6, 2007, EPA issued a request for information letter to Respondent requesting evidence demonstrating it had filed for an individual NPDES permit or a NOI form seeking coverage under the Small MS4 Permit for operation of its Small MS4.

EPA never received an answer to the July 6, 2007 request for information letter from Respondent.

On February 11, 2008, an EPA official conducted reviews of EPA's NPDES files (EPA Review). The EPA Review revealed that as of such date Respondent had not filed a NOI form seeking coverage under the Small MS4 Permit nor had it filed an individual NPDES permit for operation of its Small MS4.

Based on the findings of the EPA Review, EPA issued the Compliance Order against Respondent. According to the Compliance Order, Respondent had to: file a NOI form seeking coverage under the Small MS4 Permit by February 13, 2008; prepare, implement and enforce a SWMP and submit a copy of it to EPA by May 18, 2008; and submit to EPA the Compliance Cost Report by June 12, 2008.

On December 16, 2008, EPA received Respondent's NOI form seeking coverage under the Small MS4 Permit.

EPA sent a letter to Respondent, dated February 5, 2009, acknowledging receipt of Respondent's NOI form. Respondent was issued with Permit Number PRR040043. In the letter EPA also reminded Respondent that pursuant to the Compliance Order it should have had prepared, implemented and enforced the SWMP and also submitted a hard and electronic copy of it to EPA by the May 18, 2008 deadline.

In a letter dated January 8, 2010, EPA again ordered Respondent to immediately prepare, implement and enforce the SWMP and submit a hard and electronic copy of the plan and of the Cost Report to EPA. Respondent received the letter on January 12, 2010.

As of the date of issuance of this Complaint, Respondent continues to be in violation of the Act, Small MS4 Permit and the Compliance Order for the violations cited above.

c. Extent

From May 18, 2008 (date when Respondent had to prepare, implement and enforce a SWMP and submit a copy of it to EPA according to the Compliance Order) through December 21, 2010 (date of issuance of the Complaint), for a total of 947 days of violations.

d. Seriousness of the Violation

Importance of Controlling Storm Water Discharges from MS4s

The storm water discharges from MS4s in urbanized areas are a concern because of the high concentration of pollutants found in these discharges. Polluted storm water runoff is often transported to MS4s and ultimately discharged into local rivers and streams without treatment. Concentrated

development in urbanized areas substantially increases impervious surfaces, such as city streets, driveways, parking lots, and sidewalks, on which pollutants from concentrated human activities settle and remain until a storm event washes them into nearby storm drains.

Common pollutants include oil and grease from roadways, pesticides from lawns, sediment from construction sites, and carelessly discarded trash, such as cigarette butts, paper wrappers, and plastic bottles. Storm water runoff picks up and transports these and other harmful pollutants, then discharge them untreated to waterways via storm sewer systems. These pollutants can impair the waterways, thereby discouraging recreational use of the resource, contaminating drinking water supplies, and interfering with the habitat for fish, other aquatic organisms, and wildlife.

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 at the receiving water.

Importance of Implementing Storm Water Management Programs

The SWMP is considered to be the most important requirement of the permit. Each municipality covered by the permit must develop a program, tailored to the municipality's specific conditions, and designed with the goal of controlling the amount of pollutants in storm water discharges from the MS4. The permit requires that the plan contain a description of potential pollutant sources, and a description of the measures and controls to prevent or minimize pollution of storm water.

A regulated Municipality must develop, implement, and enforce a SWMP designed to reduce the discharge of pollutants from their MS4 to the "maximum extent practicable," to protect water quality and to satisfy the appropriate water quality requirements of the CWA.

The small MS4 storm water management program must include the following six *minimum control* measures: public education and outreach; public participation and involvement; illicit discharge detection and elimination; construction site runoff control; post-construction runoff control; and pollution prevention and good housekeeping.

A regulated Municipality must identify its selection of Best Management Practices (BMPs) and measurable goals for each minimum measure in the permit application known as NOI. The evaluation and assessment of those chosen BMPs and measurable goals must be included in periodic reports to the NPDES permitting authority, in this case, EPA Region 2.

Importance of Protecting the Receiving Waters

The Puerto Rico Environmental Quality Board (PREQB), as the designated State environmental agency, in accordance with the Environmental Public Policy Act (Law Number 9) of June 18, 1970, as amended, promulgated the Puerto Rico Water Quality Standards Regulation ("PRWQSR", as amended in 2003). This Regulation established, as goals, the need to preserve, maintain and enhance the quality of the waters of Puerto Rico to assure that they are compatible with the social and economic needs of Puerto Rico.

The PRWQSR's purpose was to designate the use for which the quality of the waters of Puerto Rico shall be maintained and protected; prescribe the water quality standards required to sustain the designated uses; identify other rules and regulations applicable to sources of pollution that may affect the quality of waters subject to the PRWQSR; and prescribe additional measures necessary for implementing, achieving, and maintaining the prescribed water quality. The Río Yaguez was classified as SD, which is defined as surface waters and the Bahía de Mayagüez was classified as SC, which is defined as coastal and estuarine waters.

Under section 303(d) of the 1972 CWA, states, territories, and authorized tribes are required to develop a list of impaired waters. Impaired waters are waters that do not meet the water quality standards that states, territories, and authorized tribes have set for them. The Río Yaguez is impaired for arsenic, cyanide, fecal coliforms and turbidity. The Bahía de Mayagüez is not listed on the 303d list.

Importance of Complying with the CWA and Regulations

EPA's storm water Phase II regulations established an MS4 storm water management program that is intended to improve the Nation's waterways by reducing the quantity of pollutants that storm water picks-up and carries into storm sewer systems during storm events. Failure to comply with the CWA and its NPDES implementing regulations means that the implementation of the NPDES program is hindered and the benefits, such as protecting the water quality of the water bodies in which the Municipality discharges that otherwise would have been obtained by the NPDES program are not being obtained. The Municipality's failure to submit a SWMP is a serious violation and has a direct effect on human health and the environment for the reasons explained in the paragraphs above.

e. Proposed Gravity Component

In the instant case, based upon the above findings and my Professional Experience, the threats to the Río Yaguez and the Bahía de Mayagüez (waters of the United States) require a substantial penalty. This is necessary to deter

Respondent and others from violating the Act. A gravity penalty component of **\$37,087.00** is being proposed after taking into consideration the length of the violations, the negative environmental effects to the receiving waters and human health, the importance of compliance and seriousness of the violations.

2. Economic Benefit or Savings Calculation (**\$47,913.00**)

The objective of the Economic Benefit (BEN) calculation is to place Respondent in the same financial position as it would have been had they complied on time. BEN results from a number of avoided or delayed expenditures associated with the failure to undertake each of the several types of construction activity requirements. The different types of avoided and delayed expenditures in this Complaint are discussed below.

The following paragraphs provide an explanation of the economic benefit or savings obtained. The EPA BEN Model Software (BEN) was used for the calculation of each benefit or saving.

EPA has received cost reports from the municipalities of Cabo Rojo, Camuy, Canóvanas, Hatillo, Naguabo, Peñuelas, San Germán, and San Juan in response to Administrative Compliance Orders issued by EPA. Each municipality named above provided the cost of developing their NOI and SWMP. Based on the information provided by these municipalities EPA has calculated that the weighted-average cost of developing a SWMP for a municipality in Puerto Rico is \$1.18 per household (see June 28, 2010 Memorandum). The calculation of the economic benefit is shown below:

Number of Households in the Municipality of Mayagüez – 39,364 households

Calculation = \$1.18 (per household) times 39,364 households = \$46,450.00

SWMP Estimated Cost = **\$46,450.00**

The estimated cost for the development of the SWMP (**\$46,450.00**) was used in the Economic Benefit Model (BEN Software) to calculate the avoided cost which provided a calculation of \$47,913.00. The noncompliance date is May 18, 2008 (date when Respondent had to prepare, implement and submit to EPA the SWMP according to the Ordered Provisions of the Compliance Order). The compliance date was December 9, 2011, which was the date of issuance of the Complaint. The Penalty Payment Date is estimated to be on July 1, 2011 based on experience with previous MS4 complaints. See Attachment 1 for copy of BEN Software calculation.

Respondent obtained an economic benefit for its delay in preparing, implementing and submitting to EPA the SWMP according to the Ordered Provisions of the Compliance Order. The calculated economic benefit is **\$47,913.00** (see BEN Calculation Printout).

3. Preliminary Proposed Penalty = (Proposed Gravity Component) + (Economic Benefit)

$$\text{Preliminary Proposed Penalty} = \$37,087.00 + \$47,913.00 = \mathbf{\$85,000.00}$$

NOTES:

- * The estimated cost figures are based on 1996 dollars.
- * Installations, where applicable, are considered in the final estimated benefit.
- * A review of the economic benefit will be necessary when information from Respondents become available.

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

1. Prior History of Violations

Prior History of violations (Recalcitrance)—Respondent does not have prior history of violations.

2. Degree of Culpability

The Municipality did not comply with the related NPDES storm water regulations developed to ensure prevention and minimization of contamination of storm water by the MS4. The Municipality should have known of its obligations and complied with the Small MS4 Permit and the Compliance Order. The Municipality disregarded EPA enforcement actions and notifications, the NPDES storm water regulations and the Clean Water Act. The violations discussed herein are serious and have an indirect effect on human health and the environment.

The proposed penalty is increased by \$10,000 for the degree of culpability.

Respondent did not comply with the related NPDES Small MS4 regulations developed to ensure prevention and minimization of contamination of storm water, and eventually of waters of the United States. The violations discussed in this document and included in the complaint are serious and have a potential indirect effect on human health and the environment.

Respondent obtained an economic benefit as a result of its noncompliance with the Act and the NPDES regulations. Respondent does not have prior

history of violations.

Also, on February 11, 2008, EPA issued the Compliance Order against Respondent to address the violations mentioned above. Despite all the efforts done by EPA to bring Respondent into compliance with the Small MS4 Permit, the NPDES regulations and the Act, as of the date of issuance of the Complaint Respondent continues to be in violation.

The penalty is increased in **\$10,000** for Respondent's degree of culpability.

3. Ability to Pay

No ability to pay argument is anticipated. Therefore, the proposed penalty has not been reduced for an inability to pay.

D. **Final Proposed Penalty** - $\$37,087.00 + \$47,913.00 + \$10,000 = \$95,000.00$

E. Recommendations

In conclusion, the final proposed penalty is **\$95,000.00**. Therefore, I recommend that a Complaint be issued against Respondents for the amount of **\$95,000.00**.

This recommendation is consistent with my application of the statutory factors in § 309(g), to the facts of this case. My findings and analysis fully support the penalty.

Attachment

cc: ORC/CT



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
CARIBBEAN ENVIRONMENTAL PROTECTION DIVISION
CENTRO EUROPA BUILDING, SUITE 417
1492 PONCE DE LEON AVENUE, STOP 22
SAN JUAN, PR 00907-4127



CERTIFIED MAIL - RETURN RECEIPT REQUESTED

FEB 11 2008

Honorable José G. Rodríguez Rodríguez
Mayor
Municipality of Mayagüez
P.O. Box 447
Mayagüez, Puerto Rico 00681

**Re: Municipality of Mayagüez Separate Storm Sewer System
Administrative Compliance Order
Docket Number CWA-02-2008-3120
NPDES Storm Water Municipal Separate Storm Sewer System General
Permit (MS4 GP) PRR040000**

Dear Mayor Rodríguez:

The United States Environmental Protection Agency (EPA), Region 2, has made findings that the Municipality of Mayagüez (the "Municipality") is in violation of the Clean Water Act (the "Act"), 33 U.S.C. §1251 *et seq.* Find enclosed an original of the ORDER CWA-02-2008-3120, issued to the Municipality pursuant to Section 309(a) of the Act, 33 U.S.C. §1319(a), which details these findings.

Please be informed that the Order requires the Municipality to immediately submit a Notice of Intent for storm water discharges, associated with municipal separate storm sewer systems (MS4s) in urbanized areas, to surface water bodies. Also, the Order requires the Municipality to develop, submit and to implement a Storm Water Management Program to bring the Municipality into compliance with the Act.

Failure to comply with the enclosed ORDER may subject the Municipality to civil and/or criminal penalties pursuant to Section 309 of the Act. Failure to comply with this ORDER may also subject the Municipality to ineligibility for participation in work associated with Federal contracts, grants, or loans.

Municipality of Mayagüez Separate Storm Sewer System
Order CWA-02-2008-3120
Page 2 of 2

If you have any questions regarding this matter, please contact Mr. Sergio Bosques of my staff at (787) 977-5838.

Sincerely,



Carl-Axel P. Soderberg, Director
Caribbean Environmental Protection Division

Enclosures

cc: Wanda Garcia, EQB (w/ Order)

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Honorable José G. Rodríguez Rodríguez		
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1. Article Addressed to:

Honorable José G. Rodríguez Rodríguez
 Mayor
 Municipality of Mayagüez
 P.O. Box 447
 Mayagüez, Puerto Rico 00681

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 Addressee

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EXHIBIT
Complainant's
5a.

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

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In the Matter of:
Honorable José G. Rodríguez Rodríguez
Municipality of Mayagüez
P.O. Box 447
Mayagüez, Puerto Rico 00681
NPDES Permit No. PRR040000

Proceeding pursuant to §309(a) of the
Clean Water Act, 33 U.S.C. §1319(a)
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ORDER
CWA-02-2008-3120

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 §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, which authority has been duly redelegated by the Regional Administrator of Region 2 to the undersigned Director, Caribbean Environmental Protection Division, Region 2.

BACKGROUND

1. The Municipality of Mayagüez, ("**Municipality**"), a "person" within the meaning of Section 502(5) of the Act, 33 U.S.C. §1362(5), owns and operates the municipal separate storm sewer system (the "MS4"). The MS4 is located in an urbanized area of Mayagüez, Puerto Rico. The MS4 is and was at all relevant times a "point source" within the respective definitions established in Section 502(14) of the Act, 33 U.S.C. §1362(14). Respondent therefore, is subject to the provisions of the Act, 33 U.S.C. §1251 et seq.
2. a) 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 ...402, and 404 of the Act, the discharge of any pollutant by any person shall be unlawful."

b) Section 402 of the Act, 33 U.S.C. §1311(a), provides that "...the Administrator may, after opportunity for public hearing, issue a permit for the discharge of any pollutant..."

c) The term "navigable waters" includes the waters of the United States pursuant to Section 502(7) of the Act, 33 U.S.C. §1362(7).

d) 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 Act, 33 U.S.C. §1362(6).

e) The term "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).

f) 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 Act, 33 U.S.C. §1362(12).

g) The term "person" includes an individual, corporation, partnership, association, State, Municipality, Commission, or political subdivision of a State or Interstate body, pursuant to Section 502(5) of the Act, 33 U.S.C. §1362(5).

h) The term "municipality" means, among other things, a city, town, borough, county, parish, district, association, or other public body created by or pursuant to State law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or a designated and approved management agency under section 208 of the Act.

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i) The term "NPDES" means a National Pollutant Discharge Elimination System permit pursuant to Section 402 of the Act, 33 U.S.C. §1342.

j) The term "municipal separate storm sewer" means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains)..., pursuant to 40 CFR Part 122.26(b)(8).

k) The term "small municipal separate storm sewer system" means all separate storm sewers, pursuant to 40 CFR Part 122.26(b)(16), that are:

(i) Owned or operated by the United States, a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States.

(ii) Not defined as "large" or "medium" municipal separate storm sewer systems pursuant to paragraphs 40 CFR Part 122.26(b)(4) and (b)(7), or designated under paragraph 40 CFR Part 122.26(a)(1)(v).

(iii) This term includes systems similar to separate storm sewer systems in municipalities, such as systems at military bases, large hospital or prison complexes, and highways and other thoroughfares. The term does not include separate storm sewers in very discrete areas, such as individual buildings.

3. Section 308 of the Act, 33 U.S.C. §1318, provides, in relevant part, that the Administrator of EPA may require the owner or operator of any point source to, among other things: maintain such records; make such reports; install, use and monitor such equipment; sample such effluents; and provide such other information as may reasonably be required in order to carry out Section 402 of the Act, 33 U.S.C. §1342.
4. The Administrator of EPA has promulgated regulations, 40 CFR §§ 122.26(a)(9)(ii), 122.26(b)(16) and 122.33, which require that a NPDES permit shall be obtained for operators of small MS4.
5. Regulations found at 40 CFR §122.26 (e)(9) and 122.33 require that operators of Small MS4 submit a permit application before March 10, 2003. EPA informed the Municipality of this requirement on February 12, 2003.
6. On November 6, 2006, EPA issued and published in the Federal Register (71 Fed. Reg. 64,952) a NPDES general permit for Small MS4 (the "Small MS4 General Permit") for storm water discharges that are associated with municipal separate storm sewer systems within urbanized areas. This Small MS4 permit establishes Notice of Intent ("NOI") requirements for those seeking coverage under the Small MS4 permit and establishes application deadlines. Operators who intended to obtain coverage under the Small MS4 permit for a storm water discharge associated with municipal separate storm sewer systems on or before February 5, 2007, should have submitted the NOI form by February 5, 2007.
7. On July 6, 2007, EPA sent the Municipality a request for information letter pursuant to Section 308 of the CWA requesting that they submit evidence of coverage under the NPDES general permit for Small MS4 or to file the pertinent NOI.
8. The regulations at 40 CFR §122.26 and 122.33 were promulgated pursuant to, among others, Section 308 of the Act, 33 U.S.C. §1318.

