



United States Environmental Protection Agency  
Region 2  
Water Division  
290 Broadway  
New York, New York 10007

## **FACT SHEET**

### **DRAFT NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM Puerto Rico Energy PERMIT No. PR000370**

This Fact Sheet sets forth the principle facts and technical rationale that serve as the legal basis for the requirements of the accompanying draft permit. The draft permit has been prepared in accordance with Clean Water Act (CWA) section 402 and its implementing regulations at Title 40 of the *Code of Federal Regulations* (CFR), Parts 122 through 124, and the interim Water Quality Certificate (WQC) issued by the Puerto Rico Department of Natural and Environmental Resources (DNER) pursuant to CWA section 401 requirements.

Pursuant to 40 CFR 124.53, the Commonwealth of Puerto Rico must either grant a certification pursuant to CWA section 401 or waive this certification before the U.S. Environmental Protection Agency (EPA) may issue a final permit. On October 18, 2022, DNER provided in the interim WQC that the allowed discharge will not cause violations to the applicable water quality standards at the receiving water body if the limitations and monitoring requirements in the WQC are met. DNER issued a final WQC December 13, 2022. In accordance with CWA section 401, EPA has incorporated the conditions of the WQC into the draft permit. Any changes to the WQC will be incorporated into the final issuance of the permit. The WQC conditions are discussed in this Fact Sheet and are no less stringent than allowed by federal requirements. Additional requirements might apply to comply with other sections of the CWA. Review and appeals of limitations and conditions attributable to the WQC were made through the applicable procedures of the Commonwealth of Puerto Rico and not through EPA procedures.

#### **PART I.**

##### **Background**

###### **A. Permittee and Facility Description**

Puerto Rico Energy (formally PUMA Energy Caribe, LLC referred to throughout as the Permittee) has applied for renewal of its National Pollutant Discharge Elimination System (NPDES) permit. The Permittee is discharging pursuant to NPDES Permit No. PR0000370. The Permittee submitted Application Form 1 and 2F dated March 30, 2020 and applied for an NPDES permit to discharge waters composed of stormwater from The Puerto Rico Energy, Bayamon, called the facility. The Permittee did not submit Form 2C since the discharge of treated wastewater has been eliminated (which consisted of underground storage tank water from service stations, above ground storage tanks cleaning, refinery cleaning – process sewer, laboratory discharges, tanks secondary containment drain to pit #1, stormwater from process dikes area, underground recovery system, dock's stormwater collection tank, loading rack process sewer stormwater/tank truck spill, and aboveground storage tanks condensate drainage). The facilities classification has been changed from major to a minor discharger by EPA in accordance with the EPA rating criteria due to the elimination of treated wastewater.

The Permittee owns and operates wholesale petroleum bulk station and terminal. Attachment A of this Fact Sheet provides a map of the area around the facility.

The treatment system for outfall 001 is no longer in use, therefore, there is no longer a discharge to San Juan Bay.

An administrative compliance order was issued on May 11, 2011, by the EPA to the Permittee following acquisition of the property from Caribbean Petroleum Refining, L.P. Two applications were submitted, one corresponding to present operations and another corresponding to proposed future operations. As per that order the Permittee demolished the refinery and the wastewater treatment plant which eliminated Outfall 001. The only remaining discharge corresponds to noncontact stormwater runoff through Outfall 002.

**Summary of Permittee and Facility Information**

<b>Permittee</b>	Puerto Rico Energy
<b>Facility contact, title, phone</b>	Mr. Victor Dominguez, General Manager 787-622-6499
<b>Permittee (mailing) address</b>	P.O. Box 11961, San Juan, PR 00922
<b>Facility (location) address</b>	State Road No. 28 KM 2.0, Luchetti Industrial Park, Bayamon, PR 00961
<b>Type of facility</b>	Industrial with SIC code 5171
<b>Pretreatment program</b>	N/A
<b>Facility monthly average flow</b>	N/A
<b>Facility design flow</b>	N/A
<b>Facility classification</b>	Minor

**B. Discharge Points and Receiving Water Information**

Stormwater is discharged from Outfall 002 to Las Lajas Creek, a Water of the United States.

