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

In re: ENERGY ANSWERS ARECIBO, LLC **ARECIBO PUERTO RICO** **RENEWABLE ENERGY PROJECT**	)	**PSD Nos. 13-05, 13-06, 13-07, 13-08 and 13-09**

BRIEF OF ENERGY ANSWERS ARECIBO, LLC IN RESPONSE TO PETITIONS FOR REVIEW

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INTRODUCTION AND BACKGROUND

The United States Environmental Protection Agency ("EPA"), Region 2 issued a Clean Air Act Prevention of Significant Deterioration ("PSD") Permit (the "Permit") to Energy Answers Arecibo, LLC ("Energy Answers") on June 11, 2013. Administrative Record ("A.R.") V.2. The Permit authorizes the construction of the Arecibo Puerto Rico Renewable Energy Project (the "Project") at the former site of the Global Fibers Paper Mill in Barrio Cambalache in Arecibo, Puerto Rico. Id., Enclosure II, at 1. The Project is designed to generate clean renewable energy primarily from residential, commercial, and non-hazardous light industrial municipal solid waste ("MSW") that would otherwise be landfilled. A.R. I.B.1.a, Prevention of Significant Deterioration Permit Application, February 8, 2011 ("Permit Application") at 1-1.

The Project is capable of producing 77 megawatts (MW) from two identical municipal waste combustors (spreader-stoker boilers). A.R. V.2, Permit, Enclosure II, at 1. The primary fuel to be combusted is refuse-derived fuel ("RDF"), which is shredded MSW that has been processed to remove most of the metal content from the waste. Id.; Permit, Section VIII.A.1, at 21. The total combined RDF process rate for the Project is 2,106 tons per day based on a 12 month rolling average. Id., Section VIII.A.1.d., at 22. The Permit also authorizes the Project to combust certain supplementary fuels, consisting of automotive-shredder residue ("ASR"), processed urban wood waste ("PUWW") and tire-derived fuel ("TDF"), each subject to tons per day limits in the Permit. Id., Section VIII.A.2., at 23-24. The Permit provides that supplementary fuels will only be combusted as part of a blend with RDF and only one supplementary fuel can be present in the RDF mixture at any one time. Id., Section VII.A.5, at 9-11.

The Permit requires Best Available Control Technology ("BACT") emission limits for nitrogen oxides ("NO_x"), carbon monoxide ("CO"), volatile organic compounds ("VOC"), sulfur

dioxide (SO_2), particulate matter ("PM" and "PM_{10}"), fine particulate matter ("$PM_{2.5}$"), fluorides (as hydrogen fluoride) ("HF"), sulfuric acid mist, municipal waste combustor organics (dioxins and furan), municipal waste combustor metals (measured as particulate matter), municipal waste acid gases (sulfur dioxide and hydrogen chloride) and greenhouse gases ("GHGs"). Id., Section VI.B, at 7; Enclosure II at 2. Air emissions from each municipal waste combustor will be controlled by the following: (i) turbosorp circulating dry scrubber system that uses lime injection to control SO_2 and other acid gases; (ii) activated carbon injection to control heavy metals, dioxins and furans; (iii) fabric filters to control particulate matter; and (iv) regenerative selective catalytic reduction to control NO_x and CO. Id., Section IX.A, at 28. Fabric filters are required for the ash handling system and the storage silos. Id., Section IX.B, at 29. GHGs will be minimized by operating the plant at a high efficiency level.

Energy Answers submitted the Permit Application to EPA on February 8, 2011. By letter dated November 21, 2011, EPA notified Energy Answers that the Permit Application was complete as of October 31, 2011. A.R. II.A.7. On May 9, 2012, EPA issued a preliminary determination to approve the PSD permit. A.R. V.2, Permit, Cover Letter at 1. The public comment period for the proposed permit was originally scheduled to last 45 days from publication of notice in a local newspaper, but EPA extended the comment period to August 31, 2012. Id.; A.R. IV.4, Fact Sheet For a Clean Air Act Prevention of Significant Deterioration of Air Quality Draft Permit ("Fact Sheet") at 23. Announcements related to the public comment periods(s) were in English and Spanish and facts sheets in English and Spanish were distributed to a significant number of interested parties. A.R.V.3, Response to Comments ("RTC") at 5. Six public hearing sessions were held in Spanish, with simultaneous English translation, between

June 25, 2012 and August 27, 2012. Id. EPA also held an informal public availability session on May 25, 2012 in Arecibo. Id.

Martha G. Quinones Dominguez filed a petition for review on July 12, 2013. Eliza Llenza and Christina Galan filed petitions for review on July 16, 2013. The Coalition of Organizations Against Incinerators (La Coalicion de Organizaciones Anti-Incineration) (the "Coalition") filed a petition for review on July 22, 2013. Finally, Aleida Centeno Rodriguez and Waldemar Natalio Flores Flores filed a petition for review that was docketed by the Environmental Appeals Board ("EAB" or the "Board") on July 23, 2012.

The petitions assert numerous objections to the Permit. However, in most cases the petitions do not identify where in the record an issue or critical fact that is claimed as a basis for remanding the Permit was presented to EPA during the public comment period and in many instances such issues and facts were not raised during said period. Consequently, the Board should reject such objections because they have not been preserved for review. Where issues were raised, the petitions rarely confront or even acknowledge EPA's responses to comments. The petitions frequently make objections that are flatly contradicted by the administrative record.

Putting aside whether the issues raised by the petitioners were preserved for review in this proceeding, none of their objections have any legal merit or identify clearly erroneous findings of fact with respect to the terms of the Permit or the underlying evaluation supporting EPA's decision to issue the Permit. A common theme is that the petitioners object to the fact that lead emissions from the Project are not regulated in the Permit, notwithstanding that EPA's long-standing regulations make clear that the PSD program does not regulate pollutants emitted in an area that is not meeting the National Ambient Air Quality Standards ("NAAQS") for that pollutant (the situation here with respect to lead). A related objection is the Coalition's claim that

the modeling of air quality impacts with respect to lead must be erroneous, notwithstanding that the Coalition fails to point to any errors in the conduct of the modeling. Another common theme is that EPA either did not provide to the public, or actively suppressed, relevant information. There is no basis to any of these objections.

As a result of the D.C. Circuit's recent judgment vacating the rule deferring the regulation of biogenic CO_2 emissions (*Center for Biological Diversity v. EPA*, No. 11-1101 (D.C. Cir. July 12, 2013)), the Coalition has requested that the Board exercise its discretion to remand the Permit. As set forth in our response, the GHG emissions from the Project are regulated in the Permit. Although the Permit was adjusted to exclude biogenic CO_2 emissions from the Permit's GHG limits, the initial BACT determination included all GHG emissions from the project and that analysis did not change after the Deferral Rule was promulgated. The Permit requires the facility to continuously monitor its total GHG emissions. The only effect of the Deferral Rule is that the Project is subject to a lower GHG emission limit than would have been the case had the Permit not been adjusted to exclude biogenic CO_2 emissions. The GHG emissions from the Project will be the same whether or not the Permit expressly factors in biogenic CO_2 emissions in the permit limits. For these and additional reasons set forth herein, the Board should not remand the Permit because of this decision.

Select excerpts from the Administrative Record have been attached for the Board's convenience.

STANDARD OF REVIEW

The EAB will not grant review of a PSD permit unless it is based on a finding of fact or conclusion of law that is clearly erroneous or raises an important policy matter or an exercise of discretion that warrants review. 40 C.F.R. § 124.19(a)(4)(i); *In re Russell City Energy Center, LLC*, PSD Appeal Nos. 10-01, 10-02, 10-03, 10-4 & 10-05 & 10-07, slip. op. at 13 (EAB

November 18, 2010), *aff'd sub nom. Chabot-Las Positas Community College District v. EPA*, No. 10-73870, 2012 U.S. App. LEXIS (9th Cir. May 4, 2012) . A petitioner must demonstrate, by citation to the administrative record and page number, that each issue raised in the petition for review that was reasonably ascertainable was raised during the comment period or explain why such comments were not raised during said period. 40 C.F.R. § 124.19(a)(4)(ii); 40 C.F.R. § 124.13. Otherwise, such issues will not be preserved for review. *In re Buena Vista Rancheria Wastewater Treatment Plant*, NPDES Appeal Nos. 10-05, 10-06, 10-07 & 10-13, slip. op. at 4 (EAB Sept. 6, 2011). "For each issue raised in a petition . . . the burden of demonstrating that review is warranted rests with the petitioner, who must raise objections to the permit and *explain why* the permit issuer's previous response to those objections is clearly erroneous or otherwise warrants review." *Russell City Energy*, slip. op. at 14 (omitting internal citations). Petitioner must not simply reiterate comments it made during the public comment period, "but must substantively confront the permit issuer's subsequent explanations." Id. (quoting *In re Peabody W. Coal Co.*, 12 .E.A.D. 22, 33 (EAB 2005)).

When a matter that is subject to review is technical or scientific in nature, the Board will generally defer to the expertise of the permitting authority, so long as the "record demonstrates that the [permitting authority] duly considered the issues raised in the comments and whether the approach ultimately adopted . . . is rational in light of all the information in the record." *Russell City Energy*, slip. op. at 15 (quoting *In re Gov't of D.C. Mun. Separate Sewer Sys.*, 10 E.A.D. 348 (EAB 2002)); *Buena Vista Rancheria*, slip. op. at 4 ("[t]hat burden is particularly heavy in cases where a petitioner seeks review of issues that are fundamentally technical or scientific in nature . . ."). Overall, "the Board's power of review 'should be sparingly exercised' and . . . 'most permit conditions should be finally determined at the permit issuer's level.'" *In re City of*

Palmdale, PSD Appeal No. 11-07, slip. op. at 8 (EAB Sept. 17, 2012) (quoting 45 Fed. Reg. 33,290, 33,412 (May 19, 1980) (quoting preamble to 40 C.F.R. § 124.19 (alteration in original))).

