



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
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NEW YORK, NY 10007-1866

APR 28 2011

Honorable Luis V. Gutiérrez
U.S. House of Representatives
Washington, DC 20515

Dear Representative Gutiérrez:

Thank you for your letters of April 6, 2011 and April 26, 2011 to U.S. Environmental Protection Agency (EPA) Administrator Lisa P. Jackson regarding the proposed construction of the *Vía Verde* natural gas pipeline in Puerto Rico. The Administrator has asked me to reply to your letter directly. We understand your concerns about the potential impacts of the project, and have been engaged in a careful review of the permit application from the Puerto Rico Electric and Power Authority (PREPA), which is currently awaiting a decision by the U.S. Army Corps of Engineers (USACE) under Section 404 of the federal Clean Water Act.

In response to the letters and your April 6, 2011 Freedom of Information Act (FOIA) request (2FOIA-0747-11), we have enclosed copies of supplemental information, documentation and reports on the *Vía Verde* project submitted by PREPA and its consultants in response to our December 21, 2010 comment letter on the project, along with documentation regarding meetings held with PREPA. This is a partial response to your requests. We are searching our records for additional information that might be responsive, and will provide it to you as soon as possible.

EPA's role in the permitting of the *Vía Verde* pipeline project stems from a Memorandum of Agreement with the USACE that provides EPA the opportunity to review and comment on individual permit applications under Section 404 of the Clean Water Act. Our initial review of the permit application for the project revealed that PREPA's proposal did not comply with the guidelines of the Clean Water Act that prohibit the discharge of dredged or fill material unless the applicant can demonstrate that such discharges will not have an unacceptable, adverse impact on the ecosystem of concern. EPA determined that the proposed use of directional drilling technology in stream crossings and karst terrain could result in potentially significant impacts to aquatic resources. In addition, the Agency determined that PREPA had not provided enough data on alternatives to the pipeline, nor had it provided suitable mitigation plans to address the project's unavoidable impacts to wetland areas. EPA provided our comments to the USACE in a letter dated December 21, 2010.

In our original evaluation of the project, we urged PREPA to consider alternatives to the delivery of natural gas to three power generating plants, including the construction of a receiving terminal on the north coast of Puerto Rico, the possibility of delivering natural gas to plants

located on the south coast, and the use of alternative power sources to achieve the purpose of the pipeline project. PREPA's response provided information on other alternatives considered during the project's conception. On the use of directional drilling, PREPA agreed to modify the project to minimize the use of directional drilling methodology in sensitive areas. EPA suggested the inclusion of a special condition in the permit to address our remaining concerns about a possible bentonite mud spill and its impacts on waters of the U.S. The inclusion of enforceable special conditions in USACE permits to address project concerns is a standard practice in the Clean Water Act Section 404 permits program. This approach allows the USACE and its resource agencies to address specific concerns regarding any uncertainties found during a project's planning, construction and operation phases.

Following procedures established in Section 404 of the Clean Water Act, the USACE submitted copies to PREPA of all comments on the permit application received from various resource agencies, including EPA. The permit program, which is administered by USACE, provides applicants the opportunity to submit additional information to address the issues raised by local and federal resource agencies, and to modify the projects accordingly. During this stage of the permitting process, PREPA and its consultants met with EPA and representatives of other agencies on several occasions to discuss the project. In addition, PREPA provided written responses to EPA comments as well as supporting documentation regarding the alternatives analysis and changes to the directional drilling methodology originally proposed. Among the supplemental information submitted by PREPA were several chapters of the environmental impact statement locally approved for the project, which EPA had not previously reviewed.

After reviewing the additional information provided by PREPA, including portions of the Commonwealth Environmental Impact Statement that were translated into English to provide for wider review by our environmental staff in New York City, EPA concluded that it had addressed most of our major concerns regarding the Vía Verde natural gas pipeline project. We conveyed our comments and outstanding concerns to the USACE in a letter dated April 1, 2011. The letter reiterates the need for EPA to receive, for review, a comprehensive mitigation plan that addresses compensation for both temporary and permanent impacts to wetlands, and a detailed explanation of the project's variable right-of-way before project construction activities begins. In addition, EPA requested that the permit includes a special condition requiring the presence of independent qualified personnel during drilling operations to closely monitor the process and stop work if any issues or abnormalities are detected. EPA comments on the permit application address Agency responsibilities under Section 404 of the Clean Water Act, and potential impacts of the project on waterbodies.

As stipulated in the Memorandum of Understanding between the USACE and EPA, the final decision on any Clean Water Act Section 404 permit application is made by the USACE. Decisions are reached after careful consideration of the project and public review, which includes comments from local and federal resource agencies and the general public. For example, at a February 1, 2011 meeting about Vía Verde that was hosted by the USACE, the U.S. Fish and Wildlife Service; the National Oceanic and Atmospheric Administration and the Commonwealth Historic Preservation Office were represented along with EPA. Public participation in the Clean Water Act Section 404 permit process is handled by the USACE,

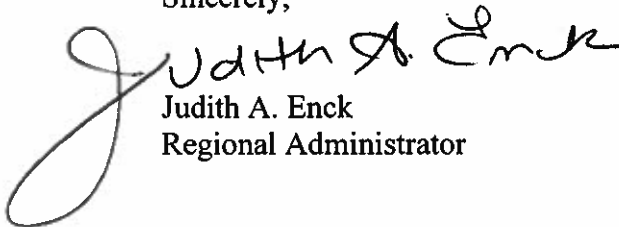
starting with the issuance of a Public Notice for the project and the opportunity for the public to submit comments within 30 days of the issuance of such notice.

In your April 26, 2011 letter, you raise concerns about information from PREPA that the USACE believes was shared with EPA and not with the USACE. The documents EPA received from PREPA in support of its permit application are public information, and are fully available to the USACE. Our expectation is that PREPA has provided and will continue to supply the USACE all the environmental documentation needed for a complete review of the permit application. Any permit for the Vía Verde project would need to address the concerns we have raised, based on sufficient documentation from PREPA.

Finally, it is important to note that the permit decision and the ultimate determination on the appropriate level of documentation required for the project pursuant to the National Environmental Policy Act (NEPA) rest with the USACE.

EPA will remain engaged as the permit review process for the Vía Verde pipeline project proceeds, and will encourage active and open public engagement and discussion. Please feel free to contact me directly at 212-637-5000 if you have any questions or have your staff contact Carl Soderberg, Director of our Caribbean Environmental Protection Division at 787-977-5801.

Sincerely,

A handwritten signature in black ink, appearing to read "Judith A. Enck". The signature is written in a cursive style with a large, looping initial "J".

Judith A. Enck
Regional Administrator

Enclosures