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9. A review of Region 2's NPDES permit records revealed that the Municipality of Mayagüez has not filed a NOI pursuant to the Small MS4 General Permit nor an individual application form seeking NPDES permit coverage.

FINDINGS

1. Based upon information in EPA's possession, EPA finds that the Municipality of Mayagüez has failed to submit a NOI application as required by 40 CFR 122.32(a). The permittee is in non-compliance with the requirements of the 301, 308 and 402 of the Act.
2. EPA has authority to establish compliance schedules to achieve compliance with the requirements of subsections 301(b)(1)(B) and (C) of the Act by issuing an enforcement order pursuant to subsection 309(a) of the Act. The issuance of such an order is a discretionary enforcement option available to EPA, is not subject to appeal, and does not insulate the discharger from other enforcement actions, including citizen suits pursuant to section 505 of the Act, to enforce the permit's requirements to achieve effluent limitations required by section 301 of the Act.

ORDERED PROVISIONS

Upon a thorough investigation of all relevant facts, taking into account the seriousness of the violations involved and any good faith efforts to comply with the applicable requirements, EPA has determined that compliance with the following Order is reasonable.

Based upon the foregoing and pursuant to the authority of Section 309(a)(3) of the Act, it is hereby ORDERED that:

1. **Immediately** upon receipt of the original copies of this ORDER, a responsible official of the Municipality of Mayagüez shall complete the acknowledgment of receipt of

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one of the originals of the ORDER and return said original to the Chief, Multi-Media Permits and Compliance Branch, Caribbean Environmental Protection Division, to the address listed below; and

2. Within ten (10) days from receipt of this Order, the Municipality of Mayagüez shall submit to EPA a complete NOI application for the Municipality to seek coverage under the issued Small MS4 permit and an electronic copy of the NOI shall be mailed to EPA to the address specified below.
3. That within ninety five (95) calendar days of receipt of this order, the Municipality of Mayagüez shall
 - a. develop and commence implementing a Storm Water Management Program (SWMP) pursuant to Part 4 of the issued Small MS4 permit, and
 - b. send a copy, including an electronic copy, of such program to EPA to the address specified below.
4. That within one hundred twenty calendar (120) days of receipt of this ORDER, the Municipality of Mayagüez shall submit to EPA, a report detailing 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: prepare and file the NOI; develop and implement sampling program; prepare the site plan; and develop and implement the Storm Water Management Program.
5. Any letter, report and/or information provided by the Municipality of Mayagüez as a requirement of this ORDER or the Small MS4 permit shall be signed by an authorized representative and shall provide 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

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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 failure on the part of the Municipality of Mayagüez to carry out the requirements of this ORDER for the municipal separate storm sewer system within the urbanized area shall result in further enforcement action pursuant to §309 of the Act, 33 U.S.C. § 1319. The EPA may also seek additional and other relief against the Municipality of Mayagüez for failure to achieve the requirements of this ORDER.

Any questions concerning this ORDER should be directed to Mr. Sergio Bosques, Environmental Engineer, Multi-Media Permits and Compliance Branch at (787) 977-5838. All information required to be submitted by this ORDER shall be sent by registered mail or its equivalent to the following addresses:

Caribbean Environmental Protection Division
Multi-Media Permits and Compliance Branch
Centro Europa Building - Suite 417
1492 Ponce De Leon Avenue
Santurce, Puerto Rico 00907
ATTN: Tere Rodríguez, Chief

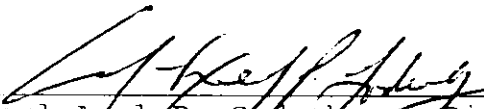
Puerto Rico Environmental Quality Board
Water Quality Area
P.O. Box 11488
Mayagüez, Puerto Rico 00910
Attn: Wanda E. García, Director

This ORDER does not constitute a waiver from compliance with a modification of the effective terms and conditions of the

Clean Water Act which remains in full force and effect. This ORDER is an enforcement action taken by EPA to ensure swift compliance of the Act. The Municipality of Mayagüez's liability under the Clean Water Act or any other federal, state, or local law or regulation is not excused by compliance with the terms of this ORDER. Sections 309(b) and (d) of the Act, 33 U.S.C. §1319(b) and (d), authorize EPA to seek injunctive relief and civil penalties of up to \$32,500 per day for a violation of an Order or of Section 301(a) of the Act, 33 U.S.C. §1311(a).

This order shall become effective upon the date of execution by the Director, Caribbean Environmental Protection Division.

Dated: 02-11-08



Carl-Axel P. Soderberg, Director
Caribbean Environmental Protection Division



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
CARIBBEAN ENVIRONMENTAL PROTECTION DIVISION
CENTRO EUROPA BUILDING, SUITE 417
1492 PONCE DE LEON AVENUE, STOP 22
SAN JUAN, PR 00907-4127



FEB 11 2009

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Honorable José G. Rodríguez
Mayor
Municipality of Mayagüez
P.O. Box 447
Mayagüez, Puerto Rico 00681

RE: Municipality of Mayagüez Separate Storm Sewer System.
MS4 GP PRR040043
Docket Number CWA-02-2008-3120

Dear Mayor Rodríguez:

This letter acknowledges that you have submitted a Notice of Intent (NOI) document to be covered under the National Pollutant Discharge Elimination System (NPDES) General Permit for Stormwater Discharges from Small Municipal Separate Storm Sewer Systems (MS4s) within an Urbanized Area (PRR040000). In accordance with 40 CFR §124.3 (45 Federal Register 33486, May 19, 1980), the U.S. Environmental Protection Agency (EPA) informs you that your application for a NPDES permit has been reviewed for completeness and is complete.

For tracking purposes, the following NPDES number has been assigned to your NOI document: **PRR040043**.

However, the EPA is requesting additional information from you to clarify, and supplement previously submitted material in processing your permit application. Such request will not render your application incomplete. The following information should be received within thirty (30) days after receipt of this letter.

- A description of the measurable goals for each of the chosen Best Management Practices (BMP) as required in item ten (10) of the NOI.

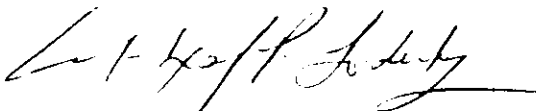
Your eligibility for coverage under the Permit is based on the validity of the certification you provided. Your signature on the transmittal letter of the NOI document certifies that you have read, understood, and are implementing all of the applicable requirements.

As you know, the Small MS4 General Permit requires you to develop, submit to EPA, and begin implementing a Storm Water Management Program (SWMP). It outlines important measurable goals including but not limited to, storm sewer system mapping, non-storm water discharges, inspections, and record keeping requirements. An electronic copy of the Permit and additional guidance materials can be viewed and downloaded at www.epa.gov/region02/cepd/prlink.htm. This document should have been submitted to this office on May 18, 2008 at the latest.

As stated in EPA's February 11, 2008 letter, failure to comply with the Administrative Order (AO) may subject the Municipality to civil and/or criminal penalties under Section 309 of the Clean Water Act and to ineligibility for participation in work associated with Federal contracts, grants, or loans. EPA reserves the right to take appropriate enforcement actions for any unpermitted discharges.

If you have questions regarding the storm water program or your responsibilities under the Small MS4 General Permit, please call Mr. Sergio Bosques at (787) 977-5838 or via email at bosques.sergio@epa.gov, or Ms. Yolianne Maclay at (787) 977-4958 or via email at maclay.yolianne@epa.gov.

Sincerely,



Carl-Axel P. Soderberg
Director
Caribbean Environmental Protection Agency

cc. Ing. Verónica Olán

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Honorable José G. Rodríguez Mayor Municipality of Mayagüez P.O. Box 447 Mayagüez, Puerto Rico 00681		
Special Apt. No. or PO Box No. or Suite, ZIP		

PS Form 3800, August 2006 See Reverse for Instructions

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<p>1. Article Addressed to:</p> <p>Honorable José G. Rodríguez Mayor Municipality of Mayagüez P.O. Box 447 Mayagüez, Puerto Rico 00631</p>	<p>3. Service Type <input type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>
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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
CARIBBEAN ENVIRONMENTAL PROTECTION DIVISION
CENTRO EUROPA BUILDING, SUITE 417
1492 PONCE DE LEON AVENUE, STOP 22
SAN JUAN, PR 00907-4127



JAN 03 2009

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Honorable José G. Rodríguez
Mayor
Municipality of Mayagüez
P.O. Box 447
Mayagüez, Puerto Rico 00681

**Re: Municipality of Mayagüez Separate Storm Sewer System
Docket Number CWA-02-2008-3120
NPDES Storm Water Municipal Separate Storm System General Permit
(MS4 GP) PRR040043**

Dear Mayor Rodríguez:


This letter is in reference to the non-compliance status of the Municipality of Mayagüez with respect to the Administrative Compliance Order (ACO) CWA-02-2008-3120, issued by the Environmental Protection Agency (EPA) on February 11, 2008. The ACO was issued against the Municipality for its failure to submit a Notice of Intent (NOI) application as required by 40 CFR 122.32(a) for the Storm Water Municipal Separate Storm Sewer System General Permit (MS4 GP) PRR040000 under the National Pollutant Discharge Elimination System (NPDES) Program.

The ACO ordered the Municipality, in addition to the submittal of the NOI, to submit a Storm Water Management Program (SWMP) and a report detailing the amount of time and associated costs which were required to prepare and file the NOI, develop and implement a sampling program, prepare the site plan, and develop and commence to implement the SWMP. This report includes, but is not limited to, storm water management controls, labor, installation, operation and maintenance. According to the deadlines establish in the ACO the SWMP was due on May 18, 2008 and the cost report was due on June 12, 2008. Therefore, you need to submit this information immediately.

We remind you that failure to comply with the ORDER may subject the Municipality to civil and/or criminal penalties pursuant to Section 309 of the Act. It may also subject the Municipality to ineligibility for participation in work associated with Federal contracts, grants, or loans.

If you have any questions regarding this matter, please contact Mr. Sergio Bosques at (787) 977-5838 or Mrs. Yolianne Maclay at (787) 977-5849.

Sincerely,

A handwritten signature in black ink, appearing to read "Carl-Axel P. Soderberg", written in a cursive style with a long horizontal flourish extending to the right.

Carl-Axel P. Soderberg
Director
Caribbean Environmental Protection Division

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1. Article Addressed to:

Hon. Jose G. Rodriguez
 Mayor
 Municipality of Mayagüez
 P.O. Box 447
 Mayagüez, Puerto Rico 00681

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent
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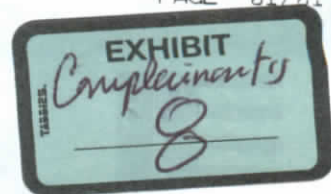
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Estado Libre Asociado de Puerto Rico
Municipio de Mayagüez
Oficina del Alcalde



September 3, 2010

Mr. Carl A. Soderberg
Director
Caribbean Environmental Protection Division, US EPA
Centro Europa Building, Suite 417
1492 Ponce de Leon Ave.
San Juan, PR 00907-4127

RE: NPDES PII Small MS4 General Permit PRR040043

Dear Mr. Soderberg,

Greetings from Mayagüez. In accordance with Section 402 (p) of the Clean Water Act (CWA) [33 U.S.C. Section 1251 (p)] the Municipality of Mayagüez is working on its Storm Water Management Program. For this we have contracted the services of The Puerto Rico Water Resources and Environmental Research Institute from the University of Puerto Rico at Mayagüez. They have been working with us for over a year now.

As you might be aware, our City was the host of the XXI Central American and Caribbean Games that took place between July 17th and August 1st of this year. This was a huge project for us, that required the involvement of many of our employees and most of our senior Staff Members who had to devote most of their time on the planning, preparation and execution of this event. Unfortunately this was at the expense of many other projects, such as the completion of the Municipality's Storm Water Management Plan that was supposed to be completed by now.

However, due to the importance of this Plan, we are working at full speed with the Puerto Rico Water Resources and Environmental Research Institute to have this document ready within the next ninety (90) days. This is our commitment. We therefore hereby ask you to grant us an extension to submit this plan.

With our most sincere appreciation for your attention and consideration to our request, we remain,

Yours,

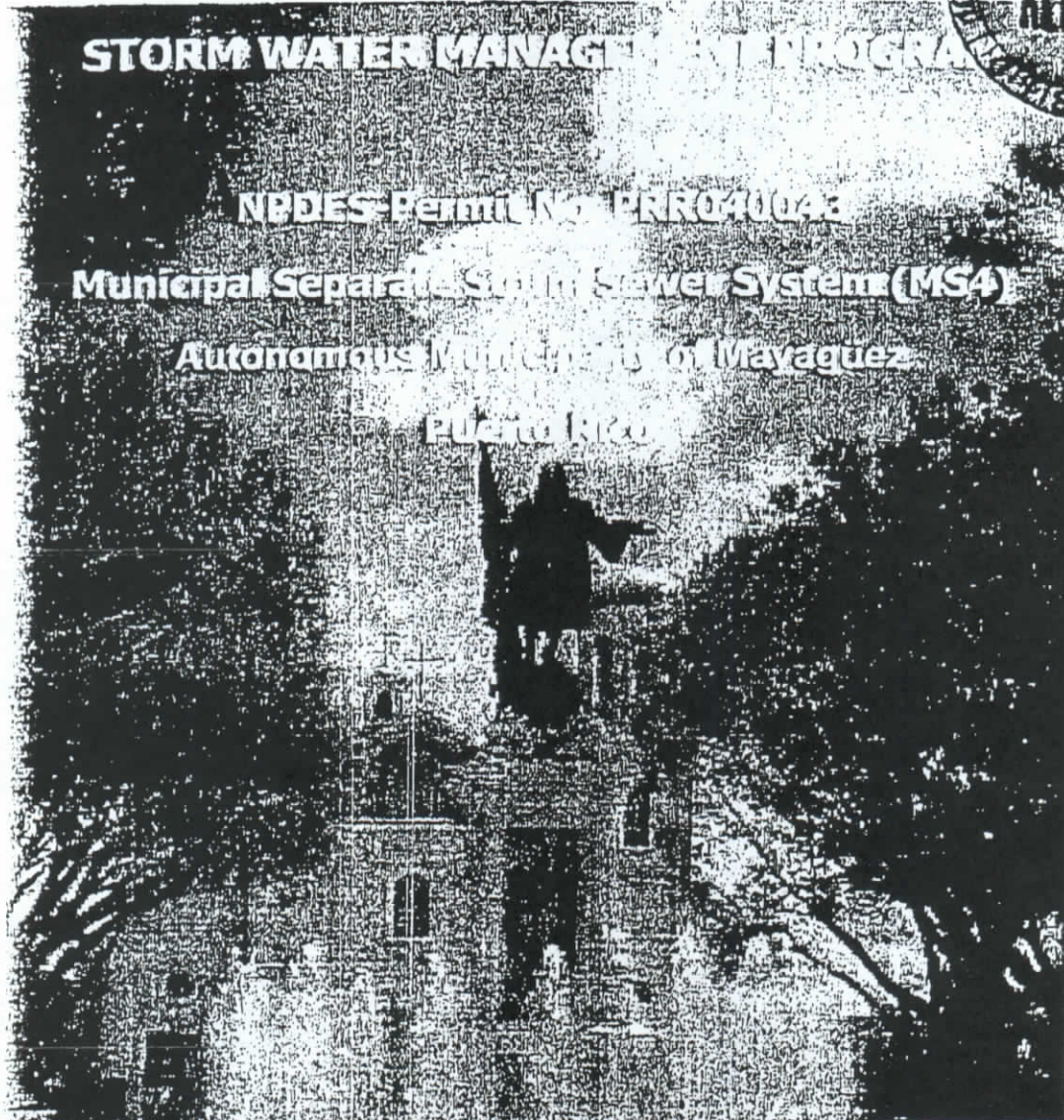

José Guillermo Rodríguez
Mayor

Apartado 447, Mayagüez, Puerto Rico 00681 * Tel (787) 834-8585 Fax (787) 265-2270
alcaldia@mayaguezpr.gov

JAN-11-1998 01:55

P.02/02

NPDES PRR040043
Storm Water Management Program
Municipality of Mayagüez, Puerto Rico



STORM WATER MANAGEMENT PROGRAM

NPDES Permit No. PRR040043

Municipal Separate Storm Sewer System (MS4)

Autonomous Municipality of Mayagüez

Puerto Rico

Public Entity of the Commonwealth of Puerto Rico

Standard Industrial Classification (SIC) 9199

P.O. Box 447

Mayagüez, PR 00681





Small MS4 General Permit

November 6, 2006

Permit No. PRR040000

Permit No. PRR04000F

**National Pollutant Discharge Elimination System
General Permit for Discharges from Small Municipal Separate Storm Sewer Systems**

Authorization to Discharge Under the National Pollutant Discharge Elimination System

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. 1251 et. seq.), except as provided in Part 1.3 of this permit, operators of small municipal separate storm sewer systems, located in the area specified in Part 1.1, Commonwealth of Puerto Rico, and who submit a Notice of Intent and a storm water management plan in accordance with Part II, are authorized to discharge pollutants to waters of the United States in accordance with the conditions and requirements set forth herein.