The draft permit authorizes the discharge from the following discharge point(s):

<b>Outfall</b>	<b>Effluent description</b>	<b>Outfall latitude</b>	<b>Outfall longitude</b>	<b>Receiving water name and classification</b>
002	Stormwater	18.00°, 25.00', 8.37"N	66.00°, 8.00', 3.39" W	Las Lajas Creek, SD

As indicated in the Puerto Rico Water Quality Standards (PRWQS) Regulations, the designated uses for Class SD receiving waters include:

Class SD - Surface waters intended for use as a raw source of public water supply, propagation and preservation of desirable species, including threatened or endangered species, as well as primary and secondary contact recreation. Primary contact recreation is precluded in any stream or segment that does not comply with Rule 1302.2 (D) (2) (I) until such stream or segment meets the goal of the referred section.

CWA section 303(d) requires the Commonwealth of Puerto Rico to develop a list of impaired waters, establish priority rankings for waters on the list, and develop TMDLs for those waters. The receiving water has not been determined to have water quality impairments for one or more of the designated uses as determined by section 303(d) of the CWA.

**C. Mixing Zone/Dilution Allowance**

N/A

**D. Compliance Orders/Consent Decrees**

The Permittee has an administrative compliance order (ACO) CWA-02-2011-3119 that was issued on May 11, 2011 by EPA. The ACO addresses the facility acquisition as it relates to the applicability of the NPDES program to the facility.

**E. Summary of Basis for Effluent Limitations and Permit Conditions - General**

The effluent limitations and permit conditions in the permit have been developed to ensure compliance with the following, as applicable:

1. Clean Water Act section 401 Certification
2. NPDES Regulations (40 CFR Part 122)
3. PRWQS (March 2010), and

## 4. Secondary Treatment Requirements (40 CFR 133).

**PART II. RATIONALE FOR EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS**

CWA section 301(b) and 40 CFR 122.44(d) require that permits include limitations more stringent than applicable technology-based requirements where necessary to achieve applicable water quality standards. In addition, 40 CFR 122.44(d)(1)(i) requires that permits include effluent limitations for all pollutants that are or may be discharged at levels that cause, have the reasonable potential to cause, or contribute to an exceedance of a water quality criterion, including a narrative criterion. The process for determining reasonable potential and calculating water quality-based effluent limits (WQBELs) is intended to protect the designated uses of the receiving water and achieve applicable water quality criteria. Where reasonable potential has been established for a pollutant, but there is no numeric criterion for the pollutant, WQBELs must be established using (1) EPA criteria guidance under CWA section 304(a), supplemented where necessary by other relevant information; (2) an indicator parameter for the pollutant of concern; or (3) a calculated numeric water quality criterion, such as a proposed state criterion or policy interpreting the state's narrative criterion, supplemented with other relevant information, as provided in 40 CFR 122.44(d)(1)(vi).

Since Outfall 002 discharges stormwater, best management practices (BMPs) to control or abate stormwater discharge pollutants, along with effluent limits provided in the water quality certificate, are used meet all applicable water quality standards. Sections 304(e), 308(a), 402(a), and 501(a) of the CWA authorize EPA to prescribe BMPs as part of Effluent Guidelines and Standards or as part of a permit. BMP permit requirements have been written clear, specific, and measurable, and are located in the "Best Management Practices and Pollution Prevention" and "Stormwater Pollution Prevention Plan" sections of the permit.

The effluent limitations and permit conditions in the permit have been developed to ensure compliance with all federal and state regulations, including PRWQS. The basis for each limitation or condition is discussed below.

**A. Effluent Limitations**

The permit establishes Technology-based Effluent Limitations (TBELs) and Water Quality-based Effluent Limitations (WQBELs) for several pollutants and the basis for these limitations are discussed below.

1. **Flow:** Effluent limitations for flow have not been established in the permit since it is stormwater only, When Flow Occurs (WFO). Monitoring conditions are applied pursuant to 40 CFR 122.21(j)(4)(ii) and the WQC.
2. **pH:** The effluent limitation for pH is based on the water quality criterion for SD waters as specified in Rule 1303 and 1306 of PRWQS, and the WQC.
3. **Temperature:** The effluent limitation for temperature is based on the water quality criterion for Class SD waters as specified in Rule 1303 and 1306 of PRWQS, and the WQC.

