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July 5, 2013

By Overnight Express Mail

Clerk of the Board
U.S. Environmental Protection Agency
1201 Constitution Avenue, NW
U.S. EPA East Building, Room 3334
Washington, D.C. 20004

RE: In re: Energy Answers Arecibo, LLC
Arecibo Puerto Rico Renewable Energy Project
Appeal No. _____

Dear Sir or Madam:

On behalf of Energy Answers Arecibo, LLC ("Energy Answers"), enclosed for filing is one original and two copies of Energy Answers's Opposition to Motion for Extension of Time to File Petition for Review. The Motion for Extension of Time was filed by The Coalition of Organizations Against Incinerators (La Coalicion de Organizaciones Anti-Incineration).

Sincerely,

Henry C. Eisenberg
D.C. Bar No. 401741
SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
1440 New York Avenue, N.W.
Washington, D.C. 20005-2111
Telephone: (202) 371-7000
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henry.eisenberg@skadden.com

Enclosure

cc: Parties on Certificate of Service

**BEFORE THE ENVIRONMENTAL APPEALS BOARD**
**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**
**WASHINGTON, D.C.**

| | |
|---|---|
| In re: | **ENERGY ANSWERS ARECIBO, LLC**<br>**ARECIBO PUERTO RICO**<br>**RENEWABLE ENERGY PROJECT** |
| | Appeal No. _____ |

## OPPOSITION TO MOTION FOR EXTENSION OF TIME TO FILE PETITION FOR REVIEW

Energy Answers Arecibo, LLC ("Energy Answers") hereby files its opposition to the motion filed by The Coalition of Organizations Against Incinerators (La Coalicion de Organizaciones Anti-Incineration ("the Coalition") for an extension of time to file a petition for review of the Prevention of Significant Deterioration Permit ("PSD Permit") issued to Energy Answers on June 11, 2013. The Coalition is requesting that it be allowed until sixty (60) days after the date of publication of a Spanish translation of the PSD Permit to file its petition for review.

The Coalition's request for a prolonged extension is contrary to the Environmental Appeals Board's (the "Board") declaration that "NSR permits are time sensitive because new source construction cannot begin prior to receiving a final permit." *Revised Order Governing Petitions for Review of Clean Air Act New Source Review Permits* at 2 (EAB, March 27, 2013). As a result of the "time-sensitive nature of NSR appeals, the Board gives its highest priority to the timely resolution of NSR cases relative to other matters on the Board's docket." *Id.*

Delay in a resolution of any challenges to the PSD Permit is of particular concern to Energy Answers given how long it has taken for EPA to process Energy Answer's application. Energy Answers submitted its PSD Permit application to EPA on February 11, 2011. By letter dated November 21, 2011, EPA notified EPA that its permit application was complete as of October 31, 2011. Letter from Steven C. Riva, Permitting Chief, Air Programs Branch, to Patrick Mahoney, President, Energy Answers LLC (attached as Exhibit 1). Section 165(c) of the Clean Air Act requires EPA to take final action on a PSD permit application within one year of receipt of a complete permit application. 45 U.S.C. §7475(c); *Avenal Power Center, LLC v. U.S. Environmental Protection Agency*, 787 F. Supp. 2d 1 (D.D.C. 2011). The statutory deadline for issuing a final decision on Energy Answers' permit application was October 31, 2012. It is now more than eight months after the deadline by which Energy Answers should have obtained a final, effective permit for the Arecibo renewable energy project.

In *In re: AES Puerto Rico L.P.*, the lone case cited by the Coalition, the Board expressly noted that it was granting "a rare extension of the appeals deadline" . . . [i]n light of the extraordinary circumstances created by [hurricane Georges] and its aftermath," which "caused severe disruptions in power, communications and other basic services." *In re: AES Puerto Rico L.P,* 8 E.A.D. 324, 328 (EAB 1999). The purported basis for the Coalition's request for an extended delay of the date by which its challenge to the Energy Answers PSD Permit must be filed -- its demand that the PSD Permit be translated into Spanish -- is neither rare nor extraordinary. It is a matter of policy, soundly within the discretion of EPA, that routinely applies to any EPA permit issued in Puerto Rico or any community that is comprised of a substantial number of non-English speakers.

