



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 2  
Caribbean Environmental Protection Division  
City View Plaza II, #48 Carr 165 Ste 7000  
Guaynabo, Puerto Rico 00968-8073

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Certified Mail – Return Receipt Requested

Mr. Carlos Rodríguez Camacho  
President  
CALRINCON Corp.  
P. O. Box 556  
Rincón, Puerto Rico 00677

**Re: Parcel of Land in Rincón, Puerto Rico  
Administrative Compliance Order  
Docket Number CWA-02-2019-3101**

Dear Mr. Rodríguez Camacho:

The United States Environmental Protection Agency (“EPA”), Region 2, has made findings that CALRINCON Corp. and Karimar Construction, Inc. are in violation of Section 301(a) of the Clean Water Act (“CWA”), 33 U.S.C. § 1251 *et seq.* Enclosed please find two originals of the Administrative Compliance Order (“Order”), Docket Number CWA-02-2019-3101, issued pursuant to Section 309(a) of the CWA, 33 U.S.C. § 1319(a). Please acknowledge receipt in one of the originals of the Order and return it to EPA.

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

If you have any questions regarding this matter, please contact Mr. José A. Rivera, Team Leader, Clean Water Act Team, at (787) 977-5842 or [rivera.jose@epa.gov](mailto:rivera.jose@epa.gov).

Sincerely,

A handwritten signature in blue ink, appearing to read "C.R.G.", with a stylized flourish at the end.

Carmen R. Guerrero Pérez  
Director

Caribbean Environmental Protection Division

Enclosures

cc: Ángel Meléndez, EQB (via email w/ attachment)  
Ángel Luis Carrero, CALRINCON Corp. (via email w/ attachment)

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2**

In the Matter of:

**CALRINCON CORP.**

P. O. Box 556

Rincón, Puerto Rico 00677

**KARIMAR CONSTRUCTION, INC.**

P. O. Box 8000

Aguada, Puerto Rico 00602

**RESPONDENTS**

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

**ADMINISTRATIVE  
COMPLIANCE ORDER**

**DOCKET NUMBER  
CWA-02-2019-3101**

**ACKNOWLEDGMENT OF RECEIPT OF  
ADMINISTRATIVE COMPLIANCE ORDER**

I do hereby acknowledge the receipt of a true copy of the Order CWA-02-2019-3101. Pursuant to the signatory's requirements in 40 C.F.R. § 122.22, I certify that I am authorized to sign this acknowledgment.

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Print Name and Title

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Date

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
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**ADMINISTRATIVE  
COMPLIANCE ORDER**

**DOCKET NUMBER  
CWA-02-2019-3101**

**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. § 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(p) of the Act, 33 U.S.C. § 1342(p), requires a NPDES permit with respect to a storm water discharge associated with industrial activity.
7. Section 402 of the Act authorizes the Administrator to promulgate regulations for the implementation of the NPDES program.



8. Pursuant to 40 C.F.R. § 122.1(b), the NPDES program requires permits for the discharge of any pollutant from any point source into waters of the United States.
9. Pursuant to 40 C.F.R. §§ 122.26(a)(1)(ii), 122.26(b)(14)(x), and 122.26(b)(15), operators are required to obtain a NPDES permit for storm water discharges associated with construction activity.
10. The Act and its implementing NPDES regulations provide definitions and requirements:
  - 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 Act, 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 Act, 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 Act, 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 Act, 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 Act, 33 U.S.C. § 1362(14), and 40 C.F.R. § 122.2; and
  - 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).

- 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;
11. On January 19, 2017, EPA re-issued the NPDES General Permit for Discharges from Construction Activities” (“2017 CGP”). 82 Fed. Reg. 6534 (Jan. 19, 2017). The 2017 CGP became effective on February 16, 2017 and expires on February 16, 2022.
12. The 2017 CGP defines the following terms as follows:
  - a. “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);
  - b. “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;
  - c. “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;
  - d. “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;
  - e. “new site” as a site where construction activities commenced on or after February 16, 2017;
  - f. “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.
13. 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 (“NOI”) prior to commencing construction activities.

