



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
CARIBBEAN ENVIRONMENTAL PROTECTION DIVISION
CITY VIEW PLAZA II BUILDING, 7TH FLOOR
ROUTE 165 GUAYNABO, PUERTO RICO 00968

February 1, 2022

Via Electronic Mail

Honorable Marcos Cruz Molina
Mayor
Municipality of Vega Baja
P.O. Box 4555
Vega Baja, Puerto Rico 00693-4555
Email: mrosado@vegabaja.gov.pr

**Re: Request for Information Pursuant to Section 308 of the Clean Water Act
Vega Baja Municipal Solid Waste Landfill
CEPD-CWA-02-IR-2022-001**

Dear Mayor Cruz Molina:

The United States Environmental Protection Agency ("EPA") is charged with the protection of human health and the environment under the Clean Water Act ("CWA" or the "Act").¹ Section 308(a) of the CWA provides that whenever it is necessary to carry out the objectives of the CWA, including determining whether or not a person is in violation of Sections 301 and 402 of the CWA, respectively, EPA shall require the submission of any information reasonably necessary to make such a determination.² Under the authority of Section 308 of the CWA, EPA may require the submission of information necessary to assess the compliance status of any facility and its related appurtenances.

EPA is conducting an investigation in response to a citizen complaint that alleged the discharge of waste leachate from the Vega Baja Municipal Solid Waste Landfill ("Vega Baja Landfill") into the Cibuco River, a water of the United States pursuant to Section 502(7) of the CWA.³

Statutory and Regulatory Provisions, and National Pollutant Discharge Elimination System ("NPDES") Permitting

Section 301(a) of the CWA states that except as in compliance with Section 402 of the CWA, the discharge of any pollutant (e.g., sediments, the commingling of runoff with leachate) by any person shall be unlawful.^{4,5} Section 402(p)(2)(B) of the CWA requires an NPDES permit with respect to stormwater discharges associated with industrial activity.⁶ The NPDES stormwater permit application regulations

¹ See 33 U.S.C. § 1251 *et seq.*

² See 33 U.S.C. §§ 1311, 1318(a), and 1342, respectively.

³ See 33 U.S.C. § 1362(7).

⁴ See 33 U.S.C. § 1311(a).

⁵ See 33 U.S.C. § 1342.

⁶ See 33 U.S.C. § 1342(p)(2)(B).

include landfills, land application sites and open dumps.⁷

Pursuant to the NPDES regulations at 40 C.F.R. §§ 122.2, 122.21 and 122.26, owners and/or operators of landfills, land application sites and open dumps are subject to NPDES permitting, and as such, may be required to obtain an NPDES permit for stormwater discharges associated with industrial activity and/or discharges of leachate and/or discharges stormwater mixed with leachate. The activities at the Vega Baja Landfill meets the stormwater discharges associated with industrial activity definitions found at 40 C.F.R. §§ 122.26(b)(14) and 122.26(b)(14)(v).

EPA issued the 2015 NPDES Multi-Sector General Permit for Stormwater Discharges from Industrial Activity (“2015 MSGP”) pursuant to Section 402(p) of the CWA. The 2015 MSGP went into effect on June 4, 2015 and expired on June 3, 2020. EPA re-issued the 2021 MSGP and became effective on March 1, 2021. EPA finalized a minor modification to the 2021 MSGP that became effective on September 29, 2021. The 2021 MSGP will expire on February 28, 2026.^{8,9}

The 2015 and 2021 MSGP establish electronic Notice of Intent (“eNOI”) form filing requirements; development and implementation of a site-specific Stormwater Pollution Prevention Plan (“SWPPP”); inspections; corrective actions; effluent monitoring; reporting; and recordkeeping, among other requirements. The 2015 and 2021 MSGP do not authorize the discharge of leachate and/or the discharge of stormwater mixed with leachate.¹⁰

NPDES Permit Applications for the Vega Baja Landfill

On October 25, 2021, an EPA official conducted a preliminary review of the NPDES databases known as “Central Data Exchange” (“CDX”) and “Enforcement and Compliance History Online” (“ECHO”).¹¹ This preliminary review revealed that:

1. the owner of the Vega Baja Landfill has not submitted an eNOI form under the 2021 MSGP for the Vega Baja Landfill; and
2. the owner of the Vega Baja Landfill has not submitted an NPDES permit individual application under NPDES permit application regulations found at 40 C.F.R. §§ 122.21 and 122.26.

