

Government of Puerto Rico
Office of the Governor
Environmental Quality Board

R-00-14-2

Re: Request for the Interpretation of the Application of Rules 103, 1002, 1003 and 1005 of the Regulations for the Management of Non-Hazardous Solid Waste to the Generation of Ashes and Production of the Manufactured Aggregate for the AES Plant.

Resolution and Notification

During the April 25, 2000 meeting the Board received a request dated April 19, 2000 from Attorney Eduardo Negrón Navas of the Firm Fiddler, González & Rodríguez, L.L.P., on behalf of AES Puerto Rico, L.P. (AES-PR) to confirm Resolution R-96-39-1 of October 1, 1996, by which the Board determined that generation of ashes and its conversion into manufactured aggregate by the AES Plant is not subject to the requirements for the construction and operation of facilities for non-hazardous solid waste or for the generation of solid wastes.

AES-PR states that, on November 10, 1997, following Resolution R-96-39-1, we approved and issued amendments to the October 4, 1993 Regulations for the Management of Solid Waste. It is AES-PR's understanding that, although the definition of solid waste and the requirements regarding the construction and operation of facilities for non-hazardous solid waste or for the generation of solid wastes were amended, such amendments did not change, alter or modify our conclusion that the conversion of ashes of the AES Plant into manufactured aggregate is not subject to Rules 641 (Rule 1002 of 1993 Regulations) and 642 (Rule 1003 of the 1993 Regulations) of the Regulations for the Management of Non-Hazardous Solid Waste of November 10, 1997. AES-PR also states that the generation of ashes and its conversion into manufactured aggregate is exempt from the requirements set forth in Rule 644 (Rule 1005 of the 1993 Regulations) of the Regulations effective in 1997. AES-PR restates that the ashes will not enter the flow of solid waste and that it will not constitute a facility that would provide services of recycling, processing, reclamation and recuperation of solid waste.

Due to AES-PR's original request dated June 10, 1996, we realized that there is a difference between the plants for the reuse and recycling of materials that have entered into the flow of solid waste and the facilities that recycle its own waste to convert it into commercial products as in the case of AES-PR's manufactured aggregate. With respect

to the former, the plants for reuse and recycling are facilities for solid waste subject to the requirements for the construction and operation of facilities for solid waste. This is because the materials absorbed by these recycling facilities are solid waste generated by other facilities which can enter into the flow of solid waste during the recycling process. Thus, the transportation and recycling process are subject to the requirements of the construction and operation permit established in Chapter 14 of the Regulations.

Nevertheless, with respect to facilities that recycle, reuse, process and recover its own waste to convert it into commercial products, these facilities do not receive any materials that have entered into the flow of solid waste. That is, the process used in the conversion process does not render the facility subject to the permit requirements for the construction and operation of solid waste facilities.

We note that in spite of Resolution R-96-39-1 of October 29, 1996, Rule 640 of the Regulations for the Management of Non-Hazardous Solid Waste regarding the applicability of the construction and operation permits for non-hazardous solid waste facilities, does not specifically include facilities that provide recycling, reuse and recovering services for materials that have entered into the flow of solid waste. As provided in our Resolution R-96-39-1, the facilities that receive solid waste to be recycled from other facilities are subject to the permit requirements for the construction and operation of Chapter XI of the Regulations.

Following our discussions of the supporting arguments and considering the power and authority conferred upon this Board of Environmental Quality by Law No. 9 of June 18, 1970, Public Environmental Policy Law, we hereby resolve as follows:

1. Ratify Resolution R-96-39-1 of October 29, 1996, determining that the activities mentioned in the communication dated July 10, 1996 and confirmed on April 19, 2000 presented by AES-PR through its legal representative, would not be subject to the construction and operation permit requirements set forth in Rules 641, 641 and 644 of the Regulations for the Management of Non-Hazardous Solid Waste of November 10, 1997, because it is an internal process carried out in the same generation place that produces a material that will not enter into the flow of solid waste that is discarded or abandoned.
2. Restate that the interpretation of the regulations applicable to the production of the manufactured aggregate in AES-PR's ash-generation facilities only applies to such operations and processes and does not apply to such facilities that would provide recovering or recycling services for

materials that are used for recycling when they enter into the flow of solid waste regardless of the similarities between the activities that are the object of this Resolution or any other activities.

3. In addition, clarify that in accordance with the Regulations for the Management of Non-Hazardous Solid Waste of November 10, 1997, any trash, waste, ash or any other non-hazardous material that is disposed or sent for recycling, reuse and recovery to a facility that provides recycling services shall be transported in a transportation service that has a permit from the Board and managed by a solid waste facility that also has a permit from this Board.

Notify Attorney Eduardo Negrón Navas, Fidler, González & Rodríguez, L.L.P., P.O. Box 383507, San Juan, Puerto Rico 00936-3507; and personally the following officers of the Board of Environmental Quality: Maribelle Marrero, Associate Member; Mr. Genaro Torres, Alternate Member; Attorney Jennifer Mayo, Legal Counsel; Attorney David Bernier, Director of the Office of Legal Services; and the Division for the Control of Contamination of Lands.

Issued in San Juan, Puerto Rico, on April 25, 2000.

Certificate of Notice: May 3, 2000.