EcoEléctrica, L.P.

United States Environmental Protection Agency
Region 2
Clean Water Division
290 Broadway
New York, New York 10007

FACT SHEET

DRAFT NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
EcoEléctrica, L.P.
PERMIT No. PR0025984

This Fact Sheet sets forth the principle facts and technical rationale that serve as the legal basis for the requirements of the accompanying draft permit. The draft permit has been prepared in accordance with Clean Water Act (CWA) section 402 and its implementing regulations at Title 40 of the *Code of Federal Regulations* (CFR), Parts 122 through 124, and the Water Quality Certificate (WQC) issued by the Puerto Rico Environmental Quality Board (EQB) pursuant to CWA section 401 requirements.

Pursuant to 40 CFR 124.53, the Commonwealth of Puerto Rico must either grant a certification pursuant to CWA section 401 or waive this certification before the U.S. Environmental Protection Agency (EPA) may issue a final permit. On October 16, 2013, EQB provided in the WQC that the allowed discharge will not cause violations to the applicable water quality standards at the receiving water body if the limitations and monitoring requirements in the WQC are met. On February 28, 2014, a draft permit was public noticed in El Vocero de Puerto Rico. The public comment period ended on March 30, 2014 and no comments were received. However, EQB issued a modified final WQC on March 17, 2014 another modified final WQC on March 20, 2014. In accordance with CWA section 401, EPA has incorporated the conditions of the modified final WQC into the draft permit. WQC conditions are discussed in this Fact Sheet and are no less stringent than allowed by federal requirements. Additional requirements might apply to comply with other sections of the CWA. Review and appeals of limitations and conditions attributable to the WQC were made through the applicable procedures of the Commonwealth of Puerto Rico and not through EPA procedures.

Changes to the draft permit include:

1. Deleted monitoring requirements for cadmium, chromium VI, lead, nickel, nitrogen and silver,
2. Modified the flow limit,
3. Inserted a Gross Discharge Limitation/No Net Addition Limitation footnote for color, copper, mercury, sulfate, undissociated sulfide, surfactants, total suspended solids, turbidity, and zinc,
4. Modified the monitoring frequency for settleable solids from daily to monthly with reference to a footnote,
5. Modified the description of the sampling point for Outfall 001 in Part II.D.3.,
6. Modified the reporting requirements for solid waste disposal in Part IV.B.5.e.1.,
7. Relocated the effluent limitations for color, oil and grease, and suspended, colloidal, or settleable solids from Part II.C. to Part II.A with reference to footnotes,
8. Corrected the flow rates in Part I.A and,
9. Corrected minor typographical errors.

PART I. BACKGROUND

A. Permittee and Facility Description

EcoEléctrica (referred to throughout as the Permittee) has applied for renewal of its National Pollutant Discharge Elimination System (NPDES) permit. The Permittee is discharging pursuant to NPDES Permit No. PR0025984**.** The Permittee submitted Application Form 1, dated April 4, 2011 and Form 2C, dated April 4, 2011, and applied for an NPDES permit to discharge treated wastewater from EcoEléctrica, Peñuelas. The facility is classified as a major discharger by EPA in accordance with the EPA major/minor rating criteria.

The Permittee owns and operates a Liquefied Natural Gas (LNG) cogeneration power plant consisting of: an LNG Marine Unloading and Storage terminal; a cogeneration plant with two combustion turbines; and two heat recovery steam generators in line with a stream turbine, a desalination plant and an auxiliary diesel generator. Attachment A of this Fact Sheet provides a map of the area around the facility and a flow schematic of the facility.

The treatment system consists of the following: evaporation from cooling tower to remove heat from the wastewater, neutralization, oil/water separation, and addition of minerals to produce potable water.

Certain solid wastes will be generated by the facility, including sewage from sewage holding tanks, waste oil from the oil/water separators, and chemical wastes from the neutralization tank. Any solid wastes generated by the permittee must be hauled off-site by licensed contractors and properly disposed. Disposal of these wastes to Outfall 001 is prohibited.

