

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

In the Matter of:

THE CLIFF CORP.

P. O. Box 116
Victoria Station
Aguadilla, Puerto Rico 00605

and

GRUPO CARIBE, LLC

P. O. Box 367197
San Juan, Puerto Rico 00936-7197

RESPONDENTS

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

PR-4458 Road, Intersection with PR-111 Road
Borinquen Ward
Aguadilla, Puerto Rico
Coordinates: 18.448184° N; 67.159583° W

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

**ADMINISTRATIVE
COMPLIANCE ORDER**

**DOCKET NUMBER
CWA-02-2022-3108**

I. STATUTORY AUTHORITY

1. This Administrative Compliance Order (the “Order”) is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency (“EPA”) pursuant to Section 309(a) of the Clean Water Act (“CWA” or the “Act”), 33 U.S.C. § 1319(a).
2. The Administrator has delegated the authority to take these actions to the Regional Administrator of Region 2, who in turn, has delegated such authority to the Director of the Caribbean Environmental Protection Division.
3. Section 301(a) of the Act, 33 U.S.C. § 1311(a), provides in part that “[e]xcept as in compliance with [CWA § 402], the discharge of any pollutant by any person shall be unlawful.”
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(a)(1) of the Act, 33 U.S.C. § 1342(a)(1), provides that “the Administrator may, after opportunity for public hearing, issue a permit for the discharge of any pollutant.... upon condition that such discharge will meet.... such requirements as the Administrator determines are necessary to carry out the provisions of the [CWA].”
6. Section 402 of the Act authorizes the Administrator to promulgate regulations for the implementation of the NPDES program.
7. Section 402(p)(2)(B) of the Act, 33 U.S.C. § 1342(p)(2)(B), requires NPDES permits with respect to a stormwater discharge associated with industrial activity.
8. Pursuant to Section 402(p)(3)(A) of the Act, 33 U.S.C. § 1342(p)(3)(A), permits for discharges associated with industrial activity shall meet all applicable provisions of Sections 301 and 402 and of the CWA, 33 U.S.C. §§ 1311 and 1342.
9. Pursuant to the Act, EPA promulgated regulations known as “EPA Administered Permit Programs: the National Pollutant Discharge Elimination System,” which was codified at 40 C.F.R. Part 122, as amended.
10. Pursuant to 40 C.F.R. § 122.21(a)(1), any person who discharges or proposes to discharge pollutants, and who does not have an effective permit, must submit a complete NPDES permit application to EPA.
11. Pursuant to 40 C.F.R. § 122.1(b)(1), the NPDES program requires permits for the discharge of pollutants from any point source into waters of the United States.
12. Pursuant to 40 C.F.R. § 122.21(c)(1), any person proposing a new discharge shall submit an application at least 180 days before the date on which the discharge is to commence, unless permission for a later date has been granted by the Director. Facilities described under 40 C.F.R. §§ 122.26(b)(14)(x) or (b)(15)(i) shall submit applications at least 90 days before the date on which construction is to commence.
13. Pursuant to 40 C.F.R. § 122.26(c)(1)(ii), an operator of an existing or new stormwater discharge that is associated with industrial activity solely under 40 C.F.R. § 122.26(b)(14)(x) or is associated with small construction activity solely under 40 C.F.R. § 122.26(b)(15), is exempt from the requirements of 40 C.F.R. § 122.21(g) and 40 C.F.R. § (c)(1)(i). Such operator shall provide a narrative description of:
 - a. the location (including a map) and the nature of the construction activity;
 - b. the total area of the site and the area of the site that is expected to undergo excavation during the life of the permit;

- c. proposed measures, including best management practices, to control pollutants in stormwater discharges during construction, including a brief description of applicable State and local erosion and sediment control requirements;
 - d. proposed measures to control pollutants in stormwater discharges that will occur after construction operations have been completed, including a brief description of applicable State or local erosion and sediment control requirements;
 - e. an estimate of the runoff coefficient of the site and the increase in impervious area after the construction addressed in the permit application is completed, the nature of fill material and existing data describing the soil or the quality of the discharge; and
 - f. the name of the receiving water.
14. Pursuant to 40 C.F.R. § 122.26(b)(14)(x), operators are required to obtain a NPDES permit for stormwater discharges associated with construction activity.
15. Pursuant to 40 C.F.R. § 122.26(b)(14)(x), construction activity, including clearing, grading and excavation, are considered a category engaging in industrial activity.
16. Pursuant to 40 C.F.R. § 122.41(a), the permittee must comply with all conditions of the permit. Any permit noncompliance is a violation of the Act and is grounds for enforcement action, permit termination, revocation and reissuance, modification or denial of a permit renewal application.
17. Pursuant to 40 C.F.R. § 122.41(c), it shall not be a defense for a 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 permit conditions.
18. Pursuant to 40 C.F.R. § 122.41(d), the permittee shall take all reasonable steps to prevent any discharge or sludge use or disposal in violation of the permit that has a reasonable likelihood of adversely affecting human health or the environment.
19. The CWA and applicable implementing regulations contain the following relevant definitions and requirements implementing NPDES regulations:
- a. “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 plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage. 40 C.F.R. § 122.2.

