



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

August 4, 2023

**CERTIFIED MAIL – RETURN RECEIPT REQUESTED**

Ms. Patricia George  
Ashford Inversores LLC  
270 Muñoz Rivera Avenue, 9<sup>th</sup> Floor  
San Juan, Puerto Rico 00918

**Re: Information Request Pursuant to Section 308 of the Clean Water Act  
Residential Building Construction at Ashford Avenue, San Juan, Puerto Rico  
NPDES ID: PRU065464  
RFI ID: CEPD-CWA-02-IR-2023-009**

Dear Ms. George:

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 Sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a) and 1342, the discharge of any pollutant by any person shall be unlawful.<sup>1</sup>

The EPA is investigating alleged discharges of pollutants (i.e., sediments) into the Condado Lagoon on June 12, 2023, from the residential building construction site located at the Ashford Avenue, between Peninsula Building (located at Ashford 1004) and a parking lot, in San Juan, Puerto Rico (the “Site” or the “Project”). The approximate coordinates of the Site are 18°27'33.20” N, 66° 4'41.30” W.

You are receiving this Request for Information (“RFI”) under EPA’s presumption that you are an Ashford Inversores LLC’s (“Ashford Inversores”) authorized representative, and that such entity is engaged in the development and/or construction activities at the Site.

**Information Requested**

Section 308(a) of the CWA, 33 U.S.C. §1318(a), provides that whenever required to carry out the objectives of the CWA, including determining whether a person is in violation of the CWA, the Administrator of EPA may require that person to provide such information as may reasonably be required to make such a determination. EPA therefore request from Ashford Inversores a response to the questions set forth in the **Attachment B** of this letter.

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<sup>1</sup>The term “person” means individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body. Refer to Section 502(5) of the Act, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.

## **Time and Delivery of Documents**

**Ashford Inversores is required to fully respond to this RFI within thirty (30) calendar days of receipt of this letter.** Electronic delivery of the information requested is strongly encouraged and should be sent to Ms. Yolianne Maclay at [maclay.yolianne@epa.gov](mailto:maclay.yolianne@epa.gov).

Ashford Inversores must follow the instructions in **Attachment A** when providing the information requested. To the extent possible, any documents to be submitted in response to this RFI should be in Portable Document Format ("PDF"). If Ashford Inversores chooses to send information by mail, the requested information should be sent to the following EPA designated official:

Yolianne Maclay, P.E.  
Senior Environmental Engineer  
Clean Water Act Team  
Caribbean Environmental Protection Division  
U.S. Environmental Protection Agency, Region 2  
City View Plaza II Building, 7<sup>th</sup> Floor  
Route 165  
Guaynabo, Puerto Rico 00968.

Failure to comply in all respects with this RFI 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 \$64,618 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 ten (10) 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 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. 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 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 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.

Should you have any questions regarding this RFI, please contact Ms. Maclay, by telephone at (787) 977-5849, or via email at [maclay.yolianne@epa.gov](mailto:maclay.yolianne@epa.gov).

Thank you for your prompt attention to this matter.

Sincerely,

CARMEN  
GUERRERO PEREZ

Digitally signed by  
CARMEN GUERRERO PEREZ  
Date: 2023.08.04 11:39:28  
-04'00'

Carmen R. Guerrero Pérez  
Director  
Caribbean Environmental Protection Division

Attachments

## ATTACHMENT A

Unless otherwise specified, the following general instructions and definitions apply when providing the information requested in **Attachment B**.

### General Instructions

1. Provide a separate narrative response to each question and subpart of a question set forth in the RFI.
2. Each response shall identify the number of the question, and if relevant, any subpart to which a response is being provided.
3. Label each document submitted in response to this RFI with the request number and subpart (if applicable) to which it corresponds. If anything is deleted or redacted from a document produced in response to this RFI, state the reason for and the subject matter of the deleted or redacted information.
4. If a document you submit is responsive to more than one request, please provide one copy of the document and identify all the requests, by number and subpart, to which it responds.
5. For each response, organize the requested information or documents chronologically.
6. 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.
7. When documents or information necessary for a response are neither in your possession nor available to you, indicate in your response why such documents or information are not available or in your possession. Identify any source that you believe either possesses or is likely to possess such information. State the person's name and last known address and phone number and the reasons for your belief.
8. If any documents or information responsive to a request are not known or are not available to you at the time you submitted your response, but later become known or available to you, you should submit the new information as a supplement to your response. If at any time after submission of your response you learn that any portion is or becomes false, incomplete, or misrepresents the facts, you should notify EPA of this fact as soon as possible and provide a corrected response. If any part of the response to this RFI is found to be false, the signatory to the response and the company may be subject to criminal prosecution.
9. If you claim that an entire document responsive to this RFI is withheld on the basis of a privilege, identify the document and provide the basis for asserting any privilege. For any portion of a document that you claim is withheld on the basis of a privilege, provide the portion of the document for which you are not asserting any privilege; identify the portion of the document for which you are asserting any privilege; and provide the basis for such an assertion.