Summary of Permittee and Facility Information

Permittee	EcoEléctrica, L.P.
Facility contact, title, phone	Damaris Negrón, Environmental Compliance Manager, (787) 836-2740
Permittee (mailing) address	641 Road 337 Firm Delivery, Peñuelas, PR 00624
Facility (location) address	641 Road 337 Firm Delivery (State Road 337, Km. 3.7), Peñuelas, PR 00624
Type of facility	Industrial SIC Codes: 4911 – Electric Services; 4491- Marine Cargo Handling; 4922 – Natural Gas Storage; 4941 – Water Supply
Pretreatment program	N/A
Facility daily maximum flow	8.65 MGD
Facility design flow	21.4 MGD
Facility classification	Major

B. Discharge Points and Receiving Water Information

Wastewater is discharged from Outfall 001 to Guayanilla Bay (extension of the Caribbean Sea), a water of the United States, in the Southern Puerto Rico watershed.

The draft permit authorizes the discharge from the following discharge point:

Outfall	Effluent description	Outfall latitude	Outfall longitude	Receiving water name and classification
001	1) Cooling tower blowdown (boiler blow down, desalination plant brine blowdown and backwash water from the remineralization system) 2) Treated stream from the neutralization system (demineralizer wastewater, laboratory drains, tank washes and chemical dike drains) 3) Demineralizer backwash 4) Treated stream from the oil/water separators (oil from plant floor drains and equipment drain lines, and remineralizer drains)	17.00°, 58.00', 13.00" N	66.00°, 45.00', 59.00" W	Guayanilla Bay, Class SC

As indicated in the Puerto Rico Water Quality Standards (PRWQS) Regulations, the designated uses for Class SC receiving waters include:

1. Primary contact recreation use from the zone subject to ebb and flow of tides (mean sea level) to 3 miles seaward
2. Secondary contact recreation from 3 miles seaward to 10.35 miles seaward
3. Propagation and preservation of desirable species, including threatened and endangered species

CWA section 303(d) requires the Commonwealth of Puerto Rico to develop a list of impaired waters, establish priority rankings for waters on the list, and develop TMDLs for those waters. The receiving water has been determined to have water quality impairments for one or more of the designated uses as determined by section 303(d) of the CWA. The receiving waterbody is on the 2012 303(d) list of impaired waters for low dissolved oxygen, pH, turbidity, and thermal modifications. A TMDL has not been developed yet.

C. Mixing Zone/Dilution Allowance

A mixing zone or dilution allowance has not been authorized for the discharger.

D. Compliance Orders/Consent Decrees

The Permittee does not have any compliance orders or consent decrees that affect this permit action.

E. Summary of Basis for Effluent Limitations and Permit Conditions - General

The effluent limitations and permit conditions in the permit have been developed to ensure compliance with the following, as applicable:

1. NPDES Regulations (40 CFR 122)
2. Puerto Rico Water Quality Standards (PRWQS), March 2010
3. Steam Electric Power Generating Effluent Guidelines (40 CFR Part 423)

PART II. RATIONALE FOR EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

CWA section 301(b) and 40 CFR 122.44(d) require that permits include limitations more stringent than applicable technology-based requirements where necessary to achieve applicable water quality standards. In addition, 40 CFR 122.44(d)(1)(i) requires that permits include effluent limitations for all pollutants that are or may be discharged at levels that cause, have the reasonable potential to cause, or contribute to an exceedance of a water quality criterion, including a narrative criterion. The process for determining reasonable potential and calculating water quality-based effluent limits (WQBELs) is intended to protect the designated uses of the receiving water, and achieve applicable water quality criteria. Where reasonable potential has been established for a pollutant, but there is no numeric criterion for the pollutant, WQBELs must be established using (1) EPA criteria guidance under CWA section 304(a), supplemented where necessary by other relevant information; (2) an indicator parameter for the pollutant of concern; or (3) a calculated numeric water quality criterion, such as a proposed state criterion or policy interpreting the state's narrative criterion, supplemented with other relevant information, as provided in 40 CFR 122.44(d)(1)(vi).