ARGUMENT

I. Petitioners Claims That The Public Was Not Notified That Lead Emissions Would Be Excluded From The Permit And That Lead Emissions Should Have Been Included Are Erroneous

In pages 1-4 of her petition, Ms. Llenza asserts that EPA did not notify the public that "NAAQS for Lead would not be enforced for the incinerator project" and that as a result, the public could not properly participate in the public hearings. We assume that Ms. Llenza's comment regarding the NAAQS is not that the NAAQS would not be enforced, but that it was error for EPA not to regulate lead emissions from the Project. The Coalition also argues that the Permit should have regulated lead emissions. Mr. Flores and Ms. Rodriguez assert on page 18 of their petition, without any legal support, that because there are emissions of lead from other sources in the area, Arecibo could not be the proposed site for the Project.

A. Public Notice Regarding Lead Emissions

The Fact Sheet accompanying the draft PSD Permit stated that the area where the Project was proposed to be located met "all National Ambient Air Quality Standards (NAAQS) promulgated to protect public health except for lead (Pb)." A.R. IV.4, Fact Sheet at 3. The Fact Sheet further stated that, although lead is a regulated pollutant, "it is not included in this permit because the applicant proposes to locate the source in a nonattainment area." Id. at 13. n.1. EPA specifically responded to a question posed during the public comment period regarding this footnote in the Response to Comments, pointing out that because the location of the proposed facility is not in attainment with the NAAQS for lead, lead would be included in the air permit to be issued by the Puerto Rico Environmental Quality Board ("PREQB"). A.R. V.3, RTC at 74-

75. Several comments relating to lead emissions were made during the public comment period that were addressed by EPA in the Response to Comments. See, e.g., id. at 50 and 56-58. It is simply false to assert that EPA failed to provide the public with notice that lead was not a pollutant regulated by the Permit.

B. Lead Emissions Are Not Subject to Regulation in the Permit

The Coalition asserts that because lead is a regulated new source review ("NSR") pollutant, the Project should be subject to BACT (and other unspecified PSD obligations) for lead. Coalition Petition at 10. The Coalition acknowledges that 40 C.F.R. § 52.21(i)(2) provides:

> [t]he requirements of paragraphs (j) through (r) of this section shall not apply to a major stationary source . . . with respect to a particular pollutant if the owner or operator demonstrates that, as to that pollutant, the source or modification is located in an area designated as nonattainment under Section 107 of the Act.

The Coalition's conclusion from this -- that this exemption only applies to paragraphs (j) through (r) and not the entire PSD program -- is frivolous. Subsections (j) through (r) are the substantive air pollution control provisions that apply to a source that is subject to PSD regulation. Paragraphs (j) through (r) cover the BACT review (40 C.F.R. § 52.21(j)); source impact analysis (40 C.F.R. § 52.21(k)); air quality analysis (40 C.F.R. § 52.21(m)); additional impact analysis (40 C.F.R. § 52.21(o)); additional requirements for sources impacting Federal Class I areas (40 C.F.R. § 52.21(p)); and public participation (40 C.F.R. § 52.21(q)). "Although a single geographic area may be designated as attainment or unclassifiable for one or more of the six criteria pollutants and as nonattainment for the others, the PSD permitting requirements will only apply to attainment/unclassifiable pollutants in that geographic area." *Russell City Energy*, slip. op. at 119.

The Coalition does not expressly argue that the Board should find that 40 C.F.R. § 52.21(i)(2) is contrary to the Clean Air Act, although that is an implication of its petition. The Coalition does not mention that this exemption was originally promulgated by EPA in 1980 and that the 1980 PSD regulation revisions were promulgated in response to the D.C. Circuit's decision in *Alabama Power v. Costle*, 636 F.2d 323 (D.C. Cir 1979). See 45 Fed. Reg. 52,676 (August 7, 1980). EPA concluded at that time that "implicit in *Alabama Power* and the structure of the Act is a recognition that where nonattainment pollutants are emitted in major amounts . . . Part D NSR rather than Part C PSD review should apply to these pollutants . . . . PSD review does not apply to the nonattainment pollutants emitted by the source otherwise subject to review." Id. at 52,711.

A challenge to EPA's PSD regulations on this issue is not timely. 42 U.S.C. § 7607(b)(1) (petitions for review of promulgation of a Clean Air Act regulation must be filed within 60 days of the date that notice of such regulation is published in the Federal Register or if the grounds for such petition "arise solely" after such period, within 60 days after such grounds arise). The Coalition's petition does not make any claim that its right to challenge this regulation arose at any time after August 7, 1980. Even if the Coalition were to argue that such a challenge is timely, as it has with respect to an aspect of EPA's nonattainment new source review regulations (see below), the Board will not hear such a challenge absent exceptional circumstances. Exclusive jurisdiction to hear challenges to "any nationally applicable regulations promulgated by . . . the Administrator" under the authority of the Clean Air Act must be filed in the United States Court of Appeals for the District of Columbia. Id.; *Massachusetts, et al. v. EPA*, 415 F.3d 50, 53 (D.C. Cir. 2005), *rev'd and remanded on other grounds*, 549 U.S. 497, 127 S. Ct. 1438 (2007). The Board, while taking the position that Section 307(b) does not provide an "absolute"

prohibition against the Board entertaining challenges to the validity of final Clean Air Act regulations, "has refused to review final agency regulations that are attacked because of their substantive content or alleged invalidity, both in the exercise of the Board's permit review authority and in the enforcement context." *In re Woodkiln, Inc.*, 7 E.A.D. 254, 269 (EAB 1997). The Board "only will entertain a challenge to a regulation subject to a preclusive judicial review provision in 'exceptional circumstances' ." *In re Sierra Pacific Industries*, PSD Appeal Nos. 13-01, 13-02, 13-03 & 13-04, slip. op. at 30 (EAB July 18, 2013). "The only circumstances identified by the Board to date as possibly meriting the extraordinary step of entertaining a challenge to a regulation precluded from judicial review is if the regulation precluded from judicial review 'has been effectively invalidated by a court but has yet to be formally repealed by the Agency.'" Id. (quoting *In re USGen New England, Inc. Brayton Point Station*, 11 E.A.D. 525, 557 (EAB 2004)).

For the reasons set forth above, the Board should deny review based on the claim that lead emissions should have been regulated in the Permit pursuant to EPA's PSD regulations.

II. The Coalition Has Not Demonstrated That Review Of The Permit Should Be Granted With Respect To EPA's Analysis Of The Ambient Impact Of Lead Emissions From The Project

A. Modeling of Lead Emissions Is Not Required for the Permit

There is no legal basis to accept a petition for review of the Permit based on the air quality modeling of lead emissions. Because the Project is to be located in an area that does not meet the NAAQS for lead, lead is not a pollutant subject to the substantive provisions of the PSD regulations. 40 C.F.R. § 52.21(i)(2). This exemption includes the source impact analysis requirement set forth in 40 C.F.R. § 52.21(k) and the air quality analysis set forth in 40 C.F.R. § 52.21(m). Even if challenges to the air quality modeling of lead emission had been preserved or there was any basis to the Coalition's contention that the modeling results are in error, this is of

no legal consequence with respect to the Permit. See *Russell City Energy*, slip. op. at 126 (petitioner's challenge to permitting authority's 24-hour $PM_{2.5}$ ambient air quality analysis was rendered moot when location of the proposed source was designated nonattainment for that pollutant).

B. The Coalition's Argument that the Modeling of Ambient Air Quality Impacts From Lead Emissions Was Flawed Should Be Rejected Because It Was Not Preserved For Review and Because the Coalition Fails to Demonstrate that Such Modeling Is Clearly Erroneous

Although air quality modeling for lead was not required for this Permit, Energy Answers modeled its "maximum potential emissions of lead using AERMOD and the methodology described in the approved protocol." A.R. I.A.10.a, PSD Air Quality Modeling Analysis (Revised $PM_{10}/PM_{2.5}$ Analysis), Revision Submitted October 2011 ("PSD Air Quality Modeling Analysis") at 46. The results of the analysis "indicate that the maximum predicted concentration of lead is 0.00056 ug/m3, which is below the 0.15 ug/m3 NAAQS (3-month average)." Id. at 47.

The Coalition asserts, without demonstrating what error was committed, that the modeling must be flawed because according to the Coalition, the air emissions from the Project (maximum potential emissions of 0.31 tons per year) will be greater than the air emissions from the Battery Recycling Company (a lead smelter). Coalition Petition at 17. The Coalition draws its conclusions as to the air emissions from the Battery Recycling Company's toxic release inventory submissions, although the Coalition does not indicate whether this information was submitted during the public comment period. Id. at 14-15 and Exhibit 9. The Coalition concludes that if the Battery Recycling Company (located 388 meters from the ambient air quality monitoring location) "caused and or contributed to the violating monitor" (Coalition Exhibit 9 at 7), then how could EPA determine that lead emissions from the Project are as low as reported?

