



To: House Committee on Natural Resources Republican Members
From: Republican Committee Staff; Ken Degenfelder
(Ken.Degenfelder@mail.house.gov) and Rob MacGregor
(Robert.MacGregor@mail.house.gov)
Date: June 30, 2021
Subject: Full Committee Legislative Hearing on H.R. 1126, "Vieques Recovery and Redevelopment Act of 2021," and H.R. 1317, "Vieques Recovery and Redevelopment Act of 2021"

The Committee on Natural Resources will hold a Full Committee Legislative Hearing on H.R. 1126 (Rep. González-Colón), titled the "Vieques Recovery and Redevelopment Act of 2021," and H.R. 1317 (Rep. Velázquez), titled the "Vieques Recovery and Redevelopment Act of 2021," **on Wednesday, June 30, 2021, at 1:00 p.m. EDT** online via Cisco WebEx.

Member offices are requested to notify Rob MacGregor (Robert.MacGregor@mail.house.gov) **by 10:00 a.m. EDT on June 29, 2021**, if their Member intends to participate from his/her laptop in 1324 LHOB or from another location. Submissions for the hearing record must be submitted through the Committee's electronic depository at HNRCDocs@mail.house.gov. Please contact David DeMarco (David.DeMarco@mail.house.gov) or Everett Winnick (EverettWinnick@mail.house.gov) should any technical difficulties arise.

I. KEY MESSAGES

- Residents of the Puerto Rico municipality of Vieques presume that heavy metals from decades of exploded and unexploded ordnance from activities of the U.S. Navy on and around the island have entered their food supply and are leading to high rates of serious health problems.
- However, there is not scientific consensus between the Agency for Toxic Substances and Disease Registry (ATSDR) and other scientific studies that U.S. Navy activities are related to the health issues being experienced by Vieques residents.
- The Department of Defense estimates that cleanup efforts will continue through Fiscal Year 2032 and that an additional \$306 million will be needed to complete the cleanup efforts.

- H.R. 1126 and H.R. 1317 are intended to provide monetary compensation to residents of Vieques for claims that testing by the U.S. Navy has led to increased health conditions.

II. WITNESSES

- **Kevin H. Gardner**, Executive Vice President for Research and Innovation, University of Louisville, Louisville, Kentucky [*Republican Witness*]
- **The Honorable Jose Corcino-Acevedo**, Mayor, Vieques, PR
- **Ms. Myrna Pagán**, Vidas Viequenses Valen, Esperanza, Vieques, PR

III. BACKGROUND

History and Background

Following the United States' victory in the Spanish-American War in 1898, the U.S. acquired Puerto Rico, Guam, and the Philippines from Spain.¹ Vieques, a small island with a land area of approximately 51 square miles,² is a municipality of Puerto Rico, an unincorporated territory of the United States.³ After the Spanish-American war and into the 1930s, Vieques's economy prospered due to thriving sugar plantations, whose exports were a major source of sugar for the U.S.⁴ In the late 1930s, the U.S. Navy acquired approximately 4,200 acres of land on Vieques, and in 1941 the Navy began construction of a naval base, including ranges to allow for training with live aerial bombs and naval ordinance.⁵

From the 1940s and into the early 2000s, the Vieques training range was used approximately 180 days a year, about 120 days of which were live ammunition exercises.⁶ In 2003, training on Vieques ended and the former Vieques Naval Training Range's 3,000 acres were transferred to the U.S. Fish and Wildlife Service. The land is now administered

¹ <https://www.loc.gov/rr/hispanic/1898/chronpr.html>

² Catherine K. Medina, Lawrence C. Pellegrini & Cristina Mogro-Wilson (2014) Political Power and Health Inequalities in Vieques, Puerto Rico, *Social Work in Public Health*, 29:5, 401-416

<https://www.tandfonline.com/doi/full/10.1080/19371918.2013.853017?scroll=top&needAccess=true>

³ Britannica, T. Editors of Encyclopedia (2019, January 10). Vieques Island. Encyclopedia Britannica.

