



September 2, 2016

The Honorable Orrin Hatch
United States Senate
Washington, D.C. 20510

Dear Senator Hatch:

I am respectfully writing to the members of the Congressional Task Force on Economic Growth in Puerto Rico on behalf of Puerto Rico Limpio, a citizens' action group dedicated to safe and sustainable landfills. We are writing about how Puerto Rico's non-hazardous solid waste management system, a fundamental part of the infrastructure of economic development, has descended into regulatory chaos and become an obstacle to economic development. This is due to the failure by the U.S. Environmental Protection Agency (EPA) to ensure the enforcement of the Resources Conservation and Recovery Act (RCRA) on our island.

The inconsistent and lax enforcement of laws and regulations has been a constant impediment to economic development in Puerto Rico, and in the case of solid waste management it has scarred our landscape and threatened our communities. Because of this, 80% of Puerto Rico's municipal landfills pose an imminent threat to the health of our communities and to the safety of our water, soil and air, and the continued state of non-compliance could impose increasing costs and liabilities on future growth in industry and commerce. To remove the imminent threat to our communities and the environment today, and safeguard our future growth, the landfill crisis must be solved.

I will outline existing federal law which should have been enforced, detail the negligence in policing enforcement and its impact on our development, and suggest concrete solutions for our solid waste management system that will contribute to safe and sustainable economic growth.

THE RESOURCES CONSERVATION AND RECOVERY ACT OF 1985 (RCRA)

The U.S. Congress passed RCRA in 1985 in part to set uniform federal minimum standards for the operation of solid waste landfills in all the States and territories of our country. Under Subtitle D, RCRA banned "open dumps" in the United States and set up minimum requirements for the operation of landfills and put the EPA in charge of administering it. These minimum requirements include: access control, liner protection for landfill cells, protection from and monitoring of methane gas build-up, liquid leachate collection and groundwater monitoring, and the daily coverage of municipal waste. RCRA also

sets design criteria, location restrictions, financial assurance requirements, corrective action (cleanup) and closure requirements for landfills.

States and territories are considered for taking a lead role in implementing these regulations and may set more stringent requirements at their discretion, but not any rules below RCRA standards. In order to be granted that lead role by the EPA, states were required to apply to the EPA for a public review of their planned permitting program, and receive EPA's approval.

The EPA is authorized to revoke that approval for any state or territorial permitting programs that are "inadequate", and then unilaterally implement federal minimum standards upon the landfills itself. So while a state or territory like Puerto Rico has authority to enforce RCRA Subtitle D once EPA has granted it that authority, EPA has sole power to revoke it and assume that enforcement authority itself. The EPA also has its own separate regulatory authority under RCRA Section 7003 to take action on the handling, transportation, or storage of solid waste where it may present "imminent and substantial endangerment to health and the environment" to bring lawsuits or issue orders.

EPA'S FAILURE UNDERMINES ECONOMIC DEVELOPMENT

Because there has been no effective enforcement of federal standards in Puerto Rico for more than 20 years, the solid waste management system is in chaos. Our organization has recently issued a report, "The Poisoning of Puerto Rico," based on internal EPA documents we obtained through the Freedom of Information Act. The report showed in detail how the EPA washed its hands of Puerto Rico's landfill crisis for over 20 years, and it can be seen along with all the EPA documentation on our website, www.puertoricolimpio.org. The neglect we uncovered was startling and unacceptable.

Non-compliant landfills run by Puerto Rico's municipalities have grown accustomed to never facing consequences for operating as open dumps. They charge tipping fees far below market in order to attract more trash, and never reinvest in compliance. There is a built-in economic incentive for landfills to violate the law to be more profitable, and it has made it impossible to build a market for recycling. Only by restoring consistent and immediate enforcement can this cycle of degradation be broken.

The regulatory chaos in solid waste management can be factored into higher costs to public health, environmental resources, land development, agriculture and many other basic features of development. Furthermore, non-compliant landfills are breeding grounds for mosquitos, which are the main driver of the Zika epidemic in Puerto Rico, which is becoming ground zero for the disease in North America. In addition to the terrible cost to public health, Zika is threatening our vital tourism industry, as is the contamination of beaches, shorelines and nature reserves.

An unsafe, unstable waste disposal system in Puerto Rico poses risks for industry and commerce, which rely on consistent, safe and compliant solid waste services being provided so they can operate on the island. How can we promote confidence in Puerto Rico for investors to come do business here if we can't ensure something as basic as minimum federal standards at all our landfills?

We now have a much costlier obstacle to development on our hands because of the landfill crisis. Allowing this state of chaos to continue for decades has added many burdens to economically and fiscally challenged municipalities, and until we address this, the costs and liabilities will only intensify and further restrain sustainable growth.