This permit becomes effective on **November 6, 2006**.

This permit and the authorization to discharge expire at midnight, **November 6, 2011**.

Region 2

Signed and issued this 21 day of September 2006.

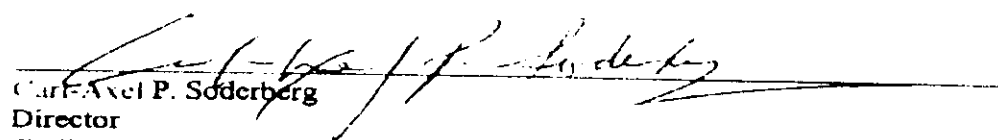

Carl Axel P. Soderberg
Director
Caribbean Environmental Protection Division
U.S. Environmental Protection Agency
Region II

Table of Contents

1. Coverage Under this Permit
 - 1.1 Permit Area
 - 1.2 Eligibility
 - 1.3 Limitations on Coverage
 - 1.4 Allowable Non-Storm Water Discharges
 - 1.5 Obtaining Authorization

2. Notice of Intent Requirements
 - 2.1 Deadlines for Notification
 - 2.2 Contents of the Notice of Intent
 - 2.3 Where to Submit
 - 2.4 Co-Permittees Under a Single Permit

3. Special Conditions
 - 3.1 Discharges to Water Quality Impaired Water Bodies

4. Storm Water Management Programs
 - 4.1 Requirements
 - 4.2 Minimum Control Measures
 - 4.3 Sharing Responsibility
 - 4.4 Reviewing and Updating Storm Water Management Programs
 - 4.5 SWMP Availability

5. Monitoring, Recordkeeping and Reporting
 - 5.1 Monitoring
 - 5.2 Recordkeeping
 - 5.3 Reporting

6. Standard Permit Conditions
 - 6.1 Duty to Comply
 - 6.2 Continuation of the Expired General Permit
 - 6.3 Need to Halt or Reduce Activity not a Defense
 - 6.4 Duty to Mitigate
 - 6.5 Duty to Provide Information.
 - 6.6 Other Information
 - 6.7 Signatory Requirements
 - 6.8 Property Rights
 - 6.9 Proper Operation and Maintenance
 - 6.10 Inspection and Entry
 - 6.11 Permit Actions

- 6.12 Permit Transfers
- 6.13 Anticipated Noncompliance
- 6.14 State/Tribal Environmental Laws
- 6.15 Severability
- 6.16 Procedures for Modification or Revocation
- 6.17 Requiring an Individual Permit or an Alternative General Permit

- 7. Permit Conditions applicable to specific states and territories

- 8. Reopener Clause
 - 8.1 Procedures for Modification or Revocation
 - 8.2 Timing of Permit Modification

- 9. Definitions

- Appendix
 - A. Endangered Species Act Review Procedures
 - B. National Historic Preservation Act Review Procedures
 - C. EPA Region 2 NPDES Permit Applications Form Regulated Small Municipal Separate Storm Sewer Systems (MS4s) in EPA's Jurisdiction within Puerto Rico

1 Coverage Under this Permit

1.1 Permit Area

Area of Coverage: Small municipal separate sewer systems (MS4s) located within:
A. Commonwealth of Puerto Rico (PRR040000);
B. Federal Facilities within Commonwealth of Puerto Rico (PRR04000F)

1.2 Eligibility Criteria

1.2.1 This permit authorizes discharges of storm water from small municipal separate storm sewer systems (MS4s), as defined in 40 CFR §122.26(b)(16). This includes small MS4s designated under 40 CFR §122.32(a)(1) and 40 CFR §122.32(a)(2). The permittee is authorized to discharge under the terms and conditions of this general permit if:

1.2.1.1 The permittee is the operator of a small MS4 within the permit area described in Section 1.1;

1.2.1.2 The permittee is not a "large" or "medium" MS4 as defined in 40 CFR §122.26(b)(4) or (7), and

1.2.1.3 The permittee submits a Notice of Intent (NOI) in accordance with Part 2 of this permit, and

1.2.1.4 The municipality is located fully or partially within an urbanized area as determined by the latest Decennial Census by the Bureau of Census.

Small municipal separate storm sewer system means all separate storm sewers that are:

(a) owned or operated by the United States, a State, city town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity and Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States.

(b) not defined as large or medium municipal separate storm sewer systems pursuant to 40 CFR §122.26(b)(4) and (b)(7) or designated under 40 CFR §122.26(a)(1)(v).

(c) This term includes systems similar to separate storm sewer systems in municipalities, such as systems at military bases, large hospitals or prison complexes, and highways and other thoroughfares. The term does not include separate storm sewers in very discrete areas, such as individual buildings.

1.3 Limitations on Coverage

The following storm water discharges are not authorize by this permit:

- 1.3.1 Discharges that are mixed with sources of non-storm water unless such non-storm water discharges are:
 - In compliance with a separate NPDES permit, or
 - Determined not to be a substantial contributor of pollutants to waters of the U.S.
- 1.3.2 Storm water discharges associated with industrial activity as defined in 40 CFR §122.26(b)(14)(i)-(ix) and (xi).
- 1.3.3 Storm water discharges associated with construction activity as defined in 40 CFR §122.26(b)(14)(x) or 40 CFR §122.26(b)(15).
- 1.3.4 Storm water discharges currently covered under another permit, including discharges covered under other regionally issued general permits.
- 1.3.5 Discharges or discharge-related activities that are likely to jeopardize the continued existence of any species that are listed as endangered or threatened under the ESA or result in the adverse modification or destruction of habitat that is designated as critical under the ESA
 - 1.3.5.1 Coverage under this permit is available only if storm water discharges, allowable non-storm water discharges, and discharge-related activities are not likely to jeopardize the continued existence of any species that are listed as endangered or threatened ("listed") under the ESA or result in the adverse modification or destruction of habitat that is designated as critical under the ESA ("critical habitat"). Submission of a signed NOI will be deemed to also constitute a certification of eligibility.
 - 1.3.5.2 "Discharge-related activities" include: activities which cause, contribute to, or result in storm water point source pollutant discharges; and measures to control storm water discharges, including the siting, construction and operation of best management practices (BMPs) to control, reduce or prevent storm water pollution.

- 1.3.5.3 In order to demonstrate eligibility, the permittee must use the most recent Endangered and Threatened Species County-Species List available from EPA and the process in **Addendum A** (ESA Screening Process) to determine their eligibility *prior* to submittal of their NOI. The most current list is available at: <http://www.epa.gov/npdes/>. The permittee must meet one or more of the criteria in 1.3.5.3.1 through 1.3.5.3.5 below for the entire term of coverage under the permit. The permittee must include a certification of eligibility and supporting documentation on the eligibility determination as part of their Storm Water Management Program.
- 1.3.5.3.1 Criteria A: No endangered or threatened species or critical habitat are in proximity to the MS4 or the point where authorized discharges reach the receiving water; or
- 1.3.5.3.2 Criteria B: In the course of a separate federal action involving the MS4, formal or informal consultation with the Fish and Wildlife Service and/or the National Marine Fisheries Service (the "Services") under Section 7 of the Endangered Species Act (ESA) has been concluded and that consultation:
- Addressed the effects of your storm water discharges, allowable non-storm water discharges, and discharge-related activities on listed species and critical habitat and
 - The consultation resulted in either a no jeopardy opinion or a written concurrence by the Service on a finding that your storm water discharges, allowable non-storm water discharges, and discharge-related activities are not likely to adversely affect listed species or critical habitat; or
- 1.3.5.3.3 Criteria C: The activities are authorized under Section 10 of the ESA and that authorization addresses the effects of your storm water discharges, allowable non-storm water discharges, and discharge-related activities on listed species and critical habitat; or
- 1.3.5.3.4 Criteria D: Using best judgement and knowledge, the effects of your storm water discharges, allowable non-storm water discharges, and discharge-related activities on listed endangered or threatened species and critical habitat have been evaluated. Based on those evaluation a determination is made by the permittee that there is no reason to believe the storm water discharges, allowable non-storm water discharges and discharge related activities will jeopardize the continued existence of any species or result in the adverse modification or destruction of critical habitat.
- 1.3.5.3.5 Criteria E: The storm water discharges, allowable non-storm water discharges, and discharge-related activities were already addressed in another operator's certification of eligibility under Part 1.3.5.3.1 through 1.3.5.3.4 which includes the

MS4 activities. If certification is under this criteria, the permittee agrees to comply with any measures or controls upon which the other operator's certification was based.

- 1.3.5.4 The permitting authority may require any permittee or applicant to provide documentation of the determination of eligibility for this permit using the procedures in Addendum A where the EPA or the Fish and Wildlife Services (FWS) and/or National Marine Fisheries Services (NMFS) determine that there is a potential impact on listed species or critical habitat.
- 1.3.5.5 A discharge is not authorized if the discharges or discharge-related activities cause a prohibited "take" of endangered or threatened species (as defined under Section 3 of the Endangered Species Act and 50 CFR 17.3), unless such takes are authorized under sections 7 or 10 of the Endangered Species Act.
- 1.3.5.6 Discharges are not authorized where the discharges or discharge-related activities are likely to jeopardize the continued existence of any species that are listed as endangered or threatened under the ESA or result in the adverse modification or destruction of habitat that is designated as critical under the ESA.
- 1.3.6 Discharges and discharge-related activities with unconsidered adverse effects on historic properties.
 - 1.3.6.1 Determining eligibility: In order to be eligible for coverage under this permit, the permittee must be in compliance with the National Historic Preservation Act. Your discharges may be authorized under this permit only if:
 - 1.3.6.1.1 Criteria A: your storm water discharges, allowable non-storm water discharges, and discharge-related activities do not affect a property that is listed or is eligible for listing on the National Register of Historic Places as maintained by the Secretary of the Interior; or
 - 1.3.6.1.2 Criteria B: the permittee has obtained and is in compliance with a written agreement with the state Historic Preservation Officer (SHPO) that outlines all measures you will undertake to mitigate or prevent adverse effect to the historic property.
 - 1.3.6.2 Addendum B of this permit provides guidance and references to assist the permittee with determining your permit eligibility concerning this provision.

- 1.3.7 Discharges to territorial seas, the contiguous zone, and the oceans unless such discharges are in compliance with the ocean discharge criteria of 40 CFR Part 125, Subpart M.
- 1.3.8 Discharges that would cause or contribute to instream exceedances of water quality standards. Your storm water management program must include a description of the BMPs that the permittee will be using to ensure that this will not occur. EPA may require corrective action or an application for an individual permit or alternative general permit if an MS4 is determined to cause an instream exceedance of water quality standards.
- 1.3.9 Discharges of any pollutant into any water for which a Total Maximum Daily Load (TMDL) has been either established or approved by the EPA unless your discharge is consistent with that TMDL. This eligibility condition applies at the time the permittee submit a Notice of Intent for coverage. If conditions change after the permittee has permit coverage, the permittee may remain covered by the permit provided the permittee comply with the applicable requirements of Part 3. The permittee must incorporate any limitations, conditions and requirements applicable to your discharges, including monitoring frequency and reporting required, into your Storm Water Management Program in order to be eligible for permit coverage. For discharges not eligible for coverage under this permit, the permittee must apply for and receive an individual or other applicable general NPDES permit prior to discharging.
- 1.3.10 Discharges prohibited under 40 CFR Part 122.4. This includes discharges that do not comply with your state's anti-degradation policy for water quality standards. State anti-degradation policies can be obtained from the appropriate state environmental office or their Internet sites.
- 1.3.11 Discharges to Water Quality Impaired Waters
- A. The permittee must determine whether storm water discharges from any part of the MS4 contribute, either directly or indirectly, to a 303(d) listed water body.
- B. The storm water management program must include a section describing how the program will control the discharge of the pollutants of concern and ensure that the discharges will not cause or contribute to instream exceedance of the water quality standards. This discussion must specifically identify control measures and BMPs that will collectively control the discharge of the pollutant(s) of concern. Pollutant(s) of concern refer to the pollutant identified as causing the impairment.

1.3.12 Total Maximum Daily Load Allocations

If a TMDL has been approved for any water body into which the MS4 discharges, the permittee must:

- A. Determine whether the approved TMDL is for a pollutant likely to be found in storm water discharges from the MS4.
- B. If the MS4 is required to implement storm water waste load allocation provisions of the TMDL, the permittee must assess whether the WLA is being met through implementation of existing storm water control measures or if additional control measures are necessary. The permittee's assessment of whether the WLA is being met is expected to focus on the adequacy of the permittee's storm water controls (implementation and maintenance), not on the response of the receiving water.
- C. Highlight in the storm water management program and annual reports all control measures currently being implemented or planned to be implemented to control pollutants of concern identified in approved TMDLs. Also include a schedule of implementation for all planned controls. Document the assessment which demonstrates that the WLA will be met including any calculations, maintenance log books, or other appropriate controls.

1.4 Allowable Non-Storm Water Discharges

The following non-storm water discharges are authorized provided it has been determined by the permittee that they are not significant contributors of pollutants to the MS4.

- 1. water line flushing
- 2. landscape irrigation,
- 3. diverted stream flows
- 4. rising ground waters,
- 5. uncontaminated ground water infiltration (as defined at 40 CFR 35.2005(20)),
- 6. uncontaminated pumped ground water,
- 7. discharge from potable water sources,
- 8. foundation drains,
- 9. air conditioning condensation,
- 10. irrigation water, springs,
- 11. water from crawl space pumps,
- 12. footing drains,
- 13. lawn watering,
- 14. individual resident car washing,
- 15. flows from riparian habitats and wetlands,
- 16. dechlorinated swimming pool discharges,

17. street wash water, and
18. Residential building wash waters, without detergents

Discharges or flows from fire fighting activities occur during emergency situations. The permittee is not expected to evaluate fire fighting discharges with regard to pollutant contributions. Therefore these discharges are excluded from the list of allowable non-storm water discharges.

1.5 Obtaining Authorization

- 1.5.1 To be authorized to discharge storm water from small MS4s, the permittee must submit a notice of intent (NOI) and a description of their storm water management program in accordance with the deadlines presented in Section 2.1 of this permit.
- 1.5.2 The permittee must submit the information required in section 2.2 on the latest version of the NOI form (or photocopy thereof) contained in Addendum C. Your NOI document must be signed and dated in accordance with section 6.7 of this permit.
- 1.5.3 Unless notified by EPA to the contrary, dischargers who submit an NOI in accordance with the requirements of this permit are authorized to discharge storm water from small MS4s under the terms and conditions of this permit thirty (30) days after the date that the NOI is postmarked. The Agency may deny coverage under this permit and require submittal of an application for an individual NPDES permit based on a review of the NOI or other information (see Section 6.16).
- 1.5.4 Where the operator changes, or where a new operator is added after submittal of an NOI under Part 2, a new NOI must be submitted in accordance with Part 2 prior to the change or addition.

2 Notice of Intent Requirements

2.1 Deadlines for Notification

- 2.1.1 If the permittee is automatically designated under 40 CFR §122.32(a)(1) or designated by the permitting authority in this permit, then the permittee is required to submit an NOI and a description of your storm water management program or apply for an individual permit by **February 5, 2007**.
- 2.1.2 *Additional designations after the date of permit issuance.* If the permittee is designated by the permitting authority after the date of permit issuance, then the

permittee is required to submit an NOI and the storm water management program, including an electronic copy, to the permitting authority within 180 days of notice.

- 2.1.3 *Submitting a Late NOI.* The permittee is not prohibited from submitting an NOI after the dates provided in 2.1. If a late NOI is submitted, your authorization is only for discharges that occur after permit coverage is granted. The permitting authority reserves the right to take appropriate enforcement actions for any unpermitted discharges.

2.2 Contents of the Notice of Intent

The Notice of Intent document requirements are specified in Appendix C of the permit, the NOI must be signed in accordance with Part 6.7 of this permit and must include information as:

2.2.1 Information on the Permittee:

- 2.2.1.1 The name of your municipal entity/name of person responsible for overall coordination/state agency/federal agency, mailing address, and telephone number;

- 2.2.1.2 An indication of whether the permittee is a Federal, State, private, or other public entity;

2.2.2 Information on the Municipal Separate Storm Sewer System:

- 2.2.2.1 The Urbanized Area or Core Municipality (if the permittee is not located in an Urbanized Area) where your system is located; the name of your organization, county(ies) or parish(es) where your MS4 is located, and the latitude and longitude of an approximate center of your MS4;

- 2.2.2.2 The name of the major receiving water(s) and an indication of whether any of your receiving waters are on the latest CWA §303(d) list of impaired waters. If you have discharges to 303(d) waters, a certification that your Storm Water Management Program complies with the requirements of Part 3.1;

- 2.2.1.3 If the permittee is relying on another governmental entity regulated under the storm water regulations (40 CFR 122.26 & 122.32) to satisfy one or more of your permit obligations (see Part 4.4), the identity of that entity(ies) and the element(s) they will be implementing.

