

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF:

Mr. Juan Benet Mendez
P.O. Box 789
Culebra, Puerto Rico 00775

Playa Clara Lot Development

NPDES Number PRU202015

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

**ADMINISTRATIVE
COMPLIANCE ORDER**

**DOCKET NUMBER
CWA-02-2008-3140**

AUTHORITY

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

DEFINITIONS AND STATUTORY PROVISIONS

- 1 The following definitions and statutory and regulatory provisions apply in this ORDER:
 - a. "Navigable waters" includes the waters of the United States pursuant to Section 502(7) of the Act, 33 U.S.C. §1362(7). "Waters of the United States" include, but are not limited to, waters which are currently used or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide and including wetlands, rivers and streams (including intermittent streams). See 40 CFR §122.2.

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- b. "Pollutant" includes solid waste, dredged spoil, rock, sand, cellar dirt, sewage, sewage sludge... and industrial, municipal and agricultural waste discharged into water, pursuant to Section 502(6) of the Act, 33 U.S.C. §1362(6).
- c. "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).
- d. "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).
- e. "Person" includes an individual, corporation, partnership or association pursuant to Section 502(5) of the Act, 33 U.S.C. §1362(5).
- f. "NPDES" means National Pollutant Discharge Elimination System under Section 402 of the Act, 33 U.S.C. §1342. National Pollutant Discharge Elimination System means the national program for, among other things, issuing and enforcing permits. See 40 CFR §122.2.
- g. The term "commencement of construction activities" means the initial disturbance of soils associated with clearing, grading, excavation activities or other construction activities.
- h. The term "Operator" for the purpose of the NPDES storm water general permit for construction activities and in the context of storm water associated with construction activity (57 FR 41190 & 63 FR 7859), means any party associated with a construction project that meets either of the following two (2) criteria:
 - 1. The party has operational control over construction plans and specifications including the ability to make modifications to those plans and specifications; or
 - 2. The party has day-to-day operational control of those activities at a project which are necessary to ensure compliance with a storm water pollution prevention plan for the site or other permit conditions.

The term "construction activity" means construction activities including clearing, grading and excavating that result in land disturbance of equal to

or greater than 1 acre. See 40 CFR §122.26(b)(14)(x)

- 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, manmade channels, or storm drains).... See 40 CFR §122.26(b)(8).
- k. The term “owner” or “operator” means the owner or operator of any “facility” or “activity” subject to regulation under the NPDES program. See 40 CFR §122.2.

The term “facility” or “activity” means any NPDES “point source” or any other facility or activity (including land or appurtenances thereto) that is subject to regulation under the NPDES program. See 40 CFR §122.2.

FINDINGS

- 2. Mr. Juan Benet Mendez, (herein “Respondent”) is a person within the meaning of Section 502(5) of the Act, 33 U.S.C. §1362(5).
- 3. Mr. Mendez is the owner and developer of a project known as “Playa Clara” (the “Project”).
- 4. The Project is located on a site of approximately 1.2 acres.
- 5. Earth movement activities at the Project involve clearing, grading and excavation on approximately 1.2 acres of land.
- 6. The Project is a multiple lot development which consists of the construction of lots for housing units.
- 7. The construction activities at the Project involve land disturbance, clearing, grading, excavation, road clearing and construction and general housing development construction activities.
- 8. The project is located at State Road # 250, Culebras Sector, San Isidro Ward, Culebra, Puerto Rico.
- 9. Respondent’s project is a “construction activity” as defined in 40 CFR §40 CFR §122.26(b)(15) .
- 10. The Project is a point source as defined in 40 CFR §122.2.
- 11. The Administrator of EPA has promulgated regulations, 40 CFR §122.26(b)(15),

which require operators of construction activities to apply for and obtain NPDES permit coverage for the storm water discharges.

