

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2**

In the Matter of:

**AURORA'S DREAM LLC**  
P. O. Box 366751  
San Juan, Puerto Rico 00936

And

**BELLAGIO LLC**  
P. O. Box 366751  
San Juan, Puerto Rico 00936

**Finca de Sueño Aurora Residential Development**  
PR-413 Road, Km. 1.3 (Int.), Princesa Path Street  
Ensenada Ward  
Rincón, Puerto Rico 00698

**RESPONDENTS**

Proceeding pursuant to Sections 308(a) and 309(a) of the  
Clean Water Act, 33 U.S.C. §§ 1318(a) and 1319(a).

**REQUEST FOR  
INFORMATION AND  
ADMINISTRATIVE  
COMPLIANCE ORDER**

**DOCKET NUMBER  
CWA-02-2021-3107**

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 Sections 308(a) and 309(a) of the Clean Water Act ("CWA" or the "Act"), 33 U.S.C. §§ 1318(a) and 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 CWA, 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 CWA, 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 CWA authorizes the Administrator to promulgate regulations for the implementation of the NPDES program.
6. Section 402(a)(1) of the CWA, 33 U.S.C. § 1342(a)(1), provides that “the Administrator may, after opportunity for public hearing, issue a permit for the discharge of any pollutant.... upon condition that such discharge will meet.... such requirements as the Administrator determines are necessary to carry out the provisions of the [CWA].”
7. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), authorizes the Administrator to issue NPDES permits to storm water discharges associated with industrial activity.
8. Pursuant to Section 402(p)(3)(A) of the CWA, 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. Section 402 of the CWA authorizes the Administrator to promulgate regulations for the implementation of the NPDES requirements.
10. Pursuant to the CWA, 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.
11. Pursuant to 40 C.F.R. § 122.1(b)(1), the NPDES program requires permits for the discharge of any pollutant from any point source into waters of the United States.
12. 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
13. Pursuant to 40 C.F.R. § 122.26(b)(15), operators are required to obtain an NPDES permit for storm water discharges associated with small construction activity.
14. The CWA and its implementing NPDES regulations include, among others, the following definitions:
  - a. “discharge of a pollutant” means any addition of any pollutant or combination of pollutants to navigable waters and/or waters of the United States from any point source. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), and 40 C.F.R. § 122.2;
  - b. “facility” 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;

- c. “navigable waters” means the waters of the United States, including the territorial seas. Section 502(7) of the CWA, 33 U.S.C. § 1362(7);
  - d. “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;
  - e. “person” means an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body. Section 502(5) of the CWA, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2;
  - f. “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 CWA, 33 U.S.C. § 1362(6), and 40 C.F.R. § 122.2;
  - g. “point source” means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), and 40 C.F.R. § 122.2;
  - h. “storm water discharge associated with small construction activity” means the discharge of storm water from construction activities including clearing, grading, and excavating that result in land disturbance of equal to or greater than one acre and less than five acres. Small construction activity also includes the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one and less than five acres. 40 C.F.R. § 122.26(b)(15); and
  - i. “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 C.F.R. § 122.2.
15. On January 11, 2017, EPA Region 2 re-issued the “NPDES General Permit for Discharges from Construction Activities” (the “2017 CGP”). 82 Fed. Reg. 6534 (Jan. 19, 2017).
  16. The 2017 CGP became effective on February 16, 2017.
  17. The 2017 CGP expires on February 16, 2022.
  18. On May 14, 2019, EPA Region 2 modified the 2017 CGP.

19. The 2017 CGP modification became effective on June 27, 2019. The 2017 CGP modification did not change the expiration date which remains as February 16, 2022. 84 Fed. Reg. 24503 (May 28, 2019).
20. The Appendix A of 2017 CGP includes, among others, the following definitions:
  - a. “action area” as all areas to be affected directly or indirectly by the federal action and not merely the immediate area involved in the action.<sup>1</sup>
  - b. “commencement of construction activities” as the initial disturbance of soils (or ‘breaking ground’) associated with clearing, grading, or excavating activities or other construction-related activities (e.g., stockpiling of fill material; placement of raw materials at the site);
  - 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.
  - d. “discharge-related activity” as activities that cause, contribute to, or result in storm water and allowable non-storm water point source discharges, and measures such as the siting, construction, and operation of storm water controls to control, reduce, or prevent pollutants from being discharged;
  - e. “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;
  - f. “new site” as a site where construction activities commenced on or after February 16, 2017;
  - g. “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; 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.