- b. “discharge of a pollutant” means any addition of any pollutant or combination of pollutants to navigable waters from any point source. Section 502(12) of the Act, 33 U.S.C. § 1362(12), and 40 C.F.R. § 122.2.
- c. “facility” or “activity” means any NPDES point source or any other facility or activity (including land or appurtenances thereto) that is subject to the regulations of the NPDES program. 40 C.F.R. § 122.2.
- d. “navigable waters” means the waters of the United States, including the territorial seas. Section 502(7) of the Act, 33 U.S.C. § 1362(7).
- e. “owner” or “operator” means the owner or operator of any facility or activity subject to regulation under the NPDES program. 40 C.F.R. § 122.2.
- f. “person” means an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body. Section 502(5) of the Act, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.
- g. “pollutant” means, 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 C.F.R. § 122.2.
- h. “construction activity” including clearing, grading and excavation, except operations that result in the disturbance of less than five acres of total land area. Construction activity also includes the disturbance of less than five acres of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb five acres or more. 40 C.F.R. § 122.26(b)(14)(x).
- i. “point source” means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. Section 502(14) of the Act, 33 U.S.C. § 1362(14), and 40 C.F.R. § 122.2.
- j. “site” means the land or water area where any “facility or activity” is physically located or conducted, including adjacent land used in connection with the facility or activity. 40 C.F.R. § 122.2.
- k. “waters of the United States” means the territorial seas, waters which are currently used, were used or may be susceptible to use in interstate or foreign commerce, including waters which are subject to the ebb and flow of the tide, tributaries, lakes, ponds, impoundments of jurisdictional waters and wetlands. 40 C.F.R. §§ 120.2 and 122.

20. On January 19, 2017, EPA re-issued the NPDES General Permit for Discharges from Construction Activities” (“2017 CGP”). 82 Fed. Reg. 6534 (January 19, 2017).
21. The 2017 CGP became effective on February 16, 2017. The 2017 CGP was modified, and the modification became effective on June 27, 2019. The 2017 CGP expired on February 16, 2022.
22. Part 1.4 of the 2017 CGP required all operators associated with a construction site seeking 2017 CGP coverage, who meet the eligibility requirements in Part 1.1 of the 2017 CGP, to submit a complete and accurate electronic Notice of Intent prior to commencing construction activities.
23. The 2017 CGP defined the term “operator” as any party associated with a construction project that meets either of the following two criteria:
 - a. the party has operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications; or
 - b. the party has day-to-day operational control of those activities at a project that are necessary to ensure compliance with the permit conditions.
24. Parts 1.4.1 and 7 of the 2017 CGP require operators associated with a construction site to develop a Stormwater Pollution Prevention Plan before submitting an electronic Notice of Intent for coverage under the 2017 CGP.
25. Part 1.4.3 and Table 1 of the 2017 CGP requires operators of new site to submit an electronic Notice of Intent for 2017 CGP coverage at least fourteen (14) calendar days before commencing construction activities.
26. On January 18, 2022, EPA re-issued the NPDES Construction General Permit for Stormwater Discharges from Construction Activities (“2022 CGP”). 87 Fed. Reg. 3522 (January 24, 2022).
27. The 2022 CGP became effective on February 17, 2022, replacing the 2017 CGP, which expired on February 16, 2022.¹
28. The 2022 CGP defines the following terms as follows:
 - a. “borrow areas” as the areas where materials are dug for use as fill, either onsite or off-site;
 - b. “commencement of construction activities” as the initial disturbance of soils (or ‘breaking ground’) associated with clearing, grading, or excavating activities or

¹ See <https://www.epa.gov/npdes/2022-construction-general-permit-cgp> for more information about the 2022 CGP.

other construction-related activities (e.g., stockpiling of fill material; placement of raw materials at the site);

