

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

In re: Puerto Rico Electric Power Authority - Aguirre Power Complex)
)
) Appeal No. ____ [EAB Appeal Number]
)
 Permit No. PR0001660)
)

PETITION FOR REVIEW

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INTRODUCTION

Pursuant to 40 C.F.R. § 124.19(a), the Puerto Rico Electric Power Authority (“Petitioner” “PREPA” or “Permittee”) petitions for review of certain of the conditions of NPDES Permit No. PR0001660 (“the Permit”), which was issued to the PREPA Aguirre Power Plant Complex (“APPC” or “Aguirre”) on October 25, 2010 through a letter signed by Patrick J. Harvey, Chief Compliance Assistance and Program Support branch, EPA, Region 2. The Permit at issue in this proceeding authorizes PREPA to discharge from the APPC into the Bahia de Jobos (“Jobos Bay”) in Salinas, Puerto Rico. The effective date of this renewal permit is January 1, 2011.

Petitioner and EPA R2 are actively engaged in conversations with respect to the issues that are the subject of the Petition. EPA R2 has advised the Petitioner of its willingness to consider the withdrawal of the Contested Conditions. EPA R2 has advised Petitioner that the contemplated withdrawal of the Contested Conditions will require EPA R2 prepare new draft permit conditions addressing the withdrawn portions, in compliance with the procedures provided in 40 C.F.R. §§124.6 through 124.18. EPA R2’s permitting authority pursuant to the Clean Water Act (“CWA”) is delegated to the Division Director for the Division of Environmental Planning and Permitting. In the time available since the parties commenced their discussions, EPA R2 has not had sufficient time to consult with the Division Director and thereby effect a formal withdrawal of the Contested Conditions. EPA R2 estimates that it may take an additional ten (10) business days from the date of the instant Motion to consult with the Division Director and formalize a withdrawal of the Contested Conditions. Consequently, Petitioner is filing this Petition as a protective filing to preserve its right to appeal the issues set forth in this Petition.

In view of the settlement discussions and EPA R2’s willingness to withdraw the Contested Conditions , contemporaneously with filing this Petition, Petitioner and the staff of

EPA R2 are jointly filing a motion requesting that the Environmental Appeals Board (“EAB”) grant an extension of time for the Petitioner to perfect its appeal in the above-captioned matter. In that motion, both parties state their agreement that it would conserve their resources and the resources of the EAB if the EAB were to accept this protective filing as a timely filing for purposes of commencing this Appeal, but allow Petitioner to supplement this filing with a more complete supplemental Petition if EPA R2 ultimately determines not to withdraw the Contested Conditions. In the contemporaneous motion, the parties are requesting that the EAB issue a Ruling accepting the Petition as validly commencing this Appeal, suspending all other applicable filing or response requirements until EPA R2 either withdraws the Contested Conditions or determines not to withdraw one or more of them, and allowing Petitioner to file a supplemental Petition within 10 business days of the date on which EPA R2 advises Petitioner and the EAB that it will not be withdrawing one or more of the Contested Conditions.

FACTUAL AND STATUTORY BACKGROUND

According to the undated Fact Sheet (at page 2) that EPA R2 issued with the draft Permit on June 8, 2010:

The Aguirre Power Plant Complex (APPC) is owned and operated by Puerto Rico Electrical Power Authority (PREPA), and is located in the Municipality of Salinas on the southern coast of Puerto Rico. ... The Thermo-Electric plant was built in the early 1970s, and consists of two twenty (20) megawatt (MW) oil-fired turbine generators, and two oil-fired four hundred and fifty (450) MW steam-electric units. The Combined Cycle plant includes two three hundred (300) MW combined cycle oil-fired units built in 1975. The Aguirre Power Plant Complex has a total electrical output rating of 1,540 MW.