10. You should provide responsive documents or information even though you consider it confidential information or trade secrets. You may assert a business confidentiality claim for part or all of the information requested, as set forth in 40 C.F.R. Part 2, Subpart B. Information covered by such a claim will be disclosed by the EPA only to the extent and only by the procedures set forth in 40 C.F.R. Part 2, Subpart B. If no confidentiality claim accompanies the information when the EPA receives it, the information may be made available to the public by the EPA without further notice to you. This inquiry is not subject to review by the office of Management and Budget under the Paperwork Reduction Act of 1980, 44 U.S.C. Chapter 35 (*see* 5 C.F.R. § 1320.3(c)).

If you would like the EPA to treat any information, document, or response as “confidential,” you must advise the EPA by placing on or attaching a cover sheet to any document or prefacing any response such language as “trade secret,” “proprietary,” or “confidential business information.” You must clearly identify allegedly confidential portions of otherwise non-confidential documents, and you may want to submit these separately to facilitate identification and handling by the EPA. Pursuant to 40 C.F.R. Part 2, Subpart B, the EPA may at any time send you a letter asking you to substantiate your confidentiality claim.

11. You or a principal executive officer must submit all requested information under an authorized signature with the following certification:

*I certify under the penalty of law that I have examined and am familiar with the information submitted in responding to this information request for production of documents. Based on my review of all relevant documents and inquiring of those individuals immediately responsible for providing all relevant information and documents, I believe that the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.*

### **General Definitions**

All terms used in this RFI shall have their ordinary meaning unless such terms are defined in the CWA, 33 U.S.C. §§ 1251-1387, or the CWA’s implementing regulations. The following specific definitions shall apply to this RFI:

1. “Or” shall mean and/or.
2. The singular form of a noun or pronoun shall be considered to include within its meaning the plural form of the noun or pronoun used, and vice versa; and in a similar fashion, the use of the masculine form of a pronoun shall be construed to also include within its meaning the feminine form of the pronoun, and vice versa; and in a similar fashion, the use of any tense of a verb shall be construed to also include within its meaning all other tenses of the verb so used.
3. “Document” is used in its broadest sense and shall mean and refer to all written or graphic matter of every kind and description however produced or reproduced, whether draft or final, original or reproduction.

4. “Work” means activities, including, but not limited to, earthmoving, dumping, excavation, mechanized and/or manual vegetation-clearing activities, construction debris disposal, solid waste disposal, logging and tree removal, roadway construction including earthwork, embankment cuts and fills, paving, piping, trenching, culvert placement, drag-lining, windrowing or stockpiling, grubbing, soil excavation or removal, dewatering, installation of dams or other water control features, and placing fill or dredged material.

## **ATTACHMENT B**

Ashford Inversores shall submit the following information pursuant to the instructions and definitions contained in **Attachment A**, above. Please use the RFI ID Number (CEPD-CWA-02-IR-2023-009) when referring to this RFI. Some petitions on this RFI refer to the 2022 National Pollutant Discharge Elimination System (“NPDES) Construction General Permit (“CGP”) for Stormwater Discharges from Construction Activities. The CGP is found at <https://www.epa.gov/system/files/documents/2022-01/2022-cgp-final-permit.pdf>.

### *Information about the Owners and Operators*

1. Submit the name(s) of the owner(s) of the Site being developed.
2. Indicate the dates when the current owner(s) acquired the Site.
3. Submit a copy of the deed(s) for the parcels of land where the Project is being developed.
4. Submit the name(s) of the operators of the Site.<sup>2</sup> Submit their addresses, emails, and contact telephone numbers.
5. Submit a copy of the contracts between the owner(s) and the operator(s) of the Site. If there was an oral agreement to conduct earth movement activities and/or construction activities, submit a detailed explanation the terms of such agreement and the names of the persons involved.