- c. “construction activities” as earth-disturbing activities, such as the clearing, grading, and excavation of land, and other construction-related activities (e.g., stockpiling of fill material; placement of raw materials at the site) that could lead to the generation of pollutants. Some of the types of pollutants that are typically found at construction sites are: sediment; nutrients; heavy metals; pesticides and herbicides; oil and grease; bacteria and viruses; trash, debris, and solids; treatment polymers; and any other toxic chemicals;
- d. “construction site” or “site” as the land or water area where construction activities will occur and where stormwater controls will be installed and maintained. The construction site includes construction support activities, which may be located at a different part of the property from where the primary construction activity will take place, or on a different piece of property altogether.
- e. “discharge-related activity” as activities that cause, contribute to, or result in stormwater and allowable non-stormwater point source discharges, and measures such as the siting, construction, and operation of stormwater controls to control, reduce, or prevent pollutants from being discharged;
- f. “earth-disturbing activity” as actions taken to alter the existing vegetation and/or underlying soil of a site, such as clearing, grading, site preparation (e.g., excavating, cutting, and filling), soil compaction, and movement and stockpiling of top soils;
- g. “exit points” as any points of egress from the construction site to be used by vehicles and equipment during construction activities;
- h. “exposed soils” as soils that as a result of earth-disturbing activities are left open to the elements;
- i. “general contractor” as the primary individual or company solely accountable to perform a contract. The general contractor typically supervises activities, coordinates the use of subcontractors, and is authorized to direct workers at a site to carry out activities required by the permit;
- j. “new site” as a site where construction activities commenced on or after February 16, 2017; and
- k. “operator” as any party associated with a construction project that meets either of the following two criteria:
 - i. the party has operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications (e.g., in most cases this is the owner of the site); or

- ii. the party has day-to-day operational control of those activities at a project that are necessary to ensure compliance with the permit conditions (e.g., they are authorized to direct workers at a site to carry out activities required by the permit; in most cases this is the general contractor of the project).
 - l. “run-on” as sources of stormwater that drain from land located upslope or upstream from the regulated site in question;
 - m. “stabilization” as the use of vegetative and/or non-vegetative cover to prevent erosion and sediment loss in areas exposed through the construction process;
 - n. “Stormwater Pollution Prevention Plan” or “SWPPP” as a site-specific, written document that, among other things:
 - i. identifies potential sources of stormwater pollution at the construction site;
 - ii. describes stormwater controls to reduce or eliminate pollutants in stormwater discharges from the construction site; and
 - iii. identifies procedures the operator will implement to comply with the terms and conditions of this general permit; and
 - o. “temporary stabilization” as a condition where exposed soils or disturbed areas are provided temporary vegetative and/or non-vegetative protective cover to prevent erosion and sediment loss. Temporary stabilization may include temporary seeding, geotextiles, mulches, and other techniques to reduce or eliminate erosion until either final stabilization can be achieved or until further construction activities take place to re-disturb this area.
29. Part 1.4 of the 2022 CGP required all operators associated with a construction site seeking 2022 CGP coverage, who meet the eligibility requirements in Part 1.1 of the 2022 CGP, to submit to EPA a complete and accurate electronic Notice of Intent (“eNOI”) prior to commencing construction activities.
30. Parts 1.4.1 and 7 of the 2022 CGP require operators associated with a construction site to develop a Stormwater Pollution Prevention Plan (“SWPPP”) before submitting an eNOI for coverage under the 2022 CGP.
31. Part 1.4.3 and Table 1 of the 2022 CGP requires operators of new site to submit an eNOI for 2022 CGP coverage at least fourteen (14) calendar days before commencing construction activities.
32. Part 2.1.3 of the 2022 CGP requires permittees to complete installation of stormwater controls by the time each phase of construction activities has begun.

- a. By the time construction activity in any given portion of the site begins, install and make operational any downgradient sediment controls (e.g., buffers, perimeter controls, exit point controls, storm drain inlet protection) that control discharges from the initial site clearing, grading, excavating, and other earth-disturbing activities.²
 - b. Following the installation of these initial controls, install and make operational all stormwater controls needed to control discharges prior to subsequent earth-disturbing activities.
33. Part 2.1 of the 2022 CGP requires operators to design, install, and maintain stormwater controls required in Parts 2.2 and 2.3 of the 2022 CGP, in order to minimize the discharge of pollutants in stormwater from construction activities.
 34. Part 2.2 of the 2022 CGP requires operators to implement erosion and sediment controls in accordance with the requirements established in the 2022 CGP, in order to minimize the discharge of pollutants in stormwater from construction activities.
 35. Part 2.3 of the 2022 CGP requires operators to implement pollution prevention controls in accordance with specific requirements in order to minimize the discharge of pollutants in stormwater and to prevent the discharge of pollutants from spilled or leaked materials from construction activities.
 36. Part 4 of the 2022 CGP requires operators to perform and document site inspections.
 37. Part 5 of the 2022 CGP requires operators to take and document corrective actions to address any of the conditions identified therein at the construction project.
 38. Part 6 of the 2022 CGP requires each operator, or group of multiple operators, to assemble a “stormwater team” that will be responsible for carrying out activities necessary to comply with the 2022 CGP; and that prior to the commencement of construction activities, the operators must ensure that all persons assigned to the stormwater team understand the requirements of the 2022 CGP and their specific responsibilities with respect to those requirements.
 39. Part 7.1 of the 2022 CGP requires all operators associated with a construction site to develop a SWPPP consistent with the requirements in Part 7 prior to their submittal of the NOI. The SWPPP must be kept up-to-date throughout coverage under this permit. Where there are multiple operators associated with the same site, they may develop a group SWPPP instead of multiple individual SWPPPs. Regardless of whether there is a group SWPPP or multiple individual SWPPPs, each operator is responsible for compliance with the permit’s terms and conditions. In addition, all operators must ensure, either directly or