In addition, an EPA official review public-available imagery, and found that the Vega Baja Landfill is located near the Cibuco River, which flows into the Atlantic Sea.¹² **Figure 1** depicts the location of the Vega Baja Landfill, watershed areas near the Vega Baja Landfill, the Cibuco River and location where the Cibuco River discharges into the Atlantic Ocean.

⁷ See 40 C.F.R. § 122.26(b)(14)(v).

⁸ See <https://www.epa.gov/npdes/stormwater-discharges-industrial-activities-epas-2021-msgp>.

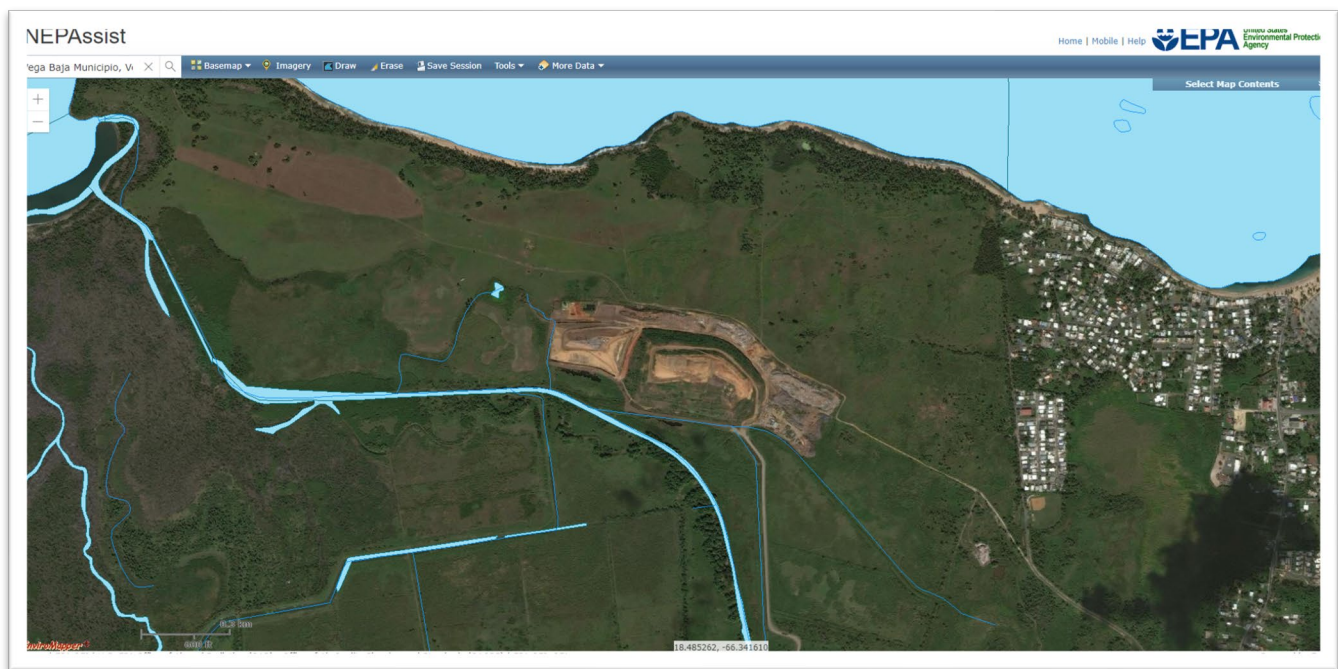
⁹ The 2021 MSGP replaced the 2015 NPDES Multi-Sector General Permit for Stormwater Discharges from Industrial Activity, which expired on June 4, 2020 (“2015 MSGP”).

¹⁰ See Part 1.1.3 of the 2021 MSGP.

¹¹ See <https://permitsearch.epa.gov/epermit-search/ui/search> and <https://echo.epa.gov/facilities/facility-search/results>, respectively.

¹² See <https://nepassisttool.epa.gov/nepassist/nepamap.aspx>.

Figure 1



Request for Information

EPA is hereby requesting information from the Municipality of Vega Baja (“Vega Baja” or the “Municipality”) pursuant to the authority granted under Section 308(a) of the CWA. Please review and follow the instructions in Enclosure 1 (Instructions and Definitions); review the information being requested in Enclosure 2 and submit the information requested therein; and submit a signed and dated Statement of Certification (Enclosure 3), which is to be signed and dated by an authorized official of the Municipality pursuant to the signatory requirements in 40 C.F.R. § 122.22. This statement certifies that the response submitted to the EPA is complete and contains all documents and information responsive to this Request for Information (“RFI”) that are known to you, following a complete and thorough review of all information and sources available to you.