The Coalition, however, does not argue that EPA failed to respond to this claim in the Response to Comments, because it cannot. Simply, this argument was not made during the public comment period. In fact, the Coalition does not point to any information submitted during the public comment period that questions either the protocols used to model lead emissions, the inputs used for the modeling or the results of the modeling. The requirement "'that a petitioner raise issues during the public comment period 'is not an arbitrary hurdle, placed in the path of potential petitioners simply to make the process of review more difficult; rather it serves an important function related to the efficiency and integrity of the overall administrative scheme.'" *Sierra Pacific Industries*, slip. op. at 58 (internal citations omitted). The failure to present factual allegations "cannot be cured by including them in a petition for review." Id. at 51 n.33. Thus, the Coalition's assertion that the air quality modeling with respect to lead emissions is somehow flawed has not been preserved for review in this appeal and should be rejected.

Moreover, the Coalition's petition fails to point to any actual error made with respect to the modeling. "Air quality modeling is 'technical in nature ' requiring "'specialized expertise and experience'" for which petitioner bears a particularly heavy burden to demonstrate clear error." *In re Cape Wind Associates, LLC*, OCS Appeal No. 11-01, slip op. at 13 (EAB May 20, 2011) (internal citations omitted); *In re Northern Michigan University Ripley Heating Plant*, PSD Appeal No. 08-02, slip. op. at 52-53 (EAB, Feb. 18, 2009) (with respect to questions pertaining to the appropriate pollutant emissions rates and other inputs to air quality models, "the Board has a well-established body of case law articulating deference in such circumstances, absent some strong evidentiary showing or argument by the petitioner that the permit issuer clearly erred in its technical analysis"). The information provided by the Coalition in its petition (but not during the comment period) alleging that the modeling "must" be erroneous based on a simplistic

comparison of the Battery Recycling Company's self-reported TRI air emissions and the Project's potential air emissions cannot possibly be considered a sufficient evidentiary showing that EPA clearly erred in its technical analysis with respect to the inputs and outputs of a complex air model.

In light of the substantial deference shown to EPA with respect to its judgments on a technical issue such as air quality modeling and the limited and indirect evidence offered by the Coalition in its petition, the Board should reject the Coalition's argument because it has not demonstrated that EPA's conclusions with respect to the modeling of lead emissions were clearly erroneous.

III. EPA Did Not Fail To Consider The Environmental Justice Implications Associated With Siting The Project In A Lead Nonattainment Area

The Coalition asserts that environmental justice concerns were not adequately addressed. The only specific alleged "error" that forms the basis for this argument is that Energy Answers provided a map showing the location of those facilities in the Arecibo are that are TRI-reporting facilities and that this "was not sufficient to address environmental justice concerns."[1] Coalition Petition at 19. The Coalition's argument is without merit because it fails to recognize the extensive environmental justice review that was conducted in connection with the Permit. See A.R. I.A.10.b, Environmental Justice Evaluation, October 2011. The October 2011 report was prepared "to consolidate EJ information and provide supplementary information with respect to the potential environmental and health burden on low-income communities in the Arecibo area surrounding the proposed facility." Id. at 1. The environmental justice analysis was conducted in accordance with Region 2's Interim Environmental Justice Policy. Id. at 1-3. Although not

[1] Moreover, with respect to the specific issue of air toxics, EPA included in the Response to Comments a specific review of the Arecibo area based on the 2005 National Scale Air Toxics Assessment published in 2011. A.R. V.3, RTC at 109-110. The Coalition does not address this in its petition.

required in connection with a PSD permit application, Energy Answers also prepared the Human Health Risk Assessment ("HHRA") for the Renewable Energy Power Plant located in Arecibo (October 2010, A.R. I.B.9.a) and the Screening Level Ecological Risk Assessment ("SLERA") for the Arecibo Renewable Energy Project to be located in Arecibo (October 2010, A.R. I.B.10.a) to further evaluate the human health risks and ecological risks associated with its proposed operations. The findings of these studies were updated in the Environmental Justice Evaluation.

The Coalition's discussion of particular health concerns in the area related to lead nonattainment and to the alleged disproportionate incurrence of asthma suffered by residents of Puerto Rico and in Arecibo does not demonstrate error or inadequacy in the environmental justice evaluation. The Coalition's petition makes apparent that the cause of adverse health impacts in the area due to lead is a result of The Battery Recycling Company facility. Coalition Petition at 19-20. With respect to asthma, even if one assumes that the information cited by the Coalition represents a statistically significant demonstration of the relative incidence of asthma in Puerto Rico, generally, and Arecibo, specifically, the Coalition does not provide any information suggesting that this increased incidence is a result of communities in Arecibo or Puerto Rico suffering from the impact of a disproportionate burden of man-made environmental pollution. Nor does it provide any legal authority for the proposition that EPA or a permit applicant, in the context of an environmental justice evaluation in connection with the issuance of a permit, bears the burden of conducting such a wide-ranging investigation of public health matters.

The cumulative impacts that would result from the Project are addressed through the evaluation of the air quality impacts of the project. The air quality modeling conducted in

connection with the Project demonstrated that the Project would not cause or contribute to a violation of primary or secondary NAAQS for any air pollutant subject to PSD review or the 24-hour or annual PSD increments. A.R. I.A.10.a, PSD Air Quality Modeling Analysis at 19-47. Even though lead is not a pollutant regulated in the Permit, the results of air quality modeling for lead demonstrated that the maximum projected impact would be more than 200 times below the 2008 lead NAAQS. A.R.V.3, RTC at 108.

The Board's practice, "in the context of PSD permit appeals, [is to] uphold a permit issuer's environmental justice analysis based on a proposed facility's compliance with the relevant NAAQS." *In re MHA Nation Clean Fuels Refinery*, NPDES Appeal Nos. 11-02, 11-03, 11-04 & 12-03, slip. op. at 30 n.59 (EAB June 28, 2012). "NAAQS are standards designed to protect public health, including the health of 'sensitive' populations such as asthmatics, children, and the elderly . . . with an adequate margin of safety, and to protect public welfare, including protection against visibility impairment and damage to animals, crops, vegetation and buildings." Id. at 30. As a result, "in the context of an environmental justice analysis, compliance with the NAAQS is emblematic of achieving a level of public health protection that, based on the level of protection afforded by a primary NAAQS, demonstrates that minority or low-income populations will not experience disproportionately high and adverse human health or environmental effects due to exposure to relevant criteria pollutants." Id. at 30 n.59 (quoting *In re Shell Gulf of Mexico,* OCS Appeal Nos. 10-01 through 10-04, slip. op. at 73-74 (EAB Dec. 30, 2010)).

Not only has the Coalition failed to demonstrate that there was clear error with respect to the performance of the environmental justice evaluation or that EPA's judgments with respect to the environmental justice evaluation are unsupported by the record, the fact that air quality modeling demonstrates that the Project will not cause or contribute to an exceedance of any of

the primary or secondary NAAQS is sufficient evidence to demonstrate that the Project will not cause disproportionate harm to any environmental justice community.

IV. The Board Does Not Have Jurisdiction In This Proceeding To Review The Coalition's Request That The Board Strike EPA's Regulations Relating To The Applicability Of Nonattainment New Source Review

The Coalition spends a considerable number of pages arguing that the Board should exercise its discretion to remand the Permit, not because there is an error with respect to the Permit, but because Region 2 either misinterpreted EPA's regulations relating to the State Implementation Plan (SIP) requirements for nonattainment new source review ("NNSR") or because those regulations are contrary to Sections 172 and 173 of the Clean Air Act with respect to the applicability of NNSR. The Coalition argues that this must be corrected because state permitting agencies look to EPA for guidance and EPA's interpretation will, it speculates, "be granted particular weight and influence in Puerto Rico." Coalition Petition at 33.

The Board should not exercise its discretion to order a remand in connection with an interpretation of law that, as the Coalition concedes, has no bearing on the Permit itself. Moreover, to the extent that the petition is a challenge to the legality of 40 C.F.R. § 51.165(a)(2), the Board does not have jurisdiction to hear such a challenge.

A. NNSR Review in Puerto Rico Is Under the Jurisdiction of the Puerto Rico Environmental Quality Board Pursuant to Puerto Rico Law

As the Coalition notes, Puerto Rico has an approved SIP with respect to NNSR. Coalition Petition at 21-22; 62 Fed. Reg. 3,213 (Jan. 22, 1997) (EPA approval of Puerto Rico air regulations). The relevant regulation for purposes of determining what requirements will apply to a source that proposes to emit a pollutant in an area that is not meeting the NAAQS is the Regulation for the Control of Atmospheric Pollution of the Commonwealth of Puerto Rico, Rule 102 (definitions), Rule 201 (location approval), Rule 202 (air quality impact analysis) and Rule

203 (permit to construct a source). The Coalition also concedes that the permitting authority in this respect will be PREQB. Coalition Petition at 21-22.

The Coalition has not asked the Board to exercise its discretion to interpret Puerto Rico air regulations. The Coalition's request that the Board weigh in on the interpretation and/or validity of *EPA's* regulations should be denied since, as the Coalition itself recognizes, the relevant regulations are those issued and to be applied by PREQB. See *In re Seminole Electric Cooperative, Inc.*, PSD Appeal No. 08-09 (EAB Sept. 22, 2009) (holding that the Board did not have jurisdiction to hear an appeal of a PSD permit issued by Florida because Florida had an approved PSD program).

