

BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF:

AES PUERTO RICO COGENERATION
PLANT

Road # 3, Km. 142.0

Puente Jobos Ward

Guayama, Puerto Rico 00784

Proceeding Pursuant to Section 505(b)(2) of the
Clean Air Act, 42 U.S.C. § 7661d

Opposition to Petition to Object to
Issuance of Final Title V Operating
Permit PFE-TV-4911-30-0703

**OPPOSITION TO PETITION TO OBJECT TO ISSUANCE OF
AES PUERTO RICO, L.P. FINAL TITLE V OPERATING PERMIT**

TO THE ENVIRONMENTAL PROTECTION AGENCY ADMINISTRATOR:

On September 21, 2011, Comité Diálogo Ambiental, Inc. (the "Petitioner") submitted a petition to the Administrator of the Environmental Protection Agency ("EPA") requesting that EPA object (the Petition to Object) to the issuance of the AES Puerto Rico, L.P. ("AESPR") operating permit coded PFE-TV-4911-30-0703, issued by the Puerto Rico Environmental Quality Board (the "PREQB") pursuant to Title V of the Clean Air Act (the "CAA"), 42 U.S.C. §§ 7661-7661f, and Part VI, Rules 601 to 610 of the Regulation for the Control of Atmospheric Pollution of September 1995 (the "Air Regulation").

Based on the discussion that follows, AESPR respectfully understands that the Petitioner did not meet the burden of demonstrating that the AESPR Title V operating permit proposed by the PREQB is not in compliance with the requirements of the CAA, the regulations promulgated thereunder, and the PREQB Air Regulation. The Petitioner

did not demonstrate that AESPR is in violation of the source's **applicable requirements**. 42 U.S.C. § 7661d(b)(2), 40 C.F.R. 70.8(c)(1). Therefore, AESPR respectfully requests EPA to deny the Petition to Object. The Petition to Object was brought after the regulatory time period provided to any person who desires to object expired; therefore, the EPA Administrator should deny the defective and untimely Petition to Object.

A. STATUTORY AND REGULATORY FRAMEWORK

Pursuant to Section 502(d)(1) of the CAA, 42 U.S.C. § 7661a(d)(1), the Commonwealth of Puerto Rico developed and submitted to EPA an operating permit program. The Air Regulation adopted the CAA Title V operating permit program as implemented through the regulations in 40 C.F.R. § 70. The PREQB Title V operating permit program was approved by EPA. 60 Fed. Reg. 57204-57207 (November 14, 1995). See, also, 62 Fed. Reg. 3213-3215 (January 22, 1997).

The Title V operating permit program adopted by the PREQB requires major stationary sources of regulated air pollutants and certain other not major stationary sources to obtain an operating permit that includes enforceable emissions limitations and standards and such other conditions as are necessary to assure compliance with **applicable requirements** of the CAA. See, 42 U.S.C. §§ 7661a(a), 7661c(a); Air Regulation, Part VI, Rules 601 to 610. The Title V operating permit does not generally impose new substantive air quality control requirements. Title V operating permits must contain monitoring, recordkeeping, reporting and other requirements to assure source's compliance with **applicable requirements**. The Air Regulation defines **applicable requirement** consistent with the federal definition of the term as it appears in 40 C.F.R. § 70.2. **Applicable requirements** to be included in a source's Title V operating permits

are standards or requirements provided in the Puerto Rico State Implementation Plan and its revisions, terms or conditions included in a Prevention of Significant Deterioration (PSD) construction permit or Rules 201 and 203 of the Air Regulation construction Permit (the PREQB construction permit), new source performance standards and national emission standards for hazardous air pollutants promulgated pursuant to Sections 111 and 112 of the CAA, enhanced monitoring requirements, standards related to solid waste incineration, consumer and commercial products standards, standard for tank vessels, standards to control air pollution from outer continental shelf sources, and standards to protect stratospheric ozone.¹

Title V of the CAA does not impose additional requirements on sources but rather consolidates all **applicable requirements** in a single document to facilitate compliance. See, 42 U.S.C. § 7661a(a). Therefore, the purpose of the Title V operating permit program is to enable the source, the PREQB, EPA and the public to understand which