In the Responses to Public Comments prepared by EPA in connection with the PSD Permit, which responses were translated into Spanish, EPA stated that "it is the policy of Region 2 . . . not to provide for translation of legally binding documents or detailed and lengthy technical documents, such as the draft PSD permit and PSD application, because of the potential for introducing ambiguity or confusion about the intended meaning of the document."[1] This policy is set forth in the Region 2 Policy on Translations & Interpretations, Order No. R-1500.1 (December 10, 1997) at 2-3 (attached as Exhibit 3). In this order, EPA Region 2 further noted that in addition to the "heightened potential" for confusion about the intended meaning of the document, "confusion could occur about which document (the original or the translation) is in fact the one that is part of the Administrative Record." Id. at 3.

Moreover, the Coalition's premise that a translation of the PSD Permit is necessary to enable the non-English speaking population of Puerto Rico to participate and effectively comment on the Energy Answers project is erroneous. Although not expressly raised in the Coalition's motion, it is the case that EPA Region 2 has been diligent in implementing Executive Order 12898 and EPA's environmental justice policy in connection with the Energy Answers permit application. The Responses to Public Comments detail EPA's public outreach to the local community, including: the holding of an informal public meeting and a public availability session, both of which were simultaneously translated into Spanish and English, prior to formal public hearings on the draft PSD permit; six public hearings that were held in Spanish with simultaneous English translation; an extended comment period of almost 120 days; notices of the public hearing in Spanish; publication of a detailed fact sheet in Spanish prior to the public

[1] *Responses to Public Comments on the Clean Air Act Prevention of Significant Deterioration of Air Quality Draft Permit For Energy Answers Arecibo, LLC Puerto Rico Renewable Energy Project* ("Responses to Public Comments"), United States Environmental Protection Agency, Region 2, June 2013, at 69 (cited pages are attached as Exhibit 2).

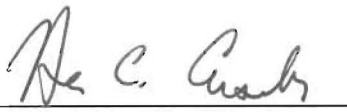
hearings, which provided a "a detailed summary of the proposed project, the emissions limits, air pollution control technologies, monitoring requirements, and the air quality impacts of the project" (id. at 67); acceptance of comments on the draft permit and project in Spanish; notice of the final permit decision in Spanish; and translation of the Responses to Public Comments. *See Responses to Public Comments* at 5, 66-67, and 105-106 (cited pages are attached as Exhibit 2).

The Coalition is not only seeking an extension, but is requesting the Environmental Appeals Board to (i) overturn EPA Region 2's long-standing policy as to the documents that it will translate in connection with a permit proceeding and (ii) order the Region to translate the PSD Permit into Spanish. If the Coalition intends to argue that the failure of Region 2 to translate the PSD Permit is in error, it should do so in connection with a timely filed petition for review and not as an exercise in indefinitely delaying the review of a PSD Permit.

For the foregoing reasons, Energy Answers respectfully requests that the Board deny the Coalition's motion to order EPA to translate the PSD Permit into Spanish and to extend the deadline for filing an appeal of the PSD Permit.

Dated: July 5, 2013

Respectfully Submitted



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Attorneys for Energy Answers Arecibo, LLC

CERTIFICATE OF SERVICE

I hereby certify that on July 5, 2013, a true and correct copy of the foregoing Opposition to Motion for Extension of Time to File Petition for Review was served, by overnight express mail, on:

Christopher D. Ahlers
Environmental and Natural Resources Law Clinic
Vermont Law School
P.O. Box 96, 164 Chelsea Street
South Royalton, VT 05068

John Filippelli, Director
Clean Air and Sustainability Division
290 Broadway
U.S. EPA Region 2
New York, New York 10007