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<sup>1</sup> See 50 C.F.R. § 402.

21. Part 1.4 of the 2017 CGP requires 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 to EPA a complete and accurate electronic Notice of Intent (“eNOI”) prior to commencing construction activities.
22. Parts 1.4.1 and 7 of the 2017 CGP require operators associated with a construction site to develop a Storm Water Pollution Prevention Plan (“SWPPP”) before submitting a NOI for coverage under the 2017 CGP.
23. Part 1.4.3 and Table 1 of the 2017 CGP require operators of a new site to submit an eNOI for 2017 CGP coverage at least fourteen (14) calendar days before commencing construction activities.
24. Part 2.1 of the 2017 CGP requires operators to design, install, and maintain stormwater controls required in Parts 2.2 and 2.3 of the 2017 CGP, to minimize the discharge of pollutants in stormwater from construction activities.
25. Part 2.2 of the 2017 CGP requires operators to implement erosion and sediment controls in accordance with the requirements established in the 2017 CGP, to minimize the discharge of pollutants in stormwater from construction activities.
26. Part 2.3 of the 2017 CGP requires operators to implement pollution prevention controls in accordance with specific requirements to minimize the discharge of pollutants in stormwater and to prevent the discharge of pollutants from spilled or leaked materials from construction activities.
27. Part 4 of the 2017 CGP requires operators to perform and document site inspections.
28. Part 5 of the 2017 CGP requires operators to take and document corrective actions to address any of the conditions identified therein at the construction project.
29. Section 308(a)(A) of the CWA, 33 U.S.C. § 1318(a)(A), provides that “[w]henver required to carry out the objective of . . . [CWA Section 402] the Administrator shall require the owner or operator of any point source to (i) establish and maintain such records, (ii) make such reports, (iii) install, use, and maintain such monitoring equipment or methods (including where appropriate, biological monitoring methods), (iv) sample such effluents (in accordance with such methods, at such locations, at such intervals, and in such manner as the Administrator shall prescribe), and (v) provide such other information as [the Administrator] may reasonably require.”
30. Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), provides that “[w]henver 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....”

31. Section 309(a)(5)(A) of the CWA, 33 U.S.C. § 1319(a)(5)(A), provides that “[a]ny order issued under [CWA Section 309] shall be by personal service, 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.”
32. 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 CWA and its implementing regulations under Section 309 of the CWA, 33 U.S.C. § 1319.

## II. **FINDINGS OF FACT**

33. Aurora’s Dreams LLC (“Respondent Aurora”) is a corporation created under the laws of the Commonwealth of Puerto Rico.
34. Respondent Aurora is the owner of a residential development project known as “Finca de Sueño Aurora Residential Development” (the “Project” or the “Development”).
35. The Project is located at PR-413 Road, Km. 1.3 (Int.), Princesa Path Street, Ensenada Ward, Rincón, Puerto Rico.
36. The Project consists of the development of a parcel of land of approximately 16,066 square meters (3.9700 acres). The construction activities at the Project includes among others, earth movement activities (i.e., grubbing, clearing, grading and excavation) and construction of 8-single/detached family residences.
37. Bellagio LLC (“Respondent Bellagio”) is a corporation organized under the laws of the Commonwealth of Puerto Rico.
38. On December 1, 2020, Respondent Aurora contracted Respondent Bellagio for the construction of the Project.
39. On April 19, 2021, following a citizen complaint, EPA issued a request for information (the “RFI Letter”) to Respondent Bellagio pursuant to Section 308(a) of the CWA, 33 U.S.C. § 1318(a).
40. On May 18, 2021, Respondent Bellagio submitted to EPA its response to the RFI Letter (the “RFI Response”).