APPC withdraws approximately 652.0 million gallons per day (MGD) of seawater from the Bahía de Jobos (Jobos Bay)... Cooling water, process wastewater, and stormwater are discharged to Jobos Bay via five separate outfalls. ...The receiving body of water is classified SC by the Environmental Quality Board (EQB) of the Commonwealth of Puerto Rico.

The Permit authorizes discharges from five Outfalls (enumerated in the Permit as Outfalls 001 through 005), some with a number of designated internal monitoring points (referred to in the Permit as “internal wastestreams”). The October 25, 2010 NPDES Permit was a renewal permit. The Permit was last completely re-issued in 1991 (with an effective date of March 1, 1992) and then partially modified on April 1, 1996 (with an effective date of May 1, 1996).

The Permit is based, in part, on a Water Quality Certificate (“WQC”) issued by the Environmental Quality Board of the Commonwealth of Puerto Rico (“EQB”). On April 7, 2010, PREPA submitted comments on the EQB’s “Intent to Issue a Water Quality Certificate” (“ITIWQC”) (dated February 16, 2010) which served as the draft WQC. EQB subsequently so issued a modified WQC on September 16, 2010. To the best of PREPA’s knowledge, EPA R2 did not submit comments on the ITIWQC or in response to PREPA’s comments.

THRESHOLD PROCEDURAL REQUIREMENTS

Petitioner satisfies the threshold requirements for filing a petition for review under 40 C.F.R. Part 124, to wit:

1. Petitioner has standing to petition for review of the permit decision because it participated in the public comment period on the permit. *See* 40 C.F.R. § 124.19(a). A copy of PREPA’s timely filed comments are included in Exhibit A.
2. The issues raised by Petitioner herein were raised during the public comment period, to the extent they were present in the draft Permit and therefore these issues were preserved for review. The listing of issues below indicates where in Exhibit A each issue included in this appeal was previously raised.

This Petition is timely filed because the 30 day appeal period started to run on October 26, the day after the date of the EPA permit transmittal letter, which served as the “notice of

service” date. Pursuant to 40 C.F.R. § 124.20(d) an additional 3 days was added to the 30-day period because the notice was mailed to PREPA. Counting “Day 1” as October 26, 2010, Sunday November 28, 2010 is the last (33rd) day. Because this was a Sunday, the last available date to file an Appeal was automatically extended until November 29, 2010. *See* 40 C.F.R. § 124.20(c). Consequently, the Board has jurisdiction to hear Petitioner’s timely request for review. *See In re Indeck-Elwood, LLC*, 13 E.A.D. 126, 143 (EAB 2006) (after petitioner satisfies the pleading obligations, the Board then evaluates the petition on its merits to determine if review is warranted).

ISSUES PRESENTED FOR REVIEW

Petitioner contends that the Contested Conditions are based on clearly erroneous findings of fact and conclusions of law. Initial discussions with EPA R2 on these issues has lead to a preliminary agreement on most of these issues. EPA R2 has committed to withdrawing the Contested Conditions to address these issues. Consequently, the Contested Conditions are listed below, but little detail is provided in this Petition. PREPA reserves its right to submit additional information on the erroneous nature of these Permit conditions if EPA R2 does not withdraw one or more of the Contested Conditions.

I. *The Permit contains errors in the form of missing parameter units and a missing note.*¹

- Outfall 001 (Permit Table A-1, page 3 of 53) – Silver has no units.
- Outfall 001 (Permit Table A-1, page 3 of 53) - The parameters Copper and Lead have a reference of the Greek letter γ but there is no corresponding note at the end of the Table.
- Wastestream 001b (Permit Table A-1b, page 7 of 53) - Total Chromium has no units.

¹ Because these are typographical errors and information that is missing from the Final Permit, they were not available to be commented on during the public comment period on the draft permit.

- Outfall 004 (Permit Table A-4, page 16 and 18 of 53) - Cyanide Free, there is a symbol for its Measurement Frequency but there is no corresponding note or reference.
- Wastestream 004a (Permit Table A-4a, page 19 of 53) – Free Available Chlorine, Total Chromium and Total Zinc have no units.