PROPOSED ACTIONS TO BUILD A SAFE AND VIABLE NEW SOLID WASTE MANAGEMENT SYSTEM THAT SUPPORTS SUSTAINABLE GROWTH, HEALTHY ENVIRONMENT, PUBLIC HEALTH NEEDS AND PROSPERITY:

Given the scale of this key infrastructure and public service problem, nothing less than immediate action is appropriate. Not only must RCRA Subtitle D be fully enforced at every landfill immediately, but temporary corrective action is needed to address EPA's persistent neglect of its duty to the public under that law. By bringing order and compliance to the solid waste management system in Puerto Rico, we can remove this impediment to economic development and growth for many communities that sorely need it.

We propose the following actions be recommended by the Task Force:

- 1. Recommend that EPA immediately withdraw its approval of the EQB's 1994 permitting plan.** It has been more than 20 years and the plan was never acted upon by the EQB, and this has created a problem that is impeding Puerto Rico's economic development. There is no excuse for EPA to let another day pass allowing EQB to retain authority under RCRA Subtitle D. If the Agency is unwilling to carry out this duty under RCRA, the Task Force should recommend that Congress order it to do so immediately through legislation.
- 2. Recommend that open dumps should be closed immediately.** There is sufficient documentation already available to the Congress that can be subpoenaed from the EPA and EQB which can clearly show which of Puerto Rico's 27 non-hazardous waste landfills, governed by Subtitle D, are in fact "open dumps". All of these sites should be ordered to immediately stop receiving waste, be prohibited from any further expansion activities, and be closed in the shortest time possible. If the EPA continues to refuse to carry out this responsibility in the letter and spirit of RCRA, then the Task Force should recommend that Congress pass legislation that orders it.
- 3. Recommend the repurposing of closed landfills for sustainable development, benefitting municipalities and the energy grid.** Private companies interested in repurposing closed landfills for new, sustainable purposes – like solar and wind energy generation – should be invited to invest in public private partnerships, along with municipalities, to help shoulder the cost of immediate and compliant closures. This will mean that closing dangerous sites will be used as an opportunity to contribute solutions to Puerto Rico's energy crisis, support economic development with modern and clean energy technology, and provide safer and more sustainable income for municipalities than open dumps.
- 4. Recommend that a plan for transition to full compliance should be adopted.** Congress and the Control Board should collaborate on a plan to ensure a swift transition to full compliance with RCRA at all remaining landfills in Puerto Rico. The Puerto Rico Solid Waste Management Authority, municipalities, landfill operators who have good records of compliance with RCRA Subtitle D should be stakeholders in establishing the most efficient new system of solid waste management that includes obligatory enforcement of RCRA Subtitle D without exception. This plan should include the following key elements:

- a. *The immediate establishment of transfer stations at open dumps slated for immediate closure.* This will ensure continued transportation of non-hazardous waste to landfills that comply with RCRA Subtitle D. Private companies and non-profit entities engaged in recycling should be invited to partner on the establishment of transfer stations to foster the economic viability of increasing Puerto Rico's recycling rate from its current 7%, compared to a U.S. mainland average of 34%.
- b. *The imposition of closure plans for open dumps, with a timeline of no more than 1 year.* RCRA sets clear requirements for the safe closure of non-hazardous waste landfills, and the enforcement staff of EPA Region 2 has already conducted numerous inspections of every such landfill in Puerto Rico for years. With most of the key data already available to Congress under its subpoena power, in relation to all the open dumps in Puerto Rico that should be closed, immediate closure plans should be drawn up and imposed on each non-compliant site. The Task Force should recommend that a temporary fund be established, with money from EPA's budget, to support the installation of basic requirements for a closed site under RCRA, and administered by the Control Board.

Puerto Rico Limpio appreciates the opportunity to share these views and this evidence with the Task Force. Such attention is being paid to Puerto Rico's economic well-being is an important opportunity for the Congress to not only help boost our future prosperity, but to help undo the damage caused by the neglect and dereliction of duty of federal agencies like the EPA for decades. Taking decisive action to address Puerto Rico's landfill crisis, and turn it into an opportunity for new and sustainable development, will go a long way to make right what the EPA has made so wrong.

We look forward to working with the Task Force on helping to bring a brighter and safer future to Puerto Rico's communities.

Sincerely,



HIRAM J. TORRES MONTALVO
Co-founder, Puerto Rico Limpio

Identical letter sent to:

The Honorable Pedro Pierluisi
The Honorable Marco Rubio
The Honorable Robert Menéndez
The Honorable Bill Nelson
The Honorable Sean Duffy
The Honorable Tom MacArthur
The Honorable Nydia Velázquez