



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

May 27, 2021

VIA ELECTRONIC MAIL

Mr. Luis Alberto Rubí González
President
VacíaTalega Village, S.E.
207 Calle del Parque, 5to piso
San Juan, Puerto Rico 00912

**Re: Request for Information Pursuant to Section 308 of the Clean Water Act
Earth Movement Activities at a Site in Frailes Ward, Loíza, Puerto Rico
NPDES ID: PRU019574
CEPD-CWA-02-IR-2021-027**

Dear Mr. Rubí González:

The United States Environmental Protection Agency (“EPA” or “Agency”) is charged with the protection of human health and the environment under the Clean Water Act (“CWA” or “Act”), 33 U.S.C. §§ 1251 *et seq.* Section 301(a) of the CWA, 33 U.S.C. § 1311(a), provides in part that except as in compliance with Section 402 of the CWA, 33 U.S.C. § 1342, the discharge of any pollutant by any person shall be unlawful.¹ The Agency promulgated National Pollutant Discharge Elimination System (“NPDES”) regulations defining the term storm water discharge associated with industrial activity. Pursuant to 40 C.F.R. § 122.26(b)(14), a construction activity is considered to be engaging in “industrial activity” for purposes of 40 C.F.R. § 122.26(b)(14).² Also, the NPDES regulations defined the term storm water discharges associated with small construction activity at 40 C.F.R. § 122.26(b)(15).³

Through different news media and citizen complaints, EPA found that earth movement activities had been conducted at your property herein referred as to the “Piñones Earth Movement Activities Site” (the “Site”) without the proper erosion and sediment controls. The Site is located at PR-187 Road, Km. 16.3, Barrio Frailes, Loíza, Puerto Rico.

¹ The term “person” means 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.

² Construction activity including clearing, grading and excavation, except operations that result in the disturbance of less than five (5) acres of total land area. Construction activity also includes the disturbance of less than five acres of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb five acres or more.

³ Construction activities includes clearing, grading, and excavating that result in land disturbance of equal to or greater than one (1) acre and less than five (5) acres. Small construction activity also includes the disturbance of less than one (1) 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 (1) and less than five (5) acres. Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility.

This letter serves to request information as a result of the National Pollutant Discharge Elimination System (“NPDES”) Reconnaissance Stormwater Inspection (“Inspection”) conducted on April 19, 2021, and further records’ review conducted by senior enforcement officer and physical scientist, Jaime López (the “EPA Inspector”), of the EPA Region 2 Caribbean Environmental Protection Division (“CEPD”) at the Site. The purpose of the Inspection was to determine Vacía Talega Village, S.E.’s (“VTV”) compliance with Sections 301(a), 308(a), and 402(p) of the CWA, the NPDES storm water permit application regulations codified in 40 C.F.R. §§ 122.21 and 122.26 (“SW Rules”), and the “2017 NPDES General Permit for Discharges from Construction Activities” (“2017 CGP” or “CGP”).

Enclosed please find a copy of the Inspection Report, dated May 18, 2021, which includes the findings and observations concerning the Inspection. You are receiving this letter under the presumption that you are the owner of the Site, and that you were/are engaged or directed/direct or allowed/allow another “person” in the performance of the above referenced earth movement activities at the Site.

Request for Information

Section 308(a) of the CWA, 33 U.S.C. § 1318(a), 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 Section 301 of the CWA, EPA shall require the submission of any information reasonably necessary to make such a determination. 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 issues this Request for Information (“RFI”) to you pursuant to the authority vested in the Administrator of EPA by Section 308(a) of the CWA. This 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.

The purpose of this RFI is to require you to submit information to EPA regarding the Site and the earth movement activities conducted at the Site. The information requested below will be used to determine owner/operator’s⁴ compliance with Sections 301(a), 308(a) and 402(p) of the CWA. This information will also be used to determine if the earth movement activities at the Site required and/or requires an NPDES storm water construction permit.⁵

Instructions for Responding and Providing Information

In responding to this Request for Information, apply the following instructions, definitions and information:

⁴ See 40 C.F.R. § 122.2 which defines the terms “owner” or “operator” which means the owner or operator of any “facility” or “activity” subject to regulation under the NPDES program. 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. The term “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, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. This term point source does not include return flows from irrigated agriculture or agricultural storm water runoff. See 40 C.F.R. § 122.2

⁵ For more information about the NPDES Stormwater General Permit for Construction Activity (“2017 CGP”), please visit the EPA NPDES Stormwater Program web page at <https://www.epa.gov/npdes/stormwater-discharges-construction-activities>.

- a. The signatory should be an officer or agent who is authorized to respond on behalf of VTC pursuant to the 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 referred in this letter, you will find its meaning in Section 502(5) of the Act, 33 U.S.C. § 1362, and 40 C.F.R. § 122.2.
- j. When referring to construction at the Site, you shall include all those activities that involved earth movement activities within the Site and its access road.
- k. For more information about NPDES permitting requirements for construction activities, please access the NPDES Stormwater Program web page at <https://www.epa.gov/npdes/stormwater-discharges-construction-activities>.