The continued inclusion of these errors and/or omissions in the Permit is clearly erroneous.

II. *The Permit includes limits, monitoring and/or other requirements on parameters which the EPA Fact Sheet and/or the Response to Comments indicated would be eliminated from the permit.*

- Outfall 003 (Permit Table A-3) – Mercury and Cyanide, Free. *See* Exhibit A, Comments II.5.c and i. Permit page references are included with Table 1 below. These parameters and Outfalls are denoted by the shaded parameters in Table 1, below.
- Outfall 004 (Permit Table A-4) – Cyanide, Free. *See* Exhibit A, Comment II.7.c.

The continued inclusion of these parameters in the Permit is clearly erroneous.

III. *The final Permit contains inconsistencies between two of the dates for CWA Section 316(b)-related requirements that will make compliance difficult with unnecessary and redundant expense to Petitioner.*

- In the Permit, the Special Conditions require that, by January 1, 2012, PREPA submit a plan for the improvement of the fish return system. *See* Permit, Special Conditions, pps. 36, 37. *See* Exhibit A, Comment 1.d.
- Yet, seven months later, by July 1, 2012, the Permit requires PREPA to submit an evaluation of possible changes to the operation and maintenance of the intake structure that may lead to reductions to fish impingement mortality, including improving the effectiveness of the fish handling system. *See* Exhibit A, Comment 1.d.

The continued inclusion of these dates in the Permit is clearly erroneous and/or based on an exercise of discretion that the Board should review. The Parties have discussed reversing the noted compliance deadlines to address the unnecessary and redundant expense the current deadlines would cause Petitioner.

IV. *The Permit erroneously allows no time for APPC to come into compliance with significantly higher Dissolved Oxygen (DO) limits which were based on a reclassification of the receiving water.*

- Outfall 002 (Table A-2, page 9 of 53 pages). See Exhibit A, Comment III.4.c.
- Outfall 004 (Table A-4, page 16 of 53 pages). See Exhibit A, Comment III.7.d.

The failure to include time to allow APPC to comply with the significantly higher DO limits is clearly erroneous and/or based on an exercise of discretion that the Board should review. PREPA has estimated that it may take up to six months to install new equipment or take other action which will allow for consistent compliance.

V. *The permit arbitrarily and, in an abuse of discretion, places numeric limits, monitoring and other requirements on the parameters listed in Table 1 below, which had previously been included in the Permit due to their inclusion in a prior WQC but which had been removed from the currently effective WQC.*

The permit arbitrarily and, in an abuse of discretion, places numeric limits, monitoring and other requirements on the parameters listed in Table 1 below, which had previously been included in the Permit due to their inclusion in a prior WQC, but which had been removed from the currently effective WQC. PREPA contends that continued inclusion of these conditions after the change in the WQC is based upon both clearly erroneous conclusions of fact and law, and upon an exercise of EPA's discretion with respect to an important policy issue that should be reviewed by the EAB.

A. Background

The current version of the APPC NPDES permit, which became effective on March 1, 1992,² had numerous Water Quality Based Effluent Limits ("WQBELs") and related water quality protection provisions which were taken directly from an EQB-issued Water Quality

² Other provisions of this permit were modified in 1996 (with an effective date of April 1, 1996), however the underlying EQB-issued WQC was not modified at this time.

Certificate dated February 26, 1990³. Exhibit C which contains a copy of those pages of the current Permit which include the contested parameters listed in Table 1. Exhibit C also contains the page of the Permit with the notes to those contested parameters which clearly show that the basis of these limits were Puerto Rico Water Quality Standards that were in effect as of the 1991 and 1996 effective dates of this Permit, and hence derived from the then current WQC. Finally, Exhibit C contains the corresponding pages from the WQC in effect as of that permit's effective date.