**Whole Effluent Toxicity (WET):** CWA section 101(a) establishes a national policy of restoring and maintaining the chemical, physical, and biological integrity of the nation's waters. Specifically, CWA section 101(a)(3) and PRWQS Rule 1303(l) prohibit the discharge of toxic pollutants in toxic amounts. PRWQS do not provide a numeric criterion for toxicity. Therefore, consistent with the recommendations of section 2.3.3 of EPA's *Technical Support Document (TSD) for Water Quality-Based Toxics Control* (EPA-505-2-90-001), a reopener for WET is being included in this permit should it be deemed necessary for inclusion. **Toxic Metals, Organic Compounds, Sulfide and Cyanide:** In accordance with 40 CFR 122.44(d), a WQBEL must be established if the discharge of a pollutant demonstrates that it is or might be discharged at a level that will cause, have the reasonable potential to cause, or contributes to an excursion above any state water quality standard. The need for WQBELs is based on the procedures specified in section 5 of EPA's TSD and by comparing effluent data and water quality criteria established in PRWQS Rule 1303 and the National Toxics Rule at 40 CFR 131.36(d)(4). On the basis of review of effluent and other data, EPA has determined the following:

- Copper has not been identified as a contaminant of concern for the facility.
- Ammonia, total and hexavalent Chromium, Nitrogen, Selenium and Barium were found to be not present in amounts that would exceed the PRWQS, therefore, they have not been included in the WQC.
- Chemical Oxygen Demand is not applicable to WFO, therefore, it has not been included in the WQC.

- Manganese and Barium are not regulated in the PRWQS, therefore, they have not been included in the Draft WQC.
- Zinc has not been identified as a contaminant of concern for the facility.
- Mercury was not found to be discharged in the stormwater.
- Total Phenolics is not regulated in the PRWQS regulations as a parameter itself, however, a monitoring program has been established for Pentachlorophenol to obtain data to determine discharge 002 violation potential for the above-mentioned parameter. The decision about phenolics was based on the results of a review process of the reported values for Total phenolics, compared to the WQS of each substance.
- Cyanide, Nickel, and Surfactants have been eliminated due to WFO stormwater only discharge.
- Turbidity monitoring remains in the permit.
- Sulfide has been identified as a contaminant of concern for the facility.
- Acids, Base/Neutrals, pesticides, metals (excluding silver, copper and zinc), and volatiles have been eliminated due to WFO stormwater only discharge.

### B. Effluent Limitations Summary Table

#### Outfall Number 002

Parameter	Units	Effluent limitations					
		Averaging period	Highest Reported Value (1)	Existing limits	Interim limits	Final limits	Basis
Effluent Flow	mgd	Monitor only	27.932	N/A	-- --	N/A	N/A
Color	Pt-C Units	Maximum Daily Average monthly	130	--	-- --	Monitor only	N/A
Effluent TSS	mg/L	Maximum Daily	226	--	--	Monitor only	N/A
	kg/day	--	--	--	--	Monitor only	N/A
pH	standard units	Minimum	6.28 (2)	6.0	--	6.0	WQBEL
		Maximum	8.73	9.0		9.0	
Solids and other Matter	N/A	Monitor Only	--	--	--	Narrative	WQBEL
Suspended, Colloidal or Settleable Solids	(mL/L)	Daily	.2	.3		Narrative	WQBEL
Taste and Odor Producing Substances	N/A	N/A	--	--	--	Narrative	WQBEL
Temperature	°F (°C)	Daily Maximum	91.22	90 (32.2) and Narrative	--	90 (32.2) and Narrative	WQBEL
Total Dissolved Solids	(mg/l)	Daily Maximum	--	--	--	Monitor only	WQBEL
Oil and Grease	(mg/l)	Bi-Monthly Average	--	--	--	Narrative	WQBEL
Pentachlorophenol	µg/L	1/Monthly	1.1	--	--	Monitor only	N/A
Sulfide (undissociated H <sub>2</sub> S)	µg/L	Daily Maximum	--	--	--	Monitor only	N/A

#### Notes, Footnotes and Abbreviations

Note: Dashes (--) indicate there are no effluent data, no limitations, or no monitoring requirements for this parameter.

(1) Wastewater data from the last 5 years.

(2) Minimum reported value.

### C. Monitoring Requirements

NPDES regulations at 40 CFR 122.48 require that all permits specify requirements for recording and reporting monitoring results. The Part III of the Permit establishes monitoring and reporting requirements to implement federal and state requirements. The following provides the rationale for the monitoring and reporting requirements for this facility.

#### 1. Effluent Monitoring Requirements

Effluent monitoring frequency and sample type have been established in accordance with the requirements of 40 CFR 122.44(i) and recommendations in EPA's TSD. Consistent with 40 CFR Part 136 monitoring data for toxic metals must be expressed as total recoverable metal.