¹ The term **applicable requirement** "means all of the following as they apply to emissions units in a Title V source (including requirements that have been promulgated or approved by EPA through rule-making at the time of issuance but have future-effective compliance dates): (1) any standard or other requirement provided for in the Commonwealth's implementation plan approved or promulgated by EPA through rule-making under Title I of the Act that implements the relevant requirements of the Act, including any revisions to the plan promulgated in 40 C.F.R. Part 52, Subpart BBB; (2) any term or condition of any construction permits issued pursuant to regulations approved or promulgated through rule-making under Title I, including Parts C or D, of the Act; (3) any standard or other requirement under Section 111 of the Act (New Source Performance Standards), including Section 111(d); (4) any standard or other requirement under Section 112 of the Act (National Emission Standards for Hazardous Air Pollutants), including any requirement concerning accident prevention under Section 112(r)(7) of the Act and any substances listed under Section 112(r)(3); (5) any requirements established pursuant to Section 504(b) (Monitoring and Analysis) or Section 114(a)(3) (Enhanced Monitoring) of the Act; (6) any standard or other requirement governing solid waste incineration, under Section 129 of the Act; (7) any standard or other requirement for consumer and commercial products, under Section 183(e) of the Act; (8) any standard or other requirement for tank vessels under Section 183(f) of the Act; (9) any standard or other requirement of the program to control air pollution from outer continental shelf sources, under Section 328 of the Act; (10) any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the Act, unless the Administrator has determined that such requirements need not be contained in a Title V permit." Air Regulation, Part I, Rule 102. The term Act refers to the CAA, 42 U.S.C. §§ 7401 to 7671q.

applicable requirements the source is subject to and to determine if the source is meeting those requirements.

Pursuant to Part VI, Rule 603 of the Air Regulation, each Title V operating permit issued by the PREQB must include the following: (1) emission limitations and standards including operational limitations to assure compliance with all **applicable requirements** at the time of permit issuance and to allow for reasonably anticipated operating scenarios and the worst-case operating scenario; (2) the legal authority for each term or condition; (3) provisions to ensure that emissions limits are quantifiable, accountable, enforceable, and based on replicable procedures; (4) a provision about permit duration; (5) monitoring procedures or test methods required under the **applicable requirements**; (6) periodic testing or instrumental or non-instrumental monitoring (recordkeeping), where applicable; (7) requirements concerning the use, maintenance, and where appropriate, installation of monitoring equipment or methods; (8) additional monitoring to ensure compliance with permit conditions; (9) recordkeeping requirements and reporting requirements; (10) emission trading provisions; (11) federally-enforceable requirements; (12) compliance requirements; (13) a permit shield provision; (14) emergency provisions; and (15) any applicable national emission standard for hazardous air pollutants, maximum achievable control technology standard, residual risk standard, conditions pertaining to CAA Section 112(r), or any general provisions pursuant to the CAA Section 112 rules and/or the PREQB air toxic rule.

B. BACKGROUND OF THE AESPR TITLE V OPERATING PERMIT

On July 16, 2003, AESPR filed the title V operating permit application for its cogeneration plant located in the Municipality of Guayama, Puerto Rico, which application was on two occasions revised and updated (November 3, 2004 and October 6, 2006). On October 29, 2010, after PREQB's reviewed of the Title V operating permit application, the agency published in two newspapers of general circulation its intention to issue to AESPR a draft Title V operating permit with the terms and conditions necessary to assure compliance with the source's **applicable requirements** (the "AESPR Draft Permit"). See **Exhibit A**. A **draft permit** is the version of a title V operating permit which the PREQB offers for public participation or to a State/Territory review under Rule 609 of the Air Regulation.² The notices informed the public that the AESPR Draft Permit was available for review at the electronic site www.jca.gobierno.pr, at PREQB's library, and at the PREQB Guayama Regional Office located on Road # 3, Km. 134.3, Algarrobos Ward, Guayama. The public notices indicated that written comments to the AESPR Draft Permit from the public should be submitted within 30 days from the day of publication of the notice to the PREQB postal address and advised of a hearing to be held on December 3, 2010 at the PREQB headquarters in San Juan, Puerto Rico. The purpose of the hearing, presided by an Examiner appointed by the PREQB, was to receive the public's comments to the AESPR Draft Permit, included in **Exhibit B**.³

AESPR attended the December 3, 2010 public hearing and submitted specific comments to the AESPR Draft Permit. The Petitioner also attended the public hearing

² Air Regulation, Part I, Rule 102.