The effluent limitations and permit conditions in the permit have been developed to ensure compliance with all federal and state regulations, including PRWQS. The basis for each limitation or condition is discussed below.

A. Effluent Limitations

The permit establishes both Technology-based Effluent Limitations (TBELs) and WQBELs for several pollutants and the basis for these limitations are discussed below**.**

1. **Arsenic:** Arsenic monitoring has been established in the permit pursuant to the WQC. There is no arsenic effluent limitation.
2. **5-Day Biochemical Oxygen Demand (BOD_5):** An effluent limitation has been established based on the WQC.
3. **Chlorine, Total Residual (TRC):** An effluent limitation for total residual chlorine has been established pursuant to 40 CFR Part 423.13. The TBEL is more stringent that the WQBEL established by the WQC.
4. **Chromium, Total.** An effluent limitation for total chromium has been established pursuant to 40 CFR Part 423.13.

5. **Color.** Color monitoring has been established in the permit pursuant to the WQC. There is no color effluent limitation.

6. **Copper.** Copper was found to be discharged in quantifiable amounts in the effluent at concentrations that are above water quality criterion. No dilution allowances exist for copper; therefore, EPA has applied criteria at the end-of-pipe. Review of effluent data demonstrates that concentrations were above the water quality criteria of 3.73 ug/l. Thus, there is reasonable potential for copper to cause an excursion of the PRWQS and an effluent limitation is established in the permit. The effluent limitation for copper in the existing permit is 3.1 ug/l and the limit required by the 2013 WQC is 3.73 ug/l. The existing effluent quality exceeds both effluent limitations; the maximum value reported during previous three years is 28 ug/l. Based on the "Region 2 Antibacksliding Policy", the effluent limitation for copper is established based on the EQB 2013 WQC. It is presumed that the less stringent effluent limitation established in the 2013 WQC constitutes a determination that the limit is sufficient to assure that the water quality standard will be attained. In accordance with the "Region 2 Antibacksliding Policy", the existing permit limitation could be relaxed.

   The existing WQBEL permit limitation of 3.73 ug/l is also more stringent than the TBEL of 1 mg/l (1000 ug/) as required by 40 CFR Part 423.13.

7. **Cyanide.** Cyanide was found to be discharged in quantifiable amounts in the effluent at concentrations that are above the water quality criterion. No dilution allowance exists for cyanide, therefore EPA has applied criteria at the end-of-pipe. Review of effluent data demonstrates that concentrations were above the water quality criterion of 1 ug/l. Thus, there is reasonable potential for cyanide to cause an excursion of the PRWQS and an effluent limitation is established in the permit.

8. **Dissolved Oxygen (DO):** The effluent limitation is based on the water quality criterion for Class SC waters as specified in Rule 1303.2 of PRWQS, and the WQC.

9. **Flow:** An effluent limitation for flow has been established in the permit. Monitoring conditions are applied pursuant to 40 CFR 122.21(j)(4)(ii) and the WQC.

10. **Iron.** An effluent limitation for iron has been established pursuant to 40 CFR Part 423.12.

11. **Mercury.** Mercury was found to be discharged in quantifiable amounts in the effluent at concentrations that are above the water quality criterion. No dilution allowance exists for mercury, therefore EPA has applied criteria at end-of-pipe. Review of the effluent data demonstrates that concentration were above the water quality criterion of 0.051 ug/l. Thus, there is reasonable potential for mercury to cause an excursion of the PRWQS and an effluent limitation is established in the permit.