### D. Compliance with Federal Anti-Backsliding Requirements and Puerto Rico's Anti-Degradation Policy

Federal regulations at 40 CFR 131.12 require that state water quality standards include an anti-degradation policy consistent with the federal policy. The discharge is consistent with the anti-degradation provision of 40 CFR 131.12, 72 Federal Register 238 (December 12, 2007, pages 70517-70526) and DPNR's *Anti-Degradation Policy Implementation Procedure* in Attachment A of PRWQS. In addition, CWA sections 402(o)(2) and 303(d)(4) and federal regulations at 40 CFR 122.44(l) prohibit backsliding in NPDES permits. Further, the Region 2 Anti-backsliding Policy provides guidance regarding relaxation of effluent limitations based on water quality for Puerto Rico NPDES permits. These anti-backsliding provisions require effluent limitations in a reissued permit to be as stringent as those in the previous permit with some exceptions where limitations may be relaxed. The effluent limitations in the permit are at least as stringent as the effluent limitations in the existing permit. The effluent limitations for certain pollutants have been eliminated due to the termination of outfall 001. Any relaxation of effluent limitations is consistent with the anti-backsliding requirements of CWA section 401(o), 40 CFR 122.44(l), EPA Region 2's Anti-backsliding Policy dated August 10, 1993, and Puerto Rico's Anti-Degradation Policy Implementation Procedure established in PRWQS.

PART I.      PART III.      Rationale for Standard and Special Conditions

### A. Standard Conditions

In accordance with 40 CFR 122.41, standard conditions that apply to all NPDES permits have been incorporated by reference in Part IV.A.1 of the permit and expressly in Attachment B of the permit. The Permittee must comply with all standard conditions and with those additional conditions that are applicable to specified categories of permits under 40 CFR 122.42 and specified in Part IV.A.2 of the Permit.

### B. Special Conditions

In accordance with 40 CFR 122.42 and other regulations cited below, special conditions have been incorporated into the permit. This section addresses the justification for special studies, additional monitoring requirements, Best Management Practices, Compliance Schedules, and/or special provisions for POTWs as needed. The special conditions for this facility are as follows:

#### 1. Special Conditions from the Water Quality Certificate

In accordance with 40 CFR 124.55, EPA has established Special Conditions from the WQC in the permit that DPNR determined were necessary to meet PRWQS. The Special Conditions established in this section are only those conditions from the WQC that have not been established in other parts of the permit.

#### 2. Best Management Practices (BMP) Plan

The Permittee has developed a BMP in accordance with 40 CFR 122.2 and 122.44(k). The BMPs include schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution to waters of the United States.

#### 3. Compliance Schedules

The schedule (activity/compliance deadline) of the Compliance Plan (CP) was established in the Work Plan – Decommission and Demolition of Industrial Wastewater Treatment Plant, submitted by PECLLC to the Water Quality Area and approved on October 18, 2013. All work has been completed.

#### 4. Other Special Conditions – N/A

PART I. Part IV. COMPLIANCE WITH APPLICABLE PROVISIONS OF OTHER FEDERAL LAWS OR EXECUTIVE ORDERS

**A. Coastal Zone Management Act**

Under 40 CFR 122.49(d), and in accordance with the Coastal Zone Management Act of 1972, as amended, 16 *United States Code* (U.S.C.) 1451 *et seq.* section 307(c) of the act and its implementing regulations (15 CFR Part 930), EPA may not issue an NPDES permit that affects land or water use in the coastal zone until the Permittee certifies that the proposed activity complies with the Coastal Zone Management Program in Puerto Rico, and that the discharge is certified by the Commonwealth of Puerto Rico to be consistent with the Commonwealth's Coastal Zone Management Program. The Puerto Rico Planning Board issued a determination, dated December 16, 1996, that the discharge is consistent with the Puerto Rico Coastal Management Program. As this activity has been permitted in the a past, a reopener clause has been established that allows the permit to be modified or revoked based on the consistency determination requested by the Permittee as part of this renewal process. The permittee submitted a request for consistency determination letter which the Planning Board issued a certification of consistency determination on May 18, 2023.