- 2.2.1.4 Information on your chosen best management practices (BMPs) and the measurable goals for each of the storm water minimum control measures in Part 4.2 of this permit,

your time frame for implementing each of the BMPs, and the person or persons responsible for implementing or coordinating your Storm Water Management Program.

- 2.2.1.5 Certification of whether you have met eligibility criteria for protection of threatened or endangered species, critical habitat, historic properties, and marine fisheries.

2.3 Where to Submit

You are to submit your NOI, signed in accordance with the signatory requirements of Section 6.7 of this permit, to EPA at the following address:

United States Environmental Protection Agency
Multi-Media Permits and Compliance Branch
Centro Europa Building, Suite 417
1492 Ponce de Leon Ave.
San Juan, PR 00907

2.4 Co-Permittees Under a Single NOI

The permittee may partner with other MS4s to develop and implement your storm water management program. The permittee may also jointly submit an NOI with one or more MS4s. Each MS4 must fill out the NOI form in Addendum C. The description of your storm water management program must clearly describe which permittees are responsible for implementing each of the control measures.

3 Special Conditions

3.1 Discharges to Water Quality Impaired Waters

3.1.1 *Applicability:* The permittee must:

3.1.1.1 Determine whether storm water discharge from any part of the MS4 significantly contributes directly or indirectly to a 303(d) listed (i.e., impaired) waterbody. If the permittee has discharges meeting this criteria, the permittee must comply with Part 3.1.2; if the permittee does not, Part 3.1 does not apply to the permittee.

3.1.1.2 If the permittee has "303(d)" discharges described above, the permittee must also determine whether a TMDL has been developed and approved by EPA for the listed waterbody. If there is a TMDL, the permittee must comply with both Parts 3.1.2 and 3.1.3; if no TMDL has been approved, Part 3.1.3 does not apply until a TMDL has been approved.

- 3.1.2 *Water Quality Controls for Discharges to Impaired Waterbodies.* Your storm water management program (SWMP) must include a section describing how your program will control the discharge of the pollutants of concern and ensure your discharges will not cause or contribute to instream exceedances of the water quality standards. This discussion must specifically identify measures and BMPs that will collectively control the discharge of the pollutants of concern.
- 3.1.3 *Consistency with Total Maximum Daily Load (TMDL) Allocations.* If a TMDL has been approved for any waterbody into which the permittee discharges, the permittee must:
- 3.1.3.1 Determine whether the approved TMDL is for a pollutant likely to be found in storm water discharges from your MS4.
 - 3.1.3.2 Determine whether the TMDL includes a pollutant wasteload allocation (WLA) or other performance requirements specifically for storm water discharge from your MS4.
 - 3.1.3.3 Determine whether the TMDL address a flow regime likely to occur during periods of storm water discharge.
 - 3.1.3.4 After the determinations above have been made and if it is found that your MS4 must implement specific WLA provisions of the TMDL, assess whether the WLAs are being met through implementation of existing storm water control measures or if additional control measures are necessary.
 - 3.1.3.5 Document all control measures currently being implemented or planned to be implemented. Also include a schedule of implementation for all planned controls. Document the calculations or other evidence that shows that the WLA will be met.
 - 3.1.3.6 Describe a monitoring program to determine whether the storm water controls are adequate to meet the WLA.
 - 3.1.3.7 If the evaluation shows that additional or modified controls are necessary, describe the type and schedule for the control additions/revisions. Continue Parts 3.1.3.4-7 until two continuous monitoring cycles show that the WLAs are being met or that WQ standards are being met.

Small MS4 General Permit

4 Storm Water Management Program (SWMP)

4.1 Requirements

- 4.1.1 The permittee must develop, implement, and enforce a storm water management program designed to reduce the discharge of pollutants from your small MS4 to the maximum extent practicable (MEP), to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act. The storm water management program should include management practices; control techniques and system, design, and engineering methods; and such other provisions as the permitting authority determines appropriate for the control of such pollutants. The permittee storm water management program must include the following information for each of the six minimum control measures described in Section 4.2 of this permit:
- 4.1.1.1 The best management practices (BMPs) that the permittee or another entity will implement for each of the storm water minimum control measures;
 - 4.1.1.2 The measurable goals for each of the BMPs including, as appropriate, the months and years in which the permittee will undertake required actions, including interim milestones and the frequency of the action; and
 - 4.1.1.3 The person or persons responsible for implementing or coordinating the BMPs for the permittee storm water management program.
- 4.1.2 In addition to the requirements listed above, the permittee must provide a rationale for how and why the permittee selected each of the BMPs and measurable goals for the permittee storm water management program. The information required for such a rationale is given in Section 4.2 for each minimum measure. The permittee must develop and fully implement your program by November 6, 2011.
- 4.1.2.1 The permittee must submit to EPA a hard and electronic copy of the SWMP by **August 6, 2007**. The storm sewer system map(s) are not required electronically.
 - 4.1.2.2 *Additional designations after the date of permit issuance.* If the permittee is designated by the permitting authority after the date of permit issuance, then the permittee is required to submit an NOI and the storm water management program, including an electronic copy, to the permitting authority within 180 days of notice.
- 4.1.3 The following EPA websites may be used in the development of BMPs and measurable goals,

EPA's BMP menu found at:

<http://cfpub.epa.gov/npdes/stormwater/menuofbmps/index.cfm>, and

EPA's guidance on measurable goals, found at:

<http://www.epa.gov/npdes/stormwater/measurablegoals/index.htm>, may be used in the development of the storm water management program.

4.2 Minimum Control Measures

The six minimum control measures that must be included in the permittee storm water management program are:

4.2.1 Public Education and Outreach on Storm Water Impacts

4.2.1.1 *Permit requirement.* The permittee must implement a public education program to distribute educational materials to the community or conduct equivalent outreach activities about the impacts of storm water discharges on water bodies and the steps that the public can take to reduce pollutants in storm water runoff.

4.2.1.2 *Decision process.* The permittee must document the decision process for the development of a storm water public education and outreach program. The rationale statement must address both the permittee overall public education program and the individual BMPs, measurable goals and responsible persons for the program. The rationale statement must include the following information, at a minimum:

4.2.1.2.1 How the permittee plan to inform individuals and households about the steps they can take to reduce storm water pollution.

4.2.1.2.2 How the permittee plan to inform individuals and groups on how to become involved in the storm water program (with activities such as local stream and beach restoration activities).

4.2.1.2.3 Who are the target audiences for the permittee's education program who are likely to have significant storm water impacts (including commercial, industrial and institutional entities) and why those target audiences were selected.

4.2.1.2.4 What are the target pollutant sources the permittee public education program is designed to address.

4.2.1.2.5 What is the permittee outreach strategy, including the mechanisms (e.g., printed brochures, newspapers, media, workshops, etc.) the permittee will use to reach your target audiences , and how many people does the permittee expect to reach by the outreach strategy over the permit term.

4.2.1.2.6 Who is responsible for overall management and implementation of the permittee storm water public education and outreach program and, if different, who is responsible for each of the BMPs identified for this program.

4.2.1.2.7 How will the permittee evaluate the success of this minimum measure, including how the permittee selected the measurable goals for each of the BMPs.

4.2.2 Public Involvement/Participation

4.2.2.1 *Permit requirement.* The permittee must at a minimum, comply with State and local public notice requirements when implementing a public involvement/participation program.

4.2.2.2 *Decision process.* The permittee must document the decision process for the development of a storm water public involvement/participation program. The rationale statement must address both the permittee overall public involvement/participation program and the individual BMPs, measurable goals, and responsible persons for the program. The rational statement must include the following information, at a minimum:

4.2.2.2.1 How the permittee has involved the public in the development and submittal of your NOI and storm water management program.

4.2.2.2.2 What is the permittee's plan to actively involve the public in the development and implementation of the program.

4.2.2.2.3 Who are the target audiences for the permittee's public involvement program, including a description of the types of ethnic and economic groups engaged. The permittee is encouraged to actively involve all potentially affected stakeholder groups, including commercial and industrial businesses, trade associations, environmental groups, homeowners associations, and educational organizations, among others.

4.2.2.2.4 What are the types of public involvement activities included in the program. Where appropriate, consider the following types of public involvement activities:

4.2.2.2.4.1 Citizen representatives on a storm water management panel

- 4.2.2.2.4.2 Public hearings
- 4.2.2.2.4.3 Working with citizen volunteers willing to educate others about the program
- 4.2.2.2.4.4 Volunteer monitoring or stream/beach clean-up activities
- 4.2.2.2.5 Who is responsible for the overall management and implementation of the storm water public involvement/participation program and, if different, who is responsible for each of the BMPs identified for this program.
- 4.2.2.2.6 How the permittee will evaluate the success of this minimum measure, including how the permittee selected the measurable goals for each of the BMPs.
- 4.2.3 Illicit Discharge Detection and Elimination**
 - 4.2.3.1 *Permit requirement.* The permittee must:
 - 4.2.3.1.1 Develop, implement and enforce a program to detect and eliminate illicit discharges (as defined in 40 CFR §122.26(b)(2)) into the permittee small MS4;
 - 4.2.3.1.2 Develop, if not already completed, a storm sewer system map, showing the location of all outfalls and the names and location of all waters of the United States that receive discharges from those outfalls;
 - 4.2.3.1.3 To the extent allowable under State or local law, effectively prohibit, through ordinance, or other regulatory mechanism, non-storm water discharges into the permittee storm sewer system and implement appropriate enforcement procedures and actions;
 - 4.2.3.1.4 Develop and implement a plan to detect and address non-storm water discharges, including illegal dumping, to the permittees' system;
 - 4.2.3.1.5 Inform public employees, businesses, and the general public of hazards associated with illegal discharges and improper disposal of waste; and
 - 4.2.3.1.6 Address the following categories of non-storm water discharges or flows (i.e., illicit discharges) only if the permittee identify them as significant contributors of pollutants to the small MS4: water line flushing, landscape irrigation, diverted stream flows, rising ground waters, uncontaminated ground water infiltration (as defined at 40 CFR §35.2005(20)), uncontaminated pumped ground water, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing

drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, and street wash water (discharges or flows from fire fighting activities are excluded from the effective prohibition against non-storm water and need only be addressed where they are identified as significant sources of pollutants to waters of the United States).

- 4.2.3.1.7 The permittee may also develop a list of other similar occasional incidental non-storm water discharges (e.g., non-commercial or charity car washes, etc.) that will not be addressed as illicit discharges. These non-storm water discharges must not be reasonably expected (based on information available to the permittees) to be significant sources of pollutants to the Municipal Separate Storm Sewer System, because of either the nature of the discharges or conditions the permittee has established for allowing these discharges to the permitted MS4 (e.g., a charity car wash with appropriate controls on frequency, proximity to sensitive waterbodies, BMPs on the wash water, etc.). The permittee must document in their SWMP any local controls or conditions placed on the discharges. The permittee must include a provision prohibiting any individual non-storm water discharge that is determined to be contributing significant amounts of pollutants to their MS4.
- 4.2.3.2 *Decision process.* The permittee must document the decision process for the development of a storm water illicit discharge detection and elimination program. The rationale statement must address both the overall illicit discharge detection and elimination program and the individual BMPs, measurable goals, and responsible persons for their program. The rationale statement must include the following information, at a minimum:
- 4.2.3.2.1 How the permittee will develop a storm sewer map showing the location of all outfalls and the names and location of all receiving waters. Describe the sources of information the permittee used for the maps, and how the permittee plan to verify the outfall locations with field surveys. If already completed, describe how the permittee developed this map. Also, describe how the map will be regularly updated.
- 4.2.3.2.2 The mechanism (ordinance or other regulatory mechanism) the permittee will use to effectively prohibit illicit discharges into the MS4 and why the permittee choose that mechanism. If the permittee need to develop this mechanism, describe the plan and a schedule to do so. If the ordinance or regulatory mechanism is already developed, include a copy of the relevant sections with the program.
- 4.2.3.2.3 The plan to ensure through appropriate enforcement procedures and actions that the illicit discharge ordinance (or other regulatory mechanism) is implemented.

- 4.2.3.2.4 The plan to detect and address illicit discharges to the system, including discharges from illegal dumping and spills. The plan must include dry weather field screening for non-storm water flows and field tests of selected chemical parameters as indicators of discharge sources. The plan must also address on-site sewage disposal systems that flow into your storm drainage system. The description must address the following, at a minimum:
- 4.2.3.2.4.1 Procedures for locating priority areas which includes areas with higher likelihood of illicit connections (e.g., areas with older sanitary sewer lines, for example) or ambient sampling to locate impacted reaches.
 - 4.2.3.2.4.2 Procedures for tracing the source of an illicit discharge, including the specific techniques the permittee will use to detect the location of the source.
 - 4.2.3.2.4.3 Procedures for removing the source of the illicit discharge
 - 4.2.3.2.4.4 Procedures for program evaluation and assessment.
 - 4.2.3.2.5 How the permittee plan to inform public employees, businesses, and the general public of hazards associated with illegal discharges and improper disposal of waste. Include in the description how this plan will coordinate with the public education minimum measure and the pollution prevention/good housekeeping minimum measure programs.
 - 4.2.3.2.6 Who is responsible for overall management and implementation of the permittee's storm water illicit discharge detection and elimination program and, if different, who is responsible for each of the BMPs identified for this program.
 - 4.2.3.2.7 How the permittee will evaluate the success of this minimum measure, including how the permittee selected the measurable goals for each of the BMPs.
- 4.2.4 Construction Site Storm Water Runoff Control**
- 4.2.4.1 *Permit requirement.* The permittee must develop, implement, and enforce a program to reduce pollutants in any storm water runoff to their small MS4 from construction activities that result in a land disturbance of greater than or equal to one acre. Reduction of storm water discharges from construction activity disturbing less than one acre must be included in your program if that construction activity is part of a larger common plan of development or sale that would disturb one acre or more. If the NPDES permitting authority waives requirements for storm water discharges associated with small construction activity in accordance with § 122.26(b)(15)(i), the permittee is not required to develop, implement,

and/or enforce a program to reduce pollutant discharges from such sites. The program must include the development and implementation of, at a minimum:

- 4.2.4.1.1 An ordinance or other regulatory mechanism to require erosion and sediment controls, as well as sanctions to ensure compliance, to the extent allowable under State or local law;
 - 4.2.4.1.2 Requirements for construction site operators to implement appropriate erosion and sediment control best management practices;
 - 4.2.4.1.3 Requirements for construction site operators to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality;
 - 4.2.4.1.4 Procedures for site plan review which incorporate consideration of potential water quality impacts;
 - 4.2.4.1.5 Procedures for receipt and consideration of information submitted by the public; and
 - 4.2.4.1.6 Procedures for site inspection and enforcement of control measures.
- 4.2.4.2 *Decision process.* The permittee must document the decision process for the development of a construction site storm water control program. The rationale statement must address both the overall construction site storm water control program and the individual BMPs, measurable goals, and responsible persons for the program. The rationale statement must include the following information, at a minimum:
- 4.2.4.2.1 The mechanism (ordinance or other regulatory mechanism) the permittee will use to require erosion and sediment controls at construction sites and why the permittee choose that mechanism. If the permittee needs to develop this mechanism, describe the plan and a schedule to do so. If the ordinance or regulatory mechanism is already developed, include a copy of the relevant sections with your storm water management program description.
 - 4.2.4.2.2 The plan to ensure compliance with the erosion and sediment control regulatory mechanism, including the sanctions and enforcement mechanisms the permittee will use to ensure compliance. Describe the procedures for when the permittee will use certain sanctions. Possible sanctions include non-monetary penalties (such a stop work orders), fines, bonding requirements, and/or permit denials for non-compliance.