² The requirement to install stormwater controls prior to each phase of construction activities for the site does not apply to the earth disturbance associated with the actual installation of these controls. Operators should take all reasonable actions to minimize the discharges of pollutants during the installation of stormwater controls.

through coordination with other operators, that their activities do not cause a violation or compromise any other operators' controls and/or any shared controls.

40. Section 309(a)(3) of the Act, 33 U.S.C. § 1319(a)(3), provides that “[w]henever on the basis of any information available . . . the Administrator finds that any person is in violation of [CWA Sections 301 and 308], or is in violation of any permit condition or limitation implementing any of such sections in a permit issued under [Section 402 of the Act, the Administrator] shall issue an order requiring such person to comply with such section...”
41. Section 309(a)(5)(A) of the Act, 33 U.S.C. § 1319(a)(5)(A), provides that “[a]ny order issued under [CWA Section 309] shall state with reasonable specificity the nature of the violation and shall specify a time for compliance . . . taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements.”
42. EPA is the agency within the Commonwealth of Puerto Rico with authority to administer the federal NPDES program. EPA maintains enforcement authority for violations of the Act and its implementing regulations under Section 309 of the Act.

II. FACTUAL FINDINGS

43. The Cliff Corp. (“The Cliff” or “Respondent The Cliff”) is a corporation created under the laws of the Commonwealth of Puerto Rico.
44. The President of Respondent The Cliff is Mr. Carlos R. Román González.
45. Respondent The Cliff is the owner of a development project known as “The Cliff Villas Hotel and Country Club Construction Project” (the “Project” or the “Construction Project”).
46. The Project is located at PR-4458 Road, Intersection with PR-111 Road, Borinquen Ward, Aguadilla, Puerto Rico (the “Site”).
47. The Project consists of the development of a parcel of land of approximately 9.5 acres. The construction activities at the Project includes among others, earth movement activities (i.e., grubbing, clearing, grading and excavation) and construction of 86 villas, a country club, and two tennis courts.
48. Respondent The Cliff contracted Grupo Caribe, LLC (“Grupo Caribe” or “Respondent Grupo Caribe”) (herein together the “Respondents” as the general contractor to perform construction activities at the Project.
49. Respondent Grupo Caribe is a limited liability company created under the laws of the Commonwealth of Puerto Rico.
50. The President of Respondent Grupo Caribe is Mr. Carlos R. Román González.

51. On May 5, 2022, EPA issued a Request for Information letter (the “RFI Letter”) to Respondent The Cliff requesting information about the Project pursuant to the authority vested in the Administrator of EPA by Section 308(a) of the CWA, 33 U.S.C. § 1318(a).
52. On May 20, 2022 (due date to submit the answer to the RFI Letter), Respondent The Cliff submitted a partial response and certain information that was due to EPA by May 20, 2022 (the “1st Response”).
53. EPA’s preliminary review of the 1st Response revealed, among other information, that:
 - a. the Site Map included in the SWPPP developed for the Project identifies five (5) stormwater discharge outfalls.
 - b. Respondent Grupo Caribe has not developed a SWPPP for the Project. The SWPPP developed by Respondent The Cliff identifies Respondent Grupo Caribe as a sub-contractor.
54. On June 9, 2022, two EPA officials performed a NPDES Stormwater Inspection (the “Inspection”) of the Project. EPA met with Eng. Nivia I. Ayala, Mr. Víctor Nieves, Mr. Carlos R. Román González, and Eng. Daniel Jones at an office building located at the Aguadilla Sugar Construction Project site.
55. The findings of the Inspection were included in an Inspection Report. **Attachment 1** of this Order includes a copy of the Inspection Report. The findings include, among other things, the following:
 - a. Respondent Grupo Caribe is the general contractor for the Project.
 - b. Mr. Daniel Jones, Project Manager, from Respondent Grupo Caribe, indicated that earth movement activities at the Project began on February 21, 2022.
 - c. Respondent Grupo Caribe had not applied for and obtained NPDES permit coverage for the stormwater discharges associated with construction activity from the Project into waters of the United States.
 - d. Respondent Grupo Caribe had installed certain erosion controls (i.e., silt fence) on the west boundary of the Project’s site.
 - e. Four access points to Project’s site were identified; three of them from the neighboring property known as the Aguadilla Pier located south of the Project’s site and the other one from a neighboring property located north of the Project’s site.
 - f. Most of the land disturbed areas and areas where gradings had been conducted lacked soil stabilization.

