



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 15, 2023

VIA EMAIL
& CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Honorable Eileen M. Vélez Vega, P.E.
Secretary
Puerto Rico Department of Transportation and Public Works
Box 41269, Minillas Station
San Juan, Puerto Rico 00940-1269

**Re: Puerto Rico Department of Transportation and Public Works and
Puerto Rico Highway and Transportation Authority
Request for Information pursuant to Section 308 of the Clean Water Act
NPDES Permit Tracking Number: PRR040080
RFI Identification Number: CEPD-CWA-02-IR-2023-003**

Dear Secretary Vélez-Vega:

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.¹ The Commonwealth of Puerto Rico Department of Transportation and Public Works (“DTPW”) is covered under the National Pollutant Discharge Elimination System (“NPDES”) General Permit for Stormwater Discharges from Small Municipal Separate Storm Sewer Systems (“MS4 Permit”) issued on May 18, 2016, with the permit tracking number PRR040080.

EPA is investigating the Municipal Separate Storm Sewer Systems (the “MS4s”) located within the Municipality of Ponce (the “Municipality”) in response to citizen complaints about sanitary sewer overflows, flooding and broken/malfunctioning storm sewer pipes. The DTPW and Puerto Rico Highway and Transportation Authority (“HTA”) own and operate MS4s located in urbanized areas of the Municipality.

¹The 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.

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 DTPW and HTA a response to the questions set forth in the “Attachment B” of this letter.

Time and Delivery of Documents and Information Requested

DTPW is required to fully respond to this Request for Information Letter (“RFI”) within thirty (30) calendar days of receipt of this letter. Electronic delivery is strongly encouraged. DTPW 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”). The requested information should be sent to:

Yolianne Maclay
Senior Environmental Engineer
Clean Water Act Team
Caribbean Environmental Protection Division
U.S. Environmental Protection Agency, Region 2
City View Plaza II Building, 7th Floor
Route 165
Guaynabo, Puerto Rico 00968
Tel: (787) 977-5849
Email: maclay.yolianne@epa.gov.

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.

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.

Thank you for your prompt attention to this matter.

Sincerely,

CARMEN

GUERRERO PEREZ

Carmen R. Guerrero Pérez

Director

Caribbean Environmental Protection Division

Digitally signed by CARMEN
GUERRERO PEREZ

Date: 2023.02.15 19:09:50
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Attachments

cc: David Moreno, DTPW's Environmental Consultant

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, installation of dams or other water control features, and placing fill or dredged material.

APPENDIX B

This RFI concerns all roads owned and/or operated by DTPW. Please use the RFI ID Number CEPD-CWA-02-IR-2023-003 when referring to this RFI. Some petitions on this RFI refer to the MS4 Permit, which is available at <https://www.epa.gov/npdes-permits/final-npdes-permit-stormwater-discharges-small-municipal-separate-storm-sewer-systems>.

- 1) Submit a diagram with the organizational administrative structure of DTPW.
- 2) Submit a list of the roads that are owned and/or operated by DTPW and HTA within the Municipality of Ponce boundaries.
- 3) Submit a map or maps depicting the roads that are owned and/or operated by to DTPW and HTA within the Municipality of Ponce boundaries.
- 4) Submit the most recent storm sewer map of the MS4s owned and/or operated by DTPW and HTA within the Municipality of Ponce boundaries. Refer to Section 2.4.4.6 of the MS4 Permit.
- 5) Submit the names and titles of the DTPW and HTA personnel responsible for the implementation of the MS4 Permit. Submit their addresses, emails, and contact telephone numbers.
- 6) Submit the names and titles of the DTPW and HTA personnel responsible for the implementation of the MS4 Permit in the Municipality of Ponce. Submit their addresses, emails, and contact telephone numbers.
- 7) Within the organizational structure of DTPW and HTA, submit the name of the area, division or office responsible for the operation and maintenance of DTPW and HTA roads located within the Municipality of Ponce boundaries.
- 8) Submit a detailed description of how DTPW and HTA provide cleaning and maintenance to their MS4 within the Municipality of Ponce boundaries. Submit schedules to perform cleaning and maintenance activities.
- 9) Submit a statement of Illicit Discharge Detection and Elimination Program (“IDDE”) Program Responsibilities DPW and HTA have developed for its MS4 program. Refer to Part 2.4.4.8.b of the MS4 Permit.
- 10) Submit a separate map of the Barrio Playa depicting the roads owned and/or operated by DTPW and HTA.
- 11) Name the owner and/or operator of the section of Hwy 123² located in Barrio Playa, Ponce, Puerto Rico.
- 12) Identify in a map the route of Hwy 123 within the Municipality of Ponce boundaries.
- 13) Identify the owner and operator of Hwy 123 outside Barrio Playa, but within the Municipality of Ponce boundaries.

² Refer to <http://its.dtop.gov.pr/es/Default.aspx>