<https://www.britannica.com/place/Vieques-Island>

⁴ <https://www.sscnet.ucla.edu/soc/faculty/ayala/vieques/web/07ayalasugaroplanttomilitary.pdf>

⁵ GRUSKY, S. (1991). THE U.S. NAVY AND VIEQUES, PUERTO RICO: CONFLICT AND COEXISTENCE. *Canadian Journal of Latin American and Caribbean Studies / Revue Canadienne Des études Latino-américaines Et Caraïbes*, 16(31), 105-122.

https://www.jstor.org/stable/41799754?seq=10#metadata_info_tab_contents

⁶ Vieques, Puerto Rico Naval Training Range: Background and Issues for Congress (2004). RS20458 <https://crsreports.congress.gov/product/pdf/RS/RS20458>

as the Vieques National Wildlife Refuge.⁷ The Live Impact Area of the former range, is managed as a wilderness area with no public access.⁸

Environmental and Civilian Impact

In recent decades, there have been several federal public health assessments conducted in Vieques by the Department of Health and Human Services' Agency for Toxic Substances and Disease Registry (ATSDR). Between 2001 and 2003, the ATSDR and Department of Health and Human Services' Centers for Disease Control and Prevention conducted a public health assessment evaluating four different pathways for potential exposure to determine if there was a correlation between the Navy's activities on Vieques and the high level of health problems experienced by Vieques residents.⁹ In these studies, the ATSDR concluded that the levels of exposure "were so low that harmful health effects would be unlikely."¹⁰

In 2009 the agency began updating its findings in response to Congress and others and began conducting a new comprehensive review.¹¹ In 2013, the ATSDR released its updated study and maintained that their review of new and previous data could not find a relationship between U.S. naval activities and residents' health problems.¹² However, in its conclusions, ATSDR called for more soil samples to further evaluate the food chain pathway.¹³

Independent Findings

According to the Environmental Protection Agency (EPA) and Navy officials, the conclusions of the ATSDR are reliable and are consistent with their respective agencies' findings.¹⁴ However, residents and academics contend that the federal agencies' scientific findings are not complete and that residual environmental risks remain, which may negatively affect the health of Vieques residents.¹⁵ For example, a 2019 study in the *International Journal of Environmental Research and Public Health* found that metal from military testing remains in the marine ecosystem neighboring the naval base, resulting in

⁷ <https://www.fws.gov/refuge/vieques/>

⁸ U.S. Government Accountability Office, *Efforts at Former Military Sites on Vieques and Culebra, Puerto Rico, Are Expected to Continue through 2032*, March 2021, <https://www.gao.gov/assets/gao-21-268.pdf>.
<https://www.gao.gov/assets/720/713544.pdf>

⁹ Agency for Toxic Substances and Disease Registry, *Vieques, Puerto Rico, Overview* (2015). Vieques, Puerto Rico. <https://www.atsdr.cdc.gov/sites/vieques/overview.html>

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ Agency for Toxic Substances and Disease Registry, *An Evaluation of Environmental, Biological, And Health Data From the Island of Vieques, Puerto Rico*, March 29, 2013, p. 143.

https://www.atsdr.cdc.gov/hac/pha/vieques/Vieques_Summary_Final_Report_English_2013.pdf.

¹⁴ U.S. Government Accountability Office, *Efforts at Former Military Sites on Vieques and Culebra, Puerto Rico, Are Expected to Continue through 2032*, March 2021, <https://www.gao.gov/assets/gao-21-268.pdf>.