³ The Examiner reviewed the public comments to the AESPR Draft Permit and submitted recommendations to the PREQB Governing Board.

and presented a Motion Requesting Authorization to Intervene in the public comment proceeding, that a public hearing be held at the Municipality of Guayama, and a site inspection (the "Motion to Intervene"). **Exhibit C.** The Examiner granted a time extension to AESPR to supplement its December 3, 2010 comments and to the Petitioner to present arguments supporting the Motion to Intervene and to provide comments to the AESPR Draft Permit.

On December 10, 2010, AESPR supplemented its comments to the AESPR Draft Permit and filed an opposition to dismiss the Petitioner's Motion to Intervene, based on the grounds that the public hearing was an investigative hearing to receive information about the emission limitations, restrictions, and conditions necessary to comply with the source's **applicable requirements**, and was not a quasi judicial or adjudicative hearing. AESPR requested the dismissal of the Petitioner's Motion to Intervene.

The Petitioner's Motion to Intervene in essence argued the reasons why the Examiner should grant Petitioner intervention in the December 3, 2010 public comment hearing. In the Motion to Intervene, the Petitioner acknowledged having reviewed the AESPR Draft Permit; however, the Petitioner did not raise specific objections to the AESPR Proposed Permit content as required by Part VI, Rule 609(e)(1) of the Air Regulation. Petitioner insisted that a site inspection and cross examination (presumably of the PREQB officials and of AESPR personnel) was necessary in order to have a complete discovery of evidence.

After reviewing the AESPR's and Petitioner's documents received during the public hearing, the Examiner issued a report titled "Informe del Oficial Examinador" dated May 6, 2011 (the "Examiner's Report"), which recommended the PREQB

Governing Board to adopt the AESPR Draft Permit with the recommendations included in the Examiner's Report as the AESPR Proposed Permit. **Exhibit D.** The **proposed permit** is the version of a permit that the PREQB proposes to issue and forwards to the EPA Administrator for review.⁴ The PREQB issued the AESPR Proposed Permit and forwarded it to EPA on May 27, 2010. **Exhibit E.**

The AESPR Proposed Permit

The AESPR Proposed Permit includes: (1) a description of the source's emission units, their control devices with their air pollution removal efficiencies (Sections V.A(2), Appendices II and II, AESPR Proposed Permit); (2) the emissions limitations and standards for particulate matter (PM) of a size of 10 micrometers (PM₁₀), sulfur dioxide, nitrogen oxides, carbon monoxide, volatile organic compounds, lead, Antimony, Arsenic, Beryllium, Cadmium, Hexavalent Chromium, Cobalt, Manganese, Mercury, Selenium, Hydrochloric acid, Nickel, Hydrogen Cyanide, Fluorides, and sulfuric acid mist (Section IV, AESPR Proposed Permit); (3) fuel consumption limitations and sulfur content in fuel restrictions for coal and diesel (Section V, AESPR Proposed Permit); (4) PM fugitive dust control pursuant to Rule 404 of the Air Regulation (Section V.A(5), AESPR Proposed Permit); (5) opacity limits, PM and PM₁₀ hourly emissions rates for affected emission units (Section V.B, AESPR Proposed Permit); (6) requirements to install, operate and maintain continuous emission monitoring systems (CEMS) for PM and sulfur oxides, and continuous opacity meter system (COMS), as required in the applicable new source performance standards of Section 111 of the CAA and the source's PSD construction permit and its modifications, and the PREQB construction permit (Sections

⁴ Air Regulation, Part I, Rule 102. See, also, *id.*, Part VI, Rule 609.

V.A, B, AESPR Proposed Permit); (7) requirements to maintain continuous recordkeeping and reporting requirements as mandated in the applicable new source performance standards and the Air Regulation (Sections III-V, Proposed Permit); (8) requirement to submit the annual certification of compliance (Section III, AESPR Proposed Permit); (9) conditions to coal and ash handling activities (Section V.B 6, 7, 8, 9, AESPR Proposed Permit); (10) performance tests and other testing requirements (Section V, Appendix IV, AESPR Proposed Permit). The AESPR Proposed Permit included the **applicable requirements** to which the facility is subject to and all the elements required in Part VI, Rule 603 of the Air Regulation, mentioned in Section A of this document.