**Table 1: Parameters Removed by EQB from the WQC
But That Were Included by EPA
in the Final Permit**

Outfall	Cadmium	Copper	Lead	Silver	Zinc	Mercury	Cyanide Free
001 (Table A-1^a)	X	X	X	X	X		
002 (Table A-2^b)	X		X	X			
003 (Table A-3^c)		X				X	X
004 (Table A-4^d)			X	X		X	X

Notes to Table 1

The shaded parameters are those parameters that the EPA prepared Fact Sheet and/or the Response to Comments indicated were being removed from the permit in their entirety.

^a Permit, pages 2 and 3 of 53 pages. See Exhibit A, comment II.1.(e)(f) and (i).

^b Permit, page 9 of 53 pages. See Exhibit A, comment II.4.(f)(g) and (h).

^c Permit, page 12 of 53 pages. See Exhibit A, comment II.5.(c)(h) and (i).

^d Permit, page 16 of 53 pages. See Exhibit A, comment II.(c)(h) and (j).

Due to changes in Puerto Rico Water Quality Standards and more recent monitoring data, the Commonwealth of Puerto Rico deleted the parameters listed in Table 1, above, in their entirety from the WQC on which the Permit is based. According to the English version of the

³ PREPA is checking its records to verify that the February 26, 1990 version of the Water Quality Certificate is the final version with respect to the 1991/1996 NPDES permit. It filed a petition for reconsideration of this WQC with EQ in 1990, but could not locate a revised WQC in its files in time to include it with this petition. Excerpts from the correct WQC will be included with the updated Petition and Brief if one is filed.

Puerto Rico Water Quality Standards (“PR WQS”) posted on EPA’s web site,⁴ the current version of the PR WQS was duly adopted in March 2003, and after several years of negotiation with EPA and the eventual adoption of an Antidegradation Policy which met EPA’s expectations, the PR WQS became effective on August 4, 2010.⁵

EPA’s Response to Comments document that accompanied the Final Permit identified EPA R2’s “*Antibacksliding Policy*” as the basis for determining that these identified parameters were required to be retained in the final Permit. The cited EPA R2 *Antibacksliding Policy*, in pertinent part, states:

Relaxation of Limits under 402(o)(2)

... For all discharges other than storm water, permit writers should consider whether the “new information” exception found in section 402(o)(2) can be applied. Specifically, the EQB reasonable potential analysis conducted in developing a new Water Quality Certificate and the associated background materials (i.e. NPDES application, DMR data) can be considered new information (subject to restrictions noted below. After determining that there is new information, when answering the question “Is compliance with Water Quality Standards assured?” *Permit writers may assume that the absence of a limited parameter in an EQB WQC constitutes a determination that a limit is not necessary and that the water quality standard is or will be attained.* The final determination left for the permit writer is compliance with antidegradation requirement (see below). Therefore, subject to antidegradation requirements, permit limits may be relaxed if a previously limited parameter is not included in a new EQB WQC.

...

Relaxation of Limits under 303(d)(4)

As noted above, the absence of a limited parameter in an EQB WQC constitutes a determination that a limit is not necessary to achieve water quality standards, and the 402(o)(2) new information exception may be applied. On the other hand, the application of a less stringent limit in a WQC generally does not allow the use of the new information exception in light of the

⁴ <http://water.epa.gov/scitech/swguidance/waterquality/standards/wqslibrary/upload/prwqs.pdf>.

⁵ http://water.epa.gov/scitech/swguidance/waterquality/standards/wqslibrary/pr_index.cfm.

special requirement in Section 402(o)(2) that revised waste load allocations must result in a net decrease of pollutants if such revised allocations are deemed to be new information. Therefore, if an EQB WQC contains a less stringent limitation, permit writers may evaluate whether the section 303(d)(4) exceptions would apply.

...

Antidegradation Requirements

...