B. There Is No Basis for the Board to Rule on a Challenge to a 30-Year Old EPA Regulation

At one point, the Coalition suggests that the issue is not the EPA regulation set forth at 40 C.F.R. § 51.165(a)(2)(i), but EPA's "policy interpretation" of that regulation. Coalition Petition at 25-27. The Coalition's argument on this point is wholly unpersuasive. 40 C.F.R. § 51.165(a) sets forth the requirements that SIPs must meet to implement the Part D NNSR permit requirements. 40 C.F.R. § 51.165(a)(2)(i) provides that "such a program shall apply to any new major stationary source or major modification that is major for the pollutant for which the area is designated nonattainment under section 107(d)(1)(A)(i) of the Act, if the stationary source or modification would locate anywhere in the designated nonattainment area" (emphasis added). See also 44 Fed. Reg. 51,924, 51,941 (Sept. 5, 1979) (Proposed Rules for Requirements for Preparation, Adoption and Submittal of SIPs) ("[n]onattainment review applicability again requires that the nonattainment pollutant be potentially emitted in major amounts"). The Coalition argues that this merely reflects that some pollutants in some jurisdictions are subject to a major source threshold that is lower than 100 tons per year, but does not explain how it is that

the phrase "major for the pollutant for which the area is designated nonattainment" actually means "major for any pollutant." If the question posed to the Board by the Coalition is whether EPA's "policy interpretation" of 40 C.F.R. § 51.165(a)(2)(i) is correct, the answer is "yes."

Alternatively, the Coalition is seeking to have the Board declare, in an administrative appeal reviewing a PSD permit, that 40 C.F.R. § 51.165(a)(2)(i) is an unlawful interpretation of Sections 172 and 173 of the Clean Air Act. The regulation that the Coalition seeks to challenge, more than 30 years after its promulgation, is a nationally applicable regulation. Energy Answers does not believe that the Board has jurisdiction to consider a challenge to this regulation in a permit appeal and in any event, it is the Board's consistent practice not to consider the validity of EPA regulations in this context. See pp. 8-9, *supra*.

The Coalition cites *Coalition for Responsible Regulation, Inc. v EPA*, 684 F.3d 102, 129-130 (D.C. Cir 2012) to assert that its challenge to the validity of 40 C.F.R. § 51.165(a)(2)(i) is timely, because its claim was not ripe until the Permit was issued – even though the Permit is a PSD permit and not an NNSR permit. Coalition Petition at 31. Notice of the final promulgation of the EPA SIP regulation that the Coalition is challenging was published on May 13, 1980. 45 Fed. Reg. 31,307. Those rules established the minimum standards that states (including Puerto Rico) have to meet to comply with the NNSR permitting requirements set forth in the Clean Air Act. Any person who believed that EPA's regulations would allow states to issue construction permits to emissions sources in a nonattainment area for any pollutant not meeting its NAAQS, in violation of the Clean Air Act, would have had standing to challenge EPA's regulation at that time.[2] To suggest otherwise would allow any person to bring suit challenging EPA's 30- year old

[2] For example, among the many parties to challenge the PSD regulations promulgated by EPA after the 1977 Clean Air Amendments (including the application of the PSD rules to sources in nonattainment areas) were environmental petitioners such as the Sierra Club and the Environmental Defense Fund. See *Alabama Power v. Costle*, 636 F.2d 323 (D.C. Cir. 1979).

SIP regulation whenever the area in which he or she lives is designated as a nonattainment area, including with respect to an original criteria pollutant such as lead. Alternatively, the members of the Coalition could have challenged EPA's 1997 approval of the Puerto Rico SIP that included its NNSR permitting regulations if they believed that the Puerto Rico SIP was not authorized by EPA regulations or the Clean Air Act. 62 Fed. Reg. 3,213 (Jan. 22, 1997).

Nonetheless, as set forth above, the Board does not have to determine when the Coalition's claim with respect to the regulation of new sources emitting nonattainment pollutants in a nonattainment area became ripe because the Board is not the proper forum to hear a challenge to EPA's regulations or Puerto Rico's regulations.

V. *Center for Biological Diversity* Does Not Compel The Board To Remand The Permit And Remand Is Not Warranted

On July 20, 2011, EPA issued a rule that deferred the regulation of CO_2 emissions from bioenergy and other biogenic sources under the PSD and Title V permit programs for a period of 3 years while it conducted "a detailed examination of the science associated with biogenic emissions from stationary sources." 76 Fed. Reg. 43,490, 43,492 (July 20, 2011) (the "Deferral Rule"). On July 12, 2013, the D.C. Circuit held that the Deferral Rule could not be justified based on the administrative law rationales invoked by EPA and accordingly vacated the rule. *Center for Biological Diversity v. EPA*, No. 11-1101 (D.C. Cir. July 12, 2013). The D.C. Circuit stated that the whether EPA could permanently exempt biogenic carbon dioxide emissions was a question left for "another day." Id., slip. op. at 18-19.

Energy Answers agrees with the Coalition that "on administrative review, the Agency has the discretion to remand permit conditions for reconsideration in light of legal requirements that change before the permit become final agency action." *In re Dominion Energy Brayton Point, LLC*, 12 E.A.D. 490, 615 (EAB 2006) (quoting *In re J&L Specialty Products Corp.*, 5 E.A.D. 31,

66 (EAB 1994)). There are several reasons why the Board should not remand the Permit for reconsideration. First, as a general proposition, EPA decisions have held that "although matters contested in a [permitting proceeding] do not become final for purposes of judicial review until the Administrator has acted on an appeal, the Administrator's review of the original action taken by the [permit issuer] should be based on the standards and guidelines in existence at the time the original action was taken, and thus, to that extent, finality must be accorded the original action taken." *Russell City Energy*, slip. op. at 110 (quoting *In re U.S. Pipe & Foundry Co.*, NPDES Appeal No. 75-4, quoted in *Alabama ex rel. Baxley v. EPA*, 557 F.2d 1101, 1108 (5th Cir. 1977)).

In *Russell City Energy*, the Board considered whether the new one-hour primary NO_2 NAAQS that was issued on February 9, 2010, and would go into effect on April 12, 2010, should be applied to a final permit issued by the permitting authority on February 3, 2010. Among the reasons the Board decided to exercise its discretion not to require a remand of the permit to consider the new NAAQS were that the permitting authority had spent "several years and significant resources . . . considering the permit application in light of the existing rules and standards. The other participants have likewise spent significant time and resources in participating, commenting and/or addressing various permit-related issues." *Russell City Energy*, slip op. at 112. The Board also recognized that if the permit was remanded to reconsider the NAAQS, "it is possible that another standard may be issued during the remand period, which would delay the permit proceedings even further and result in an endless loop of permit issuances, appeals and remands." Id. at 198. All of the factors discussed in Russel City Energy apply to the Permit, including the potential for significant delay while EPA and other interested parties respond to the *Center for Biological Diversity* decision.

Second, the Coalition's contention that biogenic CO_2 emissions were excluded from the PSD review is not accurate. On June 2, 2011, Energy Answers responded to EPA's comments on the Permit Application. A.R. I.B.2.a. In that response, Energy Answers prepared a BACT analysis with respect to the Project's GHG emissions. Id. at 42-68. The BACT analysis followed EPA's top-down methodology and other applicable EPA Guidance, including the "Guidance for Determining Best Available Control Technology for Reducing Carbon Dioxide Emissions from Bioenergy Production, March 2011." Id. at 49-50. Although the BACT analysis recognized the distinct issues associated with GHG emissions from MSW, the analysis of the options to reduce GHG emissions associated with MSW was not premised on a distinction between biogenic and non-biogenic GHG emissions. Id. at 49-68. The analysis included a conservative estimate of the total GHG emissions from the combustion of MSW and supplementary fuels for the project. Id. at 47-49. The conclusion of the control technology review was that BACT with respect to the total GHG emissions associated with the combustion of MSW and supplementary fuels for the Project is a robust program to recycle as much material as possible before waste arrives at the facility; burning MSW to generate electricity; and maximizing energy efficiency. Id. at 68.[3] The GHG BACT analysis was updated in a submission to EPA in September 2011 that addressed GHG emissions from units other than the MSW combustors. A.R. I.B.3.a, Additional Information on the PSD Air Permit Application ("September 2011 Additional Information"). The discussion in this report takes into consideration the July 2011 Deferral Rule. Id., September 2011 Additional Information at 18-22 and Appendix B. However, the result of the control technology analysis is the same, namely that BACT is still burning MSW to generate electricity and maximizing combustion efficiency. Id. at Appendix B, p. 27.

[3] EPA later determined that recycling was not BACT for GHG emissions because any recycled materials would be replaced in the combustor. A.R. I.B.3.a, September 2011 Additional Information at 19.

The Permit includes the selected BACT for GHG emissions. As a result of the Deferral Rule, the Permit emission limit for GHGs from the municipal waste combustors excludes biogenic CO_2 emissions. A.R. V.2, Permit, Section X.A.14, at 35-36. However, the continuous emissions monitors ("CEMs") for the Project will monitor and report total CO_2 emissions. Id. at Section XII.1.c, at 45. The Project is also required to conduct quarterly testing for biogenic CO_2 emissions in accordance with ASTM standards specified in the Permit. Id. at XI.A.11.c.i and XI.B.1.l. Compliance with the GHG emission limit from the MSW combustors will be determined, in part, by subtracting the biogenic CO_2 emissions determined by the quarterly tests from the monitored total CO_2 emissions. The only effect of the Deferral Rule is that the Project is subject to a lower GHG emission limit than would have been the case had the Permit emission limit for GHGs included biogenic CO_2 emissions. The GHG emissions from the Project will be the same whether or not the Permit expressly factors in biogenic CO_2 emissions in the permit limits. The Project has not avoided regulation of its GHG emissions as a result of the Deferral Rule.