- 4.2.4.2.3 The requirements for construction site operators to implement appropriate erosion and sediment control BMPs and control waste at construction sites that may cause adverse impacts to water quality. Such waste includes discarded building materials, concrete truck washouts, chemicals, litter, and sanitary waste.
- 4.2.4.2.4 The procedures for site plan review, including the review of pre-construction site plans, which incorporate consider of potential water quality impacts. Describe the procedures and the rationale for how the permittee will identify certain sites for site plan review, if not all plans are reviewed. Describe the estimated number and percentage of site that will have pre-construction site plans reviewed.
- 4.2.4.2.5 The procedures for receipt and consideration of information submitted by the public. Consider coordinating this requirement with the public education program.
- 4.2.4.2.6 The procedures for site inspection and enforcement of control measures, including how the permittee will prioritize sites for inspection.
- 4.2.4.2.7 Who is responsible for overall management and implementation of the construction site storm water control program and, if different, who is responsible for each of the BMPs identified for this program.
- 4.2.4.2.8 Describe how the permittee will evaluate the success of this minimum measure, including how the permittee selected the measurable goals for each of the BMPs.
- 4.2.5 Post-Construction Storm Water Management in New Development and Redevelopment**
- 4.2.5.1 *Permit requirement.* The permittee must:
- 4.2.5.1.1 Develop, implement, and enforce a program to address storm water runoff from new development and redevelopment projects that disturb greater than or equal to one acre, including projects less than one acre that are part of a larger common plan of development or sale, that discharge into the permittee small MS4. The permittee's program must ensure that controls are in place that would prevent or minimize water quality impacts;
- 4.2.5.1.2 Develop and implement strategies which include a combination of structural and/or non-structural best management practices (BMPs) appropriate for the permittee's community; and

Small MS4 General Permit

- 4.2.5.1.3 Use an ordinance or other regulatory mechanism to address post-construction runoff from new development and redevelopment projects to the extent allowable under State or local law; and
- 4.2.5.1.4 Ensure adequate long-term operation and maintenance of BMPs.
- 4.2.5.2 *Decision process.* The permittee must document their decision process for the development of a post-construction storm water management program. Their rationale statement must address both their overall post-construction storm water management program and the individual BMPs, measurable goals, and responsible persons for their program. The rational statement must include the following information, at a minimum:
 - 4.2.5.2.1 Their program to address storm water runoff from new development and redevelopment projects. Include in this description any specific priority areas for this program.
 - 4.2.5.2.2 How their program will be specifically tailored for their local community, minimize water quality impacts, and attempt to maintain pre-development runoff conditions.
 - 4.2.5.2.3 Any non-structural BMPs in your program, including, as appropriate:
 - 4.2.5.2.3.1 Policies and ordinances that provide requirements and standards to direct growth to identified areas, protect sensitive areas such as wetlands and riparian areas, maintain and/or increase open space (including a dedicated funding source for open space acquisition), provide buffers along sensitive water bodies, minimize impervious surfaces, and minimize disturbance of soils and vegetation;
 - 4.2.5.2.3.2 Policies or ordinances that encourage infill development in higher density urban areas, and areas with existing storm sewer infrastructure;
 - 4.2.5.2.3.3 Education programs for developers and the public about project designs that minimize water quality impacts; and
 - 4.2.5.2.3.4 Other measures such as minimization of the percentage of impervious area after development, use of measures to minimize directly connected impervious areas, and source control measures often thought of as good housekeeping, preventive maintenance and spill prevention.
 - 4.2.5.2.4 Any structural BMPs in your program, including, as appropriate:
 - 4.2.5.2.4.1 Storage practices such as wet ponds and extended-detention outlet structures;

- 4.2.5.2.4.2 Filtration practices such as grassed swales, bioretention cells, sand filters and filter strips; and
- 4.2.5.2.4.3 Infiltration practices such as infiltration basins and infiltration trenches.
- 4.2.5.2.5 What are the mechanisms (ordinance or other regulatory mechanisms) the permittee will use to address post-construction runoff from new developments and redevelopments and why did the permittee choose that mechanism. If the permittee need to develop a mechanism, describe the plan and a schedule to do so. If the ordinance or regulatory mechanism is already developed, include a copy of the relevant sections with your program.
- 4.2.5.2.6 How the permittee will ensure the long-term operation and maintenance (O&M) of their selected BMPs. Options to help ensure that future O&M responsibilities are clearly identified include an agreement between the permittee and another party such as the post-development landowners or regional authorities.
- 4.2.5.2.7 Who is responsible for overall management and implementation of the post-construction storm water management program and, if different, who is responsible for each of the BMPs identified for this program.
- 4.2.5.2.8 How the permittee will evaluate the success of this minimum measure, including how the permittee selected the measurable goals for each of the BMPs.

4.2.6 Pollution Prevention/Good Housekeeping for Municipal Operations

- 4.2.6.1 *Permit requirement.* The permittee must:
 - 4.2.6.1.1 Develop and implement an operation and maintenance program that includes a training component and has the ultimate goal of preventing or reducing pollutant runoff from municipal operations; and
 - 4.2.6.1.2 Using training materials that are available from EPA, the State or other organizations, the program must include employee training to prevent and reduce storm water pollution from activities such as park and open space maintenance, fleet and building maintenance, new construction and land disturbances, and storm water system maintenance.
- 4.2.6.2 *Decision process.* The permittee must document their decision process for the development of a pollution prevention/good housekeeping program for municipal operations. The rationale statement must address both their overall pollution prevention/good housekeeping program and the individual BMPs, measurable

goals, and responsible persons for their program. The rationale statement must include the following information, at a minimum:

- 4.2.6.2.1 The operation and maintenance program to prevent or reduce pollutant runoff from the municipal operations. The program must specifically list the municipal operations that are impacted by this operation and maintenance program. The permittee must also include a list of industrial facilities the permittee own or operate that are subject to EPA's Multi-Sector General Permit (MSGP) or individual NPDES permits for discharges of storm water associated with industrial activity that ultimately discharge to their MS4. Include the EPA permit number or a copy of the Industrial NOI form for each facility.
- 4.2.6.2.2 Any government employee training program the permittee will use to prevent and reduce storm water pollution from activities such as park and open space maintenance, fleet and building maintenance, new construction and land disturbances, and storm water system maintenance. Describe any existing, available materials the permittee plan to use. Describe how this training program will be coordinated with the outreach programs developed for the public information minimum measure and the illicit discharge minimum measure.
- 4.2.6.2.3 The program description must specifically address the following areas:
 - 4.2.6.2.3.1 Maintenance activities, maintenance schedules, and long-term inspection procedures for controls to reduce floatables and other pollutants to the MS4.
 - 4.2.6.2.3.2 Controls for reducing or eliminating the discharge of pollutants from streets, roads, highways, municipal parking lots, maintenance and storage yards, waste transfer stations, fleet or maintenance shops with outdoor storage areas, and salt/sand storage locations and snow disposal areas the permittee operate.
 - 4.2.6.2.3.3 Procedures for the proper disposal of waste removed from the MS4 and their municipal operations, including dredge spoil, accumulated sediments, floatables, and other debris.
 - 4.2.6.2.3.4 Procedures to ensure that new flood management projects are assessed for impacts on water quality and existing projects are assessed for incorporation of additional water quality protection devices or practices.
- 4.2.6.2.4 Who is responsible for overall management and implementation of the pollution prevention/good housekeeping program and, if different, who is responsible for each of the BMPs identified for this program.

- 4.2.6.2.5 How the permittee will evaluate the success of this minimum measure, including how the permittee selected the measurable goals for each of the BMPs.

4.3 Sharing Responsibility

Implementation of one or more of the minimum measures may be shared with another entity, or the entity may fully take over the measure. The permittee may rely on another entity only if:

- 4.3.1 The other entity, in fact, implements the control measure;
- 4.3.2 The particular control measure, or component of that measure, is at least as stringent as the corresponding permit requirement.
- 4.3.3 The other entity agrees to implement the control measure on your behalf. Written acceptance of this obligation is expected. This obligation must be maintained as part of the description of the permittee storm water management program. If the other entity agrees to report on the minimum measure, the permittee must supply the other entity with the reporting requirements contained in Section 5.3 of this permit. If the other entity fails to implement the control measure on your behalf, then the permittee remain liable for any discharges due to that failure to implement.

4.4 Reviewing and Updating Storm Water Management Programs

- 4.4.1 *Storm Water Management Program Review:* The permittee must do an annual review of their Storm Water Management Program in conjunction with preparation of the annual report required under Part 5.3
- 4.4.2 *Storm Water Management Program Update:* The permittee may change their Storm Water Management Program during the life of the permit in accordance with the following procedures:
- 4.4.2.1 Changes adding (but not subtracting or replacing) components, controls, or requirements to the Storm Water Management Program may be made at any time upon written notification to the Permitting Authority.
- 4.4.2.2 Changes replacing an ineffective or unfeasible BMP specifically identified in the Storm Water Management Program with an alternate BMP may be requested at any time. Unless denied by the Permitting Authority, changes proposed in accordance with the criteria below shall be deemed approved and may be implemented 60 days from submittal of the request. If request is denied, the permitting Authority will send the

permittee a written response giving a reason for the decision. Your modification requests must include the following:

- 4.4.2.2.1 An analysis of why the BMP is ineffective or infeasible (including cost prohibitive),
- 4.4.2.2.2 Expectations on the effectiveness of the replacement BMP, and
- 4.4.2.2.3 An analysis of why the replacement BMP is expected to achieve the goals of the BMP to be replaced.
- 4.4.2.3 Change requests or notifications must be made in writing and signed in accordance with Part 6.7.
- 4.4.3 *Storm Water Management Program Updates Required by the Permitting Authority:* The Permitting Authority may require changes to the Storm Water Management Program as needed to:
 - 4.4.3.1 Address impacts on receiving water quality caused, or contributed to, by discharges from the Municipal Separate Storm Sewer System;
 - 4.4.3.2 Include more stringent requirements necessary to comply with new Federal statutory or regulatory requirements; or
 - 4.4.3.3 Include such other conditions deemed necessary by the Permitting Authority to comply with the goals and requirements of the Clean Water Act.
 - 4.4.3.4 Changes requested by the Permitting Authority must be made in writing, set forth the time schedule for the permittee to develop the changes, and offer the permittee the opportunity to propose alternative program changes to meet the objective of the requested modification. All changes required by the Permitting Authority will be made in accordance with 40 CFR 124.5, 40 CFR 122.62, or as appropriate 40 CFR 122.63.
- 4.4.4 *Transfer of Ownership, Operational Authority, or Responsibility for Storm Water Management Program Implementation:* The permittee must implement the Storm Water Management Program on all new areas added to their portion of the municipal separate storm sewer system (or for which the permittee became responsible for implementation of storm water quality controls) as expeditiously as practicable, but not later than one year from addition of the new areas. Implementation may be accomplished in a phased manner to allow additional time for controls that cannot be implemented immediately.

- 4.4.4.1 Within 90 days of a transfer of ownership, operational authority, or responsibility for storm water management program implementation, the permittee must have a plan for implementing your Storm Water Management Program on all affected areas. The plan may include schedules for implementation. Information on all new annexed areas and any resulting updates required to the Storm Water Management Program must be included in the annual report.
- 4.4.4.2 Only those portions of the Storm Water Management Programs specifically required as permit conditions shall be subject to the modification requirements of 40 CFR Part 124.5. Addition of components, controls, or requirements by the permittee(s) and replacement of an ineffective or infeasible BMP implementing a required component of the Storm Water Management Program with an alternate BMP expected to achieve the goals of the original BMP shall be considered minor changes to the Storm Water Management Program and not modifications to the permit.

4.5 SWMP Availability

You must retain a copy of the current SWMP required by this permit, and it must be immediately available to EPA; a State or local agency approving storm water management plans; and representatives of the U.S. Fish and Wildlife Services (USFWS) or the National Marine Fisheries Service (NMFS) at the time or upon request. Also, in the interest of the public's right-to-know, you must allow to view a copy or provide a copy of the SWMP to anyone who makes such a request in writing. Confidential Business Information (CBI) may not be withheld from regulatory agencies, but may be withheld from the public. All portions of the SWMP not justifiably considered CBI, must be provided to the public.

5 Monitoring, Recordkeeping, and Reporting

5.1 Monitoring

- 5.1.1 The permittee must evaluate program compliance, the appropriateness of identified best management practices, and progress toward achieving identified measurable goals. If the permittee discharge to a water for which a TMDL has been approved, the permittee will have additional monitoring requirements under Part 3.1.3.6.
- 5.1.2 When the permittee conduct monitoring at their permitted small MS4, the permittee is required to comply with the following:
- 5.1.2.1 *Representative monitoring.* Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

5.1.2.2 *Test Procedures.* Monitoring results must be conducted according to test procedures approved under 40 CFR part 136

5.1.3 Records of monitoring information shall include:

5.1.3.1 The date, exact place, and time of sampling or measurements;

5.1.3.2 The names(s) of the individual(s) who performed the sampling or measurements;

5.1.3.3 The date(s) analyses were performed;

5.1.3.4 The names of the individuals who performed the analyses;

5.1.3.5 The analytical techniques or methods used; and

5.1.3.6 The results of such analyses.

5.1.4 *Discharge Monitoring Report.* Monitoring results must be reported on a Discharge Monitoring Report (DMR)

5.2 Record keeping

5.2.1 The permittee must retain records of all monitoring information, including, all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, copies of Discharge Monitoring Reports (DMRs), a copy of the NPDES permit, and records of all data used to complete the application (NOI) for this permit, for a period of at least three years from the date of the sample, measurement, report or application, or for the term of this permit, whichever is longer. This period may be extended by request of the permitting authority at any time.

5.2.2 The permittee must submit their records to the permitting authority only when specifically asked to do so. The permittee must retain a description of the Storm Water Management Program required by this permit (including a copy of the permit language) at a location accessible to the permitting authority. The permittee must make their records, including the notice of intent (NOI) and the description of the storm water management program, available to the public if requested to do so in writing.

5.3 Reporting

The permittee must submit annual reports to the Director by November 6th of each year of the permit term. The report must include:

- 5.3.1 The status of permittee's compliance with permit conditions, an assessment of the appropriateness of the identified best management practices, progress towards achieving the statutory goal of reducing the discharge of pollutants to the MEP, and the measurable goals for each of the minimum control measures;
- 5.3.2 Results of information collected and analyzed, if any, during the reporting period, including monitoring data used to assess the success of the program at reducing the discharge of pollutants to the MEP;
- 5.3.3 A summary of the storm water activities the permittee plan to undertake during the next reporting cycle (including an implementation schedule);
- 5.3.4 Proposed changes to your storm water management program, including changes to any BMPs or any identified measurable goals that apply to the program elements; and
- 5.3.5 Notice that the permittee is relying on another government entity to satisfy some of your permit obligations (if applicable).

6 Standard Permit Conditions

6.1 Duty to Comply

- 6.1.1 The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of CWA and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.
- 6.1.2 *Penalties for Violations of Permit Conditions.*

The Director will adjust the civil and administrative penalties listed below in accordance with the Civil Monetary Penalty Inflation Adjustment Rule (Federal Register: December 31, 1996, Volume 61, Number 252, pages 69359-69366, as corrected, March 20, 1997, Volume 62, Number 54, pages 13514-13517) as mandated by the Debt Collection Improvement Act of 1996 for inflation on a periodic basis. This rule allows EPA's penalties to keep pace with inflation. The Agency is required to review its penalties at least once every four years thereafter and to adjust them as

necessary for inflation according to a specified formula. The civil and administrative penalties listed below were adjusted for inflation starting in 1996.

6.1.2.1 *Criminal Violations.*

6.1.2.1.1 *Negligent Violations.* The CWA provides that any person who *negligently* violates permit conditions implementing section 301, 302, 306, 307, 308, 318 or 405 of the Act, or any condition or limitation implementing any of such sections in a permit issued under section 402, or any requirement imposed in a pretreatment program approved under sections 402(a)(3) or 402(b)(8) of the Act, is subject to a fine of not less than \$2,500 nor more than \$25,000 per day of violation, or by imprisonment for not more than 1 year, or both. In the case of a second, or subsequent conviction for a negligent violation, a person shall be subject to criminal penalties of not more than \$50,000 per day of violation, or by imprisonment of not more than two (2) years, or both.

6.1.2.1.2 *Knowing Violations.* The CWA provides that any person who *knowingly* violates permit conditions implementing section 301, 302, 306, 307, 308, 318 or 405 of the Act, or any condition or limitation implementing any of such sections in a permit issued under section 402 of the Act, or any requirement imposed in a pretreatment program approved under sections 402(a)(3) or 402(b)(8) of the Act, is subject to a fine of not less than \$5,000 nor more than \$50,000 per day of violation, or by imprisonment for not more than 3 years, or both. In the case of a second, or subsequent conviction for a knowing violation, a person shall be subject to criminal penalties of not more than \$100,000 per day of violation, or by imprisonment of not more than six (6) years, or both.

6.1.2.1.3 *Knowing Endangerment.* The CWA provides that any person who *knowingly* violates permit conditions implementing section 301, 302, 306, 307, 308, 318 or 405 of the Act, or any condition or limitation implementing any of such sections in a permit issued under section 402 of the Act, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury shall, upon conviction be subject to a fine not more than \$250,000 or by imprisonment for not more than 15 years, or both. In the case of a second, or subsequent conviction for a knowing endangerment violation, a person shall be subject to criminal penalties of not more than \$500,000 per day of violation, or by imprisonment of not more than 30 years, or both. An organization, as defined in section 309(c)(3)(B)(iii) of the CWA shall, upon conviction of violating the

imminent danger provision, be subject to a fine of not more than \$1,000,000 and can be fined up to \$2,000,000 for second or subsequent convictions.

- 6.1.2.1.4 *False Statement.* The CWA provides that any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under the Act or who knowingly falsifies, tampers with, or renders inaccurate, any monitoring device or method required to be maintained under the Act, shall upon conviction, be punished by a fine of not more than \$10,000 or by imprisonment for not more than two years, or by both. If a conviction is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than \$20,000 per day of violation, or by imprisonment of not more than four years, or by both. (See section 309(c)(4) of the Clean Water Act).