12. **Oil and Grease.** An effluent limitation for oil and grease has been established pursuant to 40 CFR Part 423.12. Oil and grease monitoring has been established in the permit pursuant to the WQC.

13. **pH:** The effluent limitation for pH is based on the water quality criterion for Class SC waters as specified in Rule 1303.2 of the PRWQS, and the WQC.

14. **Sulfates.** The effluent limitation for sulfates is based on the water quality criterion for Class SC waters as specified in Rule 1303.2 of the PRWQS, and the WQC.

15. **Sulfide.** Sulfide monitoring has been established in the permit pursuant to the WQC. There is no sulfide effluent limitation.

16. **Suspended, Colloidal, and Settleable Solids.** Monitoring has been established in the permit pursuant to the WQC

17. **Surfactants.** A monitoring only requirement for surfactants is based on the water quality criterion for Class SC waters as specified in Rule 1303.2 of the PRWQS, and the WQC.

18. **Temperature:** The effluent limitation for temperature is based on the water quality criterion for Class SC waters as specified in Rule 1303.2 of PRWQS, and the WQC.

19. **Total Suspended Solids (TSS):** An effluent limitation for total suspended solids has been established pursuant to 40 CFR Part 423.12. The TBEL is more stringent that the monitoring only WQBEL in the WQC.

20. **Turbidity.** The effluent limitation for turbidity is based on the water quality criterion for Class SC waters as specified in Rule 1303.2 of the PRWQS, and the WQC.

21. **Whole Effluent Toxicity (WET):** CWA section 101(a) establishes a national policy of restoring and maintaining the chemical, physical, and biological integrity of the nation's waters. Specifically, CWA section 101(a)(3) and PRWQS Rule 1303(I) prohibit the discharge of toxic pollutants in toxic amounts. Federal regulations at 40 CFR 122.44(d) also require that where the permitting authority determines, through the analysis of site-specific WET data, that a discharge causes, shows a reasonable potential to cause, or contributes to an excursion above a water quality standard, including a narrative water quality criterion, the permitting authority must establish effluent limits for WET.

    PRWQS do not provide a numeric criterion for toxicity. Therefore, consistent with the recommendations of section 2.3.3 of EPA's Technical Support Document (TSD) for Water Quality-Based Toxics Control (EPA-505-2-90-001), values of 0.3 acute toxic unit (TU_a) and 1.0 chronic toxic unit (TU_c) were used to interpret the narrative water quality criteria for WET established in PRWQS Rule 1303(I). As there is no existing WET data for the Permittee, the permit establishes monitoring requirements and an action level for acute WET to determine unacceptable toxicity.

22. **Zinc.** Zinc was found to be discharged in quantifiable amounts in the effluent at concentration that are above water quality criterion. No dilution allowances exist for zinc, therefore EPA has applied criteria at the end-of-pipe. Review of effluent data demonstrates that the maximum effluent concentration for zinc was 51.6 ug/l and the 95th percentile effluent concentration for zinc was 80.9 ug/l. There is no reasonable potential to exceed the water quality criterion of 85.62 ug/l. In accordance with the "Region 2 Antibacksliding Policy", the existing permit limit of 81 ug/l will be established in the permit. The existing WQBEL permit limitation of 81 ug/l is also more stringent than the TBEL of 1 mg/l (1000 ug/l) as required by 40 CFR Part 423.13.

23. **126 Priority Pollutants.** An effluent limitation for 126 priority pollutants, as specified in Appendix A of the permit, has been established pursuant to 40 CFR Part 423.12.

24. **Narrative effluent limitations:** Narrative effluent limitations for solids and other matters; taste and odor-producing substances, oil sheen, and toxics, are based on the water quality criteria as specified in Rules 1303.1 and 1303.2(D) and 1306 of PRWQS, as required by the WQC, and as carried forward from the previous permit.

