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

ASSISTANT ADMINISTRATOR
FOR ENFORCEMENT AND
COMPLIANCE ASSURANCE

FEB 13 2020

Adam Kushner
Hogan Lovells US LLP
Columbia Square
555 Thirteenth Street, NW
Washington, D.C. 20004

RE: No Action Assurance for the Puerto Rico Electric Power Authority (PREPA) Emergency Request for Generating Units Subject to the Mercury and Air Toxics Standard (MATS)

Dear Mr. Kushner:

This letter is in response to your January 14, 2020, request, on behalf of the Puerto Rico Electric Power Authority (PREPA), for No Action Assurance (NAA) regarding the operation of certain electric generating units operated by PREPA in Puerto Rico. More specifically, this letter responds to that portion of PREPA's request that seeks relief for units that are subject to the National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units (40 CFR Part 63, Subpart UUUUU), also referred to as the Mercury and Air Toxics Standards (MATS). Beginning on or about December 28, 2019, and continuing since, Puerto Rico has experienced multiple earthquakes and aftershocks that have caused extreme damage to its power grid. Among other things, the earthquakes have rendered the Costa Sur Power station, a critical baseload station, inoperable. On January 7, 2020, the Governor of Puerto Rico signed an Executive Order decreeing a state of emergency throughout Puerto Rico; on January 16, 2020, the President signed a major disaster declaration for Puerto Rico.

Your January 14, 2020, letter requests NAA for electric generating units subject to MATS for: (1) operating above the 8% capacity factor specified in the "limited use liquid oil-fired subcategory;" (2) exceeding the particulate matter (PM) emission limit, or otherwise not meeting applicable performance testing standards, and work practice standards; and (3) violating the related Title V permit requirements.

PREPA currently operates and is seeking relief for the following three (3) electric generating units classified under the Subpart UUUUU "limited-use liquid oil fired subcategory": San Juan Unit 7, San Juan Unit 8, and Palo Seco Unit 1. In order to qualify for the "limited-use liquid oil fired subcategory," an electric generating unit must have an annual capacity factor, when burning oil, of less than 8% of its maximum or nameplate heat input, whichever is greater, averaged over a 24-month block contiguous period commencing on the first of the month following the compliance date. 40 CFR § 63.10042. Electric generating units that qualify for the "limited-use liquid oil fired subcategory" are not subject to the emission limits in Tables 1 and 2 of Subpart UUUUU. 40 CFR § 63.10000(c)(2)(iv). In order to

provide power during the emergency declaration, however, the electric generating units need to operate above the 8% capacity factor and therefore would no longer qualify for the "limited-use liquid oil fired subcategory." PREPA is requesting that the three (3) electric generating units listed above, previously classified as "limited-use liquid oil fired" units, continue to be classified as "limited-use liquid oil fired" units even though they will exceed the 8% capacity factor as a result of operation during the state of emergency.

PREPA is also seeking relief from the MATS Subpart UUUUU requirements for the following five (5) electric generating units: San Juan Unit 9, Palo Seco Unit 3, Palo Seco Unit 4, Aguirre Unit 1, and Aguirre Unit 2. Specifically, PREPA is seeking relief from the PM emission limit and related performance testing and work practice requirements in Subpart UUUUU during the state of emergency.

PREPA requested NAA in order to maintain the supply of electricity to customers and critical facilities in Puerto Rico, and to facilitate the expeditious restoration of lost electrical service caused by the earthquakes. In light of the existing emergency in Puerto Rico, the U.S. Environmental Protection Agency will exercise its discretion with respect to San Juan Unit 7, San Juan Unit 8, San Juan Unit 9, Palo Seco Unit 1, Palo Seco Unit 3, Palo Seco Unit 4, Aguirre Unit 1, and Aguirre Unit 2 not to pursue enforcement for violations of the MATS provisions cited above, along with the related Title V requirements, that occur during the period covered by this NAA, subject to the following conditions:

1. This NAA applies only to MATS violations that occur as a result of EGU operations that are necessitated because of the impacts from the earthquakes.

2. Electric generating units listed above must return to normal operations as soon as practicable.

3. For the purpose of determining compliance with the 8% capacity factor following the termination of this NAA, PREPA will exclude the days during the time period of this NAA from the calculation of the average 24-month block specified in the annual capacity factor definition in 40 CFR § 63.100042.

4. PREPA will continue to calculate the 30-day total particulate emission limits for San Juan Unit 9, Palo Seco Unit 3, Palo Seco Unit 4, Aguirre Unit 1, and Aguirre Unit 2 pursuant to the relevant requirements of Subpart UUUUU, or best available information.

5. With respect to electric generating units for which PREPA will seek relief from the 8% capacity factor limit described above, PREPA must maintain records of the fuel burned, and hours operated during the time period of this NAA.

PREPA must submit a report to the EPA within two weeks of the termination of the NAA containing the following information:

1. The name, address, and contact information for the person submitting the report.

2. For each of the three (3) electric generating units identified as limited use and covered by this NAA (San Juan Unit 7, San Juan Unit 8, Palo Seco Unit 1), the hours operated, the fuel burned, and calculations of the excess emissions generated.

3. For each of the five (5) electric generating units covered by this NAA (San Juan Unit 9, Palo Seco Unit 3, Palo Seco Unit 4, Aguirre Unit 1, and Aguirre Unit 2), a calculation of the total PM emissions during the period of the NAA.

4. A description of how the energy was used, including any benefits provided to the public.

The notifications identified above should be sent to the EPA via email to Harish Patel at patel.harish@epa.gov.

The issuance of an NAA for this period of time is in the public interest. Through today's NAA, the EPA is continuing its commitment to address the very difficult circumstances caused by the earthquakes. The EPA intends to use the period of the NAA to evaluate the appropriate longer-term approach for addressing this situation. Nothing in this NAA is intended to override state or local authorities.

The NAA terminates at 11:59 PM Atlantic Standard Time, April 30, 2020. The EPA reserves the right to extend, revoke or modify the NAA if the EPA believes that such action is necessary to protect public health and the environment. This NAA does not apply to any other federal requirements that may apply to regulated activities at these facilities other than those listed above.

Nothing in this exercise of enforcement discretion relieves any person of the obligation under law, if any, to report emissions from the operation of equipment covered by this action. If you have any questions please contact Gregory Fried, at 202-564-7016 or fried.gregory@epa.gov.

Sincerely,

Susan Parker Bodine

cc: Peter D. Lopez, Regional Administrator, EPA Region 2