Henry C. Eisenberg

# EXHIBIT 1

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

NOV 21 20[redacted]

Mr. Patrick Mahoney
President
Energy Answers, LLC
79 North Pearl Street
Albany, NY 12207

Re: Completeness Determination for Clean Air Act Prevention of Significant Deterioration Permit Application for Arecibo Puerto Rico Renewable Energy Project

Dear Mr. Mahoney:

This is to inform you that the Region 2 Office of the U.S. Environmental Protection Agency (EPA) has deemed Energy Answers' Prevention of Significant Deterioration application complete as of October 31, 2011. This is the date EPA received Energy Answers' additional information on air quality modeling and environmental justice analyses. Please be advised that we are continuing to process your application and expect a preliminary determination in the near future.

If you have any questions regarding this letter, please contact me at (212) 637-4074.

Sincerely,

Steven C. Riva, Chief
Permitting Section
Air Programs Branch

cc: Luis Sierra, PREQB

Kevin R. Scott, P.E (e-mail)
Associate Project Manager II, Arcadis
801 Corporate Center Drive, Suite 300
Raleigh, NC 27607

# EXHIBIT 2

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

290 Broadway
New York, NY 10007-1866

# RESPONSES TO PUBLIC COMMENTS

## On the Clean Air Act
## Prevention of Significant Deterioration of Air Quality Draft Permit
## For

## ENERGY ANSWERS ARECIBO, LLC
## ARECIBO PUERTO RICO RENEWABLE ENERGY PROJECT

June 2013

## I. INTRODUCTION

On May 9, 2012, the U.S. Environmental Protection Agency Region 2 Office (EPA) proposed to approve, subject to public review, a Prevention of Significant Deterioration (PSD) permit for Energy Answers Arecibo, LLC ("EA") that would authorize construction, and operation of a new 77 Megawatt (MW) resource recovery facility known as the Arecibo Puerto Rico Renewable Energy Project. The public comment period for the proposed permit was originally scheduled to last approximately 30 days. However, the public comment was subsequently extended, and it was officially closed on August 31, 2012. EPA announced the public comment period(s) through public notices published in the *El Vocero* and *El Norte* (both in Spanish) and on the Interamerican University-Arecibo Campus website (in English and Spanish). EPA also distributed the Spanish and English public notices and Fact Sheet to a significant number of interested parties in accordance with 40 CFR Part 124, including notices sent by mail, and e-mail.

The Administrative Record for the proposed permit was made available at the Interamerican University-Arecibo Campus website, and at the EPA Region 2's offices in Guaynabo, Puerto Rico (PR), and New York City.

In addition, EPA held six public hearings on the following dates: June 25, 2012, August 25, 2012 (two sessions), August 26, 2012 (two sessions), and August 27, 2012 in Arecibo, PR. The hearings were held in Spanish with simultaneous English translation. All oral comments (i.e., statements) made were recorded, and the transcripts were subsequently translated in English.

EPA also held a public availability session earlier on May 25, 2012, in Arecibo, PR. The purpose of the public availability session was to answer questions about the project so that the public could provide meaningful comments during the comment period. EPA made it clear at the outset that public availability session was not the forum to provide comments, and anyone with comments on the permit conditions should submit them in writing or provide oral comments at the public hearing. A Spanish language interpreter was present for oral translation. EPA responded to questions at this meeting, but did not formally record remarks from those in attendance.

During the public comment period, EPA received 1,100 written comments ("comment letters") by mail, e-mail, fax, in person at the hearings, and written statements submitted at the public hearings, and 90 comments given by oral testimony at the six public hearings. Out of 1,100 commenter letters, 648 were identical comment letters (that means more than one person ("commenter") submitting an identical commenter letter), while 56 comment letters were signed by more than one person. About 90% of the comment letters were submitted in Spanish, and these letters were subsequently translated into English. Multiple people signed many of the comment letters so that, all together, there were several thousand signatures on the written comments. The total number of commenters who submitted comment letters (identical letters and comment letters signed by multiple people) is 3,280. In some cases, a single person commented multiple times, e.g., filed multiple sets of written comments, and spoke at one or more public hearings. All comments received equal weight, regardless of the method used to submit them, or whether they were provided at the public hearing or in writing.

