

**UNITED STATES v. MUNICIPALITY OF TOA ALTA  
FOR PUBLIC INPUT: SUMMARY OF POTENTIAL TERMS  
FOR PRELIMINARY INJUNCTION ORDER IN FEDERAL CASE**

In February 2021, the U.S. Department of Justice (DOJ) filed, on behalf of the U.S. Environmental Protection Agency (EPA), a complaint in the Federal Court in Puerto Rico against the Municipality of Toa Alta (MTA) claiming that the conditions at MTA's municipal landfill constitute an "imminent and substantial endangerment." In July 2021, DOJ filed a request that the Federal Court issue an order requiring MTA to immediately address the "endangerments" at the landfill.

**INTERIM STEPS**

The parties -- EPA/DOJ and MTA -- have been discussing a potential agreement, called a Stipulated Preliminary Injunction Order, to be issued by the Court. There is no final, agreed-upon order. EPA and DOJ are asking for public input on the terms of a potential order and have developed the following summary to share with the public:

- **Stopping Waste Disposal.** MTA would have to stop disposing of waste at the landfill immediately, with the potential exception of an area called the north slope (see below for details).
- **Making Clear the Landfill is Closed.** MTA would have to install signs at the landfill entrances, stating in Spanish and English that the landfill is closed, and that any continued operations at the landfill will be consistent with the items discussed herein.
- **Requiring Daily Cover.** MTA would be required to apply daily cover (six inches of soil) over any newly disposed waste by the end of each operating day, except when severe weather conditions make application unsafe.
- **Intermediate Cover.** MTA would have to apply intermediate cover (one foot of soil) at the rate of one acre per month during the first year and two acres per month during the second year until the entire landfill has been covered. MTA would not have to apply intermediate cover to any area that already has soil cover and vegetation that provides as much protection as a layer of intermediate cover.
- **Maintaining the Cover.** MTA would have to monitor daily cover and intermediate cover for soil erosion every two weeks and after rainfall events, and repair any eroded soils.
- **Controlling Leachate.** MTA would have to prepare a plan for and install controls to reduce and collect the liquid that seeps out of the landfill (known as "leachate") except for leachate in the Southeast Cell (see below). The controls would have to be designed by an engineer to reduce leachate releases by 90% within two years. MTA would need to either secure a permit from the Puerto Rico Aqueduct and Sewer Authority (PRASA) and convey the collected leachate to the PRASA system, or handle the leachate in an on-site wastewater treatment system. MTA would also have to monitor landfill surfaces to find any leachate seeps and make the appropriate fixes to ensure that no leachate escapes to offsite properties. The MTA has already presented a leachate control plan to the EPA in connection with the northern portion of the Landfill.

- **Controlling Stormwater**
  - **Short Term Controls.** Within 30 days, MTA would have to implement measures to control for mosquitoes, such as use of larvicides, elimination of standing water, and erosion controls.
  - **Long Term Controls.** MTA would have to prepare and implement a stormwater control plan for conveying stormwater from the landfill surface to ponds and to discharge points, so as to reduce infiltration of stormwater into the landfill mass. MTA also would have to do environmental sampling to see if stormwater discharges are contaminated with landfill pollutants and, if so, to make fixes to keep stormwater from becoming contaminated.
  - **Ponds.** MTA would have to properly manage water in the north and south ponds. Clean pond water (as determined by EPA based on MTA sampling) would be sent to the storm sewer system or to surface waters in accordance with permits. Pond water that is not clean, as determined by EPA, would have to be treated as leachate and properly sent to the PRASA system or any other appropriate process.
- **Addressing the North Slope.** Part of the north side of the landfill is sloped at an angle steeper than 2.5 feet horizontal to every 1.0 vertical foot, and EPA is concerned that this places it at an increased risk of collapse. (Please see the attached map.) The steepness of the landfill’s north slope would be addressed by two corrective measures:
  - (a) The first measure is to limit instability by reducing the amount of stormwater that seeps into the north slope. To accomplish this goal, MTA would be required, within 30 days, to construct: (a) diversion controls, such as benches, berms, and silt fences, to divert stormwater runoff on the landfill’s top deck away from the north slope area; and (b) erosion controls, such as chutes and velocity dissipation devices, to move the diverted stormwater off the slopes and down to the landfill base.
  - (b) The second required corrective measure is to make the north slope less steep or otherwise more stable. EPA and DOJ have considered four options to address the issues with the slope. All four options would require construction of a berm or wall at or near the base, referred to as the “toe,” of the north slope. The options are as follows:
    - **Options 1A and 1B, Placement of New Waste to Achieve Proper Slopes.** These two options involve placing new waste to level out the slope, especially near the toe where the berm will be built. Waste could be placed during an interim period that MTA has estimated would last 18-24 months. Completion of this project also would include final placement of new waste behind the berm. The berm design and final waste placement plan would ultimately be supervised by the Puerto Rico Department of Natural and Environmental Resources (DNER). Option 1A would limit the amount of new waste MTA could dispose of on the north slope by describing the quantity and duration of such waste placement. Option 1B would instead limit where MTA places new waste by using a map specifying the area in which additional waste placement could occur (the proposed map is attached). Both of these options could result in some continued environmental impacts (*e.g.*, increased pollutants to the aquifer) typical of a landfill without a bottom liner, but EPA believes that such impacts will be minor, provided that MTA complies with the cover placement, leachate control, and stormwater control