12. The Project is covered by the NPDES permit application regulations for construction activities since clearing, grading and/or excavation activities are equal or greater than 1 acre of total land area.
13. Regulations found at 40 CFR §122.21 require operators of new construction sites to submit an individual permit application no later than ninety (90) days before the date on which construction is to commence, unless the operator obtains authorization under a NPDES storm water general permit for construction activities.
14. Respondent is the owner or operator, as defined in 40 CFR §122.2.
15. Respondent is required to apply for and obtain NPDES permit coverage for the storm water discharges from the Project pursuant to 40 CFR §122.26(b)(15).
16. EPA issued on July 1, 2003 (68 FR 39087), the "NPDES General Permit for Discharges from Large and Small Construction Activities" (the "construction permit"). The construction permit became effective on July 1, 2003 and shall expire at midnight, July 1, 2008.
17. Part 2.3.A of the construction permit establishes application deadlines for operators of new construction projects. Such operators are required to file a complete and accurate Notice of Intent ("NOI") form prior to commencement of construction activities.
18. A review of the EPA National Storm Water Processing Center database at "<http://www.epa.gov/npdes/stormwater>," and EPA files on December 10, 2007, revealed that Mr. Juan Benet Mendez had not filed a NOI and had not obtained permit coverage for its construction activities at the project.
19. Pursuant to Section 308(a) of the Act, 33 U.S.C. §1318(a), an authorized enforcement officer of EPA performed a Reconnaissance Inspection ("RII") on January 10, 2007.
20. The findings of the CEI are included in the attached NPDES Water Compliance Inspection Report dated March 12, 2008 and include among others the following
 - a) Respondent has not filed an individual application or NOI for the development.

- b) Respondent is in violation of Section 308(a) of the Act, 33 U.S.C. §1318(a), by its failure to comply with the application requirements for a NPDES storm water permit.
- c) Respondent has not developed nor implemented a Pollution Prevention Plan for the Control of Erosion at the site and the Sedimentation of the Municipal Separate Storm Sewer System (MS4) which discharges into the Atlantic Ocean.
- d) The MS4 which discharges into the Atlantic Ocean is a water of the United States within the meaning of Section 502(7) of the Act, 33 U.S.C. §1362(7).

21 Therefore, on the basis of the findings cited in the paragraphs above, EPA hereby finds that Respondent is in violation of Sections 301 and 402 of the Act, 33 U.S.C. §1311 and 33 U.S.C. §1342, respectively, by discharging pollutants into the MS4 which discharges into the Atlantic Ocean, through storm water runoff associated with construction activities, without a NPDES storm water permit required pursuant to Section 402 of the Act.

ORDERED PROVISIONS

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

IT IS HEREBY ORDERED:

- 1 That any document to be submitted by Respondent to EPA and EQB as part of this ORDER shall be signed by an authorized representative (see 40 CFR §122.22), and shall include the following certification:

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

2. That immediately upon receipt of the originals of this ORDER, Respondent

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shall complete the acknowledgment of receipt on one of the originals of the ORDER and return said original to the Director, Caribbean Environmental Protection Division, EPA, to the address specified below.

3. **That immediately upon receipt of this ORDER**, Respondent shall cease the discharge of pollutants (storm water discharge associated with construction activities) to waters of the United States from its development in Culebra, Puerto Rico. Confirmation that the discharge of pollutants has ceased as of the date of receipt of this ORDER shall be provided to the Chief, Multimedia Permits and Compliance Branch, Caribbean Environmental Protection Division, EPA, in writing by no later than five (5) days from the date of receipt of this ORDER.
4. That **immediately** upon receipt of this ORDER, Respondent shall cease the clearing, grading and/or excavation activities at the development.

However, Respondent is authorized to carry out any activity otherwise required by this Order, including but not limited to the following:

- a) Clean and remove soil, dirt, debris and other materials which were deposited in the roads and other areas of the project where construction work is not being performed and stabilization has not been attained. Provide final stabilization.
- b) Provide final stabilization to lots where houses have been built and are ready to be occupied.
- c) Provide temporary stabilization at the areas of the development where clearing, grading and/or excavation have occurred (e.g. slopes, open land, lots where house are not ready to be occupied, etc.)
- d) Remove sediments from sediments traps or sedimentation ponds when design capacity has been reduced by 50% as required in Part 3.6.C of the permit.
- e) Construct and/or install erosion and storm water management controls (e.g. ponds, dikes, silt fences, geotextiles, rip raps, etc.) as required by part 3.13 of the permit.

Respondent shall apply best engineering practices in designing and implementing stabilization practices and storm water runoff management controls. Stabilization practices may include, among others: seeding, hale bale, mulching, geotextiles, sod stabilization, vegetative buffer strips, protection of trees and preservation of mature vegetation. Storm water management practices may include: storm water detention structures (including wet ponds); storm water retention structures; dikes; flow

attenuation by use of open vegetated swales and natural depressions; infiltration of runoff onsite; and sequential systems (which combine several practices).