## B. June 2012, Public Hearing, and Request for Additional Hearings

**Comment 1**: Several commenters provide comments stating that reducing the speaker's time allotment to 3 minutes, at the June 25, 2012 public hearing, was not adequate, and express dissatisfaction for not allowing the speakers to donate their time to other speakers. Further, the commenters request EPA to reschedule the hearing, and demand the following: 1) each more than 10 minutes for each speaker; 2) to allow the speakers to voluntarily yield their time to other speakers; 3) to allow speakers to use audiovisual equipment during oral testimonies; 4) to hold the hearing(s) during a weekend; 5) to extend the public comment until beyond the date the next public hearing ; and 6) for EPA to organize and offer trainings/workshops in Spanish, before the August hearings.

**Response to Comment 1**: EPA has already responded to these comments through letters dated 7/12/2012, and 8/22/2012, has already taken the actions requested in these comments, and also has already met the majority of the demands made in these comments.

At the June 25, 2012, public hearing, some of the attendees became contentious upon learning of the three-minute restriction on each speaker's time allotment. EPA announced the three-minute time limit, after seeing the significant turnout, to ensure that all attendees had an equal opportunity to speak. Further, EPA had to suspend the hearing, as the disturbance and interruption caused by some of the attendees made it impossible to provide the intended productive opportunity for people to comment on the proposed draft PSD permit.

When EPA rescheduled the hearing, it sought to ensure an orderly and safe hearing environment where all views could be presented. EPA listened to commenters' request and demands and scheduled five public hearing sessions, over three days, on Saturday ( two sessions) August 25, Sunday ( two sessions) August 26, and Monday ( one session) August 27, 2012. EPA also extended the public comment period to August 31, 2012 to allow hearing participants some time following the hearings to submit comments in writing, if they chose to do so. EPA increased the allotment for each speaker from three to ten minutes and provided additional time at the end of the sessions for people to speak a second time, if they wished. These public hearings were especially designed to give interested parties ample time and flexibility to deliver their oral statements. However, as EPA explained in the public notices, public hearings are only one approach that EPA uses to solicit comments on proposed permits, and the commenters had the opportunity to follow up with written comments.

While EPA could not accommodate the use of audio-visual equipment during oral testimonies, the public was encouraged to include, within their written statements, any technical presentations, graphs, charts, etc.

With respect to the request for holding trainings and workshops prior to the August public hearings, we believe that EPA conducted an extensive public outreach process for the proposed draft PSD permit to enable interested persons to comment. Although not required by 40 CFR Part 124, which sets forth the requirements for public review, EPA held a public availability session on May 23, 2012 and a public meeting session, on February 15, 2012. These sessions

were informal opportunities for the public to learn about the proposed project, and both sessions were simultaneously translated into English and Spanish.

In addition, about one month prior to the public hearings, EPA published public notices and a fact sheet in Spanish. Both the public notice and the fact sheet included appropriate information as required by 40 CFR Part 124. While, the public notices included a short summary of the proposed project, the fact sheet incorporated a detailed summary of the proposed project, the emissions limits, air pollution control technologies, monitoring requirements, and the air quality impacts of the project. Additionally, EPA allowed the written comments to be submitted in either Spanish or English. The comments in Spanish, and the hearing transcript, were then translated into English.

The adequacy of EPA's public outreach on the proposed EA's draft PSD permit is demonstrated by the 1,100 written comments we received during the 105 days of public comment period that EPA provided, and by 90 people who offered oral testimonies during the five additional public hearings, organized by EPA. About 90% of the written comments received by EPA were submitted in Spanish, and these comments were subsequently translated into English. The six public hearings sessions were held in Spanish with simultaneous English translation. All oral testimonies made at the hearings were recorded and the transcripts were translated in English.