As the Board has recognized, the D.C. Circuit's judgment in *Center for Biological Diversity* will not become final and effective until the Court issues a mandate. *Sierra Pacific Industries*, slip op. at 66. To our knowledge, EPA is considering its response to the Court's decision and how it will proceed as a result. Moreover, the substantive issue of whether and how biogenic CO_2 emissions will be regulated in Clean Air Act permits was not decided by the D.C. Circuit in this case and is still an open question. Given (1) this uncertainty, (2) the time (more than three years) and effort that has been expended with respect to the permitting of the Project, (3) the fact that the Permit's GHG BACT analysis is based on the project's total GHG emissions (including biogenic CO_2 emissions) and (4) the need for an orderly process and finality with

respect to the issuance of environmental permits, the Board should decline to remand the Permit due to the judgment in *Center for Biological Diversity*.

VI. A Materials Balance Analysis Is Not Required For A PSD Permit

The Coalition argues that a full materials balance is necessary for a PSD permit in order to "fully determine future air emissions and confirm the accuracy of the company's calculations." Coalition Petition at 36. This is a red herring. A full materials balance is neither necessary nor particularly useful in identifying the PSD-regulated air pollutants that will be emitted from the Project's municipal waste combustors. As noted by EPA in the Response to Comments, "not all products of combustion of MSW are included in the PSD permit, as these products of combustion are not required to be part of the PSD Permit." A.R. V.3, RTC at 49.

The methodology for identifying and establishing the emission limits for the regulated pollutants that will be emitted from municipal waste combustors is set forth in Section 3.1.1. of the Permit Application. Maximum potential emissions were calculated using the proposed BACT emission limits set forth in Section 5 of the Permit Application. A.R. I.B.1.a, Permit Application at 3-1. The BACT emission levels were guaranteed by the manufacturers of the equipment and the air pollution control devices. Id. "Emissions representing a short-term maximum (110%) firing rate; a typical sustained (100%) firing rate; and a short term minimum (80%) firing rate were calculated and provided in Table 2 of Appendix A (which provides the detailed calculations of the emissions for the Project)." Id. The BACT analysis and emissions calculations were further refined in subsequent responses to EPA's comments on the Permit Application. See A.R. I.B.3.a, September 2011 Additional Information. The emissions of the pollutants regulated by the Permit must comply with the emission limits in the Permit. These emissions will be controlled by a variety of air pollution control devices and operating practices and monitored through various mechanisms, including performance tests, continuous emissions

monitoring, recordkeeping and reporting. A "materials balance" is not necessary to determine the future regulated emissions from the Project.

The limited usefulness of a materials balance can be seen from the Coalition's petition itself. The Coalition stated that if one only focuses on MSW as an input fuel, there is an inadequately explained discrepancy of 103,630 tons per year, comparing the input (768,690 tons per year of MSW) and the identified outputs -- the annual air emission limits of the regulated PSD pollutants (468,388 tons) and ash (192,172 tons). Coalition Petition at 35-36. The Coalition states that "EPA suggests that the remaining 103,630 tpy of RDF would consist of "water vapors resulting from hydrogen, and from moisture and the non-biogenic CO_2 which are not included in . . . EA's permit." Id. (citing to A.R. V.3, RTC at 49) (the reference to "non-biogenic" CO_2 should actually be "biogenic" CO_2).

However, what EPA actually said was that these unregulated air emissions would account for 42% of the total products of combustion, which is far greater than 103,690 tons per year. Id. The Permit Application projects the amount of moisture in the flue gas to be 74,083 lb/hr per combustor unit (typical case), which would result in moisture emissions of approximately 648,967 tons per year. A.R. I.B.1.a, Permit Application at Appendix A, Table 2. The amount of biogenic CO_2 emissions from the Project is estimated at 587,000 tons per year. A.R.I.B.3.a, September 2011 Additional Information at Appendix B, Table 3.2.4 at 21. The total emissions of moisture and biogenic CO_2 emissions far exceeds the total MSW input, reflecting that the "inputs" to the combustion process include oxygen and moisture from the atmosphere.

A materials balance analysis for a complex system such as a MSW combustor might be an interesting intellectual exercise, but it is not necessary for understanding the emissions of the pollutants regulated in a PSD permit. The evaluation of the nature and extent of air emissions is

a scientific and technical question as to which the Board will defer to EPA so long as "the approach ultimately adopted . . . is rational in light of all the information in the record." *Russell City Energy*, slip. op. at 15. The Coalition has not demonstrated a clear error in a finding of fact or conclusion of law with respect to EPA's evaluation of the air emissions from the Project.

VII. Petitioner Dominguez Failed To Demonstrate Error With Respect To The Meteorological Data Or The Inputs Included In The Air Quality Modeling

Ms. Dominguez asserts that EPA improperly allowed the use of meteorological data from the Puerto Rico Energy Power Authority ("PREPA") in Cambalache Barrio (located approximately 1.6 kilometers from the proposed Project) from August 1992 to August 1993, rather than more recent data (from 2010-2012) available from a meteorological station maintained by the National Oceanographic and Aeronautical Administration ("NOAA") at the Arecibo Port, about 2.5 kilometers from the Project's stack. Dominguez Petition at 6. Ms. Dominguez attached to her petition a wind rose generated by Ivan Elias, dated 08/07/2013, based on data purportedly obtained from the NOAA meteorological station. According to Ms. Dominguez, the wind rose generated by Mr. Elias demonstrated that the wind velocity and direction that would be expected in the area of the Project was different than the information presented in the Permit Application and because it was more recent, it was error to not use these data in the modeling. Id. In addition, Ms. Dominguez asserts that there was no evidence in the administrative record that Energy Answers included as inputs the vertical and horizontal profile of turbulence when modeling complex terrain.

A. EPA's Conclusions Regarding the Spatial and Temporal Representativeness of the Meteorological Data Are Supported by the Record

In the Response to Comments, EPA explained that the meteorological data used in the air quality modeling were both temporally and spatially representative of conditions at the Project site. EPA stated that during the modeling protocol stage, data from the PREPA Cambalache

station and the San Juan airport were examined. Because Cambalache is more rural than San Juan and because of the geographic differences between Cambalache and San Juan, EPA concluded it was more appropriate to use data from the nearby Cambalache station than San Juan. A.R. V.3, RTC at 87; A.R. II.A.2, Letter from Steven Riva, EPA to Kevin Scott, Arcadis, August 31, 2010, at 1.

EPA also concluded that the data from 1992-1993 were temporally representative because it "found that the Caribbean is subject to little variability from one year to the next. The Caribbean is noted for its persistent weather patterns over time. Puerto Rico is located in the trade winds which blow predominantly from the north easterly/easterly direction." A.R. V.3, RTC at 87. EPA further pointed out that it and Energy Answers reviewed year to year data for the San Juan location for the 2005-2009 period and concluded that "the five years are similar to each other which show that there is little temporal variability in Puerto Rico." Id.; see also A.R. I.A.2.a, PSD Air Quality Monitoring Protocol, Revision Submitted April 2010, at 12-14 (evaluation of spatial and temporal representativeness). EPA added that the examination of meteorological data at other sites in the Caribbean also showed little variability over year and time. A.R. V.3, RTC at 87-88. Ms. Dominguez's petition does not address EPA's Response to Comments on this issue. *Buena Vista Rancheria*, slip. op. at 4 (petitioner must explain why the Region's response to objections was clearly erroneous or otherwise warrants review).

B. Ms. Dominguez Has Not Demonstrated that Data from the Arecibo Port NOAA Meteorological Station, Including the Wind Rose Attached to Her Petition, Were Included in the Administrative Record

Ms. Dominguez relies on a wind rose generated by Ivan Elias based on data purportedly obtained from a meteorological station maintained by NOAA at the Arecibo Port. Dominguez Petition at 5-6 and Exhibits 1 and 2. The wind rose attached to Ms. Dominguez' petition appears to have been prepared in July 2013, more than 10 months after the close of the public comment

period. Ms. Dominguez does not demonstrate, as she is required to do, that this information was submitted to EPA during the public comment period. 40 C.F.R. § 124.19(a)(4)(ii). Because the information attached as exhibits to Ms. Dominguez' petition was not submitted during the public comment period, EPA was not in a position to evaluate this information and consider whether this comment has merit. As a result, the Board should deny review based on a claim that EPA had erred in not using these data. The failure to present factual allegations "cannot be cured by including them in a petition for review." *Sierra Pacific Industries*, slip. op. at 51 n.33.

C. The Assertion That the Failure to Use Inputs of Vertical and Horizontal Profile of Turbulence When Modeling Complex Terrain Has Not Been Preserved for Review and Is Incorrect

Ms. Dominguez has failed to point out where in the administrative record either she or any other person commented on the alleged failure to use vertical and horizontal turbulence parameters in connection with the air quality modeling. Dominguez Petition at 6. This issue has not been preserved for review in connection with a challenge to the Permit.

In fact, contrary to her assertion, the data from the PREPA Cambalache meteorological station that were obtained and used in connection with the air quality modeling included, *inter alia*, "sigma theta" (an indication of variability of wind speed) and "sigma phi" (an indication of variability of vertical wind direction). A.R. I.A.3.a, PSD Air Quality Modeling Protocol, Revision Submitted May 2011, at 9. These parameters are used to model turbulence effects. The Response to Comments, while not addressing this specific point, noted that specific information on the terrain and topography of the Arecibo area were inputs to the AERMOD modeling. See A.R. V.3, RTC at 91-93.

