

**Unofficial English Translation**

Government of Puerto Rico  
Office of the Governor  
Environmental Quality Board

**In RE:**

**R-96-39-1**

**AES PUERTO RICO, L.P.  
BARRIO JOBOS  
GUAYAMA, PUERTO  
RICO**

**Subject:**

**SOLICITATION FOR INTERPRETATION OVER THE  
APPLICABILITY OF RULES 103, 1002, 1003 AND 1005  
OF THE REGULATIONS FOR THE HANDLING OF  
NON-HAZARDOUS WASTES FOR THE GENERATION  
OF ASHES AND THE PRODUCTION OF  
MANUFACTURED AGGREGATE AT THE AES  
ELECTRIC ENERGY PLANT**

**Plaintiff**

**RESOLUTION AND NOTIFICATION**

In a meeting held on the 29th of October of 1996, it was submitted for the consideration of the Environmental Quality Board (the Board) a consultation dated 10th of July of 1996, by Attorney Eduardo Negron Navas of Buffete Fiddler, Gonzalez and Rodriguez representing the company AES Puerto Rico, L.P. (AES-PR) for the Board to determine if the ashes that will be generated by the proposed electric energy plant by said company in the Gauyama Municipality, constitutes a solid waste and if, in consequence, said plant is not a solid waste installation subject to the requirements of a construction permit and an operation permit established in the Rules 1002 and 1003 of the Regulations for the Handling of Non-Hazardous Solid Waste (the Regulations) for installations of non-hazardous wastes.<sup>1</sup>

In essence, AES-PR explains that the ashes that will be generated in the proposed electric energy plant will not be discarded, refused, abandoned or disposed and that , on the contrary will be processed, recovered, used or reused as ingredients for the production of manufactured aggregate and as an effective substitute for other commercial products. The manufactured aggregate, AES-PR indicates, is a product with various beneficial uses, including applications such as structural fill and road base. AES-PR also indicates that the ash is reclaimed by the coal mines for distinct uses.

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<sup>1</sup> In accordance to Rule 102 of the Regulations for the Control of Hazardous and Non-Hazardous Wastes, volatile ash and sediment from chimney gases emissions control generated by the combustion of coal and other fossil fuels, are not hazardous solid wastes.

According to the company, to produce the manufactured aggregate the ashes that will be generated at the electric energy plant will be sent by closed pneumatic piping from the points where they are collected to two (2) closed storage silos. These silos will have the storage capacity for up to three (3) days of ash production assuming that the plant operates at its maximum capacity. The ashes collected in the silos will be transferred by closed pneumatic piping to a system for mixing and hydrating designed for better than 100% of the ashes that the plant will generate and convert the same to conditioned ash.

The conditioned ash will be transferred to the manufactured aggregate production area. This area of approximately ten (10) cuerdas will be an open area inside of the facility, but separate of the rest of the operations of the plant and exclusively dedicated to the production of manufactured aggregate.

The conditioned ash, a product of the initial hydration of the ash, will be spread in the manufactured area in caps, each one with a maximum thickness of twenty four (24) inches, utilizing mechanical shovels and a leveling tractor. In this phase water is newly applied to maintain the material in an optimum moisture content to facilitate the compaction and permit the best cementation. The 24 inch layers will be reduced through mechanical compaction and spread to around ten (10) inches, until obtaining a level of compaction better than 95%. The reaction of compaction and cementation of the conditioned ash will be completed in a period of between seven (7) and fourteen (14) days ("curing period").

Once the compaction and hardening process is finalized, the manufactured aggregate resulting from the before described process, is cut utilizing a reclaim scarificator. The process ends when the scarification and crushing has obtained pieces of manufactured aggregate of the size of three (3) inches.

The manufactured aggregate, which reaches a hardness of 1,750 to 2,300 pounds of pressure per square inch, will be stored in the AES-PR facility to be transported to the place where it will be used beneficially. The delivery to the final users will be realized by barges through the use of closed conveyors. In the case of local uses, the transportation will be through weighed trucks or trailers operated by contractors. The trucks will be loaded using a front end loader and covered with tarps during transit.

The Regulations for the Handling of Non-Hazardous Solid Wastes approved by this Board on the 4th of October of 1993, establishes that no person will be able to construct or permit the construction<sup>2</sup> nor the operation<sup>3</sup> of any new or modification of a solid waste facility, without obtaining the corresponding permits to construct and operate by this Board.