- g. Flow management, which in turn results in concentrated flows, and velocity dissipation, was lacking in several areas of the Project.
 - h. Stormwater run-on into the Project lacked runoff management to divert flows away from exposed soils.
 - i. Erosion and sediment controls (e.g., sediment traps) were installed at the west perimeter of the Site.
 - j. Dust controls were not applied.
 - k. Stormwater runoff flows toward three (3) conveyance points, which the EPA Inspectors identified in the Inspection Report as Outfalls 001, 003, and 004. Such points discharge into a vegetated cliff, which in turn flows into the Atlantic Ocean.
 - l. Stormwater runoff from the Project is not discharged into a Municipal Separate Storm Sewer System (“MS4”).
 - m. Respondent Grupo Caribe installed a rain gauge at the Site. Eng. Daniel Jones indicated that he reads the rain gauge daily, from Monday through Friday. He also indicated that he recorded rain data in a log sheet. EPA review of the log sheet revealed that rain events were recorded on February 24, February 25, March 1, March 4, March 7, March 8, March 10, March 14, March 15, March 21, March 24, March 29, April 6, April 11, April 18, April 19, April 20, April 21, May 2, May 3, May 26, May 30, June 6, June 7, and June 9, 2022.
56. On June 10, 2022, and as granted by EPA, Respondent The Cliff submitted its second response to the RFI Letter providing the remaining information requested that was not submitted in its 1st Response (the “2nd Response”).
57. Between April 29, 2022, and June 23, 2022, EPA officials performed reviews of the EPA databases known as “Central Data Exchange / NeT” and “ICIS” (“Integrated Compliance Information System”) to determine the NPDES permitting status for the Project. The EPA review revealed:
- a. On April 29, 2022, Respondent The Cliff submitted an eNOI for the Project seeking NPDES permit coverage under the 2022 CGP. EPA assigned NPDES ID Number PRR1000DV for the eNOI.
 - b. The eNOI submitted by Respondent The Cliff included, among others, the following information:
 - i. The Project start date as February 7, 2022.
 - ii. The estimated area to be disturbed at the Project is 9.5 acres.

- iii. The Project discharges into a Municipal Separate Storm Sewer System (“MS4”).
 - iv. The Cliff identified one discharge (Outfall 001 - Atlantic Ocean Villa Haydee 1).
 - v. Mr. Victor Nieves certified the eNOI on April 30, 2022.
- c. On May 2, 2022, an official from the United States National Marine Fisheries Service (“NMFS”) requested EPA to place on hold the eNOI. The NMFS official indicated the following in its request: *“[I]nadequate basis statement did not address NMFS species or control measures to prevent sediment discharges to the ocean. The basis statement: ‘The two endangered species (Puerto Rican Boa and Palo de Rosa) have not been sighted in the action area, nor do the[y] have critical habitats designated in the action area. A Habitat Consultation also did not produce evidence of these species presence in the action area.’”*
 - d. On May 3, 2022, an EPA official placed the eNOI on hold, which included the following statement: *“[T]he National Marine Fishery Service (NMFS) requested the NOI be placed on Hold because of inadequate basis statement did not address NMFS species or control measures to prevent sediment discharges to the ocean. The operator must provide this information [by] May 13, 2022 to EPA and NMFS at these emails bosques.sergio@epa.gov and pat.shaw-allen@noaa.gov.”*
 - e. On May 20, 2022, Respondent The Cliff submitted to EPA as part of the 1st Response a copy of the SWPPP developed for the Project.
 - f. On May 31, 2022, EPA sent the SWPPP to NMFS.
 - g. On June 23, 2022, NMFS concurred with the SWPPP’s erosion and sediment controls developed for the Project.
 - h. On June 23, 2022, EPA approved the eNOI submitted by Respondent The Cliff and granted coverage under the 2022 CGP for the Project.
 - i. The coverage effective date is June 23, 2022.
58. When reviewing the EPA Integrated Compliance Information System, the 1st Response and 2nd Response to the RFI Letter, and the findings of the Inspection, EPA learned that:
- a. As of February 7, 2022, date when Respondent Grupo Caribe began construction activities at the Project:
 - i. the Respondents had not applied for and obtained NPDES permit coverage for the stormwater discharges associated with construction activity from the Project into waters of the United States.