C. **OBJECTION BY EPA AND PUBLIC PETITION TO THE EPA ADMINISTRATOR**

The PREQB, as mandated by CAA Section 505(a), 42 U.S.C. § 7661d(b), and its implementing regulations in 40 C.F.R. § 70.8(c), promulgated Rule 609d(1)-(3) of the Air Regulation acknowledging the authority of the EPA Administrator to review and object to the issuance of all Title V operating permits proposed by the agency and determined not be in compliance with the **applicable requirements** or requirements of Part VI of the Air Regulation. EPA had 45 days from receipt of the AESPR Proposed Permit to object in writing to its issuance as a Final Permit. A **final permit** is the version of the Title V permit issued by the PREQB after all review procedures required by Rules 605, 606, 608 and 609 of the Air Regulation have been completed. Air Regulation, Part I, Rule 102.

The PREQB also promulgated provisions allowing the public to petition to the EPA Administrator to object the agency's proposed Title V operating permits when the

EPA Administrator does not exercise such power to object. See, Air Regulation, Part VI, Rule 609 (e)(1). According to this provision, any person who submitted comments during the draft permit public comment proceeding, may petition EPA to object the proposed permit. Such petition to object must be filed within 60 days after the expiration of the EPA Administrator's 45 day objection period. The 45 day time period for EPA to object the AESPR Proposed Permit ended on July 11, 2011. EPA did not object the AESPR Proposed Permit. In the case at bar, the 60 day period for any person to file the petition to object the AESPR Proposed Permit ended on September 9, 2011. The Petitioner's Petition to Object was filed on September 21, 2011, twelve days after the 60 day period expired. Because the Petition to Object was filed after the 60 day time period expired, EPA should move to dismiss the Petition for lack of jurisdiction.

According to the federal and local regulations, public's petitions to object must be based only on objections to the draft permit that were raised with reasonable specificity during the draft permit public comment period,⁵ unless the petitioner demonstrates that it was impracticable to raise such objection at that time,⁶ or the grounds for objection arose after or subsequent to that time period.⁷

Grounds for EPA to object recognized by the Title V operating permit program are the state's failure to include in the **proposed permit** the source's **applicable requirements** and/or enforcement provisions, the state's failure to comply with the public notice and comment provisions or to any of the requirements in 40 C.F.R. § 70, or the

⁵ Id., Part VI, Rule 609(c)(1).

⁶ 40 C.F.R. § 70.8(d).

⁷ Air Regulation, Part VI, Rule 609(e)(i).

state's failure to submit information necessary for EPA to review the **proposed permit**.⁸ Other grounds for EPA to object to the any **proposed permit** are the source's failure to comply with its **applicable requirements** or if the source is in violation of the CAA or the Air Regulation's requirements. The petitioner has to demonstrate non compliance with CAA requirements sufficient to require EPA to object to a permit.⁹ The petitioner must provide adequate information, the legal reasoning and the evidence supporting the allegations.¹⁰ Petitioner did not comply with this requirement. Courts have consistently deferred to EPA's reasonable interpretation as to when a petitioner's has provided sufficient evidence to demonstrate non compliance.

Issues Raised by Petitioner

Petitioner alleges that EPA should object to the issuance of the AESPR Proposed Permit as a **final permit** because the PREQB: (1) denied the Motion to Intervene; (2) did not hold a public hearing in Guayama; (3) did not order a site inspection during the AESPR Draft Permit December 3, 2010 public hearing. It is now, in the Petition to Object, that the Petitioner argues that AESPR Proposed Permit allegedly: (1) does not address the adverse human health and environmental impacts of the facility to the Guayama Region residents and ecosystems, has conditions too vague to be enforceable, (2) lacks sufficient monitoring and reporting requirements to determine compliance with an air quality requirement preventing EPA and the public from enforcing CAA requirements, (3) lacks monitoring and reporting conditions regarding the management

⁸ 40 C.F.R. § 70.8(c)(1) and (3).

⁹ Sierra Club v. Johnson, 557 F.3d 401, 406 (6th Cir. 2009); Sierra Club v. Johnson, 541 F.3d 1257, 1265-1266 (1st Cir. 2008); Mac Clarence v. EPA, 596 F.3d 1123 (9th Cir. 2010).

¹⁰ Mac Clarence, *supra*.

and disposal of coal ash, (4) does not include a compliance plan for alleged fugitive dust violations at construction sites where AESPR's manufactured aggregate (commercially known as "Agremax") is used by third parties, and (5) did not conduct an environmental justice assessment. Discussion of these allegations follows below.