requirements described above. Both options could reduce MTA's cost to correct the steepness of the north slopes (compared to using engineering or other controls) and save MTA money by delaying the date when it would have to start paying for off-site disposal. It might be easier for DNER to confirm MTA's compliance with the waste placement limitations under Option 1B than those under Option 1A.

- **Option 2, Placement of New Waste After DNER Approval of Final Closure Plan.** This option involves stopping the placement of new waste on the north slope immediately and only resuming such waste placement after DNER approves MTA's revised final closure plan. Under this option, compliance with the daily cover requirements, leachate controls, and stormwater controls during placement of new waste on the north slope would be subject to DNER monitoring. This option is advantageous because waste placement in the north slope would be integrated into MTA's overall final closure plan for the landfill. This option has the disadvantage of postponing the project to correct the steepness risk of the north slope. MTA has informed EPA and DOJ that this option would be disruptive to its finances, as it would require MTA temporarily (for about 18-24 months) to pay for an alternative disposal location for its waste, resume disposal at the north slope upon DNER's approval of MTA's final closure plan, and then continue placement of waste at the north slope until the stabilization project is completed. MTA also believes that this option is not required under current DNER regulations, and it may require additional litigation between DNER and MTA, which could further delay the process.
- **Option 3, Regrading of Existing Waste to Achieve Proper Slopes.** This option involves no placement of new waste at the north slope, but instead the regrading of the existing waste there to achieve proper slopes. This option has the disadvantage of presenting increased risk of physical danger to landfill workers performing regrading, and increased odors that would be experienced in the surrounding communities due to temporary re-exposure of buried decomposing waste. This option also is more costly to MTA.
- **Southeast Cell.** The Southeast Cell of the landfill was constructed with a bottom liner and a pumping system to remove leachate generated within the landfill that accumulates on top of the liner. The pumping system is not working properly. EPA is working to find a solution regarding the leachate system in the Southeast Cell. The proposed order would not include plans for the Southeast Cell pumping system. Any fixes that are feasible would be addressed in the future, after the Federal Court approves the stipulated preliminary injunction order.
- **Reporting.** MTA would have to submit detailed monthly reports to EPA, DOJ, and DNER regarding its compliance with all of the requirements of the preliminary injunction order.
- **Access.** MTA would have to provide EPA, DOJ, and DNER with access to the landfill for the purpose of confirming MTA's compliance with the preliminary injunction order.
- **Community Involvement.** In addition to seeking feedback on the potential order discussed in this summary and hosting a community meeting, EPA and DNER will make copies of the MTA's plans and reports available to the community.

- **Reservations.** The preliminary injunction order would not prohibit MTA from applying for permission from DNER and other government authorities to build additional areas for the disposal of waste at the landfill. The order also would not prohibit MTA from placing more waste at the landfill if it is required under any final closure plan approved by DNER (for example, for proper grading). Finally, under the order, EPA/DOJ would reserve the right to assert in the current lawsuit or in a separate action that any conditions at the landfill present an imminent and substantial endangerment.

#### PERMANENT STEPS

- **Future Measures at the Landfill.** As described above, the purposes of the Federal Case and the proposed stipulated preliminary injunction order are to address “imminent and substantial endangerments” that EPA believes exist at the landfill. Even once these urgent problems are addressed, MTA must still comply with Puerto Rico’s landfill regulations. DNER, which takes responsibility to ensure MTA’s compliance with these regulations, filed, in October 2021, an administrative complaint against MTA. DNER required MTA, among other things, to submit a revised final closure plan for the landfill and to carry out that plan. The final closure plan would include, among other items, the installation of a permanent cover on the landfill. DNER will take responsibility to ensure that MTA properly addresses the north slope and permanently closes the landfill.

#### CALL FOR COMMENT FROM COMMUNITY

- **Comments from the Community.** EPA, DOJ, and DNER would like to have community members’ input regarding the proposed urgent remedial measures described above, including the four options for the north slope and any alternatives to those options. DOJ, EPA, and DNER representatives will be available at a public meeting to answer questions from the community.