VIII. Ms. Dominguez' Claims That Energy Answers Failed To Evaluate Fugitive Emissions In Connection With The Off-Site Disposal Of Ash Or The Operation Off Cooling Water Intake Pumps Are Without Merit

A. The Disposal Location Of Ash Generated from the Project Is Not Part of the "Site" Subject to PSD Review

Ms. Dominguez asserts that fugitive emissions associated with the disposal of ash generated by the Project at an off-site location must be addressed in the Permit because the disposal location is part of the "site" subject to PSD review. Dominguez Petition at 7-8. Ms. Dominguez objects that comments about this could not be raised during the public comment period because Energy Answers did not provide information with respect to such fugitive emissions. Contrary to her claim, EPA did respond to comments regarding the disposal of ash. As set forth in the Response to Comments, "[t]he ash disposal, ash beneficial use and ash sampling are not implemented through a PSD permit. As stated in the draft PSD permit, these requirements should be addressed by appropriate permits issued under the authority of the PR EQB." A.R. V.3, RTC at 80.

Ms. Dominguez' argument that locations where ash will be disposed should be considered part of the "site" is based on 40 C.F.R. § 124.2(a), which provides that "*site* means the land or water area where any "facility or activity" is physically located or conducted, including adjacent land used in connection with the facility or activity." Dominguez Petition at 6-7. However, 40 C.F.R. § 124.2(a) specifically states that "PSD permits are governed by the definitions in 40 C.F.R. § 124.41." For PSD permits, the term *site* "means the land or water area upon which a *major PSD stationary source* or *major PSD modification* is physically located or conducted," including adjacent land used by the major PSD stationary source for support activities. 40 C.F.R. § 124.41.

The PSD regulations apply to the construction of a new major "stationary source" located in an area designated as attainment or unclassifiable pursuant to Section 107 of the Clean Air Act. 40 C.F.R. § 52.21(a)(2). A "[s]tationary source means any building, structure, facility or installation which emits or may emit a regulated NSR pollutant." 40 C.F.R. § 52.21(b)(5). The phrase "[b]uilding, structure, facility or installation means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one more contiguous or adjacent properties, and are under the control of the same person (or persons under common control)." 40 C.F.R. § 52.21(b)(6). A non-adjacent facility used for the disposal of ash that is neither owned nor operated by Energy Answers or affiliates of Energy Answers is not part of the Project stationary source subject to PSD review. The definition of "site" in 40 C.F.R. § 124.41 does not expand the definition of the stationary source subject to PSD review. The Permit does not address fugitive emissions associated with the locations where ash is disposed because these disposal locations are not where the Project is physically located.

To be clear, the Permit imposes pollution control obligations with respect to the ash handling system and also addresses fugitive emissions at the Project itself. See A.R. V.2, Permit, Sections VI.B., at 7 (limits for fugitive particulate emissions); VII.B., at 13 (ash handling system design requirements); VII.G, at 19 (control requirements for fugitive emissions); IX.B., at 29 (pollution control requirements for ash handling systems); X.B., at 36 (BACT limits for ash handling system); and X.F., at 38-39 (BACT limits for fugitive emissions). See also A.R. V.3, RTC at 35 (responding to comments on fugitive emissions), 46 (responding to comments on the ash handling system), and 80 (discussing Permit requirements relating to the ash handling system).

B. There Are No Fugitive Emissions from the Cooling Water Pumps

Ms. Dominguez' assertion that the fugitive emissions associated with the operation of cooling water intake pumps were not described in the Permit Application documents provides no valid basis for challenging the Permit.[4] Dominguez Petition at 8. Fugitive emissions from the cooling water pumps are not described because these pumps are electric and as a result there are no air emissions associated with the operation of the pumps. Moreover, Ms. Dominguez or other commenters could have commented on the absence of information related to such alleged emissions, but did not. Ms. Dominguez has not identified in the administrative record where this issue was raised and therefore this issue has not been preserved for review.

IX. Ms. Dominguez' Assertion That No Documents In The Administrative Record Addressed Health Impacts Is Incorrect

Ms. Dominguez asserts that there are "no documents in the administrative record" that addressed the impacts of the Project's air emissions on the health and welfare of the public. Dominguez Petition at 7. This is erroneous. Multiple documents were included in the administrative record with respect to the potential health and ecological impacts of the proposed Project, including: (1) the HHRA, A.R. I.B.9.a; (2) the SLERA, A.R. I.B.10.a; (3) Permit Application, Sections 6 (Ambient Air Impact Analysis) and 7 (Additional Impacts Analysis), A.R. I.B.1.a; and (4) the Environmental Justice Evaluation, A.R. I.A.10.b. See also A.R. V.3, RTC at 110-124 (responding to comments related to the health and ecological risk assessments). The HHRA was conducted in accordance with EPA risk assessment guidance and polices, and the conclusion was that the Project "does not pose a concern for human health." A.R. I.B.9.a, HHRA at ES-1, 71.

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[4] The cooling water pumps will be located at the El Vigia Pump Station, not the Janiales Pump Station as Ms. Dominguez erroneously asserts.

X. Ms. Dominguez' Assertion That Energy Answers Did Not Evaluate Ecological Impacts On The Rio Abajo Forest Or Cano Tiburones Is Incorrect

Ms. Dominguez asserts that the Permit Application did not evaluate impacts on the Puerto Rico Parrot Recovery program because the SLERA did not address impacts to the Rio Abajo Forest. Dominguez Petition at 9. Ms. Dominguez further asserts that the Permit Application did not address the health and ecological impacts on species on Cano Tiburones, a natural reserve protected by the Puerto Rican government. Id. Ms. Dominguez' argument is again contrary to the record. In the Response to Comments, EPA specifically responded to comments concerning ecological impacts from the Project, including with respect to receptors such as the Puerto Rican Parrot and species found in Cano Tiburones. A.R. V.3, RTC at 116-117. EPA pointed out that the SLERA evaluated "potential adverse effects to ecological receptors . . . which potentially could be found in habitat areas . . . and upland forested harbitat . . . within 10 km radius of the project." Id. The ecologically sensitive areas identified and evaluated in the SLERA included, inter alia, the Rio Abajo Forest and the Reserve Natural Cano Tiburones. Id. at n.51. The SLERA concluded that the estimated concentrations of contaminants of potential ecological concern in the ecologically sensitive areas were well below the ecological-based screening levels, which are "meant to be protective of these species of animals and plants" and therefore the Project did not pose a risk to these species or habitats. Id.

Ms. Dominguez petition does not mention or address EPA's response to comments with respect to the evaluation of impacts on these ecological areas and a review of her petition based on these assertions should be denied as a result.

XI. Response To Other Claims Set Forth In Ms. Llenza's Petition

Ms. Llenza's primary objection to the Permit is that because the proposed location of the Project does not meet the NAAQS for lead, the Permit must include emissions limits for lead.

As discussed, *supra*, at 7-9 and as addressed in EPA's Response to Comments, EPA's PSD regulations do not apply to a pollutant emitted by a PSD source in an area that does not meet the NAAQS for that pollutant. See A.R. V.3, RTC at 74-75 (explaining that lead will be addressed in the air permit issued by PREQB). The rest of Ms. Llenza's petition is comprised of unsupported assertions of bias, suppression of information or unfairness in the process. However, the underlying support or evidence for these claims goes back to her legally incorrect assertion that the Permit does not, but should, regulate lead emissions. Nothing in Ms. Llenza's petition provides a basis to remand the Permit.

On page 5 of her petition, Ms. Llenza claims that EPA acted in derogation of its responsibility to protect public health when it published a document entitled "Waste to Energy, A Possibility for Puerto Rico" in May 2007. Ms. Llenza further identifies a 2008 CERCLA Consent Order entered into by the City of Jacksonville and EPA, which presumably required the City to excavate incineration ash from residential properties, schools and parks and to dispose of the excavated ash to an appropriate landfill. On pages 6 and 7 of her petition, Ms. Llenza stated that EPA official Steven Riva acted as a proponent of the project, failed to provide relevant information and purportedly denied that incinerator ash was toxic.

Ms. Llenza has not cogently explained how any of these assertions demonstrates that the Permit was based on clearly erroneous findings of fact or conclusions of law, or raised an important policy matter, that warrants the Board granting her petition. Ms. Llenza does not address the extensive administrative record detailing how the Permit complies with the requirements of EPA's PSD regulations.

With respect to Ms. Llenza's claim of bias, EPA stated although no specific examples were provided to illustrate that EPA had acted subjectively, EPA explained that the Region's

processing of the application was "consistent with the PSD permitting process used across Regional Offices under the applicable procedures in 40 C.F.R. Part 124." A.R. V.3, RTC at 71. EPA stated that its purpose in requesting additional information from the permit applicant "is to ensure that the air quality will be protected and that applicant has proposed the most stringent control technology appropriate under EPA's top down BACT approach." Id. EPA further noted that it "examined all of the information provided by [Energy Answers]" and that the permit decision "was based on EPA's own analysis of [Energy Answers'] information and EPA's own technical expertise." Id.

On page 7 of her petition, Ms. Llenza claims that "Energy Answers Arecibo was given ample opportunity to collect information and to analyze documents," but the community was not allowed to assess meaningful data. The first part of her claim is merely a reflection of the fact that the Project is a complex project and that Energy Answers had to bear the substantial cost and effort to provide the information required of a PSD permit applicant to demonstrate that the Project will comply with the stringent regulations governing such applications. As to the second part of her claim, EPA noted in the Response to Comments that "[a]ll information received and which we based our PSD permitting decision was made available in the administrative record for the draft PSD permit." A.R. V.3, RTC at 71.

