



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C., 20460

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

October 7, 2022

VIA ELECTRONIC MAIL

Emilio Colón-Zavala, PE
Chairman
Puerto Rico Business Emergency Operations Center
Urb. San Francisco, 113 Ave. Jose de Diego
San Juan, Puerto Rico 00927

RE: Grant of Request for No Action Assurance by the Puerto Rico Business Emergency Operations Center for Potential Clean Air Act Violations Resulting from Hurricane Fiona and Related Recovery Efforts

Dear Mr. Emilio Colón-Zavala:

This letter is in response to your September 27 and 28, 2022 requests (together, the “Request”), on behalf of the Puerto Rico Business Emergency Operations Center (BEOC) for a no action assurance (NAA) regarding the use of emergency generators by federally regulated entities in Puerto Rico following Hurricane Fiona. The U.S. Environmental Protection Agency grants the Request, subject to the conditions specified below.

On September 18, 2022, Hurricane Fiona, a Category One storm, made landfall on Puerto Rico. Since that time, Puerto Rico has experienced blackouts, catastrophic flooding, and landslides throughout the Commonwealth. The aftermath of the storm initially left the entire Commonwealth without power. EPA was informed that, as of September 29, 2022, around 20% of residents lacked power and about 10% lacked access to potable water. As of October 7, 2022, EPA understands that at least 3% of residents remain without power and at least 1% are without access to potable water. EPA also understands that Puerto Rico is currently using 285 emergency generators to operate drinking water utilities. In addition, EPA’s understanding, based on information provided by the Puerto Rico Electric Power Authority (PREPA) and LUMA Energy (LUMA) as well as by BEOC, is that the electric grid remains unstable, with intermittent blackouts, voltage fluctuations, and other irregularities even where power is available, rendering grid-supplied power unusable for certain applications. PREPA is expecting disruptions to continue for weeks as LUMA repairs the system.

The Governor of Puerto Rico signed an Executive Order decreeing a state of emergency throughout Puerto Rico on September 17, 2022. On September 18, the Secretary of the Puerto Rico Department of Environment and Natural Resources (DNER) issued an Administrative Order authorizing certain use of emergency generators beyond those allowed by facility permits and certain installations of new generators; this Order extends until October 15, 2022. On September 18, 2022, the President declared

that an emergency exists in Puerto Rico and ordered the Federal Emergency Management Agency to support local response efforts.

BEOC's Request seeks an NAA from EPA for potential violations of several requirements applicable to the operation of electric generators at federally regulated facilities, including: (i) various Title V permit conditions limiting the hours of operation or total fuel consumption for emergency generators, or otherwise related to emergency generator operation over certain hour thresholds; (ii) for minor sources, or synthetic minor sources, the requirement to remain below the potential to emit permit limit and/or the applicable major source thresholds; and (iii) permit application submittal requirements for new installations of emergency generators. BEOC seeks an NAA for the potential violations listed above for the duration of the Governor's declared emergency, September 17, 2022, to October 15, 2022.

BEOC indicated that the situation with the electrical grid is impacting hospitals, elderly care centers, the medical supply chain, critical infrastructure, and manufacturing. EPA's understanding, based in part on information provided by BEOC, is that in the face of the current grid instabilities and irregularities, the federally regulated community's use of its emergency generators will help improve service to residents, hospitals, water treatment and distribution facilities, the manufacturing sector, critical infrastructure, and other vital services.

For the reasons stated above, EPA will exercise its discretion not to pursue enforcement for the following violations at federally regulated sources, excluding facilities owned or operated by PREPA¹, only to the extent the violations are caused by Hurricane Fiona and its effects:

1. For Title V permit holders:
 - a. Exceedance of limitations on total annual hours of operation and/or fuel consumption limits for emergency generators included in a Title V permit;
 - b. Failure of an emergency generator to meet
 - i. permit limitations on annual hours of non-emergency use for emergency generators found in 40 C.F.R. §§ 60.4211(f), 60.4243(d) or 63.6640(f)²; and/or
 - ii. the requirements of 40 C.F.R. Part 60, Subparts III & JJJ and 40 C.F.R. Part 63, Subpart ZZZZ applicable to non-emergency engines if the sole reason such standards apply is that the emergency generator operated in excess of the allowable non-emergency hours this year when counting the non-emergency hours the generator operated during the term of this NAA;
 - c. For an emergency generator whose activities are designated as insignificant, failure to comply with the requirements applicable under the Title V operating permit program absent the insignificant designation, if the sole reason such requirements would apply is that the generator operated more than 500 hours in the year when counting the hours operated during the term of this NAA;
2. Covered Minor Sources: The requirement for a minor source, including sources with "synthetic minor" limitations in existing air permits, to seek CAA federally enforceable major source air permits or comply with CAA major source requirements where such requirements would not be triggered absent inclusion of emergency generator emissions that occur during the term of this NAA in applicable calculations so long as the operator complies with conditions of this NAA;

¹ PREPA submitted its own NAA request on September 19, 2022, that is being addressed separately.

² These provisions are part of 40 C.F.R. Part 60, Subparts III & JJJ and 40 C.F.R. Part 63, Subpart ZZZZ, none of which limit emergency use of the emergency engines they regulate.

3. New Installations of Emergency Generators: For emergency generators installed during the term of this NAA, any federal requirement to apply for a permit prior to installation of the generator.

This NAA is subject to the following conditions:

1. Any emergency generator covered by this NAA shall operate only during time periods when grid power is insufficient, including but not limited to when intermittent or irregular power renders the power insufficient.
2. Emergency generators covered under this NAA must return to normal conditions as soon as practicable.
3. Where this NAA applies to an emergency generator's compliance with its annual operating hour limit or fuel limit, the source may exclude the operating hours and/or fuel use covered by this NAA from the annual total but must otherwise continue to comply with the limit.
4. Newly installed emergency generators covered by this NAA must file an application for a permit within 30 days of the expiration of this NAA.

In addition to the above-listed conditions, the NAA is only effective for operators that submit a report to EPA (sent to Harish Patel via email at patel.harish@epa.gov) within 30 days of the termination of the NAA containing the following information:

1. The name, address, and contact information for the person submitting the report, as well as a contact for each facility covered by the report if multiple facilities are covered by a single report.
2. For each emergency generator covered by this NAA, provide a record of the number of hours and dates operated during the term of this NAA, the quantity of fuel used, the type of fuel burned, the sulfur content of the fuel used, and a calculation of the excess emissions or opacity exceedances generated, and identify the specific regulation or permit provision that was violated. To the extent such records are not available, please explain why.
3. For any newly installed source covered by this NAA, the date the permit application was or will be submitted and of the manufacturer's engine specifications for the specific generator(s) installed.
4. A description of how the energy was used, including any benefits provided to the public.

Today's NAA demonstrates EPA's continuing commitment to assist Puerto Rico in addressing the very difficult circumstances caused by Hurricane Fiona. Nothing in this NAA is intended to override state or local authorities, including those of the Commonwealth of Puerto Rico.

The NAA terminates at 11:59 PM Atlantic Standard Time on Monday, October 17, 2022. The issuance of an NAA for this period is in the public interest. EPA reserves the right to extend, revoke, or modify the NAA at any time. This NAA does not apply to any other federal requirements that may apply to regulated activities at these facilities other than those listed above.

This NAA does not relieve any person of the obligation under law, if any, to report emissions from the operation of equipment covered by this action.

EPA further notes that, as the frequency of severe weather events have increased in Puerto Rico in recent years, the occurrence of such events is becoming more predictable, even if the specific timing is not. Further, Puerto Rico's grid faces reliability challenges even in the absence of such events. EPA encourages the federally regulated community to plan now for how it will be able to operate in full compliance with the law in the face of future grid stability challenges.

If you have any questions, please contact Sparsh Khandeshi at 202-564-9913 or khandeshi.sparsh@epa.gov.

Sincerely,

Lawrence E. Starfield
Acting Assistant Administrator

cc: Lisa F. Garcia, Regional Administrator, EPA Region 2
Anais Rodríguez Vega, Secretary, DNER