Consequently, in addition to the public availability session and public meeting, which educated the public about the project, we believe that EPA's public outreach and public comment process goes substantially beyond the requirements for public notice and public hearings at 40 CFR Part 124. Furthermore, we believe that the public availability and public meeting sessions, the information contained in the public notices and fact sheet, which were provided in Spanish, have provided adequate opportunity for the public to learn about the project.

### C. Public Participation Process

**Comment 1:** Several commenters submitted comments stating that EPA does not provide a full and transparent public review of the proposed EA's PSD permit, and adequate opportunities for public to participate in the permitting process.

One commenter alleges that, as shown in past examples, the public hearings are only held to fulfill the regulatory requirements, and these hearings are undemocratic, and the hearings are not taken into account (by the permitting authorities) in making final permit decisions.

Some commenters asserts that it is unfair that EA's draft PSD permit was developed over 18-month period, and the public was given a short period to understand and comment on rather complex draft PSD permit and related documents, and the public was limited to 3 minutes, respectively to 10 minutes for delivering the oral testimonies during the public hearings.

One commenter questions why the public is not given access to the PSD application documents prior to the EPA's determination of a complete application and respectively proposal of a draft PSD permit. The same commenters inquires why EPA's decision on granting the PSD permit, is

matter to go well beyond the regulatory permit requirements, including arranging for Spanish/English translation of some of the permit documents and at the public hearing (see **VI.B. Response to Comment 1**). However, it is the policy of EPA Region 2 (Region 2 Policy on Translations & Interpretations, Order No. R-1500.1) not to provide for translation of legally binding documents or detailed and lengthy technical documents, such as the draft PSD permit and PSD application, because of the potential for introducing ambiguity or confusion about the intended meaning of the document.

As we explained at **VI.B. Response to Comment 1,** EPA translated documents that were intended primarily for communication with members of the community such as the public notice (s) and a fact sheet on the project. EPA recognizes that many of the permit documents are technically complex, and so EPA presented the information in the public notices(s) and fact sheet summarizing the project, including the emissions, control technologies, and EPA's analysis, in lay persons terms.

**Comment 3:** The commenter states that the process of educating Arecibo residents and the extent of the public review and outreach conducted in conjunction with the proposed project has been the most extensive, comprehensive process that has ever taken place in Puerto Rico.

**Response to Comment 3:** EPA acknowledges the comment.

### D. Workshops

**Comment 1:** The commenter express disappointment that EPA does not organize workshops regarding the EA's proposed project.

**Response to Comment 1:** Please see Section **VI.B Response to Comment 1** and Section **VI. C Response to Comment 1** of this document.

### E. Comments about the August Public Hearings

**Comment 1:** One commenter provides comment to thank EPA for organizing the additional five hearing sessions over 3 days in August. Another commenter provide comments to expresses satisfaction and thank EPA for the way we organized and conducted the five public hearings sessions held on August 25, 26 and 27, 2012.

**Response to Comment 1:** EPA acknowledges the importance of our responsibility in providing adequate conditions for public to participate at the public hearings.

### F. EA's Supporters did not attend the August Public Hearings

**Comment 1:** The people supporting the EA project did not attend the August hearings, because EA did not want the project's supporters to hear the truth regarding the project's harmful effects on the human health.

public participation is of the utmost importance in the permitting process. Region 2 agrees and undertook two enhanced public outreach sessions. The first was upon receipt of the permit application. The second was prior to the formal public hearing. As a result of the first session, Region 2 learned that the community was largely agricultural and was concerned about impacts on their agricultural industry. The community also voiced concern over the large lead impacts due to the battery recycling facility nearby. In response to these concerns, Energy Answers undertook additional analyses that are not otherwise required in PSD permitting. Health and ecological risk assessments were done on various aspects of the agriculture, ecology, and human health for both PSD affected pollutants and non-PSD effected pollutants. Energy Answers also addressed lead impacts due to the nearby battery recycling facility and volunteered to install an ambient lead monitor in the community. The results of these analyses including more details on the enhanced public outreach follow below.