### *Information about the Project*

6. Submit a detailed description of the Project and the nature of the construction activities at the Site. Refer to Part 7.2.3 of the CGP.
7. Indicate the date when “construction activities” began at the Site. Refer to the Appendix A of the CGP.
8. Indicate the total area of surface soil (in acres) that has been disturbed at the Site as of the date of this letter.
9. Indicate the total area of surface soil (in acres) that will be disturbed at the Site at the completion of the construction activities at the Site.
10. Indicate the expected date of completion of construction activities at the Site.
11. Submit a copy of the most recent construction schedule for the Site. Refer to Part 7.2.3.f. of the CGP.
12. Submit a legible copy of any land surveys, soil studies, and hydrologic/hydraulic studies that has been prepared and/or obtained for the Site. Include any legible picture depicting the areas in the Site where

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<sup>2</sup> The term “operator” is defined in Part 1.1.1 of the CGP, and 40 C.F.R. § 122.2.

earth movement activities have been conducted as of the date of this letter. Refer to Appendix A and Part 7.2 of the CGP.

13. Submit a copy of any as-built legible map showing the features of the Site. Identify in the map the areas of the Site impacted by conducting earth movement activities and the areas in which soil stabilization measures have been implemented. Refer to Part 2.2.14 of the CGP.
14. Submit a detailed explanation of the storm water runoff path from the Site into outside premises, including but not limited to the Condado Lagoon and the Ashford Avenue.
15. Submit a detailed description of how storm water runoff has been managed at the Site since the initiation of the earth movement activities up to the date of this letter. Refer to Part 7.2.6 of the CGP.
16. Submit Site's storm sewer drawings.
17. Submit construction drawings for the final Site grading.

#### Information about Project's Permitting

18. Submit a copy of any NPDES permit application submitted to the EPA for the Site. Refer to 40 C.F.R. § 122.21.
19. Submit a copy of the "Permiso General Consolidado" from OGPe/Puerto Rico Department of Natural and Environmental Resources and all of the documents related to this permit, including but not limited to a copy of the "Plan de Control de Erosión y Sedimentación" ("Plan CES").

#### Information about Erosion and Sediment Controls

20. Submit a copy of the Stormwater Pollution Prevention Plan ("SWPPP") prepared for the Site, including all attachments thereto.
21. Submit a copy of any written plans and drawings developed concerning erosion and sediment controls and soil stabilization practices for the Site, including those developed under the Puerto Rico Department of Environmental and Natural Resources' Regulation for the Control of Erosion and Prevention of Sedimentation.
22. Submit a detailed description of the erosion and sediment controls and soil stabilization practices that have been implemented at the Site since prior to the initiation of earth movement activities up to the date of this letter. Refer to Parts 2 and 7 of the CGP.

#### Information about Rainfall

23. Submit a picture depicting any rain gauge that had been installed and retained for the Project.
24. Indicate the location where the rain gauge was installed.

25. Submit any logs where rain precipitation was recorded for the Project since the initiation of the earth movement activities at to Site the date of this letter.

Information about Groundwater and Construction Dewatering Activities<sup>3</sup>

26. Indicate the groundwater distance below ground surface prior to commencement of construction activities at the Site.

27. Indicate the groundwater distance below the Project's lowest elevation.

28. Indicate the dates and time periods when dewatering activities at the Site have occurred. For each dewatering activity, submit the location where the water was discharged.

29. Submit all written documentation (e.g., logbook, construction meeting minutes) for dewatering activities at the Site.

30. For each dewatering activity, submit a detailed description of the water source, and the volume discharged.

31. For each dewatering activity at the Site, indicate the entity(ies) and/or individual(s) involved in such activity.

32. For each dewatering activity at the Site, submit a description for the control measure (e.g., Best Management Practice) implemented.

33. Submit dewatering inspection reports from the initiation of the earth movement activities at the Site up to the date of this letter. Indicate the names of the individuals that performed the site inspections and their qualifications to conduct the inspections. Refer to Part 4.6.3 of the CGP.

34. For each dewatering activity, indicate whether samples were taken for turbidity analysis. Include the sampling location where each sample was taken and indicate the test methods used for turbidity measurement.

35. For each dewatering activity, submit turbidity analysis result.

Information about Inspections and Corrective Actions

36. Submit a copy of the inspection reports prepared from the initiation of the earth movement activities up to the date of this letter. Indicate the names of the individuals that performed the site inspections and their qualifications to conduct the inspections. Refer to Part 4 of the CGP.

37. Submit a copy of all corrective action reports prepared from the initiation of the earth movement activities up to the date of this letter. Refer to Part 5 of the CGP.

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<sup>3</sup> Dewatering" is defined in Appendix A of the CGP as "the act of draining accumulated stormwater and/or ground water from building foundations, vaults, and trenches, or other similar points of accumulation."

Information about Sanitary Wastewater

38. Submit a description of the method of collection, treatment and disposal of sanitary wastes that will be generated at the Site.
39. If the sanitary wastewater will be ultimately discharged into the Puerto Rico Aqueduct and Sewer Authority's sanitary collection system, submit the point of connection and all documents issued by PRASA authorization the connection and its location.