¹⁵ *Id.* p. 29.

toxic substances filtering into the marine food web.¹⁶ The study also found that contaminants from the ordnance testing on the island filtered through the air and soil, into the island's vegetation, and detonations from exploded ordnance contaminated the air on the island with airborne toxic particles.¹⁷

However, from 2005 to 2013, the Navy conducted on-site air sampling during open detonation events on Vieques to measure the air concentration of particulate matter such as dust and soot, metals, and other explosive chemicals at over 170 detonation events.¹⁸ The U.S. Navy's air samples showed no detection of explosive chemicals, nor were there any violations to the national ambient air quality standards.¹⁹

The *International Journal of Environmental Research and Public Health* study also found trace elements of heavy metals from the naval exercises in the soil, water, and air absorbed into the vegetation and crops, which serves as a potential pathway to exposure for civilians.²⁰ Additionally, the study includes test results for the presence of toxic metal depuration in Vieques residents and mainland Puerto Rico residents. The results indicated toxic metals such as lead, aluminum, uranium, arsenic, cadmium, and gallium were found in higher concentrations in Vieques residents than in mainland Puerto Rico residents. Further, many toxic metals were found in higher concentrations in Vieques' female residents than in male residents. The study found that while some of the toxic metals examined are found naturally in the environment, they are greatly increased in environments impacted by military activity.²¹

Additionally, a study in the *Journal of Epidemiology and Community Health* on Mercury contamination in reproductive age women in Vieques, found that reproductive age women on Vieques were exposed to unsafe levels of mercury due to U.S. naval activity.²² In 2007, the Puerto Rico Department of Public Health found that residents of Vieques have elevated risks to health problems in comparison to mainland Puerto Rico residents. These elevated risks include a 25% higher infant mortality rate, 16% higher asthma rates, 27% higher cancer rates, 28% higher diabetes rates, 95% higher cirrhosis of the liver, and 381% higher

¹⁶ International Journal of Environmental Research and Public Health, *Toxic Metals Depuration Profiles from a Population Adjacent to a Military Target Range (Vieques) and Main Island Puerto Rico*, December, 2019, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6994965/>

¹⁷ Id.

¹⁸ U.S. Government Accountability Office, *Efforts at Former Military Sites on Vieques and Culebra, Puerto Rico, Are Expected to Continue through 2032*, March 2021, <https://www.gao.gov/assets/gao-21-268.pdf>.

¹⁹ Id.

²⁰ International Journal of Environmental Research and Public Health, *Toxic Metals Depuration Profiles from a Population Adjacent to a Military Target Range (Vieques) and Main Island Puerto Rico*, December, 2019, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6994965/>.

²¹ Id.

²² Ortiz-Roque, C., & López-Rivera, Y. (2004). Mercury contamination in reproductive age women in a Caribbean island: Vieques. *Journal of epidemiology and community health*, 58(9), 756–757. <https://doi.org/10.1136/jech.2003.019224>
<https://pubmed.ncbi.nlm.nih.gov/15310801/>

hypertension rates. Also, higher rates of skin problems and infertility and lower birth rates than mainland Puerto Ricans were observed.²³

Sánchez v. United States

In 2007, a federal torts lawsuit was filed by Juanita Sánchez in the United States District Court for the District of Columbia on behalf of child Debora Rivera-Sánchez and 7,125 Vieques residents. The claimants argued that the nearly 60 years of U.S. naval ordnance testing activity exposed them to harmful toxic substances which led to tort injuries. The lawsuit was dismissed on procedural grounds.²³

In 2012, the United State Court of Appeals for the First Circuit upheld the District Court's decision to dismiss on procedural grounds, citing the U.S. Navy's "sovereign immunity" and a lack of jurisdiction over the claims.²⁴ Although the Court dismissed the claims, they urged Congress to bring their attention to this issue:

“Nonetheless, while the majority’s view is that the dismissal of the suit must be affirmed, and the dissent disagrees, the plaintiffs’ pleadings, taken as true, raise serious health concerns. The majority and the dissent agree that these issues should be brought to the attention of Congress. The Clerk of Court is instructed to send a copy of this opinion to the leadership of both the House and Senate.”²⁵