**B. Comments Related to Enhanced Public Participation**

**Comment 1**: Some commenters expressed concern that the public participation process was not guaranteed for all affected persons.

**Response to Comment 1**: EPA recognizes that public participation is an important component of the E.O. 12898. That recognition is a major reason why EPA went above and beyond the requirements of the procedures in 40 CFR Part 124 with respect to EA's permit, including, among other things, early outreach to the community, translation of permit documents into Spanish, conducting the public hearing in Spanish, extending the public comment period and holding multiple public hearings. Not only did EPA's additional efforts provide the public with ample opportunity to participate in the permit process, but it made it possible for EA and EPA to address substantive environmental justice concerns. The extent of the enhanced public outreach undertaken in this case to reach out to all members of the affected community may be seen in section VI.C under Response to Comment 1.

In order to enhance the public outreach, EPA Region 2 held two informal public availability sessions. These are not required by law but were held in order to provide a forum to hear the public's concerns, and allow informal conversations in order to better inform people and in some case alleviate concerns. The first public availability session was held shortly after the submittal of the initial PSD permit application. The meeting was held early in the permit process upon receipt of the first submittal regarding the PSD application. This allowed EPA to hear the concerns of the public at the outset so that they may be addressed to the extent possible in the application. For example, we heard early on that the area is largely an agricultural area.

Therefore, in response to this information, the application contains health and ecological risk assessments that examined impacts on soils and vegetation, milk and other intakes on various sensitive populations. These studies were not required by EPA's PSD regulations. They were additional steps taken to ensure the protection of agriculture and the people's health. In addition we heard many concerns regarding high lead levels in the area. The permit application took additional measures to address these concerns. The second public availability session was held shortly after the issuance of the draft PSD permit and prior to the first formal public hearing. A goal at this stage is to respond to questions or clarify issues so that if a citizen would like to

formally submit a comment, they may do so in a more informed manner. The EPA regulations require a public comment period which typically is open for 30 days. In this case the comment period was open for several months (105 days). Typically, there is only one public hearing if any. In this case there were 6 hearings with sessions in the day, evening and the weekend in order to accommodate the various schedules of citizens.

Enhanced public outreach may also be seen by the multiple public notices, emails and letters that notified the public of the draft permit and announced the public availability sessions and hearings. The letters and emails were sent to all interested parties including a solicitation of others who might be interested. All the meetings were announced in several newspapers both in English and in Spanish well in advance of the meetings to allow proper planning. The PSD permit application and the associated correspondence was uploaded to a website at the local university in Arecibo for ease in obtaining information from any location. The website is: http://www.arecibo.inter.edu/reserva/epa/epa.htm. The information was also available at the EPA Region 2 offices in San Juan and New York.

Translators procured by Region 2 were present at the public availability sessions and public hearings so that comments could be made both verbally or in writing and in English or in Spanish. Transcripts and fact sheets were prepared in both Spanish and English.
Energy Answers also held their own set of public outreach with more than 40 public presentations, radio interviews, and trips for community leaders to the similar SEMASS facility in Boston.

**C. Comments related to Disproportionate or Adverse Impacts of Criteria Pollutants**

**Comment 1**: Several commenters made comments that there are already disproportionate or adverse burdens in their neighborhoods due to criteria pollutants:

**Response to Comment 1**: An air quality analysis was undertaken for all the criteria pollutants for which the facility is subject to PSD. This included SO2, NO2, PM2.5, PM10, O3 and CO. The air quality impacts from the proposed facility alone were less than the "Significant Impact Levels" which EPA considers to be de minimis impact levels except for the 1 hour average NO2, 1 hour average SO2 and the 24 hour average PM2.5. Therefore a cumulative source modeling analysis was required for these three pollutants at these averaging times to show compliance with the NAAQS and increment (increment applies to PM2.5 only). Three modeling analyses were done for each pollutant in order to account for worst case impacts due to the various operating loads. This included Energy Answers operating at 80%, 100% and 110% loads (plus startup and shutdown.) Permit conditions are included that restrict Energy Answers to these operating load ranges in order to minimize impacts due to lower loads (except for startup and shutdown which also has its own permit conditions designed to minimize air quality impacts under this scenario.) The cumulative source modeling analysis that included other existing sources and background concentrations showed that the maximum impacts occurred close in to the facility in the barrio of Cambalache and were below the NAAQS and increment. The impacts decreased with distance out to about 4 km to the northwest of the facility where the concentrations then fall below the de minimis impact levels. This would normally be sufficient

# EXHIBIT 3

# Region 2 Policy on Translations and Interpretations

Environmental Protection Agency

***ORDER***

R-1500.1

Region 2

December 10, 1997

**COMMUNICATIONS**

## REGION 2 POLICY ON TRANSLATIONS & INTERPRETATIONS

1. BACKGROUND: Official business of the United States Environmental Protection Agency is, in general, carried out in English.

In order to communicate effectively with members of the public in our Region who do not speak English fluently, and in order to understand documents received by EPA which are written in languages other than English, it is sometimes necessary and appropriate:

- that certain EPA documents be translated into other languages;

- that certain documents received by EPA be translated into English; and

- that EPA arrange for interpretation services for certain meetings or conferences.

While members of the public who do not speak English fluently live throughout Region 2, some communities are heavily populated by such persons. When EPA is active in such communities it may be appropriate to provide translations or interpretation services at certain times.

Puerto Rico, one of the four State or Territorial jurisdictions that make up Region 2, presents a special case in this regard because Spanish is an official language and is the "first" language of most of the citizens. It is therefore more likely that translations and/or interpretation services will be provided in Puerto Rico than elsewhere in the Region.

2. POLICY: This policy provides general guidance to Region 2 staff in determining when it is appropriate to arrange for translation of documents or interpretation services, how services are to be obtained, and under what circumstances employees should be asked to perform translation and interpretation services.

There may be occasions when it is appropriate to deviate from these guidelines; a decision to do so should be made at the DRA level. Requests for deviations to the guidelines will be made in writing to the DRA.

This policy provides guidance on what kinds of documents may be translated, and what kinds of documents will not generally be translated. The policy also sets guidelines for when interpretation services may be provided, and when not.

---

**Distribution: All Employees via LAN** **Initiated by:**

**OPM and ORC**

A. Documents that may not be translated.

1. Documents generated by EPA Region 2 that have legally binding effect will be written

in English, and EPA will not provide for their translation into other languages. EPA will also not provide for translation of legally binding documents when they are generated by others. Examples of such documents include: federal statutes, rules, regulations, official policies and official guidance; enforcement instruments such as administrative and judicial complaints and orders, consent orders and consent decrees, stipulations, etc.; delegations and authorizations of authority to state, territorial or tribal governments; permit applications, proposed permits and permits; requests for proposals, bids and contracts; and Records of Decision (RODs) and similar documents formally memorializing official decisions.

If documents having legally binding effect are translated, there is heightened potential for introducing ambiguity or confusion about the intended meaning of the document. In addition, many of these documents are extremely long and highly technical. Providing for their translation, and confirming the accuracy of a translation, could be prohibitively expensive.

2. Detailed and lengthy technical documents prepared by EPA or its contractors will be written in English and EPA will not provide for their translation. Such documents include RI/FS documents prepared under the Superfund program; comprehensive environmental management and planning documents such as Estuary Protection Plans, Strategic Area Management Plans, etc.; and other similar technical studies, reports or plans.