- ii. The Respondents had not submitted an NPDES individual permit application for the Project.
 - iii. The Respondents did not submit eNOIs for the Project under the 2017 CGP.
 - iv. Respondents had not submitted an eNOI for the Project under the 2022 CGP.
- b. Based on the findings of the Inspection, and EPA’s review of records, the eNOI Respondent The Cliff submitted for the Project on April 29, 2022, is inaccurate, as indicated below:
- i. The eNOI identified one (1) discharge location (outfall); but based on the Site Map included in the SWPPP prepared for the Project, dated April 30, 2022, Respondent The Cliff identified five discharge locations (outfalls).
 - ii. The eNOI indicates that storm water is discharged into an MS4; but based on the Inspection’s finding, storm water runoff is not discharged into an MS4.
59. On June 16, 2022, an EPA official reviewed the National Climatic Data Center’s (“NCDC”) online meteorological database (the “NCDC Review”) for the Aguadilla 5.5 NNE, PR Climatological Station (the “NCDC Station”).³ The purpose of the NCDC Review was to learn about the storm events of 0.25 inches or greater that had occurred at or near the Project, which will cause the discharge of pollutants (stormwater associated with construction activities) from the Project into the Atlantic Ocean.
60. The NCDC Review revealed that on February 7, 2022 (2.13”) and February 19 (0.25”) storm events of 0.25 inches or more were recorded at the NCDC Station.

III. CONCLUSIONS OF LAW AND FINDINGS OF VIOLATIONS

- 61. Respondents are subject to the provisions of the Act, 33 U.S.C. § 1251, *et seq.*, and the applicable NPDES regulations found at 40 C.F.R. Part 122.
- 62. Respondent The Cliff is a “person” pursuant Section 502(5) of the Act, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.
- 63. Respondent Grupo Caribe is a “person” pursuant to Section 502(5) of the Act, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.
- 64. The Project is a “new site”, as defined in Appendix A of the 2017 CGP and 2022 CGP.
- 65. The Project is a “facility”, as defined in 40 C.F.R. § 122.2.

³ <https://www.ncdc.noaa.gov/cdo-web/datasets/GHCND/stations/GHCND:RQ1PRAL0003/detail>.

66. Sediments from construction activities at the Project are “pollutants”, as defined under Section 502(6) of the Act, 33 U.S.C. § 1362(6), and 40 C.F.R. § 122.2.
67. The Project is a “point source” pursuant to Section 502(14) of the Act, 33 U.S.C. § 1362(14), and 40 C.F.R. § 122.2.
68. At all relevant times to this Order, Respondent The Cliff was and is the owner of the Project.
69. At all relevant times to this Order, Respondent The Cliff had and continues to have operational control over construction plans, site drawings and specifications, stormwater conveyances, and control designs, including the ability to make modifications to such at the Project.
70. Respondent The Cliff is an “operator”, as defined in 40 C.F.R. § 122.2, and Appendix A of the 2017 CGP and 2022 CGP.
71. At all relevant times to this Order, Respondent Grupo Caribe had and continues to have day-to-day control of activities at the Project that were and are necessary to ensure compliance with the 2017 CGP and 2022 CGP.
72. Respondent Caribe Group is an “operator”, as defined in 40 C.F.R. § 122.2 and Appendix A of the 2017 CGP and 2022 CGP.
73. The Respondents were and are required to apply for and obtain NPDES permit coverage for the Project’s discharges of pollutants into waters of the United States pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and its implementing NPDES regulations at 40 C.F.R. Part 122.
74. Respondent The Cliff did not submit an eNOI for coverage under the 2017 CGP.
75. Respondent The Cliff did not submit an accurate eNOI, as required in Part 1.4 of the 2022 CGP.
76. Respondent Grupo Caribe did not submit an eNOI for the Project under the 2017 CGP and 2022 CGP, nor did it submit an NPDES individual permit application under 40 C.F.R. § 122.26(c)(1)(ii).
77. The Respondents discharged and continue to discharge stormwater containing “pollutants” from the Project into the Atlantic Ocean.
78. The Atlantic Ocean is a water of the United States pursuant to Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and 40 C.F.R. § 122.2.

79. Respondent The Cliff violated Sections 301(a) and 402(p) of the Act, 33 U.S.C. §§ 1311(a) and 1342(p), respectively, for its failure to comply with conditions and requirements of the 2022 CGP; therefore, Respondent The Cliff is subject to an enforcement action under Section 309(a) of the Act, 33 U.S.C. § 1319(a).
80. Respondent Grupo Caribe's discharges of stormwater containing pollutants into waters of the United States without a NPDES permit constitute a violation of Sections 301(a) and 402(p) of the Act, 33 U.S.C. §§ 1311(a) and 1342(p), and the applicable NPDES regulations; therefore, Respondent Grupo Caribe is subject to an enforcement action under Section 309(a) of the Act, 33 U.S.C. § 1319(a).

IV. **ORDERED PROVISIONS**

In consideration of the Findings of Fact and Conclusions of Law above, EPA has determined compliance with the following ordered provisions is consistent with the authority in Section 309 of the CWA, 33 U.S.C. § 1319.