14. 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.
15. Part 1.4.3 and Table 1 of the 2017 CGP requires operators of new site to submit a NOI for 2017 CGP coverage at least fourteen (14) calendar days before commencing construction activities.
16. Section 308(a)(A) of the Act provides that “[w]henever 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.”
17. Section 309(a)(3) of the Act 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....”
18. Section 309(a)(5)(A) of the Act 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.”
19. 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**

20. CALRINCON Corp. (“CALRINCON”) is a corporation organized under the laws of the Commonwealth of Puerto Rico.
21. CALRINCON is the developer of a parcel of land located at PR-413 Road, Km. 1, Rincón, Puerto Rico (the “Parcel”).
22. CALRINCON is conducting or proposing to conduct a construction activity at the Parcel (the “Project”).

23. Karimar Construction Inc. (“Karimar”) is a corporation organized under the laws of the Commonwealth of Puerto Rico.
24. On or about from April up to September 2018, Karimar conducted earth movement activities at the Project.
25. On October 4, 2018, EPA performed a NPDES Stormwater Reconnaissance Inspection (the “Inspection”) of the Project.
26. The findings of the Inspection were included in an Inspection Report, dated October 10, 2018.
27. During the Inspection, EPA observed the following:
  - a. earth movement activity, such as soil clearing and grading (fill material), at portions of the Project;
  - b. the surface areas where the fill material was placed were not compacted and lacked erosion and sediment controls;
  - c. the surface areas where the fill material was placed lack soil stabilization;
  - d. soil piles on top of the fill material without erosion and sediment controls;
  - e. lack of perimeter controls for retention of sediments;
  - f. stormwater runoff carrying sediments from the Project into an unnamed creek;
  - g. most of the stormwater runoff from areas north of the right of way ultimately flows into a swale that conveys stormwater into an unnamed creek;
  - h. the unnamed creek touching the north, east and southwest slopes where the fill material was deposited; and
  - i. the unnamed creek flowing into the Caribbean Sea.
28. At the time of the Inspection, CALRINCON and Karimar (collectively, the “Respondents”) had not applied for 2017 CGP or obtained coverage for the stormwater discharges associated with construction activity from the Project into waters of the United States.

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

29. Respondents are subject to the provisions of the Act, 33 U.S.C. § 1251, *et seq.*, and the applicable NPDES permit application regulations found at 40 C.F.R. Part 122.
30. CALRINCON is a “person” as defined under Section 502(5) of the Act, 33 U.S.C. §



1362(5).

31. Karimar is a “person” as defined under Section 502(5) of the Act, 33 U.S.C. § 1362(5).
32. 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.
33. The Project is a “point source” as defined under Section 502(14) of the Act, 33 U.S.C. § 1362(14).
34. Respondents discharged and continue to discharge storm water containing “pollutants” from the Project into an unnamed creek, which discharges into the Caribbean Sea.
35. The unnamed creek and the Caribbean Sea are waters of the United States as defined under Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and 40 C.F.R. § 122.2.
36. Respondents’ discharges of stormwater containing pollutants into waters of the United States constitute a violation of Section 301 of the Act, 33 U.S.C. § 1311, and the applicable NPDES regulations; therefore, Respondents are subject to an enforcement action under Section 309 of the Act, 33 U.S.C. § 1319.

#### IV. ORDERED PROVISIONS

In consideration of the Factual Findings 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:

37. **That within five (5) calendar days upon receipt of the originals of this ORDER**, the Respondents shall complete the acknowledgment of receipt on one of the originals of the Order and return said original to the Team Leader, Clean Water Act Team, Multimedia Permits and Compliance Branch, Caribbean Environmental Protection Division, EPA, Region 2, to the address specified below.
38. **That immediately upon receipt of this Order**, in conformance with Section 301(a) of the Act, Respondents shall not discharge storm water runoff from the construction activities at the Project into the unnamed creek and the Caribbean Sea, except with authorization under the provisions of the 2017 CGP or other NPDES permit for which Respondent applied for and obtained coverage.
39. **That within thirty (30) calendar days upon receipt of this Order**, Respondents shall seek authorization under the provisions of the 2017 CGP or other NPDES permit for the construction activities at the Project.
40. In order to bring the Project into compliance with Section 301 of the Act, while