The purpose of this RFI is to require the Municipality to submit information regarding the alleged discharge of waste leachate from the Vega Baja Landfill into the Cibuco River; past and current operations and activities at the Vega Baja Landfill; and the discharge of pollutants from the Vega Baja Landfill into waters of the United States.¹³ The EPA will use the requested information to determine Municipality of Vega Baja’s compliance with Sections 301(a), 308(a), and 402 of the CWA.

¹³ For the definition of “waters of the United States”, see 40 C.F.R. § 122.2, 85 FR 22250 (April 20, 2020), https://www.epa.gov/sites/production/files/2020-01/documents/navigable_waters_protection_rule_prepublication.pdf

Because of the ongoing COVID-19 pandemic, electronic delivery of Vega Baja's response is strongly encouraged.¹⁴ To the extent possible, any documents to be submitted in response to this RFI should be in Portable Document Format ("PDF"). The requested information must be sent to the following EPA Region 2 designated official:

Mr. Jaime López
Physical Scientist
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, PR-165, Km 1.2
Guaynabo, Puerto Rico 00968-8069
Telephone Number: (787) 977-5851
Electronic Mail: lopez.jaime@epa.gov.

If you are without access to a computer and must submit the response by U.S. mail, the Municipality should notify Mr. López at (787) 977-5851, or by electronic mail ("email") at lopez.jaime@epa.gov, when it sends a document in such a manner.

Please be advised that you are under a continuing obligation to supplement its response if information not known or not available to you as of the date of submission of your response should later become known or available to you. In this instance, you must supplement the response to EPA within ten (10) business days.

If at any time in the future you become aware of additional information or find that any portion of the submitted information is false, misleading or misrepresents the truth, you must notify EPA of this fact immediately and provide a corrected response within ten (10) business days. If any part of the response is found to be untrue, you may be subject to criminal prosecution.

This RFI is not subject to the approval requirements of the Paperwork Reduction Act of 1980, 44 U.S.C. §§ 3501-3520. The Municipality may, if so desire, assert a business confidentiality claim covering all or part of the information requested by this letter. 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.

If no such claim accompanies the information contained in the response to the RFI when it is received by EPA, it may be made available to the public by EPA without further notice to you. You 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. Allegedly confidential portions of otherwise non-confidential documents should be clearly identified by you. If you desire

¹⁴ Currently, EPA's office in Guaynabo, Puerto Rico, is not accessible to the public and is unable to accept filings or correspondence by personal delivery.

confidential treatment of information only until a certain date or until the occurrence of a certain event, your response should state so.

Failure to comply in all respects with this request for information may result in the initiation of an enforcement action under Section 309 of the CWA under which injunctive relief and penalties may be sought. Such an enforcement action may include the assessment of penalties of up to \$56,460 per day for each day of continued non-compliance.¹⁵

Because this is a formal information request issued to you pursuant to Section 308(a) of the CWA, you are legally required to respond within a reasonable time frame. **EPA requests that you fully respond to the requested information within fifteen (15) calendar days of receipt of this letter by email.** However, the EPA acknowledges that the COVID-19 pandemic may be impacting Vega Baja's operations. If that is the case, EPA will consider, at its sole discretion, Vega Baja's specific circumstances that could affect a timely response to this RFI, while ensuring that the EPA receives the relevant information it needs to effectively evaluate Vega Baja's compliance with Sections 301(a), 308(a) and 402(p) of the CWA. Therefore, you or your authorized representative should contact the designated EPA official identified above in a timely manner for further instructions.

If you have any questions concerning this RFI, please contact me at (787) 977-5875, or by email at guerrero.carmen@epa.gov; or Mr. José A. Rivera, BSCE, Team Leader, Clean Water Act Team, Multimedia Permits and Compliance Branch, at (787) 977-5842, or by email at rivera.jose@epa.gov. Your staff or consultants may also can contact Mr. López at (787) 977-5851, or by email at lopez.jaime@epa.gov.

Sincerely,

CARMEN

GUERRERO PEREZ

Carmen R. Guerrero Pérez

Director

Caribbean Environmental Protection Division

Digitally signed by CARMEN

GUERRERO PEREZ

Date: 2022.02.01 16:26:19 -04'00'

cc: Ángel Meléndez, DNER/WQA (via email)

¹⁵ See 33 U.S.C. § 1319.