Deletion of Effluent Limitations

For those cases where EQB has determined that a water quality-based limit is no longer necessary for a parameter and has deleted the parameter from the WQC, the permit writer can remove the limit without violating antidegradation requirements. The rationale would be that the permittee will be discharging the pollutant at the same level, therefore the discharge would not contribute to further degradation of the receiving water and existing uses would be maintained. When removing a limit from the permit, permit writers must include a special condition in the permit which requires the permittee to achieve the same level of treatment as in the previous permit. The special condition could include a one year monitoring requirement for the deleted parameters to ensure that the level of treatment previously achieved by the permittee is maintained.

Antibacksliding Policy, EPA Region 2, Robert F. Vaughn, Chief Water Permits and Compliance Branch, August 10, 1993, pps. 1-3 (emphases added). A copy of this policy was provided to PREPA at its request on November 10, 2010, by Karen O'Brien of EPA R2. A copy is included in Exhibit D.

Petitioner notes that, when EPA R2 chose to delete parameters that had been deleted from the 1990 WQC during the 1991 renewal of the current Permit, it stated in its Fact Sheet:

The water quality-based limitations in the existing permit for Total Coliform, Fecal Coliform, Sulfate, Cyanide, Total Phenols and Trivalent Chromium in outfall 001 based on the existing WQC, have been removed from the WQC issued by EQB. EPA has removed these limitations for the parameters mentioned above based on information in the Discharge Monitoring Reports and/or NPDES application which indicate that these parameters are not present in the discharge, or not present at

levels which would warrant controls. EPA has removed these limitations without violating anti-backsliding provisions of the CWA since the permit includes the following two special conditions:

- 1) EQB Special Condition #8 regarding toxic substances which prohibits the permittee from discharging these parameters in exceedance of those concentrations as specified by the applicable regulatory limitations.
- 2) Part I, EPA Condition B.5, additional reporting requirements which requires the permittee to notify EPA in the event the parameters are expected to exceed the notification levels established in the permit.

Undated EPA Fact Sheet accompanying the 1991 NPDES permit, Part III, pps. 1 and 2 of 8, copies included in Exhibit C.

Thus, when faced with this exact same situation in 1991, EPA explained in its Fact Sheet (*See Exhibit C*) that it could and did delete those parameters from the permit itself because two conditions were inserted into the permit to protect against degradation. These conditions (1) and 2) above) are still in the Final Permit. As shown in Exhibit B, the September 16, 2010 EQB-issued WQC again contains the 1) provision as Special Condition #3 (which is repeated in the Permit (at page 24 of 53) as Special Condition #3.) The Permit itself continues to contain the 2) condition, at Part I B.8 (on page 35 of 53). The reasoning which EPA R2 applied in 1991 to delete parameters from the permit which had been deleted from the WQC are just as valid today as they were then.

B. EPA Region 2 acted contrary to the CWA when it included parameters in the Permit limits and monitoring requirements that had been included in previous versions of this NPDES Permit solely due to water quality concerns but which had been deleted from the most recent WQC issued by EQB.

As demonstrated by the pages from the 1991 Aguirre NPDES permit and Fact Sheet included in Exhibit C, all of the parameters for each of the outfalls included in Table 1 were

taken directly from a prior EQB-issued WQC, and were based on cited Puerto Rico Water Quality Standards in effect at the relevant times of permit issuance or modification. For the reasons set forth below, continued inclusion of those parameters in the Permit after they have been deleted from the WQC violates the CWA.

1. Congress reserved primacy in the area of setting water quality standards and establishing requirements needed to achieve and maintain water quality to the States rather than EPA.

Section 101(b) of the CWA gives the primary responsibility to States (including Puerto Rico) on water quality matters:

It is the policy of the Congress to recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution, to plan the development and use (including restoration, preservation, and enhancement) of land and water resources, and to consult with the Administrator in the exercise of his authority under this Act.

