Honorable Dennis A. Ross  
House of Representatives  
229 Cannon Building  
Washington, DC 20515  

Re: Municipal Solid Waste Disposal in the Commonwealth of Puerto Rico  

Dear Congressmember Ross:  

This is in response to your May 26, 2016, letter to Gina McCarthy, Administrator of the U.S. Environmental Protection Agency (EPA), regarding municipal solid waste disposal in the Commonwealth of Puerto Rico. I have been asked to respond on behalf of the Administrator.  

You expressed concerns with non-compliance with federal standards at 22 open dumps, and what you characterize as EPA’s “failure” to exercise its statutory oversight authority and the Commonwealth’s “abysmal” record in addressing the management of solid waste disposal.  

EPA shares your concerns about open dumps in Puerto Rico and welcomes this opportunity to inform you of our efforts to address this problem. For many years, EPA has worked to improve the management of solid waste in Puerto Rico. EPA has utilized our enforcement authority under the Resource Conservation and Recovery Act to require substantive actions be taken, on the basis of environmental and health risk, to address the most significant open dumps. It should be noted that the federal regulations governing solid waste are not directly enforceable in Puerto Rico, as the Puerto Rico Environmental Quality Board has been approved by EPA, pursuant to statute, to conduct its own solid waste compliance and enforcement program. To date, EPA has finalized nine consent orders, and has also issued three unilateral administrative orders (i.e., to entities that would not agree to enter into orders on consent), which address nine open dumps in Puerto Rico. The respondents include municipal governments, private landfill operators, and the Puerto Rico Land Authority.  

Improving solid waste management and addressing open dumps in the Commonwealth remain priorities for the Agency. We have and continue to take direct action to address non-compliance, as our resources and legal authorities allow, including referring Puerto Rico landfill cases to the U.S. Department of Justice for enforcement. A judicial consent decree was entered by the court for one such defendant in 2015, and further judicial actions are anticipated in the future.

(over)
As you know, the central government of Puerto Rico faces a budget crisis which extends to the municipalities, who have scarce funds to implement the engineering controls required to improve, and ultimately close, their landfills. This problem is compounded by the dwindling resources made available to the Puerto Rico Environmental Quality Board by the central government to carry out their solid waste compliance and enforcement program, a situation that we understand predated the current fiscal crisis facing the Commonwealth. This has resulted in, among other things, reduced staffing and reported delays in permitting of new and existing landfills. In spite of these constraints, the Puerto Rico Environmental Quality Board continues to strive to maintain an effective solid waste program, with recent efforts including requiring closure plans and schedules from all operating landfills, and ongoing coordination with EPA on the revision of Commonwealth solid waste regulations to address significant issues identified by EPA in its oversight capacity.

You concluded that “lax” regulatory oversight by the Commonwealth had resulted in a “failed system” of solid waste management and that this had adversely impacted recycling in Puerto Rico, and noted that the recycling rate there is well below the national average. We share your concerns about improving the recycling rate in Puerto Rico. We have made recycling a priority component of our solid waste capacity building and enforcement efforts in Puerto Rico, and have successfully negotiated the inclusion of comprehensive recycling provisions in eight of the nine orders discussed above. In 2010, we also helped establish the Puerto Rico Recycling Partnership to promote reuse, recycling, and clean composting. We have worked with businesses and not for profit institutions to reduce the amount of waste generated and increase recycling through other EPA programs such as WasteWise and the Food Recovery Challenge (more information at: https://www.epa.gov/srnrnlwastewise and https://www.epa.gov/sustainable-management-food/food-recovery-challenge-frc), and have worked with both the Puerto Rico Environmental Quality Board and the Puerto Rico Solid Waste Management Authority on materials management planning. Enclosed please find an important report from the Puerto Rico Recycling Partnership.

You referenced reports of non-compliance and improper management at the landfills, including inadequate cover contributing to mosquito breeding and the resultant potential for Zika transmission, leaching of toxic runoff, and fires from methane gas emissions. Please be advised that our EPA legal orders specifically address these issues, and require the design and implementation of controls for leachate, storm water, and landfill gas among other measures. Moreover, with respect to the potential for mosquito breeding and Zika transmittal, EPA has recently issued letters to all order respondents requiring that they expand their existing disease vector control efforts pursuant to the orders by developing and immediately implementing comprehensive plans for mosquito control. The letter was written following guidelines established by the U.S. Center for Disease Control, and in direct consultation with EQB, the Puerto Rico Department of Agriculture, and the U.S. Fish and Wildlife Service. The EPA letter is enclosed.
Lastly, in response to your request that we provide you a plan for addressing the safety of Puerto Rico’s landfills, we are currently negotiating orders on consent with three Puerto Rico municipalities, continue to actively assess the status of the remaining open dumps, and intend to issue further orders on a priority basis. Moreover, we continue to work closely with the Puerto Rico Environmental Quality Board to both coordinate on solid waste enforcement and to oversee implementation and enhancement of their approved solid waste program.

I trust that this addresses the concerns you relayed to the Administrator. Please do not hesitate to contact me at (212) 637-5000, or Mr. Leonard Voo, Chief, RCRA Compliance Branch, at (212) 637-4173, if you have questions or would like to discuss this matter further.

Sincerely,

Judith A. Enck
Regional Administrator

Enclosures