Hurricane Maria

In 2017, Hurricane Maria devastated several islands in the Caribbean. This left Vieques without an adequate healthcare facility, dependable transportation to and from the mainland, and reliable electricity. Prior to Hurricane Maria, Vieques had one limited-capacity medical facility; however, it was closed due to the damages incurred from the storm. Currently, the island’s Diagnosis and Treatment Center (CDT) is the only operational medical facility and does not have adequate treatment facilities for toxic element exposure or emergency circumstances.²⁶ Viequians must travel 29.1 miles to the Puerto Rico mainland via an unpredictable ferry system to access medical care not available on Vieques.²⁷

²³ Catherine K. Medina, Lawrence C. Pellegrini & Cristina Mogro-Wilson (2014) Political Power and Health Inequalities in Vieques, Puerto Rico, *Social Work in Public Health*, 29:5, 401-416

<https://www.tandfonline.com/doi/full/10.1080/19371918.2013.853017?scroll=top&needAccess=true>

²³ Withers, George. (2013). Vieques, A Target in the Sun. Washington Office on Latin America.

<https://www.wola.org/sites/default/files/downloadable/Regional%20Security/Vieques%20report%20advance%20copy%20for%20press%204.26.pdf>

²⁴ Id.

²⁵ *Sánchez v. United States*, 671 F.3d 86 (1st Cir. 2012), <https://casetext.com/case/sanchez-v-united-states-30>

²⁶ Syria Ortiz-Blanes, *3-year-old child dies in Vieques, which has been without a hospital since Hurricane Maria*, May 27, 2021.

²⁷ Corujo, Christina (2021). Maritime transportation issues cause outrage in Puerto Rico. ABC News. <https://abcnews.go.com/US/maritime-transportation-issues-outrage-puerto-rico/story?id=76768791>

In 2013, the Department of Health and Human Services found that transportation on Vieques was poor and a hurdle to health care for residents.²⁸ The effects of Hurricane Maria have only worsened the already deficient system. Hurricane Maria also destroyed Vieques's energy infrastructure, and the island was still running on generators more than a year after the devastating storm struck. Powerful earthquakes at the beginning of 2020 also damaged power generation capacity and left the island in a near-total blackout.²⁹ Although power on the island has been restored, it is still very vulnerable to disruptions and blackouts are frequent which inhibits healthcare treatments on the island.

Current DOD Cleanup Efforts

The Department of Defense (DOD) began cleanup efforts on Vieques in 2005.³⁰ The cleanup effort is being conducted pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9601 et seq., CERCLA). On Vieques, the U.S. Navy funds and leads the cleanup efforts, and the Environmental Protection Agency (EPA) has oversight responsibilities.³¹ According to DOD data, DOD reported spending \$327 million on cleanup efforts on Vieques through Fiscal Year 2019.³² For Vieques, in September of 2020 the DOD estimated that cleanup efforts would continue on the island through Fiscal Year 2032 and DOD will need an additional \$306 million to complete the cleanup efforts.³³

The cleanup efforts under the Defense Environmental Restoration Program are organized into two main programs: the Installation Restoration Program (IRP) and the Military Munitions Response Program (MMRP). The IRP addresses sites with hazardous substances like petroleum, hazardous wastes, or explosive compounds released into soil or water. The MMRP focuses on sites that are known to or expected to contain unexploded or discarded ordnance and addresses the release of chemicals contained in the ordnance.³⁴ Almost all IRP sites are cleaned up on Vieques, but substantial work remains for the 19 MMRP sites.³⁵ As of October 2020, the Navy has completed a preliminary assessment and site inspection for all MMRP sites, and the majority of sites are in the remedial investigation phase. According to U.S. Navy documentation, once sufficient munitions removal actions

²⁸Withers, George. (2013). Vieques, A Target in the Sun. Washington Office on Latin America. <https://www.wola.org/sites/default/files/downloadable/Regional%20Security/Vieques%20report%20advance%20copy%20for%20press%204.26.pdf>

²⁹ Alex Roarty, *Puerto Rico, U.S. Virgin Islands closer to getting \$2 billion for electric grid repairs*, Miami Herald, June 22, 2021.