33 U.S.C. § 1251(b). Hence, where EQB has decided that no WQBEL is necessary and, because of this, a parameter is not included in the applicable Water Quality Certificate, simple past compliance with WQBELs cannot be used to justify the imposition of the same or a lower limit on that parameter in a renewed Permit.

EQB, in its September 16, 2010 letter accompanying the final revised WQC, stated:

Pursuant to Section 401 (a) (1) of the Act, after due consideration of the applicable provisions established in the Puerto Rico Water Quality Standards Regulation (PRWQSR), as amended and in Sections 208(e), 301, 302, 303, 304(e), 306 and 307 of the Act, it is certified that there is reasonable assurance as determined by the Environmental Quality Board (EQB) that the alluded discharge will not cause violations to the applicable water quality standards at the receiving water body if the limitations and monitoring requirements in Tables A-1 , A-2, A-3, A-4, A-5, A-6 and A-7 are met.

Letter to Eng. Jaime A. Plaza Velazquez of PREPA signed by three EQB Board members, re: Water Quality Certificate Puerto Rico Electric Power Authority, Aguirre Power Complex State Road No. 3 Int. 705, Salinas, Puerto Rico NPDES NO. PR000IG60 (emphasis added). See Exhibit B.

2. 303(d) listing status of Jobos Bay

Jobos Bay, which is part of the PRSC41 (Punta Ola Grande to Punta Petrona) Coastal Assessment Unit has been listed as a CWA impaired water body since at least 2006 due to Fecal Coliforms. In the 2010 listing, pH, Low Dissolved Oxygen, Enterococcus and Turbidity-related impairments were added to the 303(d) list as causing impairment to Jobos Bay.⁶ The metals which are at issue here are not causing or contributing to any of the listed causes of impairment of Jobos Bay, hence there is no basis for EPA to question EQB's deletion of these parameters from the WQC.

3. More recent Antibacksliding/Antidegradation Guidance from EPA also allows parameter deletion

Even though the EPA R2 Antibacksliding guidance is nearly 20 years old, its interpretation of the Clean Water Act's prohibition against "backsliding" is consistent with EPA's more recent guidance on Antibacksliding. The Exhibit 10-1 Decision Tree in Section 10.3.1 of EPA's *NPDES Permit Writers' Manual* states that in cases, such as this one, where the State [EQB] has determined that the Puerto Rico Water Quality standards will continue to be attained without the inclusion of specific limits or requirements on the Table 1 metals, the elimination of the parameters from the NPDES permit is allowed as long as the revision is consistent with EPA's R2 Antidegradation Policy. This is essentially the same reasoning and logic that the EPA R2 Antibacksliding Guidance relies on. As quoted above, that guidance also includes the relevant Antidegradation policy which also allows parameter deletion when a parameter has been deleted from the Water Quality Certificate.

⁶ http://www.gobierno.pr/NR/rdonlyres/4D099761-12EF-4672-9F61-169D49DDB679/0/FinalDraft303_d_Listcycle2010CoastalShoreline.pdf.

C. EPA Region 2's inclusion of certain parameters in the Permit that were omitted from the EQB-issued WQC is an important policy consideration that the Board should, in its discretion, review.

While Petitioner maintains that EPA R2's inclusion of parameters in the Permit that were omitted from the EQB-issued WQC is based on a clearly erroneous conclusion of law (i.e., that EPA has the authority to continue to include them even after they are deleted from the WQC), in the alternative, the Board should exercise its discretion to review the important policy considerations that EPA R2's actions implicate with respect to this issue.

Without question Congress has reserved to the States and Puerto Rico the responsibility for setting water quality standards and establishing requirements needed to achieve and maintain water quality. *See supra* V(B)(1). By way of example, even this Board lacks jurisdiction to review permit conditions "attributable to state water quality certifications" because such permit conditions are the jurisdiction of the permitting state. *See In re Scituate Wastewater Treatment Plant*, 12 E.A.D. 708, 736-738 (EAB 2006). As such, EPA R2's decision to include parameters in the Permit that were explicitly omitted from the EQB-issued WQC usurped EQB's authority to set water quality standards for Puerto Rico and apply such standards to NPDES permits through conditions set forth in a WQC. EPA R2's decision to retain the conditions despite their deletion from the WQC, would set an important policy consideration which the Board should, in its discretion, review.