Discussion of Petitioner's Allegations

1. Petitioner claims that EPA must object to the AESPR Proposed Permit because the PREQB denied the Motion to Intervene filed during the December 3, 2010 draft permit public comment hearing, did not hold a hearing in Guayama, and did not conduct a site inspection.

The December 3, 2010 hearing was an investigative hearing to gather information and comments on a draft permit before the PREQB finally issued it. See, Rule 2.10.3 of the Environmental Quality Board Administrative Hearings Regulation of October 19, 1988; and Subchapter V, Section 5.4 of the Uniform Administrative Procedures Act, Act No. 170 of August 12, 1988, as amended, 3 L.P.R.A. § 2101 et seq. See, also, AESPR Opposition to Petitioner's Motion to Intervene dated December 10, 2010. **Exhibit F.**

A Motion to Intervene was neither a pre-requirement nor the administrative venue for the Petitioner to appear before the agency and present specific comments to the conditions and terms being proposed by the PREQB the AESPR Draft Permit. Nothing precluded the Petitioner from appearing at the public hearing held by the PREQB. Moreover, nothing would have precluded the Petitioner from presenting specific comments to the AESPR Draft Permit at that time. The Petitioner had more than enough time to review the AESPR Draft Permit, which was available for review at the PREQB Guayama Regional Office. After the December 3, 2010 hearing concluded, the Petitioner

requested to review the AESPR Draft Permit and the supporting documents. During the 30 day public comment period and the extension granted, the Petitioner failed to submit specific comments to the AESPR Draft Permit.

The Petitioner did not provide the necessary information for the PREQB to determine whether a site inspection was required to issue the AESPR Proposed Permit. It is unreasonable to request the objection of the AESPR Proposed Permit because a hearing was not held in Guayama. The Petitioner attended the December 3, 2011 hearing and took a turn to argue its Motion to Intervene. Petitioner failed to follow and comply with the regulatory procedures established to comment on a **draft permit**. The failure to diligently review and comment on the **draft permit** bars Petitioner from objecting the AESPR Proposed Permit and delaying the issuance of the **final permit**. This claim is unreasonable, frivolous, and vague and does not comply with the standards to present an objection established in the CAA, the regulation promulgated thereunder and the Air Regulation.

2. Petitioner argues that the AESPR Proposed Permit lacks monitoring and reporting requirements sufficient for the public and regulations to determine whether the facility is in compliance with air quality requirements. Petitioner argues that the AESPR Proposed Permit limits the type of evidence the public and the government may rely upon to show that the facility is violating an air quality requirement.

A review of the AESPR Proposed Permit shows that it contains pollutant specific emission limitations and restriction to be measured in daily rolling averages. The permit has physical and operational design limitations to the maximum design capacity, has air pollution control requirements, restrictions on the type and amount of fuel to be

combusted, storage and processing requirements. The air pollution control equipment required in the AESPR Proposed Permit is the Best Available Control Technology with the maximum degree of reduction of each pollutant subject to applicable rules and regulations determined to be achievable by EPA in the PSD construction permit and the PREQB construction permit for the facility. See, Air Regulation, Part I, Rule 102. The AESPR Proposed Permit has specific hourly emission rates. Moreover the AESPR Proposed Permit has continuous emission monitoring systems that continuously record emissions of the pollutants that are monitored. The facility has to prepare and maintain for five years all the data obtained from the monitoring systems.

3. Petitioner alleges that the AESPR Proposed Permit lacks monitoring and reporting conditions regarding the management and disposal of the coal ash generated.

This allegation is false. The AESPR Proposed Permit, as it pertains to the Title V operating permit program and the Air Regulation requirements, has specific PM₁₀ emissions limitations for ash handling, control requirements for the conveyors, the coal and manufactured aggregate processing lifts, the hoppers, and the hauling trucks. The AESPR Proposed Permit requires the operation of baghouses/dust collectors of a control efficiency of 99%. The AESPR Proposed Permit also has recordkeeping requirements related to ash produced in the facility, which records shall be available to the PREQB at any time. See, Section V.B.9.b(2), (3) and (5) of AESPR Proposed Permit, at pages 63 and 64.