B. Effluent Limitations Summary Table

1. Outfall Number 001 Numeric Effluent Limitations

Parameter	Units	Effluent limitations					
		Averaging period	Highest Reported Value (1)	Existing limits	Interim limits	Final limits	Basis
Arsenic (As)	ug/l	Daily maximum	--	Monitoring only	--	Monitoring only	WQBEL
BOD_5	mg/l	Average monthly	5.9	30.0	--	30.0	TBEL
Chlorine, Total Residual	mg/l	Daily maximum	0.20	0.50	--	0.20	TBEL
Chromium, Total	mg/l	Daily maximum	--	--	--	0.2	TBEL
		Monthly average	--	--	--	0.2	TBEL
Color	Pt-Co	Instantaneous	10	Monitoring only	--	Monitoring only	WQBEL
Copper (Cu)	ug/l	Daily maximum	28.0	3.1	--	3.73	WQBEL
Cyanide, Free (Cn)	ug/l	Daily maximum	21.0	1.0	--	1.0	WQBEL
Dissolved Oxygen	mg/l	Monthly average	7.5	Shall contain no less than 4.0	--	Shall contain no less than 4.0	WQBEL
Flow (2)	MGD	Daily maximum	8.65	21.4	--	21.4	TBEL
Iron	mg/l	Daily maximum	--	--	--	1.0	TBEL

Parameter	Units	Effluent limitations					
		Averaging period	Highest Reported Value (1)	Existing limits	Interim limits	Final limits	Basis
		Monthly average	--	--	--	1.0	TBEL
Mercury (Hg)	ug/l	Daily maximum	0.096	0.051	--	0.051	WQBEL
Oil and Grease	mg/l	Daily maximum	--	--	--	20.0	TBEL
		Monthly Average	--	--	--	15.0	TBEL
pH	SU	Instantaneous	Between 8.6 and 7.1	Shall always lie between 7.3 and 8.5	--	Shall always lie between 7.3 and 8.5	WQBEL
Sulfates(SO_4)	mg/l	Daily maximum	--	--	--	2,800.0	WQBEL
Sulfide (undissociated H_2S)	ug/l	Daily maximum	--	Monitor only	--	Monitor only	WQBEL
Suspended, Colloidal and Settleable Solids	ml/l	Instananeous	--	Monitoring only	--	Monitoring only	WQBEL
Surfactants (as MBAS)	ug/l	Daily maximum	--	--	--	Monitor only	WQBEL
Temperature	°F (°C)	Daily maximum	87.8°	90° (32.3°)	--	90° (32.3°)	WQBEL
Total Suspended Solids (TSS)	mg/l	Daily maximum	119.0	100.0	--	100.0	TBEL
		Monthly average	49.8	30.0	--	30.0	TBEL
Turbidity	NTU	Daily maximum	27.1	10.0	--	10.0	WQBEL
Acute Whole Effluent Toxicity (WET)	TU_a	Daily maximum	--	--	--	0.30	WQBEL
Zinc (Zn)	ug/l	Daily maximum	51.6	81.0	--	81.0	WQBEL
126 Priority Pollutants	mg/l	Daily maximum	--	No detectable amount	--	No detectable amount	TBEL
		Monthly average	--	No detectable amount	--	No detectable amount	TBEL

Notes, Footnotes and Abbreviations
Note: Dashes (--) indicate there are no effluent data, no limitations, or no monitoring requirements for this parameter.
All flow measurements must achieve accuracy within the range of plus or minus 10%.
(1) Wastewater data from DMRs dated July 1, 2008 through June 30, 2013.
(2) The flow of discharge 001 must not exceed the limitation of 81,007 m^3/day (21.4 MGD) as daily maximum. No increase in flow of discharge 001 must be authorized without recertification from the Puerto Rico Environmental Quality Board.

1. Outfall Number 001 Narrative Effluent Limitations

a) The Waters of Puerto Rico must not contain floating debris, scum or other floating materials attributable to the discharge in amounts sufficient to be unsightly or deleterious to the existing or designated uses of the water body.

b) Taste and odor-producing substances must not be present in amounts that will render any undesirable taste or odor to edible aquatic life.