**B. Endangered Species Act**

Under 40 CFR 122.49(c), EPA is required pursuant to section 7 of the Endangered Species Act (ESA), 16 U.S.C. 1531 *et seq.* and its implementing regulations (50 CFR Part 402) to ensure, in consultation with the National Marine Fisheries Service (NMFS) and U.S. Fish and Wildlife Service (USFWS) that the discharge authorized by the permit is not likely to jeopardize the continued existence of any endangered or threatened species or adversely affect its critical habitat.

The ESA requires the Regional Administrator to ensure, in consultation with the Secretary of the Interior or Commerce, that any action authorized by EPA is not likely to jeopardize the continued existence of any endangered or threatened species or adversely affect its critical habitat.

EPA initiated consultation regarding this permit action on June 1, 2023.

In a May 2000 memo to the Regions, EPA Headquarters provided guidance to the Regions in making a determination as to whether a final permit may be issued while waiting for consultation to be concluded. As part of this permit action, if consultation has not been completed by final permit issuance and EPA has concluded that permit issuance is consistent with section 7 prior to the conclusion of consultation, EPA will re-issue the final permit before consultation is concluded and will document this decision in the Administrative Record. At the time consultation is completed, EPA may decide that changes to the permit are warranted after permit issuance based on the results of the consultation. Therefore, a reopener provision to this effect has been included in the Permit Part IV.A.1.b.

**C. Environmental Justice**

Environmental Justice (EJ) is the right to a safe, healthy, productive, and sustainable environment for all, where "environment" is considered in its totality to include the ecological, physical, social, political, aesthetic and economic environments. The NPDES permitting process provides opportunities to address EJ concerns through appropriate avenues for public participation, seeking out and facilitating involvement of those potentially affected, and, when relevant, including public notices in more than one language where appropriate. EPA has extended the public participation timeframe from 30 days to 60 days and has created a one-page plain language summary of this permitting action, which includes clear instructions on how the public may participate in the permitting process.

**D. Coral Reef Protection**

Under Executive Order 13089, *Coral Reef Protection*, EPA is required to ensure that discharge authorized under the permit will not degrade any coral reef ecosystem. No corals or coral ecosystems are in the vicinity of the discharge.

**E. Climate Change**

EPA has considered climate change when developing the conditions of the permit. This draft permit requires new conditions related to the Permittee's Preventative Maintenance Plan. Specifically, the Permittee shall implement structural improvements, enhanced/resilient pollution prevention measures, and/or other mitigation measures to minimize impacts from discharges as a result of major storm events, such as hurricanes, storm surge, extreme/heavy precipitation, and flood events.

**F. National Historic Preservation Act**

Under 40 CFR 122.49(b), EPA is required to assess the impact of the discharge authorized by the permit on any properties listed or eligible for listing in the National Register of Historic Places (NRHP) and mitigate any adverse effects when necessary in accordance with the National Historic Preservation Act, 16 U.S.C. 470 *et seq.* EPA's analysis indicates that no soil disturbing or construction-related activities are being authorized by approval of this permit; accordingly, adverse effects to resources on or eligible for inclusion in the NHRP are not anticipated as part of this permitted action.

**G. Magnuson-Stevens Fishery Conservation and Management Act**

Under 40 CFR 122.49, EPA is required to ensure that the discharge authorized by the permit will not adversely affect Essential Fish Habitat (EFH) as specified in section 305(b)(2) of the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA), 16 U.S.C. 1801 *et seq.* EPA initiated consultation with the National Marine Fisheries Service regarding this permit action on June 1, 2023. A reopener provision has been included in the draft permit which allows EPA to modify or revoke the permit based on new information.

**Part V. PUBLIC PARTICIPATION**

The procedures for reaching a final decision on the draft permit are set forth in 40 CFR Part 124 and are described in the public notice for the draft permit, which is published on EPA's website at <https://www.epa.gov/npdes-permits/puerto-rico-npdes-permits>. Included in the public notice are requirements for the submission of comments by a specified date, procedures for requesting a hearing and the nature of the hearing, and other procedures for participation in the final agency decision. EPA will consider and respond in writing to all significant comments received during the public comment period in reaching a final decision on the draft permit. Requests for information or questions regarding the draft permit should be directed to:

Andrea Coats  
EPA Region 2, Water Division  
Permit Writer Phone: 212-637-3850  
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### ATTACHMENT A — FACILITY MAP AND FLOW SCHEMATIC

The facility map is attached as provided by the discharger in the application. Outfall 001 has been eliminated.