41. On July 1, 2021, an EPA official conducted a review of the EPA NPDES database known as Central Data Exchange (“CDX”).<sup>2</sup> The review revealed that:
- a. Respondent Aurora has not submitted an eNOI for the Project.
  - b. Respondent Bellagio submitted an eNOI for the Project on July 21, 2020.
  - c. Respondent Bellagio indicated in its eNOI, among other things, the following:
    - 1) The Project start date is August 3, 2020.
    - 2) The Project end date is February 28, 2022.
    - 3) The estimated area of the Project’s site to be disturbed is 3 acres.
    - 4) The receiving water of the Outfall 001 is “Punta Cadena to Punta Higuero Coastal (PRWC50)”.
  - d. On August 4, 2020, EPA granted Respondent Bellagio coverage under the 2017 CGP for the Project, under NPDES tracking number PRR1000A9.
42. On July 2, 2021, an EPA official performed an on-site NPDES Stormwater Inspection (the “Inspection”) of the Project.
43. Among others, the purpose of the Inspection was to evaluate Respondents’ compliance with the Act, applicable NPDES regulations and 2017 CGP.
44. The EPA official learned and/or observed during the Inspection, among other things, the following:
- a. Part 2.1.2 of the 2017 CGP (*Design and install all stormwater controls in accordance with good engineering practices, including applicable design specifications*)
    - 1) Few sediment traps or other sediment retention controls were observed.
    - 2) Stormwater collection, management and conveyance was lacking, including velocity dissipators on slopes, the road and other concentrated flow locations (i.e., slopes at Basin 9, entrance).
    - 3) Installation of silt fences in areas with steep slopes did not follow good engineering practices.

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<sup>2</sup> See <https://permitsearch.epa.gov/epermit-search/ui/search>.

- b. Part 2.1.4 of the CGP (*Ensure that all stormwater controls are maintained and remain in effective operating condition during permit coverage and are protected from activities that would reduce their effectiveness*)
  - 1) Certain silt fences installed were observed in disrepair, displaced and/or bulged.
  
- c. Part 2.2.4 of the CGP (*Minimize sediment track-out*)
  - 1) Sediment track-out was observed in areas outside the entrance to the Project.
  - 2) Sediment track-out controls were not implemented at or near the entrance to the Project.
  
- e. Part 2.2.5 of the CGP (*Manage stockpiles or land clearing debris piles composed, in whole or in part, of sediment and/or soil*)
  - 1) Several stockpiles were observed without controls. Some others were observed with silt fences that were not properly installed and/or in disrepair.
  
- f. Part 2.2.7 of the CGP (*Minimize steep slope disturbances*)
  - 1) Large areas of the slopes within Basin 8 and Basin 9 were disturbed by means of clearing, grubbing and grading.
  
- g. Part 2.2.11 (*Minimize erosion of stormwater conveyance channels and their embankments, outlets, adjacent streambanks, slopes, and downstream waters*) and Part 2.2.22 of the CGP (*Control stormwater discharges, including both peak flowrates and total stormwater volume, to minimize channel and streambank erosion and scour in the immediate vicinity of discharge points*)
  - 1) Erosion controls and velocity dissipation devices were not installed within and along the length of any stormwater conveyance swale/channel, such as the bottom of the slopes and the road.
  
- h. Part 2.2.14 of the CGP (*Stabilize exposed portions of the site*)
  - 1) Soil stabilization measures were not implemented and maintained at several slopes.
  - 2) Other slopes had erosion blankets installed or under installation.



- i. Part 2.3 of the CGP (Pollution prevention requirements)
  - 1) The Project's site was observed without litter and waste materials in most areas except near the Project's office and parking area. A waste container was observed without lid coverage.
45. On July 2, 2021, upon completion of the Inspection, the EPA Official conducted a preliminary assessment of the stormwater runoff surface path (the "SW Path Assessment") from the entrance of the Project to wetlands located in an area west of the José Perez Street in Rincón, Puerto Rico. The EPA Official observed a stormwater runoff hydraulic connection from the entrance of the Project to wetlands.
46. The findings and observations of the Inspection and the SW Path Assessment were included in an Inspection Report, dated August 6, 2021. **Attachment 1** of this Order includes a copy of the Inspection Report.
47. On July 1, 2021 and after Inspection, an EPA official conducted a preliminary review of the RFI Response and records obtained during the Inspection. The review revealed the following:
  - a. Earth work activities for field studies (surveying and geotechnical) were conducted during the months of January and February 2019. Approximately 0.6 acres were cleared to complete the topographic surveying and geotechnical soil samples.
  - b. Earth work activities for the site development started on November 15, 2020.
  - c. A SWPPP was prepared for the Project in March 2020.
  - d. Section 1.1 of the SWPPP identified Respondents as operators of the Project.
  - e. Section 1.2 of the SWPPP identified a corporate official from:
    - 1) Respondent Aurora, as a member of the Stormwater Team. The roles or responsibilities of such member are listed as: decision-making, management, and NOI Certifier; and
    - 2) Respondent Bellagio, as a member of the Stormwater Team. The roles or responsibilities of such member are listed as: decision-making, management, inspections, reports required by SWPPP, log sheets, SWPPP compliance documentation, ensure proper implementation of SWPPP, and Contractor NOI Certifier.