³⁰ U.S. Government Accountability Office, *Efforts at Former Military Sites on Vieques and Culebra, Puerto Rico, Are Expected to Continue through 2032*, March 2021, <https://www.gao.gov/assets/gao-21-268.pdf>.
<https://www.gao.gov/assets/720/713544.pdf>

³¹ U.S. Government Accountability Office, *Highlights: Efforts at Former Military Sites on Vieques and Culebra, Puerto Rico, Are Expected to Continue through 2032*, March 2021, <https://www.gao.gov/assets/gao-21-268-highlights.pdf>.

³² Id.

³³ U.S. Government Accountability Office, *Efforts at Former Military Sites on Vieques and Culebra, Puerto Rico, Are Expected to Continue through 2032*, March 2021, <https://www.gao.gov/assets/gao-21-268.pdf>.
<https://www.gao.gov/assets/720/713544.pdf>

³⁴ Id.

³⁵ Id.

have occurred, site workers can safely enter a site and gather environmental samples from the soil, sediment, surface water, and groundwater. The Navy and others use these environmental samples to conduct, human health risk assessments and other studies, which the EPA then reviews and comments on.³⁶

Legislative action

In response to the various allegations and studies indicating U.S. military activities may be responsible for health related issues on Vieques, in the 116th Congress Rep. Gonzalez-Colon introduced H.R. 4605, the Vieques Recovery and Redevelopment Act. The legislation was intended to provide compensation to residents of Vieques, who have experienced certain covered health issues which could be related to U.S. Navy activities on the island. Additionally, the bill authorized funding for a trauma center to be constructed on Vieques to provide healthcare to residents. No action was taken on the bill in Congress.

In the 117th Congress, Rep. Gonzalez reintroduced identical legislation, H.R. 1126 on February 28, 2021. On February 28, 2021, Rep. Velazquez also introduced largely similar legislation, H.R. 1317.

Both H.R. 1126 and H.R. 1317 are intended to provide compensation to the residents of Vieques and authorize funding for a trauma center. H.R. 1317, however, increases the compensation amount from \$10,000 to \$50,000 if a claimant can document one medical condition.

Additionally, H.R. 1317 does not authorize compensation to the municipality of Vieques for research conducted for Vieques by universities, colleges, scientists, and doctors who have tested and evaluated the prevalence of toxic substances in the soil, food sources, and human populations.

Finally, H.R. 1317 includes a provision capping the total amount of compensation authorized at \$1 billion and mandates that all claims must be submitted within 15 years.

IV. SECTION-BY-SECTION ANALYSIS

H.R. 1126 (Rep. González-Colón), "Vieques Recovery and Redevelopment Act of 2021"

Section 1. Provides short title.

Section 2. Sets forth findings.

Section 3. *Subsection (a)* places the Special Master in charge of determining if a claimant is eligible for compensation. To be eligible, one must be a resident, a child of a resident, or an immediate heir of a deceased claimant. Stipulates that claimants must have already filed a claim or lawsuit or must file a claim within 120 days of enactment of the bill to receive

³⁶ Id.

compensation with medical documentation certifying chronic, life threatening, or physical or mental disease or illness to the Special Master.

Subsection (b) stipulates the amounts of award for claimants who meet the requirements of subsection (a). The subsection provides \$10,000 for claimants who provide proof of a previously filed lawsuit within 5 years or for a claimant who is a child of a parent who resided on Vieques for over 5 years. It provides \$50,000 for claimants with one qualifying disease, \$80,000 for claimants with two qualifying diseases, and \$110,000 for claimants with three qualifying diseases. Qualifying diseases include, cancer, hypertension, cirrhosis, kidney disease, diabetes, or a heavy metal poisoning.

Subsection (c) gives the Attorney General 90 days to appoint the Special Master to consider claims. The subsection includes requirements to ensure the Special Master has experience in processing claims.