ENCLOSURE 1

INSTRUCTIONS AND DEFINITIONS

In responding to this RFI, please apply the following instructions, definitions, and information:

- a. The signatory should be an officer or agent who is authorized to respond on behalf of the Municipality pursuant to the NPDES signatory requirements regulations codified at 40 C.F.R. § 122.22.
- b. A complete separate response must be made to each individual question in this RFI. Identify each answer with the number of the question to which it is addressed and precede each answer with the question to which it is addressed.
- c. Interpret “and” as well as “or” to include within the scope of the question as much information as possible. If two interpretations of a question are possible, use the one that provides more information.
- d. In preparing your response to each question, consult with all present and former employees, agents and/or contractors whom you have reason to believe may be familiar with the matter to which the question pertains, regardless of whether the source is in your immediate possession.
- e. In answering each question, identify all contributing sources of information.
- f. If you are unable to answer a question in a detailed and complete manner or if you are unable to provide any of the information or documents requested, indicate the reason for your inability to do so. If you have reason to believe that there is an individual who may be able to provide more detail or documentation in response to any question, state that person's name and last known address and phone number and the reasons for your belief.
- g. If anything is deleted from a document produced in response to this RFI, state the reason for and the subject matter of the deletion.
- h. For each document produced in response to this RFI, indicate on the document or in some other reasonable manner, the number of the question to which it applies. If a document is requested but is not available, state the reason for its unavailability.
- i. For terms and definitions referred in this RFI, you will find its meaning in Section 502 of the CWA and 40 C.F.R. § 122.2.

ENCLOSURE 2

INFORMATION REQUESTED

The Municipality shall submit the following information pursuant to the instructions and definitions contained in Enclosure 1, above. Please use the **RFI ID Number CEPD-CWA-02-IR-2022-001** when referring to this matter:

Information about the operations and activities at the Vega Baja Landfill

1. Submit the name of the owner(s) of the property where the Vega Baja Landfill is located, their addresses, emails, phone numbers and officers. Include a copy of the property deed(s).
2. Submit the names of the lessor and lessee of the property where the Vega Baja Landfill is located, their addresses, emails, phone numbers and officers. Include a copy of the lease agreement(s).
3. Submit the names of the entities that were and are engaged in operating the Vega Baja Landfill for the last five (5) years. Include the names of the officers, executive directors and agents, emails, their addresses, and phone numbers.
4. Submit a copy of the past and current operation contracts between the owner(s) and operator(s) of the Vega Baja Landfill for the last five (5) years.
5. Provide a detailed description of the Vega Baja Landfill, including but not limited to, geographic location, topography, hydrogeology, and extent of surfaces (in square feet).
6. Identify in a legible site map and/or by other means, such as a legible aerial photography, those areas in the Vega Baja Landfill in which industrial activities are conducted, as defined in 40 C.F.R. §§ 122.26(b)(14) and 122.26(b)(14)(v).
7. Submit a legible site map the areas of the Vega Baja Landfill where soil stabilization is lacking, if applicable.

Information about the NPDES Permitting for the Vega Baja Landfill

8. Submit a copy of all Stormwater Pollution Prevention Plans (SWPPPs) developed for the Vega Baja Landfill for the last five (5) years
9. Submit a copy of NPDES permit application(s) that the Municipality filed for the Vega Baja Landfill for the last five (5) years.
10. Submit a copy of most recent legible Vega Baja Landfill site map.
11. Submit a copy of the most recent Vega Baja Landfill topographic survey map.
12. Submit a copy of the most recent Vega Baja Landfill storm water collection and discharge system (i.e., storm sewer map).

Information about the discharges from the Vega Baja Landfill

13. Submit a copy of the most recent version of the Hydrologic and Hydraulic Study (H&H Study) developed for the Vega Baja Landfill.
14. Submit a detailed explanation of the storm water runoff path from the Vega Baja Landfill premises into the closest surface water body.
15. Submit the name of closest surface bodies of water.
16. Submit a detailed description of the stormwater management practices being applied to divert, infiltrate, reuse or otherwise manage stormwater runoff at La Vega Baja Landfill.
17. Submit pictures clearly depicting storm water runoff points of discharge from the Vega Baja Landfill into, among others, off-site storm water infrastructure, drainage, channels, and surface water bodies. Submit the coordinates (Lambert) for the location where the stormwater runoff and/or leachate discharges into surface water bodies.
18. Submit the dates when rain events occurred at the Vega Baja Landfill for the last five (5) years. For each rain event, submit the dates and duration, including beginning and end of each storm event.
19. Submit information about the installation and operation of a rain gauge at the Vega Baja Landfill for the last five (5) years. If a rain gauge is available, submit legible pictures and indicate its location (coordinates in Lambert).
20. Submit a copy of precipitation logs retained at the Vega Baja Landfill for the last five (5) years.
21. Submit the dates when rain events and runoff precluded the operation of the Vega Baja Landfill for the last five (5) years.