- f. On July 21, 2020, a Respondent Bellagio’s official signed and certified the SWPPP developed for the Project.
  - g. On July 21, 2021, a Respondent Aurora’s official signed and certified the SWPPP developed for the Project.
  - h. The Construction Schedule in the SWPPP indicates that mobilization began on December 1, 2020 and clearing and grubbing began on December 2, 2020.
  - i. The Stormwater Construction Site Inspection Report forms for December 16, 2020, December 30, 2020, January 15, 2021, January 28, 2021, February 4, 2021, February 15, 2021, March 4, 2021, March 11, 2021, March 19, 2021, March 22, 2021, March 29, 2021, April 7, 2021, April 14, 2021, April 28, 2021, May 5, 2021, May 12, 2021, May 19, 2021, May 26, 2021, June 3, 2021, June 10, 2021, June 24, 2021, and June 30, 2021, were not signed by authorized officials, as required in Part 4.7.2 of the 2017 CGP.
  - j. The Stormwater Construction Site Inspection Report forms are not Project-specific.
  - k. Staff training documentation shows that training was provided on May 5, 2021 (Rockfall Installation), March 1, 2021 (Erosion Control Blanket Installation), February 1, 2021 (Temporary Sediment Pond), January 12, 2021 and April 4, 2021 (Silt Fence Installation), and December 8, 2020 (Plan CES). The staff training documentation does not include all the required personnel such as Mr. Jorge Vaz, a member of the Stormwater Team, as required by Part 7.2.8 of the CGP.
48. On July 29, 2021, EPA received a citizen complaint alleging that loose fill located at the top of a hill at the Project had been transported by Respondents to a property located northwest of the Project. The citizen complaint also alleged that such location northwest of the Project shows soil disposal throughout the property without the use of stormwater and sediment controls.
49. On July 19 and July 30, 2021, an EPA official reviewed the National Climatic Data Center’s (“NCDC”) online meteorological database (the “NCDC Review”) for the Rincón 1.5 N, US Climatological Station (the “NCDC Station”).<sup>3</sup> 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 (storm water associated with small construction activities) from the Project into wetlands.

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<sup>3</sup> Refer to <https://www.ncdc.noaa.gov/cdo-web/datasets/GHCND/stations/GHCND:RQ1PRRN0003/detail>.

50. The NCDC Review revealed that one-hundred sixty-one (161) storm events of 0.25 inches or more were recorded at the NCDC Station during the January 1, 2019 and July 2, 2021 period.