C. Monitoring Requirements

NPDES regulations at 40 CFR 122.48 require that all permits specify requirements for recording and reporting monitoring results. Part III of the Permit establishes monitoring and reporting requirements to implement federal and state requirements. The following provides the rationale for the monitoring and reporting requirements for this facility.

1. **Influent Monitoring Requirements**

   This facility is not subject to influent monitoring requirements.

2. **Effluent Monitoring Requirements**

   Effluent monitoring frequency and sample type have been established in accordance with the requirements of 40 CFR 122.44(i) and recommendations in EPA's TSD. Consistent with 40 CFR Part 136 monitoring data for toxic metals must be expressed as total recoverable metal.

D. Compliance with Federal Anti-Backsliding Requirements and Puerto Rico's Anti-Degradation Policy

Federal regulations at 40 CFR 131.12 require that state water quality standards include an anti-degradation policy consistent with the federal policy. The discharge is consistent with the anti-degradation provision of 40 CFR 131.12, 72 Federal Register 238 (December 12, 2007, pages 70517-70526) and EQB's *Anti-Degradation Policy Implementation Procedure* in Attachment A of PRWQS. In addition, CWA sections 402(o)(2) and 303(d)(4) and federal regulations at 40 CFR 122.44(l) prohibit backsliding in NPDES permits. Further, the Region 2 Antibacksliding Policy provides guidance regarding relaxation of effluent limitations based on water quality for Puerto Rico NPDES permits. These anti-backsliding provisions require effluent limitations in a reissued permit to be as stringent as those in the previous permit with some exceptions where limitations may be relaxed. The effluent limitations in the permit are at least as stringent as the effluent limitations in the existing permit, with the exception of effluent limitations for zinc and copper. The effluent limitations for these pollutants are less stringent that those in the existing permit. This relaxation of effluent limitations is consistent with the anti-backsliding requirements of CWA section 401(o), 40 CFR 122.44(l), EPA Region 2's Anti-backsliding Policy dated August 10, 1993, and Puerto Rico's Anti-Degradation Policy Implementation Procedure established in PRWQS. The basis for the relaxation of the limits is discussed in Part II.A.5 and 23.

PART III. RATIONALE FOR STANDARD AND SPECIAL CONDITIONS

A. Standard Conditions

In accordance with 40 CFR 122.41, standard conditions that apply to all NPDES permits have been incorporated by reference in Part IV.A.1 of the permit and expressly in Attachment B of the permit. The Permittee must comply with all standard conditions and with those additional conditions that are applicable to specified categories of permits under 40 CFR 122.42 and specified in Part IV.A.2 of the Permit.

B. Special Conditions

In accordance with 40 CFR 122.42 and other regulations cited below, special conditions have been incorporated into the permit. This section addresses the justification for special studies, additional monitoring requirements, Best Management Practices, Compliance Schedules, and/or special provisions for POTWs as needed. The special conditions for this facility are as follows:

1. **Special Conditions from the Water Quality Certificate**

   In accordance with 40 CFR 124.55, EPA has established Special Conditions from the WQC in the permit that EQB determined were necessary to meet PRWQS. The Special Conditions established in this section are only those conditions from the WQC that have not been established in other parts of the permit.

   a. No changes in the design or capacity of the treatment system will be permitted without the previous authorization from EQB.

   b. Prior to the construction of any additional treatment system or the modification of the existing one, the permittee must obtain the approval from EQB of the engineering report, plans, and specifications.

   c. The permittee must install, maintain and operate all water pollution control equipment in such manner as to be in compliance with the applicable Rules and Regulations.

   d. The sampling point for discharge 001 must be labeled with an 18 inches per 12 inches (minimum dimension) sign that reads as follows:

      "Punto de Muestreo para la Descarga 001"

e. All water or wastewaters treatment facilities, whether publicly or privately owned, must be operated by a person licensed by the Potable Water and Wastewaters Treatment Plants Operators Examining Board of the Commonwealth of Puerto Rico.