Among the reasons for this policy is that these documents often become part of the formal Administrative Record supporting an official Agency decision or action. Translating them could create heightened potential for ambiguity or confusion about the intended meaning of the document, as well as confusion about which document (the original or the translation) is in fact the one that is part of the Administrative Record. Furthermore, many of these documents are extremely long and highly technical. Providing for their translation, and confirming the accuracy of a translation, could be prohibitively expensive.

However, documents which may otherwise be translated under this policy (such as fact sheets or summaries), and which then are made part of the Administrative Record associated with an agency action, are an exception to the general rule that documents comprising the Administrative Record will not be translated.

B. Documents that may be translated.

Translation is likely to be appropriate when a document is intended primarily for communication with members of the public, and the community that forms the target audience for that communication is inhabited by a substantial proportion of persons who are not

fluent in English. This is common in Puerto Rico, but may occur in other parts of the Region as well. Examples of such communications include brochures or other documents provided for compliance assistance purposes; Superfund Proposed Plans; fact sheets about, or summaries of, important EPA actions, such as RODs, final permits, enforcement orders or consent decrees; notices or announcements of public hearings or meetings, and descriptions or summaries of the issues to be addressed at such occasions.

When preparing fact sheets or summaries about important EPA documents such as permits or enforcement orders, it may be appropriate to include *excerpts* of critical portions of the underlying document. If so, and if such a fact sheet or summary is then to be translated, the excerpts will naturally be translated also. When this is done, the following disclaimer should be included (in the language of the translation, of course):

*This document is a translation, and is believed to be representative for informational purposes only, and is not to be relied upon in rendering legal interpretations.*

C. When interpretation services may be provided.

Similarly, where the purpose of a meeting or conference is primarily to communicate with members of the public, and the efficacy of such communication will be substantially enhanced by providing interpretation services, it is likely to be appropriate for EPA to provide such services. Examples of such occasions include meetings with residents of a community affected by an environmental threat or an environmental justice concern or meetings to inform citizens about the contents of an important permit or enforcement action; gathering evidence or other information or taking testimony in a legal proceeding from persons not fluent in English;

and providing compliance assistance to members of the regulated community who are not fluent in English.

D. When interpretation services may not be provided.

Interpretation services may not ordinarily be provided in connection with formal, official communications with a member of the regulated community. Examples of such formal communications include a settlement conference or negotiating session; an adjudicatory hearing; or discussions with a permit applicant about the contents of the application or the terms of a permit or proposed permit.

Note that the purpose of the document or oral communication is relevant when applying this policy. Under A., above, the purpose of the types of documents in question is primarily to

impose specific legal obligations upon the regulated community, or to establish a specific contractual obligation between the Agency and another party, or to inform the Agency itself in connection with an official decision or determination. Under B. and C., above, the purpose of the documents and/or meetings

is to communicate with the public. When the efficacy of such communication depends upon it being in a language other than English, then translation or interpretation services are likely to be appropriate.

E. How translation and interpretation services will be procured.

The Region has entered into an Interagency Agreement (IAG) with the State Department to provide some of our translation and interpretation services. This IAG will provide us primarily with written translation services, since the State Department does not have qualified interpreters in Puerto Rico. There, we will continue to use contract translation services for simultaneous translation at public meetings and hearings; in other locations, we may use State Department interpreters if they are available. Services should be requested through project officers in the Communications Division and the Caribbean Environmental Protection Division (CEPD).

F. Circumstances under which employees may be asked to perform translation and interpretation services.

As a general rule, it is not appropriate to call on EPA employees to translate or interpret, because this takes time away from the work which they were hired to perform and they may lack the proficiency to translate or interpret accurately. Notwithstanding the above, certain positions involve regular use of a foreign language in day-to-day work. For example, employees in the CEPD regularly use Spanish in conducting business with the regulated community and the public. For other positions, fluency in a foreign language may be a requirement or may be desirable; in such cases this will be reflected in the job announcement and position description for the position. However, employees should not be asked to perform translation and interpreting services outside the scope of their own positions or the limits of this policy.

/s/

Jeanne M. Fox