4. Petitioner alleges that the AESPR Proposed Permit does not include provisions requiring the submittal of "reports of any required monitoring at least every 6

months", which reports must be certified by a responsible official, as per 40 C.F.R. § 70.6(a)(3)(iii)(A) and § 70.5(d).

This allegation is false. AESPR Proposed Permit condition 15 of Section III (General Permit Conditions), at page 13 of the AESPR Proposed Permit, requires AESPR to submit semi-annual reports of all required monitoring. To that effect, condition 15 read as follows:

"15. Reporting Requirement: As specified under Rule 603(a)(5)(i) of the RCAP, AESPR shall submit the semi-annual reports of all required monitoring on October 1st and April 1st of every year, respectively, or more frequently if required by the EQB or any other underlying applicable requirement. All instances of deviations from permit requirements must be clearly identified in such reports. All required reports must be certified by a responsible official as established under Rule 602(c)(3) of the RCAP."

5. Petitioner alleges without providing any specific information to that effect, that the AESPR Proposed Permit prevents EPA and the public from enforcing CAA requirements.

This allegation is false. The AESPR Proposed Permit has emissions limitations in tons per year and hourly emission rates, and continuous emission monitoring systems monitoring compliance with such emission limitations. It also has specific fuel consumption restrictions that have to be monitored and reported to the PREQB and EPA. Additionally, the AESPR Proposed Permit requires AESPR to prepare the certification of compliance for each and everyone of the permit terms and conditions.

The allegations of the Petitioner show that the Petitioner lacks knowledge regarding the purpose, scope and legal boundaries of this type of permit. EPA should not object the issuance of the AESPR Title V operating permit based on the untimely, unfounded and false allegations raised by the Petitioner.

6. The Petitioner alleges that the PREQB needs to analyze the potential environmental justice implications of the AESPR cogeneration plant before issuing the AESPR final permit.

The environmental justice concerns raised in the Petition to Object were adequately addressed by EPA during the PSD construction permit process. EPA prepared an environmental justice analysis which concluded with EPA issuing the PSD construction permit on August 10, 2004. EPA incorporated into the PSD construction permit conditions in response to the Guayama community's concerns regarding air quality. See, In Re: AES Puerto Rico, L.P., PSD Appeal Nos. 98-29, 98-30 and 98-31, decided on May 27, 1999, Section II.E. **Exhibit G.**

The AESPR Proposed Permit includes all the terms and conditions of the PSD construction permit of August 10, 2004. Thus, all terms and conditions adopted as a result of the EPA environmental justice analysis are in the AESPR Proposed Permit, are federally enforceable permit conditions, the compliance of which can be enforced by EPA, the PREQB and the public.

7. Although not under the purview of the AESPR Proposed Permit, the Petition to Object discusses unfounded allegations about the beneficial use of AESPR CCPs. **This allegation is false.** Without any evidence, study, investigation or testimony, Petitioner alleges that the use of the CCPs will contaminate the acquirer in the Region. On the contrary, responsible scientists and professionals have conducted sampling and studies regarding the use of manufactured aggregate as fill material, and all of the studies showed that the manufactured aggregate can be safely used without risk of groundwater

contamination.¹¹ The manufactured aggregate is neither toxic nor hazardous. The manufactured aggregate is not a hazardous waste as defined by the EPA hazardous waste management regulations promulgated pursuant to the Resource Conservation and Recovery Act (RCRA) and the Regulation for the Control of Hazardous Wastes. In fact, AESPR is not regulated as a Solid Waste Facility as defined by the Puerto Rico Environmental Quality Board Regulation for the Management of Solid Wastes.

Petitioner further argues that AESPR does not control how the manufactured aggregate is used by contractors in construction projects. **This allegation is false.** Under the Title V operating permit program, AESPR is not required to oversee how carriers and contractor handle the manufactured aggregate outside of the AESPR facility. However, AESPR, as a responsible corporate citizen, contractually requires them to at all times comply with the federal and local regulatory requirements to control particulate matter fugitive emissions that may be generated while the product is used as fill material. In addition, AESPR verifies that the contractor has obtained all required permits, including the air emissions source construction permit and the erosion and sedimentation control permit and plan, among others. Furthermore, as a responsible corporate citizen, AESPR periodically conducts inspections to the construction sites where the manufactured aggregate is used to verify compliance with the contractual obligations. Petitioner's