2. **Best Management Practices (BMP) Plan**

In accordance with 40 CFR 122.2 and 122.44(k), BMPs are schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution to waters of the United States. The Permittee is required to develop a BMP Plan in Part IV.B.3.a of the permit to control or abate the discharge of pollutants.

3. **Compliance Schedules**

A compliance schedule has not been authorized for any pollutant or parameter in the permit on the basis of 40 CFR 122.47.

4. **Clean Water Act Section 316(b)**

It is EPA's Best Professional Judgment (BPJ) that the permittee has demonstrated that entrainment and impingement impacts at the facility are minimal. The existing location, design, construction and cooling water intake structure reflect the best available technology for minimizing adverse impact, and as such are in compliance with CWA Section 316(b).

PART IV. COMPLIANCE WITH APPLICABLE PROVISIONS OF OTHER FEDERAL LAWS OR EXECUTIVE ORDERS

A. Coastal Zone Management Act

Under 40 CFR 122.49(d), and in accordance with the Coastal Zone Management Act of 1972, as amended, 16 *United States Code* (U.S.C.) 1451 *et seq*. section 307(c) of the act and its implementing regulations (15 CFR Part 930), EPA may not issue an NPDES permit that affects land or water use in the coastal zone until the Permittee certifies that the proposed activity complies with the Coastal Zone Management Program in Puerto Rico, and that the discharge is certified by the Commonwealth of Puerto Rico to be consistent with the Commonwealth's Coastal Zone Management Program. The Puerto Rico Planning Board issued a determination, dated December 16, 1996, that the discharge is consistent with the Puerto Rico Coastal Management Program. As this activity has been permitted in the past, a reopener clause has been established that allows the permit to be modified or revoked based on the consistency determination requested by the permittee as part of this renewal process. The permittee submitted the request for consistency determination in a letter dated January 24, 2014.

B. Endangered Species Act

Under 40 CFR 122.49(c), EPA is required pursuant to section 7 of the Endangered Species Act (ESA), 16 U.S.C. 1531 *et seq*. and its implementing regulations (50 CFR Part 402) to ensure, in consultation with the National Marine Fisheries Service (NMFS) and U.S. Fish and Wildlife Service (USFWS) that the discharge authorized by the permit is not likely to jeopardize the continued existence of any endangered or threatened species or adversely affect its critical habitat.

The ESA requires the Regional Administrator to ensure, in consultation with the Secretary of the Interior or Commerce, that any action authorized by EPA is not likely to jeopardize the continued existence of any endangered or threatened species or adversely affect its critical habitat.

In a May 2000 memo to the Regions, EPA Headquarters provided guidance to the Regions in making a determination as to whether a final permit may be issued while waiting for consultation to be concluded. As part of this permit action, if consultation has not been completed by final permit issuance and EPA has concluded that permit issuance is consistent with section 7 prior to the conclusion of consultation, EPA will re-issue the final permit before consultation is concluded and will document this decision in the Administrative Record. At the time consultation is completed, EPA may decide that changes to the permit are warranted after permit issuance based on the results of the consultation. Therefore, a reopener provision to this effect has been included in the Permit Part IV.B.5. EPA initiated the formal consultation on January 9, 2014.

C. Environmental Justice

EPA has performed an Environmental Justice (EJ) Analysis for the discharge in accordance with Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Population and Low-Income Populations*, and EPA's Plan EJ 2014. EJ is the right to a safe, healthy, productive and sustainable environment for all, where

"environment" is considered in its totality to include the ecological, physical, social, political, aesthetic and economic environments. NPDES permitting provides opportunities to address EJ concerns through appropriate avenues for public participation, seeking out and facilitating involvement of those potentially affected, and, when relevant, including public notices in more than one language where appropriate. Based on review and screening of data in the EPA Region 2 Environmental Justice Assessment Tool, the facility is not in an area characterized as overburdened.