IT IS HEREBY ORDERED:

81. **That within five (5) calendar days upon receipt of the originals of this ORDER by electronic mail** ("email"), an authorized representative of Respondent The Cliff and Respondent Grupo Caribe shall complete the acknowledgment of receipt included as an Attachment of this Order and return it via email to the Team Leader, Clean Water Act Team, Multimedia Permits and Compliance Branch, Caribbean Environmental Protection Division, U.S. Environmental Protection Agency, Region 2, at rivera.jose@epa.gov. Also, Respondents shall mail, by certified mail (or its equivalent), the signed acknowledgement of receipt to the Team Leader to the address specified in paragraph 93, below.
82. **Except as otherwise indicated in this Order,** Respondent The Cliff shall immediately comply with the 2022 CGP, which implements Section 402 of the Act, 33 U.S.C § 1342.
83. **That immediately upon receipt of this Order by email** and pursuant to Section 301(a) of the Act, 33 U.S.C. § 1311(a), Respondent Grupo Caribe shall cease the discharge of any pollutant, including stormwater run-off associated with construction activities, from the Project into waters of the United States, and construction activities related thereto (i.e., clearing, grading and excavation), except with authorization and in compliance with the requirements and conditions of the 2022 CGP or other NPDES permit for which Respondent Grupo Caribe obtained coverage.
84. **That within seven (7) calendar days upon receipt of this Order by email,** Respondent Grupo Caribe shall submit a written certification stating that they had complied with paragraph 83, above. The certification shall be submitted to the Team Leader, Clean Water Act Team, Multimedia Permits and Compliance Branch, Caribbean Environmental Protection Division, EPA Region 2 to the email rivera.jose@epa.gov.

85. **Within fifteen (15) calendar days of receipt of this Order by email**, Respondents shall review and submit a detailed response to the Inspection Report via the email to Team Leader, Clean Water Act Team, Multimedia Permits and Compliance Branch, Caribbean Environmental Protection Division, U.S. Environmental Protection Agency, Region 2, at rivera.jose@epa.gov.
86. **Within thirty (30) calendar days of receipt of this Order by email**, Respondents shall prepare and submit a Plan of Action (“POA”) to bring Respondents into compliance with Sections 301(a) and 402(p) of the CWA, 33 U.S.C. §§ 1311(a) and 1342(p), its implementing NPDES stormwater permit application regulations codified in 40 C.F.R. § 122.26, and the 2022 CGP.

Respondents shall include in the POA, at a minimum, a detailed description of actions to be taken and an implementation schedule to address the following:

- a. Modification and re-certification of the SWPPP developed for the Project according to Parts 7 and Appendix G, Part G.11 of the 2022 CGP.
- b. Accurate modification of the eNOI that Respondent The Cliff submitted for the Project to address the findings in paragraph 58.b, above, thru “Central Data Exchange” (“CDX”) tool “Net” and in accordance with Part 1.4 of the 2022 CGP.
- c. Respondent Grupo Caribe’s submittal of a complete and accurate eNOI for the Project thru “Central Data Exchange” (“CDX”) tool “Net” and in accordance with Part 1.4 of the 2022 CGP; or submittal of an NPDES individual permit application in accordance with 40 C.F.R. § 122.21 (Duty to Apply) seeking coverage for its construction activities at the Site.
- d. The specific tasks to be performed for the design and installation of stormwater controls in accordance with good engineering practices, including applicable design specifications, are among others:
 - i. Velocity dissipation devices at each discharge location.
 - ii. Dust controls for disturbed soils.
 - iii. Temporary and final soil stabilization at disturbed soils.
 - iv. Stormwater run-on management to divert and convey away such run-on from exposed soils.
 - v. Stormwater runoff collection, diversion/management and conveyance away from exposed soils and to reduce concentrated runoff flows.
 - vi. Other erosion and sediment controls, including perimeter controls on the east boundary of the Site.

- vii. Replace existing erosion and sediment controls.
 - viii. Provide maintenance for the existing and future erosion and sediment controls.
- e. A schedule with the expected completion date for each task.
 - f. The estimated costs for each task which will be required to fully implement the POA.

The tasks in the POA shall be undertaken as quickly as possible, but in no case the completion date of all required activities shall be beyond sixty (60) calendar days from the receipt date of this Order by email. EPA in its sole discretion, may review and provide comments and require Respondents to revise the POA to assure compliance with this Order and the Act.