Information about Implementation of Stormwater Pollution Prevention Controls at the at the Vega Baja Landfill

22. Submit a detailed explanation of the soil stabilization practices applied to the Vega Baja Landfill in those areas (e.g., cells) that are active, including access and internal roads.
23. Submit a detailed explanation of the soil stabilization practices applied to the Vega Baja Landfill in those areas (e.g., cells) that are currently inactive.
24. Submit a detailed description of the erosion control practices implemented at access roads and active and inactive disposal areas of the Vega Baja Landfill.

Information about the alleged discharge of waste leachate from the Vega Baja Landfill into Surface Bodies of Water

25. Submit a detailed description of all elements of leachate collection and treatment systems to prevent exposure of leachate to rain and storm water runoff.

26. Submit detailed information and documentation concerning any discharge of waste leachate from the Vega Baja Landfill into surface bodies of water for the last (5) years.
27. Submit a detailed description of the sequence of events that occurred leading to the discharge of waste leachate from the Vega Baja Landfill into surface bodies of water for the last (5) years.
28. Submit the exact location(s) and coordinates (Lambert) where the discharge of waste leachate from the Vega Baja Landfill into surface bodies of water occurred for the last five (5) years.
29. Submit the dates in which the discharge of waste leachate from the Vega Baja Landfill into surface bodies of water started and ended for the last five (5) years.
30. Submit a description of the methods used to eliminate or minimize the discharge of waste leachate from the Vega Baja Landfill into surface bodies of water for the last (5) years.
31. If waste leachate was discharged from the Vega Baja Landfill premises, describe the path within the Vega Baja Landfill and locations where the waste leachate left the premises for the last five (5) years.
32. Submit a detailed description of the waste leachate path downstream until reaching among others, off-site storm water infrastructure, drainage, channels, and surface water bodies.
33. Provide a copy of written reports concerning the discharge of waste leachate including reports prepared by the Vega Baja Landfill's operator and by any other governmental or private entity.
34. Submit copy of any records (i.e., manifest) concerning collection and off-site transportation of waste leachate for final disposal for the last five (5) years.

Information about Inspections, Corrective Actions and Monitoring conducted at the Vega Baja Landfill

35. Submit all training logs on which Municipality's employees received training under the 2015 MSGP and 2021 MSGP for the Vega Baja Landfill for the last three (3) years.
36. Submit all routine inspection documentation prepared under the 2015 MSGP and 2021 MSGP for the Vega Baja Landfill for the last three (3) years.
37. Submit all routine quarterly visual assessment documentation prepared under the 2015 MSGP and 2021 MSGP for the Vega Baja Landfill for the last three (3) years.
38. Submit all corrective action documentation prepared under the 2015 MSGP and 2021 MSGP for the Vega Baja Landfill for the last three (3) years.
39. Submit all monitoring reports for the benchmark monitoring prepared under the 2015 MSGP and 2021 MSGP for the Vega Baja Landfill for the last three (3) years.

40. Submit all monitoring reports for the effluent limitations prepared under the 2015 MSGP and 2021 MSGP for the Vega Baja Landfill for the last three (3) years.
41. Submit all monitoring reports for the impaired waters monitoring prepared under the 2015 MSGP and 2021 MSGP for the Vega Baja Landfill for the last three (3) years.

ENCLOSURE 3

STATEMENT OF CERTIFICATION

I certify that I have examined and am familiar with the information in the enclosed documents, including all attachments. Based on my personal inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are, to the best of my knowledge and belief, true and complete. I am aware that there are significant penalties for knowingly submitting false statements and information, including the possibility of fines or imprisonment pursuant to Section 309 of the CWA, 33 U.S.C. § 1319, and 18 U.S.C. §§ 1001, 1341 and 1505.

(Signature)

(Printed Name)

(Title)

(Date)