Ms. Llenza does not specify the "meaningful data" related to the Permit Application that were not provided for the review of the community, although later in her petition, she objects that the files provided for public review in connection with the issued final permit were incomplete, because not all of the documents that are part of the Administrative Record are posted on the Inter American University website. Llenza Petition at 9. Ms. Llenza also claims that the documents in the record are in New York, but only a "selection" of documents were

posted in Puerto Rico. Id. at 10. This is incorrect. The cover letter to the Permit states that the complete Administrative Record can be reviewed in person either at Region 2's office in New York or at Region 2's office in Guaynabo, Puerto Rico. A.R. V.2, Permit, Cover Letter at 2.

On page 8 of her petition, Ms. Llenza claims that the fact that the Permit Application did not include limits for lead and "diverts ash throughout the island" discriminated against Puerto Ricans because of their national origin. Ms. Llenza's claims with respect to lead are addressed above. With respect to the "diversion of ash," EPA explained in the Response to Comments that "[t]he PSD permit concerns the air emissions resulting from the proposed project, and health effect from those emissions." A.R. V.3, RTC at 80. EPA further explained that ash disposal is not implemented through a PSD permit and that "[a]s stated in the draft PSD permit, these requirements should be addressed by appropriate permits issued under the authority of the PR EQB." Id. Ms. Llenza does not explain, as she is required to do, why this response is clearly in error and a basis for remanding the Permit.

On page 8 of her petition, Ms. Llenza also asserts that because Puerto Rico is a disadvantaged community, environmental justice requires efforts to allow said communities to have full and meaningful access to the permitting process. Although not discussed by Ms. Llenza in her petition, Region 2 has been diligent in implementing Executive Order 12898 and EPA's environmental justice policy in connection with the Permit Application. The Response to Comments details EPA's public outreach to the local community. A.R. V.3, RTC at 5, 66-67 and 105-106; see also pp. 2-3, *supra*. The Fact Sheet, published in Spanish before the public comment period (which extended to almost 120 days), provided "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. Notice of the final permit

decision was provided in Spanish and the Response to Public Comments was also translated into Spanish. See http://www.epa.gov/region02/air/permit/energyanswers. Ms. Llenza also does not identify any errors or even discuss the Environmental Justice Evaluation prepared in connection with this application.

Ms. Llenza also claims that because Puerto Rico is disadvantaged, the Permit should "address environmental justice issues" and that she believes that such measures as "an aggressive campaign in favor of recycling, reusing, reducing and composting" would be less discriminatory alternatives to the Permit. Llenza Petition at 8. In the Response to Comments, EPA indicated its support for recycling programs in Puerto Rico, but also stated that it believed that "the development and implementation of waste management plans, including recycling programs . . . are best made by the local government and state government(s) . . . and not by EPA through this permitting action." A.R. V.3, RTC at 54. With respect to the Project, EPA pointed out that there are no provisions in the Permit that "would prevent strong recycling programs" and that EPA had added a new requirement to the Permit that clarified the conditions under which Energy Answers could accept MSW in a manner consistent with the municipal recycling obligations under Puerto Rico law. Id. at 55. Ms. Llenza's petition does not discuss EPA's response to comments nor explain why EPA's determinations relating to the scope of the Permit with respect to recycling and alternative waste management are clearly erroneous.

XII. Response to Other Claims Set Forth In The Flores/Rodriguez Petition

Mr. Flores and Ms. Rodriguez' petition does not demonstrate that the Permit and its terms are the result of a clearly erroneous finding of fact or conclusion of law or reflect an important policy matter as to which the Board should exercise its discretion and grant review. The petition makes a number of allegations, but frequently does not explain how or why these allegations relate to the Permit under review. Moreover, where the petition touches upon issues that were

addressed by EPA in the Response to Comments, the petition either does not acknowledge that EPA has addressed the issue in the Response to Comments or does not explain why the response does not adequately address the issue. *Russell City Energy*, slip. op. at 14 (petitioner must "substantively confront" the permit issuer's subsequent explanations).

A. EPA's Alleged "Failure" to Require PREQB to Have an "Adequate Legal Structure" Is Irrelevant

On pages 1-4 and 6-8 of their petition, Mr. Flores and Ms. Rodriguez make a variety of difficult-to-follow claims relating to the supposed inadequacy of PREQB with respect to monitoring and regulating emissions sources and EPA's alleged failure to require PREQB to correct these deficiencies. The gist of these claims *might be* that because of these alleged inadequacies, the data necessary for EPA to evaluate the Permit Application and issue the Permit were lacking. At least that is what we believe is being argued. The Board would be entitled to deny review simply because the petition fails "to clearly identify the issue being raised and to provide some supportable reason as to why review is warranted." *In re Knauf Fiber Glass, GmbH*, 9 E.A.D. 1, 6 (EAB 2000). Moreover, the petition does not identify where in the administrative record these claims were made and accordingly, to the extent that there is an actual allegation of error here, the issue has not been preserved for review.

The petition's primary support for this argument is EPA's findings that 28 states, the District of Columbia and Puerto Rico have not made complete SIP submissions to address basic program elements necessary to implement the 2008 8-hour ozone NAAQS. Flores/Rodriguez Petition at 1-2. In these findings, EPA pointed out that

> many states would have developed and made timely infrastructure SIP submissions . . . but for the uncertainty of the submission date requirement as a result of EPA's efforts to reconsider that NAAQS, the EPA's associated interim advice to states regarding implementation of those NAAQS and the lack of guidance from the EPA regarding what such infrastructure submissions should include. The EPA believes that many states in fact have SIPs in place that meet

> all or many of the basic program elements . . . as a result of their earlier SIP submissions in connection with previous ozone NAAQS and NAAQS for other pollutants.

78 Fed. Reg. 2,882, 2884 (Jan. 15, 2013). The January 15, 2013 SIP findings is not a finding that the data necessary to evaluate the Permit Application were lacking.

To the extent that Mr. Flores and Ms. Rodriguez are asserting, without support, that alleged PREQB inadequacies are a basis for remanding the Permit, EPA pointed out in the Response to Comments that "EPA is the primary authority for PSD permits in Puerto Rico and will enforce EA's PSD permit conditions. Any concerns regarding PR EQB's ability to protect public health and welfare and the environment is beyond the scope of this permit action." A.R. V.3, RTC at 72. See also *In re EcoElectrica, L.P.*, 7 E.A.D. 56, 70 (EAB 1997) (the "Board's role . . . is to examine specific permit conditions that are claimed to be erroneous, not to address generalized concerns directed towards the enforcement capabilities" of EPA or other agencies).

B. The Air Quality Modeling Included Relevant Sources of Air Emissions

In several places in their petition, the petitioners allege that relevant information regarding air emissions was not "in the file of this permit." Flores/Rodriguez Petition at 4. The petition specifically discusses the Safetech Corporation Carolina biomedical incinerator; the Battery Recycling Company; Safety Kleen in Manati; and Merck, Sharpe and Dohme in Manati. Id. at 4-6 and 17. The petitioners also allege that EPA failed in its duty to include and "incorporate" TRI reports for a number of facilities in the Permit and therefore the "real emissions" are unknown for Arecibo and the public's right to know the ambient air quality was denied. Id. at 13-17.

Assuming *arguendo* that this is a claim about whether existing sources of emissions were taken into consideration with respect to the air quality modeling, EPA stated that ["e]missions from existing facilities were considered in the multi-source modeling analysis, which was

performed for the 1 hour NO_2, 1 hour SO_2 and 24 hour and annual average $PM_{2.5}$ NAAQS. The list and figure of existing sources that was included in the multisource modeling analysis are found in Appendix D of the October 2011 PSD Air Quality Modeling Analysis (revised)." A.R. V.3, RTC at 96. Appendix D of the PSD Air Quality Modeling Analysis includes a list of 34 facilities that were included in the cumulative impact analysis, including all of the specific facilities identified above other than the Safety Kleen facility. A.R. I.A.10.a, at Appendix D. The petitioners do not identify where in the administrative record any person raised as an issue the failure to include the Safety Kleen site as a specific source to be included in the air quality modeling and accordingly, this issue is not preserved for review. The procedure for identifying the specific sources to be considered in the cumulative impact analysis is described on page 27 of the PSD Air Quality Modeling Analysis. A.R. I.A.10.a. Minor emission sources that are outside of the modeled significant impact area are not specifically included in the cumulative impact analysis. Id. Energy Answers worked with Region 2 and PREQB to identify the sources to be included in the analysis. Id. Although not in the record, this would be the reason Safety Kleen is not one of the sources of emissions specifically included in the cumulative impact analysis.

With respect to petitioners claim regarding TRI information, Energy Answers looked at facilities in the Arecibo area as part of the environmental justice evaluation, but the air emissions information in TRI reports (reporting in gross ranges for certain listed toxic chemicals) is not the type of information used in an air quality modeling analysis. See 40 C.F.R. Part 51, Appendix W, Tables 8-1 and 8-2 (describing model inputs). In response to a question on unspecified air toxics that purportedly came from TRI reports for the Arecibo area, EPA further noted that "PSD, in general, address[es] air pollutants, other than toxics." A.R. V.3, RTC at 51-52.