Documents and Information Requested

Pursuant to Section 308(a) of the CWA, please submit the following information:

- 1. A detailed description of the property where the earth movement activities at the Site took place.
- 2. A copy of the deed for each property in which earth movement activities were conducted.

3. The name of the owner or owners of the property where the project is being constructed, their addresses, phone numbers, emails and officers.
4. The names of the corporations, businesses or individuals that are engaged in developing the Site. Include the names of the officers, executive directors and agents, their addresses, emails and phone numbers.
5. The names of all contractors, past and present that engaged in earth movement activities at the Site. Include a description of their activities at the Site, and their addresses, phone numbers, emails and officers.
6. A copy of the construction contract between the development companies and construction companies engaged in earth movement activities at the Site. If there was an oral agreement to conduct the earth movement activities, please explain the terms of such agreement and the names of the persons involved.
7. A detailed description concerning current and future development plans for the Site.
8. The exact date when earth movement activities began at the Site.
9. The periods of time (beginning and end) when earth movement activities (i.e., clearing) took place since the first date that earth movement activities began at the Site.
10. A copy of the construction logbook for the periods in which earth movement activities were conducted.
11. The last date that earth movement activities were conducted at the Site.
12. The acres of soil that were disturbed until the last date that that earth movement activities were conducted at the Site.
13. The acres of soil that are expected to be disturbed during the development of the Site.
14. A copy of all storm sewers or storm water collection system drawings and specifications for the Site.
15. A color copy of all available aerial photographs taken since the initiation of earth movement activities at the Site.
16. The number of construction employees of the companies involved in the earth movement activities at the Site.
17. A detailed description of how storm water runoff was and is being managed at the Site.
18. A copy of all Hydrologic and Hydrology studies prepared for the Site.
19. A copy of the Storm Water Pollution Prevention Plan developed for the Site. Refer to

Instruction k, above.

20. A copy of the Notice of Intent submitted for the Site. Refer to Instruction k, above.
21. A detailed explanation of the storm water runoff path after leaving the Site, and the receiving waters, which receive the storm water runoff from the Site.
22. A site map and/or aerial imagery depicting the areas of the site impacted by the earth movement activities conducted at the Site.
23. A site map and/or legible aerial imagery depicting the areas in which temporary soil stabilization was applied, and the areas pending implementation of final soil stabilization.
24. A description of the materials used for soil stabilization at the Site.
25. A description and photo-documentation of erosion and sediments controls installed at the Site since the initiation of earth movement activities.

Time and Delivery of Documents and Information Requested

You are required to fully respond to the requested information within thirty (30) calendar days of receipt of this letter by electronic mail. Because of the ongoing COVID-19 pandemic, electronic delivery is strongly encouraged.⁶ To the extent possible, any documents to be submitted in response to this RFI should be in Portable Document Format (“PDF”). The requested information should be sent to:

Mr. Jaime López
Senior Enforcement Officer/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
Tel.: (787) 977-58451
Email: lopez.jaime@epa.gov.

If you are without access to a computer and must submit your response by U.S. mail, please notify Mr. López when you plan to send any document in such a manner.

Your response 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

⁶ The EPA Region 2 office in Guaynabo, Puerto Rico, is not currently accessible to the public and not able to receive documents by personal delivery.

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."

The EPA acknowledges that the COVID-19 pandemic may be impacting you and/or the construction activities at the Site. If that is the case, EPA will consider, at its sole discretion, the specific circumstances that could affect your timely response to this RFI, while ensuring that the EPA receives the relevant information it needs to effectively evaluate the owner's and/operator's compliance with Sections 301(a), 308(a) and 402(p) of the CWA. Therefore, you or your designee should contact Mr. López in a timely manner for further instructions.

Failure to comply in all respects with this RFI within the time specified above may result in the initiation of an enforcement action under Section 309 of the Act, 33 U.S.C. §1319, 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.

Please be advised that you are under a continuing obligation to supplement the 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 your response to EPA within five (5) business days.

If at any time in the future you obtain or 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 five (5) business days. If any part of the response is found to be untrue, you may be subject to criminal prosecution.

This Request for Information is not subject to the approval requirements of the Paperwork Reduction Act of 1980, 44 U.S.C. §§ 3501-3520. You may, if you 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 this 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 confidential treatment of information only until a certain date or until the occurrence of a certain event, your response should state so.

EPA encourages you to become familiar with the Small Business Resource Information Sheet which is available at <https://www.epa.gov/compliance/small-business-resources-information-sheet>. This Information Sheet provides an array of resources, including workshops, training sessions, hotlines, websites and guides, to help small businesses understand and comply with federal and state environmental laws. In addition to helping small businesses understand their environmental obligations

and improve compliance, these resources will also help such businesses find cost-effective ways to comply through pollution prevention techniques and innovative technologies.

If you have any questions concerning this request, please contact Mr. López at (787) 977-5851, or through electronic mail at lopez.jaime@epa.gov.

Sincerely,

CARMEN

GUERRERO PEREZ

Digitally signed by CARMEN
GUERRERO PEREZ

Date: 2021.05.27 21:11:04 -04'00'

Carmen R. Guerrero Pérez

Director

Caribbean Environmental Protection Division

Enclosure

cc: Ángel Meléndez, EQB (via e/mail)