### III. **CONCLUSIONS OF LAW AND FINDINGS OF VIOLATIONS**

51. Respondents are subject to the provisions of the CWA, 33 U.S.C. § 1251, *et seq*, and the applicable NPDES regulations found in 40 C.F.R. Part 122.
52. Respondent Aurora is a “person” pursuant to Section 502(5) of the CWA, 33 U.S.C. § 1362(5).
53. Respondent Bellagio is a “person” pursuant to Section 502(5) of the CWA, 33 U.S.C. § 1362(5).
54. The Project is a “new site” as defined in Appendix A of the 2017 CGP.
55. The Project is a “facility” as defined in 40 C.F.R. § 122.2.
56. Sediments from construction activities at the Project are “pollutants” as defined under Section 502(6) of the CWA, 33 U.S.C. § 1362(6) and 40 C.F.R. § 122.22.
57. The Project is a “point source” pursuant to Section 502(14) of the CWA, 33 U.S.C. § 1362(14), and 40 C.F.R. § 122.2.
58. At all relevant times to this Order, Respondent Aurora was and is the owner and/or operator of the Project.
59. At all relevant times to this Order, Respondent Aurora had and has operational control over construction plans, site drawings and specifications, storm water conveyances, and control designs, including the ability to make modifications to such at the Project.
60. Respondent Aurora is an “operator” as defined in 40 C.F.R. § 122.2 and Appendix A of the 2017 CGP.
61. At all relevant times to this Order, Respondent Bellagio had and has day-to-day control of activities at the Project that are necessary to ensure compliance with the 2017 CGP.
62. Respondent Bellagio is an “operator”, as defined in 40 C.F.R. § 122.2 and Appendix A of the 2017 CGP.
63. Respondents discharged and continue to discharge storm water containing “pollutants” from the Project into wetlands, which are hydraulically connected to the Caribbean Sea.

64. The wetlands and Caribbean Sea are waters of the United States pursuant to Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and 40 C.F.R. § 122.2. The Caribbean Sea is a navigable water and a territorial sea 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.
65. Respondent Aurora was 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.
66. Respondent Aurora's discharges of storm water containing pollutants into waters of the United States without an NPDES permit constitute a violation of Section 301(a) and 402(p) of the Act, 33 U.S.C. §§ 1311(a) and 402(p), respectively, and the applicable NPDES regulations; therefore, Respondent Aurora is subject to an enforcement action under Section 309(a) of the Act, 33 U.S.C. § 1319(a).
67. Respondent Bellagio violated Sections 301(a) and 402, 33 U.S.C. §§ 1311(a) and 1342, for its failure to comply with requirements and conditions established in the 2017 CGP; therefore, Respondent Bellagio is subject to an enforcement action under 309(a) of the CWA, 33 U.S.C. § 1319(a).

#### IV. **ORDERED PROVISIONS**

Based on the Findings of Fact, Conclusions of Law and Findings of Violations, and pursuant to the authority of Section 309(a)(3), 33 U.S.C. § 1319(a), of the CWA, it is hereby ORDERED that:

68. **That within five (5) regular days upon receipt of this Order** by electronic mail ("email"), Respondents shall complete the acknowledgment of receipt included as **Attachment 2** of this Order and return it via email to [rivera.jose@epa.gov](mailto:rivera.jose@epa.gov). Respondents shall also send the signed acknowledgement of receipt via certified mail (or its equivalent) to the address specified in Paragraph 77, below.
69. **Except as otherwise indicated in this Order**, Respondents shall comply with the CWA, its NPDES implementing regulations, and 2017 CGP.
70. **That within fifteen (15) calendar days upon receipt of this Order by email**, Respondent Aurora shall prepare and submit an eNOI for the Project thru "Central Data Exchange" ("CDX") tool "Net" in accordance with Part 1.4 of the 2017 CGP or submit 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 Project.<sup>4</sup>

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<sup>4</sup> <https://cdx.epa.gov/cdx/Login?ReturnUrl=%2fCDX%2fMyCDX>

71. Once Respondent Aurora obtains coverage under an NPDES permit for its construction activities at the Project (e.g., 2017 CGP), Respondent Aurora must immediately comply with all applicable NPDES permit requirements, in addition to the requirements included in this Order.
72. **That within thirty (30) calendar days upon receipt of this Order** by email, Respondents shall submit:
- a. A detailed response to the Inspection Report.
  - b. A detailed Plan of Action (“POA”) to address:
    - 1) The observations and finding in the Inspection Report and Paragraph 44 of this Order.
    - 2) Paragraphs 47.i, 47.j, and 47.k of this Order.
    - 3) Any pending corrective action identified by Respondents at the Project.

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 2017 CGP.

- c. The POA shall include, at a minimum, the following:
  - 1) A modification and/or update to the SWPPP.
  - 2) Preparation and use of a Site Stormwater Inspection Form.
  - 3) A detailed description of the corrective actions implemented at the Project to address the findings and observation included in the Inspection Report and Paragraphs 44, 47.i, 47.j, and 47.k of this Order.
  - 4) Design and installation stormwater controls in accordance with good engineering practices, including applicable design specifications for among others:
    - a) Sediment track-out at entrance of the Project.
    - b) Velocity dissipation devices.
    - c) Temporary and final soil stabilization at slopes.