Respondents obtain coverage under an NPDES permit, Respondents shall, at a minimum, implement the following measures:

- a. temporary stabilization to areas where clearing, grading and excavation activities had temporarily ceased;
  - b. final stabilization to areas where clearing, grading and excavation activities will no longer be performed;
  - c. perimeter controls, erosion and sediment controls, and Best Management Practices (BMPs);
  - d. storm water run-on management from flows coming from outside properties into the Project;
  - e. sediment track-out controls to address sediment discharges into PR-413 Road;
  - f. pollution prevention controls;
  - g. dust controls;
  - h. maintenance and replacement, where required, of the existing and future BMPs; and
  - i. installation and maintenance of sediment and erosion controls required by the Puerto Rico Department of Natural and Environmental Resources (former Environmental Quality Board), provided Respondents submit to EPA a written notification no later than five (5) calendar days before the commencement of such activity. Such notification shall include a description and itinerary of implementation of the activities to be undertaken.
41. **That within forty-five (45) calendar days upon receipt of the originals of this ORDER,** Respondents shall certify in writing to EPA that Respondents complied with the ordered provisions in paragraph 40, above.
42. **Until Termination of this Order,** Respondents shall jointly perform site inspections at the Project and document the site inspections following the requirements in Part 4 of the 2017 CGP.
43. **Until Termination of this Order,** Respondents shall jointly take corrective actions to address any triggering conditions identified at the Project and document such corrective actions following the requirements in Part 5 of the 2017 CGP.
44. **Until Termination of this Order,** Respondents shall jointly submit Monthly Progress Reports that, at a minimum, describe the status and progress of Respondents' actions taken to comply with the provisions of this Order. Respondents shall submit each Monthly

Progress Report to EPA no later than the fifteenth (15<sup>th</sup>) day of the month following the month subject to the reporting period.

**V. GENERAL PROVISIONS**

45. 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 / [rivera.jose@epa.gov](mailto:rivera.jose@epa.gov). Information about the NPDES stormwater permitting program for construction activities is found at the following online link: <https://www.epa.gov/npdes/stormwater-discharges-construction-activities>.

46. Any documents to be submitted by Respondents as part of this Order shall be hand-delivered or sent by certified mail or its equivalent, or via electronic mail, and shall be signed by an authorized representative of the respective entity (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.”

47. All documents required to be submitted under this Order shall be sent to the following addresses:

Director, Water Quality Area  
Puerto Rico Department of Natural and Environmental Resources (former  
Environmental Quality Board)  
P. O. Box 11488  
San Juan, Puerto Rico 00910,

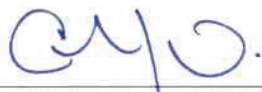
and

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.



48. Respondents shall have the opportunity, for a period of twenty (20) days from the effective date of this Order, to confer, regarding the requested information and the ordered provisions, with the following designated Agency representative: José A. Rivera, Team Leader, Clean Water Act Team, Multimedia Permits and Compliance Branch, Caribbean Environmental Protection Division at (787) 977-5865 or (787) 977-5842 / [rivera.jose@epa.gov](mailto:rivera.jose@epa.gov).
49. 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.
50. 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 Act.
51. Notice is hereby given that should EPA commence an action in a United States District Court for a violation of any Ordered Provision of this Order, Respondent may be subject to: (1) civil penalties up to \$53,484 per day for each day of violation that occurred after November 2, 2015, pursuant to Section 309(d) of the Act, 33 U.S.C. §1319(d); and/or (2) injunctive relief, pursuant to Section 309(b) of the Act, 33 U.S.C. § 1319(b), as imposed by the Court.
52. 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.
53. This Order shall become effective upon the date of execution by the Director, Caribbean Environmental Protection Division.

Dated: NOVEMBER 21 / 2018

Signed:   
**CARMEN R. GUERRERO PÉREZ**  
Director  
Caribbean Environmental Protection Division  
Environmental Protection Agency, Region 2

Attachment