- 5) That **immediately** upon receipt of this ORDER, Respondent shall submit to EPA the following information:
- a. A detailed description of the property where the project is being developed, name of the owner or owners of the property, their address, phone numbers and contact person.
 - b. Names of the corporations, businesses or individuals developing the project, names of the officers, executive directors and agents, their address, phone numbers and contact persons.
 - c. The names of all contractors, past and present, that engaged in clearing, grading and/or excavation activities at the development. Also, provide their relationship with the project, their addresses, phone numbers and contact persons.
 - d. The date when clearing of the site began, the status of the construction activities and expected construction completion date.
 - e. Indicate the acres that will be disturbed at the construction site.
 - f. A detailed description of how storm water is collected and disposed of, and the name of the receiving water(s) of the storm water discharges.
 - g. All available construction drawings related to clearing, grading, excavation and storm water management (e.g. storm sewer). Indicate on the drawings the location of the point sources and/or discharge points.
 - h. A copy of the Storm Water Pollution Prevention Plan for the development.
A copy of the Notice of Intent filed for this development.
A copy of all inspection reports since the commencement of the development.
- 6) **That within 5 calendar days of receipt of this ORDER**, Respondent shall submit a certification stating the following

“Clearing, grading and excavation activities have ceased as of the date of receipt of ORDER CWA-02-2008-3140”

- 7) **That within 15 calendar days of receipt of this ORDER**, Respondent shall submit a Compliance Plan to bring the Project into compliance with the construction permit, NPDES permit application regulations and the Act. The Compliance Plan shall include, but not be limited to the following activities:
- a. For Respondent, filing of a NOI form for coverage under the construction permit. Information about the storm water program for construction activities is located at EPA web site "www.epa.gov/npdes/stormwater."
- The Respondent is advised that the NOI form cannot be filed until Respondents have brought the Project into compliance with this ORDER, and the conditions and requirements of the construction permit.
- b. Prepare the Storm Water Pollution Prevention Plan ("SWPPP"), to specify the responsibilities of CPI and VPI for the implementation of the SWPPP in accordance with Part 3.2 of the construction permit.
 - c. Use of logs and implementation of good record-keeping practices to comply with Part 6 of the construction permit.
 - f. Conduct inspections as required by Part 3.10 of the construction permit.
 - g. Complete and retain inspection reports as required by Part 3.10 of the construction permit.
 - h. Prepare the SWPPP to comply with the management practices required by Part 3.13 of the construction permit.
- Prepare the SWPPP to comply with the Plan Review and Signatory requirements required by Part 3.12 of the construction permit.
- Revise the site map included in the SWPPP to describe the Project's conditions as of the date of receipt of this ORDER, as specified in Part 3.3.C of the construction permit.
- k. Address all findings included in the Inspection Reports, dated March 12, 2008, which is incorporated as Attachment 1 of this ORDER.
- Detailed cost report on the amount of time and associated costs to comply with this ORDER. The cost report must include, but not be limited to: (a) filing of permit applications; (b) purchase and installation of controls; (b) legal fees; (c) engineering costs; (d) inspection and reports; (e) development of Compliance Plan; (f) contracts; (g) machinery; and (h) other methods of compliance.

Any questions concerning this ORDER should be directed to Mr. Jaime López of the Caribbean Environmental Protection Division at (787) 977-5851.

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

Director
Water Quality Area
Environmental Quality Board
P.O. Box 11488
San Juan, Puerto Rico 00910

and

Jaime López
Environmental Scientist
Caribbean Environmental Protection Division
U.S. Environmental Protection Agency, Region 2
Edificio Centro Europa, Suite 417
1492 Avenida Ponce de León
San Juan, Puerto Rico 00907-4127.

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, and the construction 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 an Administrative ORDER shall not be deemed an election by EPA to forego any civil or criminal actions which would seek penalties, fines, or other appropriate relief under the Act.

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

Dated: 04-01-08

Signed: 
CARL-AXEL P. SODERBERG, P.E.
Director
Caribbean Environmental Protection Division



ATTACHMENT 1
WATER COMPLIANCE INSPECTION REPORT

**SUPPLEMENT TO WATER COMPLIANCE INSPECTION REPORT FORM
(EPA FORM 3560-3 (REV 9-94))**

**Playa Clara Lots Development
State Road # 250, Culebras Sector, San Isidro Ward, Culebra, Puerto Rico**

On December 19, 2007, Mr. Jaime Lopez of the United States Environmental Protection Agency ("EPA") performed a Reconnaissance Inspection ("RI") of the referenced Development. The purpose of the RI was to evaluate the operator's compliance with the NPDES storm water permit application regulations for construction sites and the Clean Water Act (the "Act"). The findings of the RI are listed below and complement the Water Compliance Inspection Report Form:

1. SITE AND OPERATORS INFORMATION

- A. Playa Clara Lots Development (the "project" or "development") is a lots construction project. Construction activities consist of earth movement (e.g., clearing, grading and excavation), site work and general construction work.
- B. The project is located at State Road # 250, Culebras Sector, San Isidro Ward, Culebra, Puerto Rico
- C. The area of the project to be disturbed is 1.2 acres of land.
- D. The development is owned Juan Benet Mendez. Mr. Juan Benet Mendez's address is P.O. Box 789, Culebra, Puerto Rico 00775.
- E. Mr. Juan Benet Mendez performed earth movement, site preparation and road clearing and construction.

2. PERMITTING

- A. The project is covered by the NPDES permit application regulations for storm water discharges at 40 CFR §122.26(b) (15), since clearing, grading and/or excavation activities are equal to or greater than one (1) acre of total land area.
- B. On July 1, 2003, EPA issued and published in the Federal Register (68 FR 39087) the "NPDES General Permit for Discharges from Large and Small Construction Activities" (the "permit"). The permit became effective on July 1, 2003 and expires on July 1, 2008.

- B. An operator is defined by the permit and in the context of storm water associated with construction activity, as any party associated with a construction project that meets either of the following two (2) criteria:
 - (i) the party has operational control over construction plans and specifications including the ability to make modifications to those plans and specifications; or
 - (ii) the party has day-to-day operational control of those activities at a project which are necessary to ensure compliance with a Storm Water Pollution Prevention Plan (SWPPP) for the site or other permit conditions.
- C. The permit requires eligible operators to timely file a Notice of Intent ("NOI") for coverage under the permit. Part 2.3 of the permit establishes NOI submission deadlines.
- D. Mr. Juan Benet Mendez is the owner and an operator of the project.
- B. My review of the EPA National Storm Water Processing Center database at "<http://www.epa.gov/npdes/stormwater>," and EPA files on December 10, 2007, revealed that Mr. Juan Benet Mendez had not filed a NOI and had not obtained permit coverage for its construction activities at the project.

3. December 19, 2007 INSPECTION FINDINGS

The following findings are based on the walk-through

- A. Mr. Juan Benet Mendez is the operator conducting construction activities at the site.
- B. Storm water runoff from the project is discharged into the Atlantic Ocean, a water of the United States.
- C. A copy of the SWPPP was not available on site at the time of inspection.
- D. Mr. Juan Benet Mendez had not appropriately implemented a Storm Water Pollution Prevention Plan (SWPPP) requirement associated with the construction activity at the construction site neither assured compliance with the terms and conditions of Part 3.1 of the Construction General Permit.

- E. Stabilization practices on slopes and roads were not observed at the visited areas. Most of the roads cleared were observed without temporary or final stabilization. Such stabilization practices may include but are not limited to: establishment of temporary vegetation, establishment of permanent vegetation, mulching, geotextiles, sod stabilization, vegetative buffer strips, protection of trees, preservation of mature vegetation, and other appropriate measures.
- E. Mr. Juan Benet Mendez failed to provide adequate sediment and erosion control measures in the project as required by Part 3.13.E of the permit.
- F. Twelve (12) photos were taken with an electronic camera and are included in Attachment 1. Below is a general description of the photos:
1. Silt fence wrongly installed and not maintained.
 2. There was not an inlet control at or filtration device at headwall. There is no diversion to rip rap.
 3. Same as above.
 4. Earth pile without any controls.
 5. There was not offsite sediment tracking controls at project entrance.
 6. Slopes lack of sediment and erosion controls plus a velocity dissipation device.
 7. Same as above.
 8. Clearing of slopes without erosion and sediment controls along the road were observed.
 9. Erosion channels could be observed on slopes, where clearing activities have been performed and no controls or stabilization practices were implemented.
 10. Storm sewer drain that crosses and collects storm water from main road of project was filled with sediments.
 - 11 Sediments observed at storm sewer drain at the end of street which discharges into the Atlantic Ocean.

12. Same as above

4. RECOMMENDATIONS

Based upon the findings noted above and my professional judgment, I recommend that EPA issue an enforcement action to bring the operator(s) of the construction project into compliance with the NPDES storm water regulations for construction activities and the Clean Water Act.

Attachment 1 - Photo Documentation

ATTACHMENT 1

PHOTO DOCUMENTATION

December 19, 2007 RI



1



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3



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