6.1.2.2 *Civil Penalties.*

The CWA provides that any person who violates a permit condition implementing section 301, 302, 306, 307, 308, 318 or 405 of the Act or any condition or limitation implementing any of such sections in a permit issued under section 402 of the Act, or any requirement imposed in a pretreatment program approved under sections 402(a)(3) or 402(b)(8) of the Act is subject to a civil penalty not to exceed \$32,500 per day for each violation.

6.1.2.3 *Administrative Penalties.*

The CWA provides that any person who violates a permit condition implementing section 301, 302, 306, 307, 308, 318 or 405 of the Act or any condition or limitation implementing any of such sections in a permit issued under section 402 of the Act, or any requirement imposed in a pretreatment program approved under sections 402(a)(3) or 402(b)(8) of the Act is subject to an administrative penalty as follows:

- 6.1.2.3.1 *Class I penalty.* Not to exceed \$11,000 per violation nor shall the maximum amount exceed \$32,500.
- 6.1.2.3.2 *Class II penalty.* Not to exceed \$11,000 per day for each day during which violation continues nor shall the maximum amount exceed \$157,500.

6.2 Continuation of the Expired General Permit

If this permit is not reissued or replaced prior to the expiration date, it will be administratively continued in accordance with the Administrative Procedures Act and remain in force and effect. Any permittee who was granted permit coverage prior to

the expiration date will automatically remain covered by the continued permit until the earlier of:

- 6.2.1 Reissuance or replacement of this permit, at which time the permittee must comply with the Notice of Intent conditions of the new permit to maintain authorization to discharge; or
- 6.3.2 Issuance of an individual permit for your discharges; or
- 6.3.3 A formal permit decision by the permitting authority not to reissue this general permit, at which time the permittee must seek coverage under an alternative general permit or an individual permit.

6.3 Need to Halt or Reduce Activity Not a Defense

It shall not be a defense for the permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

6.4 Duty to Mitigate

The permittee must take all reasonable steps to minimize or prevent any discharge in violation of this permit that has a reasonable likelihood of adversely affecting human health or the environment.

6.5 Duty to Provide Information

The permittee must furnish to the permitting authority any information that is requested to determine compliance with this permit or other information.

6.6 Other Information

If the permittee becomes aware that they have failed to submit any relevant facts in your Notice of Intent or submitted incorrect information in the Notice of Intent or in any other report to the permitting authority, the permittee must promptly submit such facts or information.

6.7 Signatory Requirements

All Notices of Intent, reports, certifications, or information submitted to the permitting authority, or that this permit requires be maintained by the permittee shall be signed and certified as follows:

6.7.1 *Notices of Intent.* All Notices of Intent shall be signed by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a Federal agency includes (1) the chief executive officer of the agency, or (2) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of EPA).

6.7.2 *Reports and other information.* All reports required by the permit and other information requested by the permitting authority or authorized representative of the permitting authority shall be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:

6.7.2.1 *Signed authorization.* The authorization is made in writing by a person described above and submitted to the permitting authority.

6.7.2.2 *Authorization with specified responsibility.* The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of manager, operator, superintendent, or position of equivalent responsibility for environmental matter for the regulated entity.

6.7.3 *Changes to authorization.* If an authorization is no longer accurate because a different operator has the responsibility for the overall operation of the MS4, a new authorization satisfying the requirement of (6.7.2.2) above must be submitted to the permitting authority prior to or together with any reports, information, or notices of intent to be signed by an authorized representative.

6.7.4 *Certification.* Any person (as defined above in (6.7.2.1 and 6.7.2.2)) signing documents under section 6.7 shall make 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 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."

6.8 **Property Rights**

The issuance of this permit does not convey any property rights of any sort, or any exclusive privilege, nor does it authorize any injury to private property nor any invasion of personal rights, nor any infringement of Federal, State or local laws or regulations

6.9 Proper Operation and Maintenance

The permittee must at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by you to achieve compliance with the conditions of this permit and with the conditions of your storm water management program. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. Proper operation and maintenance requires the operation of backup or auxiliary facilities or similar systems, installed by you only when the operation is necessary to achieve compliance with the conditions of the permit.

6.10 Inspection and Entry

The permittee must allow the permitting authority or an authorized representative (including an authorized contractor acting as a representative of the Administrator) upon the presentation of credentials and other documents as may be required by law, to do any of the following:

- 6.10.1 Enter the premises where a regulated facility or activity is located or conducted or where records must be kept under the conditions of this permit;
- 6.10.2 Have access to and copy at reasonable times, any records that must be kept under the conditions of this permit;
- 6.10.3 Inspect at reasonable times any facilities or equipment (including monitoring and control equipment) practices, or operations regulated or required under this permit; and
- 6.10.4 Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the CWA, any substances or parameters at any location.

6.11 Permit Actions

This permit may be modified, revoked and reissued, or terminated for cause. Your filing of a request for a permit modification, revocation and reissuance, or termination,

or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

6.12 Permit Transfers

This permit is not transferable to any person except after notice to the permitting authority. The permitting authority may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under the Act.

6.13 Anticipated Noncompliance

The permittee must give advance notice to the permitting authority of any planned changes in the permitted small MS4 or activity which may result in noncompliance with this permit.

6.14 State/Tribal Environmental Laws

6.14.1 Nothing in this permit shall be construed to preclude the institution of any legal action or relieve you from any responsibilities, liabilities, or penalties established pursuant to any applicable State/Tribal law or regulation under authority preserved by section 510 of the Act.

6.14.2 No condition of this permit releases you from any responsibility or requirements under other environmental statutes or regulations.

6.15 Severability

The provisions of this permit are severable, and if any provision of this permit or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit shall not be affected thereby.

6.16 Procedures for Modification or Revocation

Permit modification or revocation will be conducted according to 40 CFR 122.62, 122.63, 122.64 and 124.5.

6.17 Requiring an Individual Permit or an Alternative General Permit

- 6.17.1 *Request by permitting authority.* The permitting authority may require any person authorized by this permit to apply for and/or obtain either an individual NPDES permit or an alternative NPDES general permit. Any interested person may petition the permitting authority to take action under this paragraph. Where the permitting authority requires you to apply for an individual NPDES permit, the permitting authority will notify you in writing that a permit application is required. This notification shall include a brief statement of the reasons for this decision, an application form, a statement setting a deadline for you to file the application, and a statement that on the effective date of issuance or denial of the individual NPDES permit or the alternative general permit as it applies to the individual permittee, coverage under this general permit shall automatically terminate. Applications must be submitted to the appropriate Regional Office (see Part 2.3). The permitting authority may grant additional time to submit the application upon request of the applicant. If you fail to submit in a timely manner an individual NPDES permit application as required by the permitting authority under this paragraph, then the applicability of this permit to you is automatically terminated at the end of the day specified by the permitting authority for application submittal.
- 6.17.2 *Request by permittee.* Any discharger authorized by this permit may request to be excluded from the coverage of this permit by applying for an individual permit. In such cases, you must submit an individual application in accordance with the requirements of 40 CFR 122.33(b)(2), with reasons supporting the request, to the permitting authority at the address for the appropriate Regional Office (see Part 2.3). The request may be granted by issuance of any individual permit or an alternative general permit if the reasons cited by the permittee is adequate to support the request.
- 6.17.3 *General permit termination.* When an individual NPDES permit is issued to a discharger otherwise subject to this permit, or the permittee is authorized to discharge under an alternative NPDES general permit, the applicability of this permit to the individual NPDES permittee is automatically terminated on the effective date of the individual permit or the date of authorization of coverage under the alternative general permit, whichever the case may be. When an individual NPDES permit is denied to an operator otherwise subject to this permit, or the operator is denied for coverage under an alternative NPDES general permit, the applicability of this permit to the individual NPDES permittee is automatically terminated on the date of such denial, unless otherwise specified by the permitting authority.

7 Permit Conditions Applicable to Specific State or Territory

No additional requirements.

8 Reopener Clause

8.1 Procedures for Modification or Revocation

Permit modification or revocation will be conducted according to 40 CFR §122.62, §122.63, §122.64 and §124.5.

8.2 Timing of Permit Modification

EPA may elect to modify the permit prior to its expiration (rather than waiting for the new permit cycle) to comply with any new statutory or regulatory requirements, such as for effluent limitation guidelines, that may be promulgated in the course of the current permit cycle.

9 **Definitions**

All definition contained in Section 502 of the Act and 40 CFR 122 shall apply to this permit and are incorporated herein by reference. For convenience, simplified explanations of some regulatory/statutory definitions have been provided, but in the even of a conflict, the definition found in the Statute or Regulation takes precedence.

Best Management Practices (BMPs) means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the United States. BMPs also include treatment requirements, operating procedures, and practices to control runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

Control Measure as used in this permit, refers to any Best Management Practice or other method used to prevent or reduce the discharge of pollutants to waters of the United States.

CWA or The Act means the Clean Water Act (formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972) Pub.L. 92-500, as amended Pub. L. 95-217, Pub. L. 95-576, Pub. L. 96-483 and Pub. L. 97-117, 33 U.S.C. 1251 et.seq.

Discharge, when used without a qualifier, refers to “discharge of a pollutant” as defined at 40 CFR 122.2.

Illicit Connection means any man-made conveyance connecting an illicit discharge directly to a municipal separate storm sewer.

Illicit Discharge is defined at 40 CFR 122.26(b)(2) and refers to any discharge to a municipal separate storm sewer that is not entirely composed of storm water, except

discharges authorized under an NPDES permit (other than the NPDES permit for discharges from the MS4) and discharges resulting from fire fighting activities.

MEP is an acronym for "Maximum Extent Practicable," the technology-based discharge standard for Municipal Separate Storm Sewer Systems to reduce pollutants in storm water discharges that was established by CWA §402(p). A discussion of MEP as it applies to small MS4s is found at 40 CFR 122.34.

MS4 is an acronym for "Municipal Separate Storm Sewer System" and is used to refer to either a Large, Medium, or Small Municipal Separate Storm Sewer System (e.g. "the Dallas MS4"). The term is used to refer to either the system operated by a single entity or a group of systems within an area that are operated by multiple entities (e.g., the Houston MS4 includes MS4s operated by the city of Houston, the Texas Department of Transportation, the Harris County Flood Control District, Harris County, and others).

Municipal Separate Storm Sewer is defined at 40 CFR 122.26(b)(8) and means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains): (i) Owned or operated by a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States; (ii) Designed or used for collecting or conveying storm water; (iii) Which is not a combined sewer; and (iv) Which is not part of a Publicly Owned Treatment Works (POTW) as defined at 40 CFR 122.2.

NOI is an acronym for "Notice of Intent" to be covered by this permit and is the mechanism used to "register" for coverage under a general permit.

Permitting Authority means the EPA Regional Administrator or an authorized representative.

Small Municipal Separate Storm Sewer System is defined at 40 CFR 122.26(b)(16) and refers to all separate storm sewers that are owned or operated by the United States, a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or

similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States, but is not defined as "large" or "medium" municipal separate storm sewer system. This term includes systems similar to separate storm sewer systems in municipalities, such as systems at military bases, large hospital or prison complexes, and highways and other thoroughfares. The term does not include separate storm sewers in very discrete areas, such as individual buildings.

Storm Water is defined at 40 CFR 122.26(b)(13) and means storm water runoff, snow melt runoff, and surface runoff and drainage.

Storm Water Management Program (SWMP) refers to a comprehensive program to manage the quality of storm water discharged from the municipal separate storm sewer system.

SWMP is an acronym for "Storm Water Management Program."

Urbanized Area comprises a place and the adjacent densely settled surrounding territory that together have a minimum population of 50,000 people. The "densely settled surrounding territory" adjacent to the place consists of:

1. Territory made up of one or more contiguous census blocks having a population density of at least 1,000 people per square mile that it is:
 - a. Contiguous with and directly connected by road to other qualifying territory, or
 - b. Noncontiguous with other qualifying territory, and:
 - (1) Within 1 ½ road miles of the main body of the urbanized area and connected to it by one or more nonqualifying census blocks that [a] are adjacent to the connecting road and [b] together with the outlying qualifying territory have a total population density of at least 500 people per square mile, or
 - (2) Separated by water or other undevelopable territory from the main body of the urbanized area, but within 5 road miles of the main body of the urbanized area, as long as the 5 miles include no more than 1 ½ miles of otherwise nonqualifying developable territory.
2. A place containing territory qualifying on the basis of criterion 1 [above] will be included in the urbanized area in its entirety (or partially, if the place is an extended city) if that qualifying territory includes at least 50 percent of the population of the place. If the place does not contain any territory qualifying on the basis of the

above criterion, or if that qualifying territory includes less than 50 percent of the place's population, the place is excluded in its entirety.

3. Other territory with a population density of less than 1,000 persons per square mile, provided that it:
 - a. Eliminates an enclave of no more than 5 square miles in the territory otherwise qualifying for the urbanized area when the surrounding territory qualifies on the basis of population density, or
 - b. Closes an indentation in the boundary of the territory otherwise qualifying for the urbanized area when the contiguous territory qualifies on the basis of population density, provided that the indentation is no more than 1 mile across the open end, has a depth at least two times greater than the distance across the open end, and encompasses no more than 5 square miles.

Appendix A
Eligibility and screening procedures relating to species listed and critical habitat designated
under the Endangered Species Act

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Appendix A. Eligibility and screening procedures relating to species listed and critical habitat designated under the Endangered Species Act.

You must meet one or more of the following six criteria (A-F) to be eligible for coverage under the permit:

Criterion A. No federally-listed threatened or endangered species or their designated critical habitat are in proximity to your facility; or

Criterion B. Consultation between a Federal agency and the Fish and Wildlife Service and/or the National Marine Fisheries Service (together, the "Services") under section 7 of the ESA has been concluded. Consultations can be either formal or informal, and would have occurred only as a result of a separate federal action (e.g., during application for an individual wastewater discharge permit, the issuance of a wetlands dredge and fill permit, or as a result of a NEPA review).

The consultation must have addressed the effects of the facility's stormwater discharges, allowable non-stormwater discharges, and stormwater discharge-related activities on federally-listed threatened or endangered species and federally-designated critical habitat, and resulted in either:

- i. a biological opinion finding no jeopardy to federally-listed species or destruction/adverse modification of federally-designated critical habitat, or
 - ii. written concurrence from the Service(s) with a finding that the facility's stormwater discharges associated with industrial activity and allowable non-stormwater discharges are not likely to adversely affect federally-listed species or federally-designated critical habitat;
- or

Criterion C. The industrial activities are authorized through the issuance of a permit under section 10 of the ESA, and that authorization addresses the effects of the stormwater discharges associated with industrial activity and allowable non-stormwater discharges on federally-listed species and federally-designated critical habitat; or

Criterion D. Coordination between the operator and the Fish and Wildlife Service and/or the National Marine Fisheries Service has been concluded. The coordination must have addressed the effects of the facility's storm water discharges associated with industrial activity and allowable non-storm water discharges on federally-listed threatened or endangered species and federally-designated critical habitat. The result of the coordination must be a written statement from the Services that there are not likely to be any adverse affects to federally-listed species or federally-designated critical habitat. Any conditions or prerequisites deemed necessary to achieve no adverse effects become eligibility conditions for Small MS4 General Permit coverage; or

Criterion E. Stormwater discharges associated with industrial activity and allowable non-stormwater discharges are not likely to adversely affect any federally-listed endangered and threatened ("listed") species or designated critical habitat ("critical habitat"); or

Criterion F. The facility's stormwater discharges associated with industrial activity and allowable non-stormwater discharges were already addressed in another operator's valid certification of eligibility under Criteria A-E which included the industrial activities and there is no reason to believe that federally-listed species or federally-designated critical habitat not considered in the prior certification may be present or located in proximity to the facility. To certify eligibility under this criterion there must be no lapse of coverage in the other operator's certification. By certifying eligibility under this criterion, you agree to comply with any measures or controls upon which the other operator's certification was based. You must comply with any applicable terms, conditions, or other requirements developed in the process of meeting the eligibility requirements of the criteria in this section to remain eligible for coverage under this permit. Such terms and conditions must be documented and incorporated into your Stormwater Management Program (SWMP).

Assessing Your Facility Discharges

You must follow the procedures in this addendum to assess the potential effects of stormwater discharges and stormwater discharge-related activities on listed species and their critical habitat. When evaluating these potential effects, you must evaluate your entire facility. For purposes of this Addendum, the term "facility" is inclusive of the term "Action Area." Action area is defined in 50 CFR §402.02 as all areas to be affected directly or indirectly by the federal action and not merely the immediate area involved in the action. This includes areas beyond the footprint of the facility that may be affected by stormwater discharges and stormwater discharge related activities. "Facility" is defined in Appendix A. Note that dischargers who are eligible and able to certify eligibility under Criterion B, C, D, or F because of a previously issued ESA section 10 permit, a previously completed ESA section 7 consultation, or because their activities were already addressed in another discharger's certification of eligibility may proceed directly to Step Four.