- d) Stormwater runoff collection, diversion/management and conveyance away from exposed soils.

To comply with this requirement, Respondents shall construct and maintain stormwater berms and channels at the base of the slopes to intercept both general side slope stormwater and channelized stormwater up gradient (or above) and to convey stormwater to appropriate management areas, including but not limited to detention basins and discharge points into the environment., Also, Respondents shall construct and maintain side slopes contour diversion berms, or other equivalent engineering works (e.g., filter cloth-covered gabions), at least three (3) sets per Drainage Area, to reduce the velocity of stormwater flow and to divert flow to the stormwater chutes. The diversion berms shall be covered and maintained with erosion control blankets to safeguard its integrity.

- e) Employee training.
- f) Signatory to site inspection reports.
- g) Erosion controls for sediment traps.
- h) Inspection and maintenance/replacement of erosion controls after rain events resulting in stormwater runoff through the entrance of the Project.
- i) Management of stormwater on the upper deck of the Project to minimize soil erosion from both, the Upper Deck and side slopes.

To comply with this requirement, Respondent shall install and maintain anchored combined hay bale and silt fence barriers or other equivalent engineering works (e.g., filter cloth-covered gabions), except for the down chute inlets, along the entire perimeter of the Upper Deck (i.e., the top of the side slopes). Respondents shall employ additional erosion control methods (e.g., additional cover soil, sod and matting, and/or enhanced vegetative cover) as necessary to maintain soil stabilization and minimize soil erosion.

- 5) Respondents shall carry out all work under this Order in accordance with Good Engineering Practices under the direction and certification of a professional engineer experienced in the design and inspections of storm water management controls, erosion and

sediment controls and soil stabilization practices.<sup>5,6</sup> The POA shall be reviewed and signed by such Professional Engineer.

- 6) All significant slope grading and regrading and any other engineering works (e.g., New or enhance Sedimentation Basin), including all stormwater works, done on the slopes and the base of the slopes of the Project must be reviewed, approved, and certified by a Professional Engineer experienced in geotechnical engineering.
- 7) All significant stormwater conveyance and detention engineering works must be designed by, approved, and certified by a Professional Engineer experienced in stormwater management system design and construction, after consultation with a professional hydrologist.
- 8) The implementation of the POA shall not exceed ninety (90) calendar days from the date of receipt of this Order by email.

73. **Until Termination of this Order**, Respondents shall jointly prepare and submit Progress Reports (“PR”) every two (2) weeks that describe the status and progress of Respondents’ actions taken to comply with the provisions of this Order. Respondents shall:

- a. Submit the first PR on Friday, August 27, 2021, and thereafter every two (2) weeks (e.g., Friday, September 10, 2021).
- b. Each PR shall include, at a minimum, the following:
  - 1) The actions taken during the reporting period.
  - 2) 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.
  - 3) A cost report detailing the expenses incurred during the reporting period.

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<sup>5</sup> “Good Engineering Practices” means proven and generally accepted engineering methods and procedures that provide for appropriate, safe, cost-effective (i.e., employing reasonable financial considerations consistent with the requirements of this Order), and well-documented solutions.

<sup>6</sup> “Professional Engineer” means an engineer either licensed by the Commonwealth of Puerto Rico or otherwise permitted to practice engineering in the Commonwealth of Puerto Rico.

V. **REQUEST FOR INFORMATION**

Based on the Findings of Fact, Conclusions of Law and Findings of Violations, and pursuant to the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a), **within 15 (fifteen) calendar days of receipt of this Order by email**, Respondent Bellagio shall submit to EPA by email and by certified mail (or its equivalent) the following information:

74. The location(s) and approximate coordinates where Respondents had disposed/deposited and are disposing/depositing soil material generated at the Project, including the following:
- a. The owner(s) of the property(ies) where the soil material had been disposed/deposited or is being disposed/deposited.
  - b. The total amount of soil material (in cubic meters) that has been disposed/deposited as of the date of receipt of the Order. Specify the soil material amount (in cubic meters) for each location.
  - c. The date when Respondents began to transport soil material from the Project to its final disposal/deposit location(s).
  - d. The date when Respondents ended to transport soil material from the Project to its final disposal/deposit location(s). If transportation of the soil material from the Project to its final disposal/deposit location(s) has not been completed, indicate the projected date when it will be completed.
  - e. A copy of the transportation manifests and/or any other similar record documenting the transportation of the soil material to the final disposal/deposit location(s).
  - f. A detailed description of the end use of the soil material that had been disposed/deposited or is being disposed/deposited for each location.