- 87. While Respondent The Cliff modifies and submits an accurate eNOI, and Respondent Grupo Caribe applies for and secures NPDES permit coverage for the Project and fully implement the SWPPP and POA, Respondents may conduct construction activities at the Site in order to implement erosion and sediment controls and pollution prevention controls according to best engineering practices, the POA and 2022 CGP. These controls measures include but are not limited to, the following:
 - a. Provide temporary stabilization to areas where clearing, grading and excavation activities had temporarily ceased.
 - b. Provide final stabilization to areas where clearing, grading and excavation activities will no longer be performed.
 - c. Implement erosion and sediment controls, and BMPs at the Project.
 - d. Provide stormwater run-on management from flows coming from outside properties into the Project.
 - e. Implement dust controls.
 - f. Provide maintenance and replacement, where required, of the existing and future BMPs.
- 88. Once Respondent Grupo Caribe obtain coverage under an NPDES permit for the Project (e.g., 2022 CGP), Respondent Grupo Caribe must immediately comply with all applicable NPDES permit requirements, in addition to the requirements included in this Order.
- 89. **Until Termination of this Order**, Respondents shall prepare and submit Monthly Progress Reports (“MPR”) on the 1st day of the month; describing the status and progress of the actions taken to comply with the provisions of this Order. Respondents shall:

- a. Submit the first MPR on August 1, 2022, and thereafter every month (e.g., September 1, 2022).
- b. Each MPR shall include, at a minimum, the following:
 - i. The actions taken during the reporting period.
 - ii. Description of any non-compliance with this Order, including a statement describing the non-compliance, its underlying causes, and a proposed new date(s) to rectify non-compliance with this Order.
 - iii. A cost report detailing the expenses incurred during the reporting period.

V. GENERAL PROVISIONS

- 90. Any questions concerning this Order should be directed to the Team Leader, Clean Water Act Team, Multimedia Permits and Compliance Branch, Caribbean Environmental Protection Division, at (787) 977-5842 / rivera.jose@epa.gov. For information about the stormwater program, Respondents may review EPA's web site at <https://www.epa.gov/npdes/stormwater-discharges-construction-activities>.
- 91. Any documents to be submitted by Respondents as part of this Order shall be sent by email and by certified mail (or its equivalent), shall be signed by an authorized representative for each Respondent (Respondent The Cliff and Respondent Grupo Caribe) (see 40 C.F.R. § 122.22), and shall include the following certification:

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

- 92. All information required to be submitted by Respondents under this Order shall be sent by email and by certified mail (or its equivalent) to the following addresses:

Mr. Ángel Meléndez
Manager
Water Quality Area
Puerto Rico Department of Natural and Environmental Resources
P. O. Box 11488
San Juan, Puerto Rico 00910
Email: angel.melendez@drna.pr.gov

In the Matter of:
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and

José A. Rivera, BSCE
Team Leader
Clean Water Act Team
Multimedia Permits and Compliance Branch
Caribbean Environmental Protection Division
U.S. Environmental Protection Agency, Region 2
City View Plaza II, Suite 7000
48 RD. 165 Km. 1.2
Guaynabo, Puerto Rico 00968-8069
Email: rivera.jose@epa.gov.

93. Within twenty (20) calendar days from the effective date of this Order, Respondents shall have the opportunity to confer regarding the ordered provisions with the following EPA Region 2 official: José A. Rivera, Team Leader, Clean Water Act Team, Multimedia Permits and Compliance Branch, Caribbean Environmental Protection Division at (787) 977-5842 / rivera.jose@epa.gov.
94. Respondents have the right to seek immediate federal judicial review of the Order pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706. Section 706, which is set forth at <http://uscode.house.gov/download/pls/05C7.txt>, provides the grounds for such review.
95. This Order does not constitute a waiver from compliance with, or a modification of, the effective terms and conditions of the Act, its implementing regulations, the 2022 CGP, or any applicable permit, which remain in full force and effect. This Order is an enforcement action taken by EPA to ensure swift compliance with the Act. Issuance of this Order shall not be deemed an election by EPA to forego any civil or criminal actions for penalties, fines, imprisonment, or other appropriate relief under the Act.
96. Notice is hereby given that failure to comply with the terms of an Order issued under Section 309(a)(3) of the Act may result in Respondents' liability for civil penalties for each violation of up to \$59,973 per day pursuant to Section 309(d) of the Act, 33 U.S.C. §1319(d), as modified by 40 C.F.R. Part 19. Upon suit by EPA, the United States District Court may impose such penalties if, after notice and opportunity for hearing, the Court determines that Respondents have violated the Act, as described above.
97. If any provision of this Order is held by a court of competent jurisdiction to be invalid, any surviving provisions shall remain in full force and effect.
98. This Order shall become effective upon the date of execution by the Director, Caribbean Environmental Protection Division.

Dated: June 27, 2022

Signed: *Carmen Guerrero Perez*
CARMEN R. GUERRERO PÉREZ
Director
Caribbean Environmental Protection Division
U.S. Environmental Protection Agency, Region 2