Step One: *Determine if Listed Threatened or Endangered Species and Critical Habitat are Present On or Near Your Facility.*

You must first determine whether federally-listed species commonly reside in your area. Federally-listed threatened and endangered species are usually found in county-specific or sometimes township-specific listings. The local offices of the U.S. Fish and Wildlife Service (FWS), National Marine Fisheries Service (NMFS), and State or Tribal Heritage Centers often maintain such lists on their internet sites. The types of species that may be present determine which Service office you should contact (in general, NMFS has jurisdiction over marine, estuaries, and anadromous species). Visit www.epa.gov/npdes/stormwater/cgp to find the appropriate site

for your state or check with your local office. If there are listed species in your county or township, you must then determine, as best you are able, whether any of the species are located on or near your property (use the Services or Heritage Centers, as necessary).

You must also check to see if critical habitat has been designated and whether such areas overlap or are near your facility by contacting your local FWS, NMFS, or State or Tribal Heritage Center. Critical habitat areas may be designated independently from the listed species for your county, so even if there are no listed species in your county or township, you must still contact one of the agencies mentioned above to determine if there are any critical habitat areas on or near your project area. You can also find critical habitat designations and associated requirements at 50 CFR Parts 17 and 226 <http://www.access.gpo.gov>.

If there are no listed species in your county or township, no critical habitat areas on or near your project area, or if your local FWS, NMFS, or State or Tribal Heritage Center indicates that listed species are not a concern in your part of the county or township, you have satisfied your eligibility obligations under Criterion A (check box A on the Notice of Intent Form). If there are listed species and if your local FWS, NMFS, or State or Tribal Heritage Center indicates that these species could exist on or near your project area, you will need to do one or more of the following:

- Conduct visual inspections. This method may be particularly suitable for facilities that are smaller in size or located in non-natural settings such as highly urbanized areas or industrial parks where there is little or no natural habitat, or for facilities that discharge directly into municipal separate storm sewer systems.
- Conduct a formal biological survey (typically performed by environmental consulting firms). In some cases, particularly for larger facilities with extensive stormwater discharges, biological surveys may be an appropriate way to assess whether species are located on or near the project area and whether there are likely adverse effects to such species. A biological survey may in some cases be useful in conjunction with Steps Two, Three or Four of these instructions.
- Conduct an environmental assessment under the National Environmental Policy Act (NEPA). Such reviews may indicate if listed species are in proximity to the facility. Coverage under this Small MS4 General Permit may trigger such a review for new sources (that is, dischargers subject to New Source Performance Standards under section 306 of the Clean Water Act). Other facilities might require review under NEPA for other reasons, such as federal funding or other federal involvement in the facility. If listed threatened or endangered species or critical habitat are present in the project area, you must look at impacts to species and/or habitat when following Steps Two through Four. Note that many but not all measures imposed to protect listed species under these steps will also protect critical habitat. Thus, meeting the eligibility requirements of this Small MS4 General Permit may require measures to protect critical habitat that are separate from those to protect listed species.

Step Two: *Determine if your facility's Stormwater Discharge Associated With Industrial Activity or Allowable Non-Stormwater Discharges Are Likely to Adversely Affect Listed Threatened or Endangered Species or Designated Critical Habitat*

To receive Small MS4 General Permit coverage, you must assess whether your stormwater discharges associated with industrial activity or allowable non-stormwater discharges are likely to adversely affect listed threatened or endangered species or designated critical habitat that are present on or near your facility. Potential adverse effects from stormwater discharges associated with industrial activity include:

- **Hydrological.** Stormwater discharges may cause siltation, sedimentation or induce other changes in receiving waters such as temperature, salinity or pH. These effects will vary with the amount of stormwater discharged and the volume and condition of the receiving water. Where a stormwater discharge constitutes a minute portion of the total volume of the receiving water, adverse hydrological effects are less likely. Industrial activity itself may also alter drainage patterns on a site where construction occurs that can impact listed species or critical habitat.
- **Habitat.** Site development, grading or other surface disturbances from industrial activities, including storage of materials and the installation or placement of stormwater BMPs, may adversely affect listed species or their habitat. Stormwater may drain or inundate listed species habitat.
- **Toxicity.** In some cases pollutants in stormwater may have toxic effects on listed species.

The scope of effects to consider will vary with each site. If you are having difficulty determining whether your facility is likely to adversely affect listed species or critical habitat, or one of the Services has already raised concerns to you, you must contact the appropriate office of the FWS, NMFS or Natural Heritage Center for assistance. If adverse effects are not likely, you have satisfied your eligibility obligations under Criterion E (clarify on the NOI form that Criteria E has been met) and can apply for coverage under the Small MS4 General Permit. If your stormwater discharge may adversely affect listed species or critical habitat, you must follow Step Three.

Step Three: *Determine if Measures Can Be Implemented to Avoid Adverse Effects*

If you make a preliminary determination that adverse effects to listed species and/or critical habitat are likely to occur, you can still receive coverage under Criterion E if appropriate measures are undertaken to avoid or eliminate the likelihood of adverse effects prior to applying for Small MS4 General Permit coverage. These measures may be relatively simple, e.g., re-routing a stormwater discharge to bypass an area where species are located, relocating BMPs, or

changing the "footprint" of the industrial activity. If you cannot ascertain which measures to implement to avoid the likelihood of adverse effects, you must follow Step Four (iii).

Step Four: *Determine if the Eligibility Requirements of Criterion B, C, D or F Can Be Met*

Where adverse effects are likely and you are uncertain about how to avoid or eliminate the likelihood of adverse effects, you must contact the FWS and/or NMFS (see subpart iii below). However, you may still be eligible for Small MS4 General Permit coverage if any likely adverse effects can be addressed through meeting Criterion B, C, D, or F as follows:

- i. A consultation under ESA Section 7 has been performed for your industrial activity (see Criterion B).
- ii. An incidental taking permit under Section 10 of the ESA has been issued for your activity (see Criterion C). Stormwater discharges from your industrial facility may be authorized by this Small MS4 General Permit if some activity is authorized through the issuance of a permit under section 10 of the ESA and that authorization addressed the effects of your stormwater discharges on federally-listed species and designated critical habitat. You must follow FWS and/or NMFS procedures when applying for an ESA Section 10 permit (see 50 CFR §17.22(b)(1) for FWS and §222.22 for NMFS). Application instructions for section 10 permits for FWS and NMFS can be obtained by accessing the FWS and NMFS websites (<http://www.fws.gov> and <http://www.nmfs.noaa.gov>) or by contacting the appropriate FWS and NMFS regional office.
- iii. You have coordinated your activities with the appropriate Service office (see Criterion D). In the absence of any other conditions set forth in Step Four, you may still be able to qualify for coverage under this Small MS4 General Permit if you coordinate with the FWS or NMFS and the Service provides a letter or memorandum concluding that the direct and indirect effects of permitting your stormwater discharges will be unlikely to adversely affect listed species or to adversely modify designated critical habitat. If you adopt measures to avoid or eliminate adverse effects, per the Service's requirements or recommendations, you must abide by those measures for the duration of your coverage under the Small MS4 General Permit. Any such measures must be described in the Storm Water Management Program (SWMP) and are enforceable Small MS4 General Permit conditions and/or conditions for meeting the eligibility criteria in Subpart 1.3.5.3.
- iv. You are covered under the eligibility certification of another operator for the project area (see Criterion F). Your stormwater discharges were already addressed in another discharger's certification of eligibility under Criteria A through E, which also included your facility and determined that federally listed endangered or threatened species or designated critical habitat would not be jeopardized. To certify eligibility under this

criterion there must be no lapse of coverage in the other operator's certification. By certifying eligibility under Criterion F, you agree to comply with any measures or controls upon which the other discharge certification under Criterion B, C, or D was based. Certification under Criterion F is discussed in more detail in the Fact Sheet that accompanies this permit.

You must comply with any terms and conditions imposed under the eligibility requirements of Criterion A through F to ensure that your stormwater discharges are protective of listed species and/or critical habitat. Such terms and conditions must be incorporated in the project's Stormwater Management Program (SWMP). If the eligibility requirements cannot be met, then you are not eligible for coverage under this small MS4 general permit. In these instances, you may consider applying to EPA for an individual permit.

Appendix B
Eligibility and screening procedures relating to historic properties and the National
Historic Preservation Act

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Appendix B – Eligibility and screening procedures relating to historic properties and the National Historic Preservation Act

Section 106 of the National Historic Preservation Act (NHPA) requires Federal agencies to take into account the effects of Federal “undertakings” on historic properties that are either listed on, or eligible for listing on, the National Register of Historic Places. The term Federal “undertaking” is defined in the NHPA regulations to include a project, activity, or program of a Federal agency including those carried out by or on behalf of a Federal agency, those carried out with Federal financial assistance, and those requiring a Federal permit, license or approval. See 36 CFR 800.16(y). Historic properties are defined in the NHPA regulations to include prehistoric or historic districts, sites, buildings, structures, or objects that are included in, or are eligible for inclusion in, the National Register of Historic Places. This term includes artifacts, records, and remains that are related to and located within such properties. See 36 CFR 800.16(1).

EPA’s issuance of the Small Municipal Separate Storm Sewer System (MS4) General Permit is a Federal undertaking within the meaning of the NHPA regulations. To address any issues relating to historic properties in connection with issuance of the permit, EPA has included criteria for certifications by applicants that potential impacts of their covered activities on historic properties have been appropriately considered and addressed. Although individual applications for coverage under the general permit do not constitute separate Federal undertakings, the screening criteria and certifications provide an appropriate site-specific means of addressing historic property issues in connection with EPA’s issuance of the permit. Applicants seeking coverage under the Small MS4 General Permit are thus required to make certain certifications regarding the potential effects of their stormwater discharge, allowable non-stormwater discharge, and discharge-related activities on properties listed or eligible for listing on the National Register of Historic Places.

You must meet one or more of the following four criteria (A- D) to be eligible for coverage under this permit:

Criterion A. Your stormwater discharges and allowable non-stormwater discharges do not have the potential to have an effect on historic properties and you are not constructing or installing stormwater BMPs – or, for existing facilities seeking renewal of previous permit coverage, new BMPs – on your site that cause less than 1 acre of subsurface disturbance; or

Criterion B. Your discharge-related activities (i.e., construction and/or installation of stormwater best management practices that involve subsurface disturbance) will not affect historic properties; or

Criterion C. Your stormwater discharges, allowable non-stormwater discharges, and discharge-related activities have the potential to have an effect on historic properties, and you have obtained and are in compliance with a written agreement with the State Historic

Preservation Officer (SHPO) that outlines all measures you will carry out to mitigate or prevent any adverse effects on historic properties; or

Criterion D. You have contacted the State Historic Preservation Officer in writing regarding your potential to have an effect on historic properties, and you did not receive a response within 30 days.

Activities with No Potential to Have an Effect on Historic Properties

A determination that a Federal undertaking has no potential to have an effect on historic properties fulfills an agency's obligations under the NHPA. EPA has reason to believe that the vast majority of activities authorized under the Small MS4 General Permit have no potential to have effects on historic properties. The purpose of this permit is to control pollutants that may be transported in stormwater runoff from industrial facilities. EPA does not anticipate effects on historic properties from the pollutants in the stormwater and allowable non-stormwater discharges from municipal separate storm sewer systems. Thus, to the extent EPA's issuance of this general permit authorizes discharges of such constituents, confined to existing stormwater channels or natural drainage areas, the permitting action does not have the potential to cause effects on historic properties.

In addition, EPA is not aware of any impacts on historic properties under other storm water general permits (i.e., Construction and Multi-Sector General Permits) that provide coverage to the regulated community of Puerto Rico.

Activities with Potential to Have an Effect on Historic Properties

EPA believes this permit may have some potential to have an effect on historic properties where the Small MS4 General Permit authorizes the construction and/or installation of stormwater best management practices (BMPs) that involve subsurface disturbance and impact less than 1 acre of land. (Ground disturbances of 1 acre or more require coverage under a different permit, the Construction General Permit.) Where you have to disturb the land through the construction and/or installation of BMPs, there is a possibility that underground artifacts, records, or remains associated with historic properties could be impacted. Therefore, if you are establishing new or altering existing BMPs to manage your stormwater that will involve subsurface ground disturbance of less than 1 acre, you will need to ensure that historic properties will not be impacted by your activities or that you are in compliance with a written agreement with the SHPO that outlines all measures you will carry out to mitigate or prevent any adverse effects on historic properties.

Examples of BMPs Which Involve Subsurface Disturbance

EPA reviewed all BMPs currently employed to determine which practices involve some level of earth disturbance. The following is a non-inclusive list of BMPs that are presumptively expected to cause subsurface ground disturbance:

Dikes	Berms	Catch Basins
Ponds	Ditch	Trench
Culvert	Land manipulation: contouring, sloping, and grading	Channels
Perimeter Drain	Swales	Other

EPA cautions dischargers that this list is non-inclusive. Any installation and/or construction of BMPs that involve earth disturbing activities that are not on this list will need to be further examined for the potential to affect historic properties.

Historic Property Screening Process

You should follow the following screening process in order to certify your compliance with historic property eligibility requirements under this permit (see Section 1.3.6.1). The following three steps describe how applicants can meet the permit eligibility criteria for protection of historic properties under this permit:

Step 1: Are You Constructing or Installing Any Stormwater BMPs That Require Subsurface Disturbance of Less Than 1 acre?

If, as part of your coverage under this permit, you are not building or installing BMPs on your site that cause less than 1 acre of subsurface disturbance, then your discharge-related activities do not have the potential to have an effect on historic properties. You have no further obligations relating to historic properties. You have met eligibility Criterion A of the Small MS4 General Permit.

If the answer to the Step 1 question is yes, then you should proceed to Step 2.

Step 2: Have Prior Earth Disturbances Determined That Historic Properties Do Not Exist, or Have Prior Disturbances Precluded the Existence of Historic Properties?

If previous construction either revealed the absence of historic properties or prior disturbances preclude the existence of historic properties, then you have no further obligations relating to historic properties. You have met eligibility Criterion B of the Small MS4 General Permit.

If the answer to the Step 2 question is no, then you should proceed to Step 3.

Step 3: Contact the Appropriate Historic Property Authorities

Where you are building and/or installing BMPs affecting less than 1 acre of land to control stormwater or allowable non-stormwater discharges associated with this permit, and the answer to Step 3 is no, then you should contact the relevant SHPO to determine the likelihood that subsurface artifacts, records, or remains are potentially present on your site. This may involve examining local records to determine if historic artifacts have been found in nearby areas, as well as limited subsurface examination carried out by qualified professionals.

If through this process it is determined that such historic properties potentially exist and may be impacted by your construction or installation of BMPs, you should contact the relevant SHPO in writing and request to discuss mitigation or prevention of any adverse effects. The letter should describe your facility, the nature and location of subsurface disturbance activities that are contemplated, any known or suspected historic properties in the area, and any anticipated effects on such properties. The letter should also indicate that if the SHPO does not respond within 30 days of receiving the letter, you may start your subsurface activities. EPA encourages applicants to contact the appropriate authorities as soon as possible in the event of a potential adverse effect to an historic property. By entering into, and complying with, a written agreement with the SHPO regarding how to address any adverse impacts on historic properties, you have met eligibility Criterion C. In situations where an agreement cannot be reached between you and the SHPO you should contact the Environmental Protection Agency (Caribbean Environmental Protection Division, Centro Europa Building, 1492 Ponce de León Avenue, San Juan, PR 00907-4127).

If you have contacted the SHPO in writing regarding your potential have an effect on historic properties and did not receive a response within 30 days, you have met eligibility Criterion D.

Addresses for State Historic Preservation Officers may be found on the Advisory Council on Historic Preservation's website (<http://www.achp.gov/programs.html>). For Puerto Rico you may write or call to:

State Historic Preservation Office
P.O. Box 9066581
San Juan, Puerto Rico 00906-6581
Telephone: 787-721-3737
Fax: 787-722-3622

You are reminded that you must comply with applicable State and local laws concerning protection of historic properties and include documentation supporting your determination of permit eligibility with regard to Part 1.3.6.1(Historic Places) within your implementation of BMPs. If ground disturbances are of 1 acre or more, this requires coverage under the

Construction General Permit (CGP) and documentation regarding historic properties must be included in your Stormwater Pollution Prevention Plan (SWPPP) required by the CGP.

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Appendix C
**EPA Region 2 NPDES Permit Applications Form Regulated Small Municipal Separate
Storm Sewer Systems (MS4s) in EPA's Jurisdiction within Puerto Rico**

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EPA Region 2
NPDES Permit Applications Form
Regulated Small Municipal Separate Storm Sewer Systems (MS4s)
in EPA's Jurisdiction within Puerto Rico

February 2003

Introduction

The U.S. Environmental Protection Agency - Region 2 (EPA) is providing this "Question & Answer" document outlining permit application requirements to assist the operators of small municipal separate storm sewer systems (MS4s) required to obtain a National Pollutant Discharge Elimination System (NPDES) permit for storm water discharges.

This document is intended for use only by MS4 operators in the area of Puerto Rico where EPA is the NPDES permitting authority.