VI. **GENERAL PROVISIONS**

75. Any questions concerning this Order should be directed to José A. Rivera, Team Leader, Clean Water Act Team, Multimedia Permits and Compliance Branch, Caribbean Environmental Protection Division, at (787) 977-5842, or by email at [rivera.jose@epa.gov](mailto:rivera.jose@epa.gov). For information about stormwater discharges from construction activities, Respondents may review information in EPA's web site at <https://www.epa.gov/npdes/stormwater-discharges-construction-activities>.
76. 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 of each Respondent (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.”

77. 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: [angelmelendez@jca.pr.gov](mailto:angelmelendez@jca.pr.gov)

and  
Mr. 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](mailto:rivera.jose@epa.gov)

78. 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 designated EPA Region 2 representative: José A. Rivera, Team Leader, Clean Water Act Team, Multimedia Permits and Compliance Branch, Caribbean Environmental Protection Division at (787) 977-5842, or by email at [rivera.jose@epa.gov](mailto:rivera.jose@epa.gov).
79. Respondents have the right to seek immediate federal judicial review of the Order pursuant to Chapter 7 of the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 701-706. Section 706 of the APA, which is set forth at <http://uscode.house.gov/download/pls/05C7.txt>, provides the grounds for such review.

80. This Order does not constitute a waiver from compliance with, or a modification of, the effective terms and conditions of the CWA, its implementing regulations, 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 CWA. 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 CWA.
81. Respondents may, if they so desire, assert a business confidentiality claim covering all or part of the information requested by this Order. A business confidentiality claim may be asserted by placing on (or attaching to) the information, at the time it is submitted, a cover sheet, stamped or typed legend, or other suitable form of notice employing language such as “trade secret” or “proprietary” or “company confidential.” Information covered by such a claim will be disclosed by EPA only in accordance with and by means of procedures set forth in Sub-Part B, 40 C.F.R. Part 2.<sup>7</sup> If no such claim accompanies the information when it is received by EPA, it may be made available to the public by EPA without further notice to Respondents. Allegedly confidential portions of otherwise non-confidential documents should be clearly identified by you. If Respondents desire confidential treatment of information only until a certain date or until the occurrence of a certain event, Respondents should state so.
82. Notice is hereby given that failure to comply with the requirements of Section 308(a) of the CWA (“Request for Information”) may result in Respondent’s liability for civil penalties for each violation of up to \$56,460 per day under Section 309(d) of the CWA, 33 U.S.C. § 1319(d), as modified by 40 C.F.R. Part 19. Upon suit by the EPA, the United States District Court may impose such penalties if, after notice and opportunity for a hearing, the Court determines that Respondents have failed to comply with the terms of the Request for Information. Respondent may also be subject to administrative remedies for a failure to comply with the Request for Information, as provided by Section 309 of the CWA, 33 U.S.C. § 1319.
83. Notice is hereby given that failure to comply with the terms of a Compliance Order issued under Section 309(a)(3) of the CWA may result in Respondents’ liability for civil penalties for each violation of up to \$56,460 per day pursuant to Section 309(d) of the CWA, 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 CWA as described above.
84. 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.

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<sup>7</sup> Respondents should read the above-cited statutory and regulatory provisions carefully before asserting a business confidentiality claim, since certain categories of information are not properly the subject of such a claim.

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

Dated: August 12, 2021

Signed: \_\_\_\_\_

**CARMEN  
GUERRERO  
PEREZ**

Digitally signed by  
CARMEN GUERRERO  
PEREZ  
Date: 2021.08.12  
13:53:47 -04'00'

Carmen R. Guerrero Pérez  
Director  
Caribbean Environmental Protection Division  
Environmental Protection Agency, Region 2

Attachments: Inspection Report and Acknowledgment of Receipt