Subsection (d) provides compensation for the municipality of Vieques including funding for: a medical staff and resources for a level three trauma center, operations of the medical facility, transportation costs for residents, free medical screenings, additional research via an academic partner, compensation for previous research conducted, and administrative expertise. The subsection provides “amounts necessary” for additional costs incurred by the Municipality if the Special Master determines they are necessary to carry out this section. It also directs the Special Master to determine the best way to produce independent power on the island and provides funding for the construction of necessary facilities.

The bill utilizes funding from the “Judgment Fund” under section 1304 of title 31, United States Code. As such, the funding would not count as an appropriation or as annual discretionary spending and would not affect other Puerto Rico programs.³⁷

Subsection (e) gives the Special Master 150 days to make a determination on each claim.

Subsection (f) Outlines that payments made under the bill “constitute a complete release by the individual or Municipality of such claim against the United States.”

Subsection (g) Certification of treatment of payments under other laws and limitations to treatment of payments.

H.R. 1317 (Rep. Velázquez), "Vieques Recovery and Redevelopment Act of 2021"

Section 1. Provides short title.

Section 2. Sets forth findings.

Section 3. *Subsection (a)* places the Special Master in charge of determining if a claimant is eligible for compensation. To be eligible, one must be a resident on the island for at least 5

³⁷ [https://uscode.house.gov/view.xhtml?req=\(title:31%20section:1304%20edition:prelim\)](https://uscode.house.gov/view.xhtml?req=(title:31%20section:1304%20edition:prelim)).

years, a child of a resident, or an immediate heir of a deceased claimant during or after the U.S. Government used the island. It also stipulates that claimants must have already filed a claim or lawsuit or must file a claim within 120 days of enactment of the bill to receive compensation with medical documentation certifying chronic, life threatening, or physical or mental disease or illness to the Special Master.

Subsection (b) stipulates the amounts of award for claimants who meet the requirements of subsection (a). The subsection provides \$50,000 for claimants with one qualifying disease, \$80,000 for claimants with two qualifying diseases, and \$110,000 for claimants with three qualifying diseases. These diseases are limited to: cancer, hypertension, cirrhosis, kidney disease, diabetes, or a heavy metal poisoning.

Subsection (c) gives the Attorney General 90 days to appoint the Special Master to consider claims. The subsection includes requirements to ensure the Special Master has experience in processing claims.

Subsection (d) provides compensation for the municipality of Vieques including funding for: a medical staff and resources for a level three trauma center, operations of the medical facility, transportation costs for residents, free medical screenings, additional research via an academic partner, and administrative expertise. The subsection provides “amounts necessary” for additional costs incurred by the Municipality if the Special Master determines they are necessary to carry out this section. It also directs the Special Master to determine the best way to produce independent power on the island and provide funding for the construction of necessary facilities.

The bill utilizes funding from the “Judgment Fund” under section 1304 of title 31, United States Code. Funding would not count as an appropriation or as annual discretionary spending and would not affect other Puerto Rico programs.³⁸ This section also specifies that the total amounts awarded under this Act shall not exceed \$1 billion.

Subsection (e) gives the Special Master 150 days to make a determination on each claim.

Subsection (f) Outlines that payments made under the bill “constitute a complete release by the individual or Municipality of such claim against the United States.”

Subsection (g) Certification of treatment of payments under other laws and limitations to treatment of payment.

Subsection (h) Specifies certain claims be barred unless the claim is filed within 15 years after the date of the enactment.

³⁸ [https://uscode.house.gov/view.xhtml?req=\(title:31%20section:1304%20edition:prelim\)](https://uscode.house.gov/view.xhtml?req=(title:31%20section:1304%20edition:prelim)).

V. COST

H.R. 1126 (Gonzalez-Colon)

A Congressional Budget Office (CBO) score for the legislation in the 117th Congress has not been completed.

H.R. 1317 (Velasquez)

A CBO score for the legislation in the 117th Congress has not been completed.

VI. ADMINISTRATION POSITION

Unknown.