EPA published the "Phase II" regulations addressing small municipal storm sewer systems on December 8, 1999.¹ This "Question & Answer" document addresses the Phase II application requirements for MS4 operators seeking NPDES permit coverage for storm water management plans to be implemented under 40 CFR 122.34 (i.e., a storm water management plan based on the "six minimum measures").²

EPA Region 2 has not yet issued a general NPDES permit for storm water discharges from regulated small MS4s, but does intend to issue such a permit. Until EPA issues the general permit, small MS4s must apply for individual permits as required by 40 CFR 122.33; this document outlines the individual permit application procedures described at 40 CFR 122.33(b)(2)(i). Any application information provided by MS4 operators by the deadlines outlined below will fulfill upcoming general permit application requirements.

All regulatory citations referencing the Phase II MS4 application requirements are underlined and included as an appendix starting on page 5.

Please note: there are no application forms for the Phase II MS4 permit program at this time. A permit application can be substantively completed by following the applicable regulations and by using the guideline suggestions included in this document. Other EPA-published guidance material may provide additional clarification of these requirements, and are listed at the end of this document.

¹64 FR 68721.

² MS4 operators who seek a permit to discharge under an individual permit, either: 1) through implementing a program different from the "six minimum measures" program under 40 CFR 122.34, or 2) by participating in an existing "Phase I" NPDES municipal permit program as a limited co-permittee, must comply with the application requirements for "Phase I" municipalities contained in 40 CFR 122.26(d). These requirements are not addressed by this EPA Region 10 Q&A document. Please contact EPA Region 2 directly for more information about the "Phase I" MS4 application process.

Who Must Apply for Permit Coverage?

All "regulated small MS4s" defined at 40 CFR 122.32(a) must apply for NPDES permit coverage for their storm water discharges. The basic term "small municipal separate storm sewer system" is defined at 40 CFR 122.26(b)(16). A "regulated small MS4" is an MS4 located within an urbanized area defined by the latest Census, or an MS4 that has been specifically designated by EPA Region 2.

Can Multiple MS4 Operators Submit a Joint Permit Application?

Yes. EPA Region 2 allows multiple regulated entities to create a storm water management plan and jointly apply as co-permittees. The joint application must identify the persons or persons within each organization responsible for implementing/coordinating the storm water management program and must be signed by the responsible official of each organization. See 40 CFR 122.33, 122.34, and 122.35 for more information.

Where Should Applications be Sent?

All application packages should be mailed to the following address:

U.S. EPA Region 2
Caribbean Environmental Protection Division
Centro Europa Building, Suite 417
1492 Ponce de Leon Avenue
San Juan, Puerto Rico 00907-4127

When Must Applications be Submitted?

Operators of regulated small MS4s located within Census Bureau-defined Urbanized Areas must apply for NPDES permit coverage by March 10, 2003.

Operators of MS4s located outside of a Urbanized Area that are otherwise designated by EPA under 40 CFR 122.32(a)(2) will be required to apply for permit coverage by a date specified by EPA-Region 2 at the time of designation. See 40 CFR 122.33(c).

Who Must Sign the Application?

NPDES regulations at 40 CFR 122.22 specify that all permit applications from a municipality, state, federal or other public agency must be signed by either a principal executive officer or ranking elected official. A principal executive officer of a federal agency includes: 1) the chief executive officer of the agency, or 2) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of EPA).

For joint applications, representatives of each co-applicant must sign the application as described above.

All applications must be signed using 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 gather and evaluate 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."

What Information Must be Included in the Application?

The following basic information must be included in all NPDES permit applications, as required by 40 CFR 122.21(f). Where appropriate, suggestions for addressing the requested item are included:

- 1) Activities by the applicant that require obtaining an NPDES permit.

(Suggestion: This item can be addressed by a statement such as: "The Applicant Name operates a municipal separate storm sewer system located in _____.")

- 2) Name, mailing address, and location of the facility for which the application is submitted.

(Suggestion: In the context of the MS4 permitting program, this item should list the name(s), title(s), affiliation(s), mailing address(es), and telephone number(s) of the operator(s) of the MS4(s).)

- 3) Standard Industrial Classification (SIC) Code that reflect the service provided by the facility.

(Suggestion: Generally speaking, the SIC code established by the federal Office of Management and Budget for public administration/general federal, state or local government activities is 9199. For additional information on SIC codes, check the Occupational Safety and Health Administration's website at: <http://www.osha.gov/cgi-bin/sic/sicser5>)

- 4) The operator name(s), address(es), telephone number(s), ownership status, and status as a federal, state, local, Tribal or other public entity.

(Suggestion: This item should identify the names and titles of the primary administrative and/or technical staff contacts for the municipal operator(s), if different from item #2.)

- 5) A listing of any permits or construction approvals received or applied for under any of the following programs: Resource Conservation or Recovery Act; Underground Injection Control under the Safe Drinking Water Act; NPDES program under the Clean Water Act; Prevention of Significant Deterioration program under the Clean Air Act; Nonattainment program under the Clean Air Act; the National Emission Standards for Hazardous Air Pollutants preconstruction approval under the Clean Air Act, Ocean Dumping Permits under the Marine Protection Research and Sanctuaries Act; Dredge or fill permits under section 404 of the Clean Water Act; or other relevant environmental permits, including state permits.

- 6) A topographic map (or other map if a topographic map is unavailable) extending one mile beyond the property boundaries of the source, depicting the facility and each of its intake and discharge structures; each of its hazardous waste treatment, storage, or disposal facilities; each well where fluids from the facility are injected underground; and those wells, springs, other surface water bodies, and drinking water wells listed in public records or otherwise known to the applicant in the map area.

(Suggestion: A map of the storm sewer system(s), showing the location of all outfalls and names and location of all waters of the United States that receive discharges from those outfalls, is most appropriate for fulfilling this requirement. If a map of such detail is not available by March 2003, please include any reasonably available version of such a map and a schedule of when such a map will be available. [See 40 CFR 122.34(b)(3)(ii)(A) for a description of the mapping requirement.])

7) A brief description of the nature of the business.

(Suggestion: In the context of the MS4 permitting program, briefly describe the MS4 in terms of its general characteristics, such as: capacity, general operation, or other relevant information.)

The following additional information is required as part of an NPDES application from regulated small MS4(s) according to 40 CFR 122.33(b)(2)(i) and 40 CFR 122.34(d)(1):

8) An estimate of the square mileage served by the MS4(s);

9) Descriptions of the best management practices to be implemented by the applicant or another entity for each of the six storm water minimum control measures described in 40 CFR 122.34(b)(1) through (b)(6);

10) Descriptions of the measurable goals for each BMP, including (as appropriate) the months and years in which the action will be taken, including interim milestones and the frequency of the action; and

11) The person(s) responsible for implementing or coordinating the applicant's storm water management program.

(Suggestion: Your description of the storm water management program should identify those measures that are already in place or are underway, as well as measures that remain to be developed or implemented. As the operator of the MS4, you have the flexibility to determine the BMPs and measurable goals, for each minimum control measure, that are most appropriate for the system. It is not required that all BMPs be fully implemented and in place at the time of application. As stated in 40 CFR 122.34(a), EPA will require full implementation of the applicant's storm water management program no later than the end of the first permit term (NPDES permits are typically issued for a 5 year period). The application package should fully summarize the storm water management plan that is anticipated for the area, and should acknowledge those BMPs that remain to be developed, including time lines and milestones for implementation.)

Questions about the information contained in this document can be directed to Sergio Bosques, EPA Region 2 Storm Water Program Coordinator, at (787) 977-5838.



Estado Libre Asociado de Puerto Rico
Municipio de Mayagüez
Oficina del Alcalde



January 12, 2011

Regional Hearing Clerk

U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, New York 10007-1866

RE: Notice of Proposed Assessment of a Civil Penalty
Municipality of Mayagüez
Permit Number PRR040043
Docket Number CWA-02-2008-3120

Honorable Hearing Clerk:

Greetings from Mayagüez, Puerto Rico. Yesterday we received your letter dated December 28, 2010 regarding the above subject. The Complaint filed by the US EPA alleges failure to submit a Storm Water Management Program (SWMP) for a National Pollutant Discharge Elimination System (NPDES) permit.

Due to the importance of implementing a SWMP, we have been working on the development of the Program since 2008. Part of this work includes the financial planning in order to contract the technical personnel for the development of the SWMP. We analyzed at least three (3) proposals from qualified candidates and the best proposal was presented by the Puerto Rico Water Resources and Environmental Research Institute. The cost of development of the Program has reached an approximate total of \$500,000.00. Due to the financial hardship that blasts America's and the Puerto Rico's economy years ago, we had to manage the budget, prioritize issues and projects in the City in order to achieve this important goal.

As stated on our September 3, 2010 letter, the Municipality of Mayagüez was the host of the Central American and Caribbean Games and requested an extension of ninety (90) days to submit the SWMP. Despite this was a huge project for us, we remained committed to comply with the requirements of the Clean Water Act (CWA).

The following tasks have been accomplished:

- December 16, 2008 (Received by US EPA on December 17, 2008) – The Municipality submitted the Notice of Intent (NOI).
- February 11, 2009 -The US EPA acknowledged the submittal of the NOI and a NPDES Permit number was assigned.
- March 5, 2009 – As requested by the US EPA, we submitted a description of the measurable goals for each of the chosen Best Management Practices.

Apartado 447, Mayagüez, Puerto Rico 00681 *Tel (787) 834-8585 Fax (787) 265-2270
alcaldia@mayaguezpr.gov

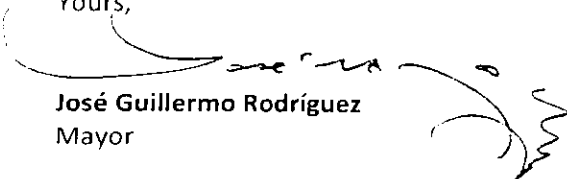
- July 2009 – The Puerto Rico Water Resources and Environmental Research Institute started working on the SWMP.
- **January 3, 2010 – The Storm Water Management Program was personally submitted to the US EPA, Caribbean Environmental Protection Division.**
- To this date we are waiting for the revision and approval of the Program.

The Municipality of Mayagüez is committed to fully comply with the SWMP and all requirements in Sections 301 and 402 of the Clean Water Act (CWA), 33 U.S.C. 1311 and 1342. We therefore hereby ask you to reevaluate the complaint and proposed assessment of a civil penalty.

Therefore we respectfully ask you to accept our SWMP submitted on January 3, 2011; dismiss the proposed assessment of a civil penalty, and let us continue working in the implementation phase of our SWMP.

With our most sincere appreciation for your attention and consideration to our request, we remain

Yours,



José Guillermo Rodríguez
Mayor

Enclosures

1. Copy of letter acknowledging the submittal of the NOI and assigning a NPDES Permit number.
2. Copy of our letter dated September 3, 2010, requesting an extension to submit the SWMP.
3. Evidence of the receipt of the SWMP submitted to the US EPA -Caribbean Environmental Protection Division.

cc: Carl-Axel P. Soderberg, Director – Caribbean Environmental Protection Division
Sergio Bosques, Regional Coordinator – Caribbean Environmental Protection Division
Héctor Vélez, Esq. - Office of Regional Counsel, US EPA Region 2
Roberto Ayala – Director Water Quality Area EQB



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
CARIBBEAN ENVIRONMENTAL PROTECTION DIVISION
CENTRO EUROPA BUILDING, SUITE 417
1492 PONCE DE LEON AVENUE, STOP 22
SAN JUAN, PR 00907-4127

FEB 11 2009

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Honorable José G. Rodríguez
Mayor
Municipality of Mayagüez
P.O. Box 447
Mayagüez, Puerto Rico 00681

RE: Municipality of Mayagüez Separate Storm Sewer System.
MS4 GP PRR040043
Docket Number CWA-02-2008-3120

Dear Mayor Rodríguez:

This letter acknowledges that you have submitted a Notice of Intent (NOI) document to be covered under the National Pollutant Discharge Elimination System (NPDES) General Permit for Stormwater Discharges from Small Municipal Separate Storm Sewer Systems (MS4s) within an Urbanized Area (PRR040000). In accordance with 40 CFR §124.3 (45 Federal Register 33486, May 19, 1980), the U.S. Environmental Protection Agency (EPA) informs you that your application for a NPDES permit has been reviewed for completeness and is complete.

For tracking purposes, the following NPDES number has been assigned to your NOI document: **PRR040043**.

However, the EPA is requesting additional information from you to clarify, and supplement previously submitted material in processing your permit application. Such request will not render your application incomplete. The following information should be received within thirty (30) days after receipt of this letter.

- A description of the measurable goals for each of the chosen Best Management Practices (BMP) as required in item ten (10) of the NOI.

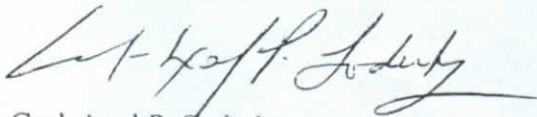
Your eligibility for coverage under the Permit is based on the validity of the certification you provided. Your signature on the transmittal letter of the NOI document certifies that you have read, understood, and are implementing all of the applicable requirements.

As you know, the Small MS4 General Permit requires you to develop, submit to EPA, and begin implementing a Storm Water Management Program (SWMP). It outlines important measurable goals including but not limited to, storm sewer system mapping, non-storm water discharges, inspections, and record keeping requirements. An electronic copy of the Permit and additional guidance materials can be viewed and downloaded at www.epa.gov/region02/cepd/prlink.htm. This document should have been submitted to this office on May 18, 2008 at the latest.

As stated in EPA's February 11, 2008 letter, failure to comply with the Administrative Order (AO) may subject the Municipality to civil and/or criminal penalties under Section 309 of the Clean Water Act and to ineligibility for participation in work associated with Federal contracts, grants, or loans. EPA reserves the right to take appropriate enforcement actions for any unpermitted discharges.

If you have questions regarding the storm water program or your responsibilities under the Small MS4 General Permit, please call Mr. Sergio Bosques at (787) 977-5838 or via email at bosques.sergio@epa.gov, or Ms. Yolianne Maclay at (787) 977-4958 or via email at maclay.yolianne@epa.gov.

Sincerely,



Carl-Axel P. Soderberg
Director
Caribbean Environmental Protection Agency

cc. Ing. Verónica Olán



Estado Libre Asociado de Puerto Rico
Municipio de Mayagüez
Oficina del Alcalde



September 3, 2010

Mr. Carl A. Soderberg
Director
Caribbean Environmental Protection Division, US EPA
Centro Europa Building, Suite 417
1492 Ponce de Leon Ave.
San Juan, PR 00907-4127

RE: NPDES PII Small MS4 General Permit PRR040043

Dear Mr. Soderberg,

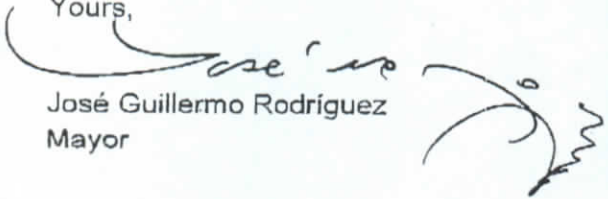
Greetings from Mayagüez. In accordance with Section 402 (p) of the Clean Water Act (CWA) [33 U.S.C. Section 1251 (p)] the Municipality of Mayagüez is working on its Storm Water Management Program. For this we have contracted the services of The Puerto Rico Water Resources and Environmental Research Institute from the University of Puerto Rico at Mayagüez. They have been working with us for over a year now.

As you might be aware, our City was the host of the XXI Central American and Caribbean Games that took place between July 17th and August 1st of this year. This was a huge project for us, that required the involvement of many of our employees and most of our senior Staff Members who had to devote most of their time on the planning, preparation and execution of this event. Unfortunately this was at the expense of many other projects, such as the completion of the Municipality's Storm Water Management Plan that was supposed to be completed by now.

However, due to the importance of this Plan, we are working at full speed with the Puerto Rico Water Resources and Environmental Research Institute to have this document ready within the next ninety (90) days. This is our commitment. We therefore hereby ask you to grant us an extension to submit this plan.

With our most sincere appreciation for your attention and consideration to our request, we remain,

Yours,


José Guillermo Rodríguez
Mayor

Apartado 447, Mayagüez, Puerto Rico 00681 * Tel (787) 834-8585 Fax (787) 265-2270
alcaldia@mayaguezpr.gov

NPDES PRR040043
Storm Water Management Program
Municipality of Mayagüez, Puerto Rico



4

STORM WATER MANAGEMENT PROGRAM

NPDES Permit No. PRR040043

Municipal Separate Storm Sewer System (MS4)

Autonomous Municipality of Mayagüez

Puerto Rico

Public Entity of the Commonwealth of Puerto Rico

Standard Industrial Classification (SIC) 9199

P.O. Box 447

MAYAGÜEZ, PR 00681

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FC. OF REG. COUNSEL



Estado Libre Asociado de Puerto Rico
Gobierno Municipal de Mayagüez
Departamento de Asuntos Legales
P.O. Box 447
Mayagüez, P.R. 00681-0447

Héctor Vélez, Esq.
Office of Regional Counsel
U.S.E.P.A., Region 2
1492, Ponce de León Ave., Suite 417
San Juan, PR 00907

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