C. EPA Explained Why Obtaining Ozone Air Quality Data from a Monitor in Catano Was Technically Justified and Arecibo Is Not a Federal Class I Area

On page 9 of their petition, Mr. Flores and Ms. Rodriguez assert that ozone monitoring data should have been collected from Arecibo rather than the existing monitor in Catano, but do not explain why EPA's response to this comment is in error. EPA's guidance for ambient monitoring for PSD "allows the use of monitors in other geographical areas provided they are representative." A.R. V.3, RTC at 94. EPA approved Energy Answers' request to use the preexisting monitors in Catano, Barceloneta and San Juan because the sites are located in more industrial areas than Arecibo and "represent a conservative estimate." Id.

The petition also declares that because of nature reserves in the Arecibo area, the area should be considered a "Class I" area for purposes of the PSD permit. Flores/Rodriguez Petition at 9. The petitioners have not preserved this issue for review. Further, there is no Federal Class I area in Puerto Rico. See 40 C.F.R. Part 81, Subpart D.

D. Petitioners Point to Certain Responses to Comments Relating to Permit Terms, But Do Not Explain With Specificity Why Region 2's Decisions Are Erroneous

On pages 10 and 11 of their petition, Mr. Flores and Ms. Rodriguez discuss certain EPA responses relating to certain permit terms, but in general, do not explain why EPA's responses or the permit terms are clearly erroneous. Petitioners repeat a complaint that there should be 8 inspections per day of the ammonia storage tank in order to know sooner if there is a leak from the tank. EPA in fact modified this condition to require inspections 3 times a day (including 1 inspection during night time) and that this in combination with the other requirements in the Permit related to the ammonia storage tank (double walled, unpressurized tank with a vapor recovery and return system) "are adequate measures for preventing and detecting ammonia emissions." A.R. V.3, RTC at 9. Petitioners also pointed out that Energy Answers is obligated

to ensure that the concentration of the aqueous ammonia solution is 19% by volume, but do not allege any error with respect to the relevant permit condition. Flores/Rodriguez Petition at 10.

Mr. Flores and Ms. Rodriguez allege that the Permit does not establish limits to supplementary fuels (id. at 10-11), but this is false. The Permit contains limits on the amount of supplementary fuels that can be burned per day; operating practices related to the combustion of supplementary fuels (must be combined with RDF and only one supplementary fuel can be combusted with RDF at a time); limits on the heat input to the boilers; and air emissions limits that are subject to the monitoring, recordkeeping and reporting requirements of the Permit. A.R. V.2, Permit, Sections VII.A.5 at 9-10, VIII.A.2 at 22-24 and VIII.A.3 at 24-25. Mr. Flores and Ms. Rodriguez also assert that fugitive ash emissions are excluded, but their assertion is baseless and fails to acknowledge the Permit terms relating to the ash handling systems and fugitive emissions. See p. 28, *supra*.

The Flores/Rodriguez petition includes a comment regarding inspections of parking lots and roadways, but does not specify any errors with the conditions in the Permit relating to such inspections. Flores/Rodriguez Petition at 11.

The Flores/Rodriguez petition asserts that Energy Answers should be required to verify the sulfur in fuel limit and that the Permit condition that establishes compliance with the sulfur in fuel limit based on a supplier certification for each fuel oil or propane delivery is in "error." Id. at 11. The petition does not provide any explanation as to why this is an error.

E. Petitioners' Assertions Relating to Dioxins/Furans and Requirements of a QS, QAPP and QMT Do Not Identify Any Clear Errors of Fact or Law

On pages 11-13 of their petition, Mr. Flores and Ms. Rodriguez make various statements regarding dioxins/furans, the disposal of incinerator ash, the emissions of pollutants that are not

regulated by the Permit and quality assurance protocols. None of these statements identify any clear errors of fact or law with respect to the Permit.

On page 11, the petitioners state that "EPA erred not requiring that documents submitted by EA comply with the requirement of a QS, QAPP and QMT and to confound a 'protocol' with a QAPP." We do not understand petitioners' argument. Nonetheless, in the RTC, EPA noted that performance tests to be conducted by Energy Answers and continuous monitoring systems to be employed at the Project are subject to EPA-approved methods that included quality assurance and quality control measures and that recordkeeping and reporting under the Permit have to comply with relevant provisions of 40 C.F.R. Part 60. A.R. V.3, RTC at 13.

Petitioners assert that EPA erred by requiring performance tests for dioxin/furans only once per year and *appear* to be saying that continuous monitoring should be used (although this is not absolutely clear). Flores/Rodriguez Petition at 11-12. The petitioners do not address EPA's response to comments on this issue. EPA pointed out that: (1) it had increased the frequency of sampling to quarterly; (2) it does not have performance standards for continuous monitoring systems for dioxin/furans for stationary sources such as the Project; and (3) the emission monitoring requirements for dioxin/furans in the Permit are "consistent with EPA's regulations and guidance and have been successfully employed by other PSD municipal solid waste combustion facilities." A.R. V.3, RTC at 24, 32.

On page 12 of their petition, Mr. Flores and Ms. Rodriguez appear to demand that EPA "prove beyond a reasonable doubt" that the disposal of incinerator ash containing dioxins and furans will not eventually require a CERCLA remediation action somewhere. The petition does not substantively address EPA's response that the disposal of ash is not a subject of a PSD permit

but is the subject of appropriate permits issued by PREQB. A.R. V.3, RTC at 80; see also pp. 27, *supra*.

Finally, on pages 12-13 of their petition, Mr. Flores and Ms. Rodriguez assert that EPA's statement on page 27 of the RTC that some of the air pollutants from the Project are not PSD regulated pollutants is an "admission" that hazards are being imposed on Arecibo "without any QS, QAPP or QMT." The petition does not explain why EPA's conclusion that certain pollutants are not subject to the Permit is erroneous and nor do they acknowledge that these air pollutants will be addressed by the air permit to be issued by PREQB. A.R. V.3, RTC at 27.

XIII. Ms. Galan's Petition Does Not Specify Any Findings Of Fact Or Conclusions Of Law That Are Clearly Erroneous

Ms. Galan's petition makes certain observations relating to the Project, but does not assert that there are any findings of fact or conclusions of law in connection with the Permit that are clearly erroneous.

Ms. Galan first states that she is concerned that existing air quality has not been taken into account in connection with the Permit. Galan Petition at 1. In fact, air quality modeling was undertaken in connection with the Permit, which modeling, pursuant to EPA regulations and guidance, considered existing air quality. See A.R. V.3, RTC at 81-104; A.R. I.A.10.a, PSD Air Quality Modeling Analysis; pp. 36-37, *supra*.

Ms. Galan observes that there is variation in the composition of MSW and that there is "no real knowledge of the real composition of the waste that will be burned." Galan Petition at 1. As noted by EPA, information relating to the composition of MSW can be found in the Permit Application. A.R. V.3, RTC at 52; A.R. I.B.1.a, Permit Application at 2-5 – 2-7. The Permit requires Energy Answers to employ the best engineering and work practices to remove identifiable wastes that do not qualify as MSW prior to shredding; remove, to the maximum

extent possible, the metal component from the MSW stream; and prevent large quantities of easily discernible yard wastes from being charged to the combustors. A.R. V.2, Permit, Section VIII.A.1.c, at 22. EPA also reviewed Energy Answers' Materials Separation Plan and determined that the plan satisfied the requirements of 40 C.F.R. § 60.57b, although EPA noted that this requirement is outside the scope of the Permit. A.R. V.3, RTC at 55. The Materials Separation Plan, which was included in the administrative record for review, requires Energy Answers to monitor all loads of waste that are deposited on the tipping floor to separate "unacceptable materials," which includes a long list of materials (including human wastes) that "may present a substantial endangerment to health or safety." A.R. I.B.8, Final Materials Separation Plan at 4-20; A.R. I.B.1.a, Permit Application at 2-5. Moreover, Ms. Galan's comment ignores that air emissions from the Project will be subject to stringent emission limits, substantial pollution controls and an array of performance testing, monitoring, recordkeeping and reporting requirements.

Finally, Ms. Galan observes, without pointing to any evidence in the administrative record, that incinerators are prone to various types of system failures and breakdowns that result in serious air pollution control problems. Galan Petition at 2. Ms. Galan claims that this has not been addressed in the Permit. Id. To the contrary, the Permit requires Energy Answers to use best operating practices to minimize emissions, including during periods of startup, shutdown and malfunction; to maintain records of the duration of malfunction events; and to report malfunction events within 24 hours with a follow-up letter that discusses the event, the excess emissions from the event, and the actions taken to correct the problem. A.R. V.2, Permit, Sections IX. at 28; XIV.1.d, at 51; and XV.4 and XV.5 at 54. The Permit does not provide any exemptions from the permitted emission limits during malfunction or upset events. A.R. V.3,

RTC at 31. In short, contrary to Ms. Galan's observation, the Permit does address malfunctions. Ms. Galan has not alleged that the provisions in the Permit are in error.

CONCLUSION

For the reasons set forth above, Energy Answers respectfully requests that the Board deny review of Region 2's Permit for the Project.

Dated: August 12, 2013

Respectfully Submitted

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CERTIFICATE OF COMPLIANCE WITH WORD COUNT LIMITATION

Pursuant to 40 C.F.R. § 124.19(d)(3), I hereby certify that the Brief of Energy Answers Arecibo, LLC in Response to the Petitions for Review contains 13,919 words, as calculated using Microsoft Word software.

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CERTIFICATE OF SERVICE

I hereby certify that on August 12, 2013, a true and correct copy of the foregoing BRIEF OF ENERGY ANSWERS ARECIBO, LLC, IN RESPONSE TO THE PETITIONS FOR REVIEW was served, by first class mail, on:

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