Further, although EPA R2 cited its own *Antibacksliding Policy* as the sole support for its decision to maintain parameters in the Permit that were taken out of the WQC by EQB, EPA R2 failed to follow the cited policy or explain why the agency was deviating from its own guidance document. *See supra* V(A). The manner in which EPA R2 applied its own guidance document with respect to this permit raises significant policy issues which warrant the Board's

review. At the very least, EPA R2's reliance on its *Antibacksliding Policy* either undermines the States' authority in an area that Congress has explicitly reserved to the States or improperly implements the agency's policy directives. Both of these issues raise significant policy concerns that the Board should, in its discretion, review.

D. Conclusion

Because the Clean Water Act specifically reserved to the States (including the Commonwealth of Puerto Rico) supremacy in most water quality-related decisions and because the only reason cited by EPA for not deleting the Table 1 parameters from the Permit is the EPA R2 Antibacksliding Policy, and further because that Policy would allow this deletion, EPA R2's actions with respect to these parameters are based on a clearly erroneous conclusion of law. The failure to delete these parameters from the Permit would be arbitrary and capricious. Moreover, EPA R2's reliance on its Antibacksliding Policy, and then subsequent failure to follow its own guidance, is an important policy consideration that the Boards should, in its discretion, review.

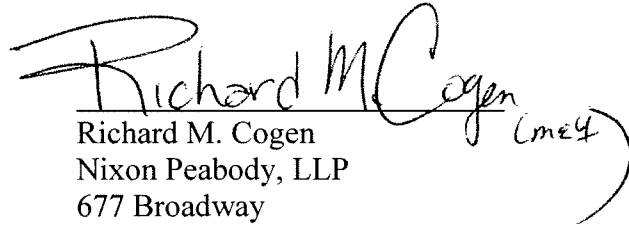
CONCLUSION

For the reasons set forth herein, PREPA requests the following relief:

1. If EPA R2 does not voluntarily withdraw those sections of the Permit containing missing parameter units and the missing notes listed above, the EAB should remand those related sections of the Permit listed in Exhibit E.
2. If EPA R2 does not voluntarily withdraw those sections of the Permit containing parameter limits, monitoring and other requirements which it had noted in the Fact Sheet and/or Response to Comments that it intended to delete from the Permit, the EAB should remand those related sections of the Permit listed in Exhibit E.
3. If EPA R2 does not voluntarily withdraw those sections of the Permit containing the inconsistent 316(b) provisions, the EAB should remand those related sections of the Permit listed in Exhibit E.
4. If EPA R2 does not voluntarily withdraw those sections of the Permit containing the new, higher minimum Dissolved Oxygen limits in Outfalls 001 through 004, the EAB should remand those related sections of the Permit listed in Exhibit E.

5. If EPA R2 does not voluntarily withdraw those sections of the Permit containing the Table 1 parameters limits, monitoring and other requirements, the EAB should remand those related sections of the Permit listed in Exhibit E.

Respectfully submitted,

A handwritten signature in black ink that reads "Richard M. Cogen" with a stylized flourish at the end that includes the letters "me4" in parentheses.

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LIST OF EXHIBITS

- A. Comments On The Draft APPC NPDES Permit Filed By PREPA
- B. September 16, 2010 Water Quality Certificate
- C. Excerpts From The Current APPC NPDES Permit, Related Water Quality Certificate Pages and Fact Sheet Pages
- D. EPA R2 Antibacksliding Policy
- E. Contested Conditions Provisions Of The New NPDES Permit Which Should Be Remanded