

**UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO**

UNITED STATES OF AMERICA,

Plaintiff,

v.

MUNICIPALITY OF TOA ALTA,
PUERTO RICO,

Defendant.

Civ. No. 3:21-01087 (SCC)

**STATUS REPORT REGARDING
MUNICIPALITY OF TOA ALTA'S
COMPLIANCE WITH STIPULATION
AND PRELIMINARY INJUNCTION
ORDER**

The United States respectfully submits this status report in compliance with the Court's March 12, 2024, Order. Docket. No. (DN) 181.

BACKGROUND

The Court entered a "Stipulation and Preliminary Injunction Order" (SPIO) in this matter on August 12, 2022. DN 127-1. The United States filed a motion to enforce the SPIO on June 14, 2023. DN 149. The motion has been fully briefed. On January 26, 2024, the Court ordered, *inter alia*, the United States to file, by February 26, 2024, a motion detailing the status of the Municipality of Toa Alta's (MTA's) compliance with the SPIO. DN 175. The Court extended this deadline to March 11, 2024. DN 179. The United States filed a timely pleading in which it: (a) summarized the status of MTA's compliance with the SPIO; (b) amended its motion to enforce the SPIO to withdraw two claims (regarding the leachate discharge permit and the stormwater management plan); (c) requested that the Court hold the motion to enforce in abeyance regarding the remaining third claim (intermediate cover); and (d) proposed to file two further status reports, on June 15 and on September 15, 2024. DN 180. The Court granted the motion to amend the motion to enforce and directed the United States to file the two further

proposed status reports. DN 181. The Court also held the motion to enforce the SPIO in abeyance. DN 182.

The United States hereby files the first of the two status reports in compliance with the Court's Order at DN 181.

STATUS REPORT

The SPIO (DN 127-1) requires MTA, *inter alia*, to:

- Commence application of “intermediate cover” (12 inches of compacted soil) by October 1, 2022, at a rate of one acre per month during the first year and, subsequently, two acres per month. SPIO ¶ 6.
- Submit a “Leachate Management Plan” by October 1, 2022, that describes engineered works and procedures that are designed to ensure at least a 90% reduction in releases of leachate from unlined portions of the landfill to the subsurface within two years after the effective date (*i.e.*, August 12, 2022). SPIO ¶ 9.a.
- Act in good faith to obtain the necessary permits to enable MTA to transport its leachate to a publicly owned treatment works (POTW) lawfully permitted to receive the leachate (*i.e.*, a Puerto Rico Aqueduct and Sewer Authority (PRASA) POTW). SPIO ¶ 9.b.¹
- Submit a “Stormwater Management Plan” by January 1, 2023, that describes engineered controls and procedures designed to minimize infiltration of stormwater (*i.e.*, precipitation) into the waste mass and minimize contact between stormwater runoff and leachate (to minimize the quantity of leachate-contaminated stormwater flowing from the sides of the landfill). SPIO ¶ 10.c.

The status of MTA's compliance with each of these provisions is described below:

Intermediate Cover. MTA asserts that it has completed the initial phase of the intermediate cover project. *See* MTA Monthly Report for April 2024, at 8 (Gallagher Dec. Exh. 1). The initial phase comprises 5.24 acres and is on the top deck of the landfill. *Id.*

¹ The “Second Stipulation and Final Order” (SSFO) will provide in essence, if approved by the Court, that upon issuance of the PRASA permit, MTA will cooperate with the “LandTech Companies” regarding the handover of the operation of the Southeast Cell leachate pumping system to MTA. *See* SSFO ¶ 3.a (DN 177-1). The United States lodged the SSFO with the Court pending completion of a period for public comment. *See* DN 177. The public comment period has ended. The United States anticipates that, within two weeks, it will inform the Court whether it still consents to the SSFO and, if it does, it will request that the Court approve and enter the SSFO.

MTA plans to install intermediate cover on the next section of the landfill, the 10-acre south slope, in two phases. *See* DN 180 (U.S. Status Report and Amendment to Motion to Enforce) at 4. The first of these phases will comprise 4.5 acres and the second, 5.5 acres. *Id.* MTA expects to receive funding from the U.S. Department of Housing and Urban Development (HUD) for landfill closure activities. *Id.* MTA proposes to complete the south slope in two phases since the HUD funding will not be available in time to pay for the first phase but may be available for the second phase. *Id.* MTA expects to commence the first phase of the south slope by July 1, 2024. *See* June 10, 2024, 3:43 pm email from MTA's representative, Carlos Lopez Freytes (Gallagher Dec. Exh. 2). EPA understands that MTA intends to apply intermediate cover in this area at the rate of one acre per month. Plössl Declaration, ¶ --. MTA expects to commence the second phase of the south slope without interruption upon completion of the first phase. DN 180, at 5.

Leachate Management Plan. MTA submitted a draft Leachate Management Plan (LMP) to the U.S. Environmental Protection Agency (EPA) on October 20, 2022. Plössl Dec. at 1. EPA sent informal comments to MTA regarding the LMP on or about April 27, 2023. *Id.* The U.S. Department of Justice (DOJ) formally conveyed the comments to MTA on May 23, 2023, and requested a response by July 7, 2023. *Id.* One of the comments was a request that MTA implement a "pilot project" to field test on a small scale the performance of the proposed leachate interception system. *Id.* at 2. MTA has not implemented the pilot project and has not submitted a revised LMP to EPA. *Id.* at 2. Separately, MTA states that it submitted a Preliminary Closure Plan, accompanied by a LMP, to DNER on October 31, 2023. *See* MTA April 2024 Monthly Report (Gallagher Dec. Exh 1) at 2. Because MTA has not completed the pilot project, its October 2023 submission to DNER did not include any results from the pilot project

requested by EPA. Plössl Dec. at 2. On May 31, 2024, DOJ on behalf of EPA requested that MTA expedite the pilot project. *Id.*

Leachate Disposal Permit. MTA has obtained a leachate disposal permit from PRASA. The permit authorizes MTA to haul its leachate to PRASA's publicly owned treatment works (POTW) in Ponce. *See* Lopez Freytes June 10, 2024, 4:07 pm email (Gallagher Dec. Exh 3). MTA has requested that PRASA allow MTA to haul its leachate to a closer POTW than the Ponce POTW. *Id.* This request is pending with PRASA. *Id.*

Stormwater Management Plan. MTA submitted a draft Stormwater Management Plan (SMP) to EPA on or about July 31, 2023. DN 180, at 3. EPA provided informal comments to MTA and MTA's engineer has been working to revise the SMP. *Id.* DOJ on behalf of EPA sent a set of written comments to MTA regarding the SMP on May 31, 2024. DOJ requested that MTA provide a revised SMP within 30 days or that MTA advise if it needs additional time to revise the SMP.

Respectfully submitted,

/s/ Mark Gallagher

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