¹¹ University of PR-Mayagüez Masters of Science Thesis Project "Soil Improvement using Circulating Fluidized Bed Fly Ash from AES-PR"; University of PR-Mayagüez Project "AGREMAX as an Alternative Daily Landfill Cover"; University of PR-Mayagüez PhD Project "Biochemical Decomposition and Settlement of Landfill with AGREMAX Daily Cover". Presented at the World of Coal Ash Conference in Cincinnati, Ohio, May 2007; University of PR-Mayagüez Project "Application of Coal Combustion Products and Biopolymer as In Situ Capping Amendments for Heavy Metals Remediation". (In Progress); University of PR-Mayagüez Masters of Science Thesis Project "Low-Cost On-Site Treatment of Explosive Related Compounds - Laden Water and Wastewater". (In Progress); Texas Transportation Institute at Texas A & M - "Potential Markets for Flowable Fill for the Dry CCP's and Asphalt Filler with Agremax"; Texas Transportation Institute at Texas A & M - "Physical, Mechanical, and Chemical Evaluation of Manufactured Aggregate"; Yale University Study "Uncovering Eco-Industrial Networks in Puerto Rico" presented at the Eco-Industrial Networking Roundtable held in North Vancouver, BC, 2004.

allegation that AESPR's manufactured aggregate has radioactive constituents at levels that can affect the public has no scientific or legal basis. Petitioner did not submit this comment during the public comment period and failed to meet the burden to demonstrate that the AESPR Proposed Permit is not in compliance with the applicable requirements.

Contrary to what Petitioner indicates, there is no such "stiff opposition to the AESPR plant in the Guayama Region since its inception".¹² Since its inception, AESPR received and continues to receive ample support from the public. Notwithstanding the public notice published by EQB and the efforts made by Petitioner inviting the public to attend the EQB hearing and oppose the permit, as admitted by Petitioner, "no other members of the public participated" in the December 3, 2010 AESPR Draft Permit hearing.

D. CONCLUSION

The Petition to Object was filed on September 21, 2011; twelve (12) days after the 60 day period to file the petition had expired. **The Petitioner's allegations are false.** The Petitioner's allegations fail to meet the grounds for objection recognized by the federal and local statutes and regulations. The Petition to Object does not specifically mention which **applicable requirements** the PREQB failed to include in the AESPR Proposed Permit. The Petitioner's allegations do not meet the standards set forth in CAA Section 505(b)(2), because they lack the reasonable specificity to demonstrate to the EPA Administrator that the AESPR Proposed Permit is not in compliance with the CAA **applicable requirements** or the federal Title V operating permit program requirements in 40 C.F.R. Part 70.

¹² The opposition during the environmental impact statement and sitting process was sponsored by interest groups, such as the Petitioner.

AESPR respectfully requests EPA to deny the Petition to Object filed by the Petitioner because the agency does not have jurisdiction to entertain it because it was filed after the 60 day time period provided by CAA Section 505(a), 40 C.F.R. Part 70.8(d), and Rule 609 of the Air Regulation expired. Moreover, the EPA Administrator must deny the Petition to Object because it fails to provide adequate information supporting the allegations, it is based on general arguments without information to provide the specificity required by the two allegations, including those not related to the **applicable requirements** to which the facility is subject to, and because of the AESPR Proposed Permit has the emission limitations monitoring, recordkeeping and reporting requirements required by the applicable rules and regulations that are necessary to demonstrate compliance with the emissions limitation and restrictions imposed to the facility.

RESPECTFULLY SUBMITTED.


In San Juan, Puerto Rico, this September 28, 2011.

I HEREBY CERTIFY having sent a copy of this Opposition to Petition to Object to Issuance of AES Puerto Rico, L.P. Final Title V Operating Permit by overnight delivery to **Ms. Lisa Jackson**, EPA Administrator, Ariel Ríos Building, 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20004; **Ms. Judith Enck**, Regional EPA Administrator for Region 2, 290 Broadway, New York, NY 10007-1823; **Mr. Steven Riva**, Chief Permitting Officer, EPA Region 2, 290 Broadway, New York, NY 10007-1823; **Pedro Nieves, Esq.**, President, Puerto Rico Environmental Quality Board, P.O.

Box 11488, San Juan, Puerto Rico 00910; and **Ruth Santiago, Esq.**, P.O. Box 518,
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