A solid waste is defined as any material discarded, refused, abandoned or disposed. A discarded material is that which whose usefulness has expired, or that it is no longer useful, unless it will be processed or recovered.<sup>4</sup> A material that is refused, abandoned or disposed is mixed with other refuse or disposed in a final and definite manner through discharge, destruction, deposit, injection, dispersion or filtering, in or over land, a body of water or to the air.<sup>5</sup> Recovery is the process through which the materials which are no longer useful for the purposes that they were initially produced, are converted to a useful product.

A Solid Waste Facility is defined as all lands, branches or vessels or any site used for the generation, collection, recovery or disposal of non-hazardous wastes.<sup>6</sup> Said facilities include, among others, transfer stations, incinerators, landfills, places for recovery of materials and reuse plants and materials recycling.

Besides, Rule 1005 specifically regulates the generation of non-hazardous wastes.<sup>7</sup> In essence Rule 1005 requires a permit from the Board for non-hazardous waste generator activities.

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<sup>2</sup> Regulations for the Handling of Non-Hazardous Solid Wastes, Rule 1002.

<sup>3</sup> Jd. Rule 1003.

<sup>4</sup> Jd. Rule 103 - Definition of "Solid Waste".

<sup>5</sup> Jd. Definition of "Disposal".

<sup>6</sup> Jd. Definition of "Non-Hazardous Solid Waste installation".

<sup>7</sup> Rule 1005 of the Regulations for the Handling of Non-Hazardous Wastes expresses:

Rule 1005-Permit to Operate a Non-Hazardous Waste Generator Activity

1. Applicability

This Regulation applies to all owners and operators of an non-hazardous waste generator activity

2. Requirement for a Permit

No person shall allow or permit a non-hazardous waste generator activity without obtaining a permit from the Board beforehand.

The manner in which a material is determined to be a solid waste is that it has to be discarded, refused, abandoned or disposed in a definite form. Said in another way, if the material is processed as part of the operations of the facility which generates it, said material does not enter the flow of non-hazardous solid wastes. Consequently, the facility which processes said material is not a generator, and also is not an installation for non-hazardous solid wastes. Thus, the plaintiff having demonstrated, that there exists an acceptable process to convert the generated material to a product that is able to be used or reused beneficially, that has the capacity, resources and adequate facilities to provide said treatment, that the material once processed has a beneficial use and an existing market, and the same will not enter the flow of the solid wastes which are disposed, refused or abandoned.

After having discussed all the merits of this petition and by virtue of the powers that are conferred by Law Number 9 of 18 June 1970, Law over Public Environmental Policies, as amended, for the present **RESOLUTION:**

1) That this Board of Governors, for the present interprets that the specific activities will not be subject to the Rule 103, 1002, 1003 and 1005 of the Regulations for the Handling of Non-Hazardous Solid Wastes approved by this board on 4 October 1993.

2) Clarification that the interpretation here notified is based on having taken into consideration the complete dossier present at the Board, including the procedure for the production and processing of ashes generated at the proposed energy plant, so that this interpretation is solely extended to said operations and processes of the production of manufactured aggregate through the processing of ashes generated at said energy plant. In particular, this interpretation does not apply to those facilities that recover or recycle materials that have entered the flow of solid wastes.

3) Clarification that this interpretation through this resolution does not constitute by any means a concession of a permit.

**NOTIFICATION TO:** Attorney Eduardo Negron Navas, Fiddler, Gonzalez & Rodriguez, P.O. Box 363507, San Juan, Puerto Rico, 00936; and personally to the following officials of the Environmental Quality Board, Eng. Luis Ruben Rodriguez, Vice President; Agro. Maribel Marrero, Associate Member; Mr. Israel Torres, Director Land Contamination Control Area; to Attorney Eduardo Gonzalez, Director Office of Legal Services and Division of public Hearings

Given in San Juan, Puerto Rico this 29 October 1996.

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HECTOR RUSSE MARTINEZ

President

CERTIFICATION: That I have notified, by certified mail with return receipt, accurate and exact copy of the present Resolution to the parties mentioned in the Notification, having filed the original.

In San Juan, Puerto Rico this 31 of October 1996

SECRETARY

BOARD OF GOVERNORS

Unofficial Translation by: Bill Vela