E. Climate Change

EPA has considered climate change when developing the conditions of the permit. This is in accordance with the draft *National Water Program 2012 Strategy: Response to Climate Change* that identifies ways to address climate change impacts by NPDES permitting authorities (77 Federal Register 63, April 2, 2012, 19661-19662). Climate change is expected to affect surface waters in several ways, affecting both human health and ecological endpoints. As outlined in the draft National Water Program 2012 Strategy, EPA is committed to protecting surface water, drinking water, and ground water quality, and diminishing the risks of climate change to human health and the environment, through a variety of adaptation and mitigation strategies. These strategies include encouraging communities and NPDES permitting authorities to incorporate climate change strategies into their water quality planning, encouraging green infrastructure and recommending that water quality authorities consider climate change impacts when developing water load and load allocations for new TMDLs, identifying and protecting designated uses at risk from climate change impacts. The 2010 *NPDES Permit Writers' Manual* also identifies climate change considerations for establishing low-flow conditions that account for possible climatic changes to stream flow. The conditions established in the permit are consistent with the draft National Water Program 2012 Strategy.

F. National Historic Preservation Act

Under 40 CFR 122.49(b), EPA is required to assess the impact of the discharge authorized by the permit on any properties listed or eligible for listing in the National Register of Historic Places (NRHP) and mitigate any adverse effects when necessary in accordance with the National Historic Preservation Act, 16 U.S.C. 470 et seq. EPA's analysis indicates that no soil disturbing or construction-related activities are being authorized by approval of this permit; accordingly, adverse effects to resources on or eligible for inclusion in the NHRP are not anticipated as part of this permitted action.

G. Magnuson-Stevens Fishery Conservation and Management Act

Under 40 CFR 122.49, EPA is required to ensure that the discharge authorized by the permit will not adversely affect Essential Fish Habitat (EFH) as specified in section 305(b)(2) of the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA), 16 U.S.C. 1801 *et s*eq. EPA is currently in the process of initiating discussion/consultation with National Marine Fisheries Service regarding this permit action. Therefore, a reopener provision to this effect has been included in Part I.C.4 and 5 of the draft NPDES permit.

H. Clean Water Act, Section 403 Ocean Discharge.

CWA Section 403 requires EPA to consider guidelines for determining potential degradation of the marine environment when issuing NPDES permits. These Ocean Discharge Criteria (40 CFR 125, Subpart M) are intended to "prevent unreasonable degradation of the marine environment and to authorize imposition of effluent limitations, including a prohibition on discharge, if necessary, to ensure this goal". Based on the available information, EPA has determined that the discharge will not cause unreasonable degradation of the marine environment. A reopener provision has been included in the permit Part IV.B.5 that provides EPA the right to modify or revoke the permit based on any new data.

PART V. PUBLIC PARTICIPATION

The procedures for reaching a final decision on the draft permit are set forth in 40 CFR Part 124 and are described in the public notice for the draft permit, which is published in *El Vocero de Puerto Rico.* Included in the public notice are requirements for the submission of comments by a specified date, procedures for requesting a hearing and the nature of the hearing, and other procedures for participation in the final agency decision. EPA will consider and respond in writing to all significant comments received during the public comment period in reaching a final decision on the draft permit. Requests for information or questions regarding the draft permit should be directed to

Sieglinde Pylypchuk
EPA Region 2, Clean Water Division

EcoEléctrica, L.P.

Permit Writer Phone: 212-637-4133
Permit Writer Email: pylypchuk.sieglinde@epa.gov

A copy of the draft permit is also available on EPA's website at www.epa.gov/region02/water/permits.html.

ATTACHMENT A — FACILITY MAP AND FLOW SCHEMATIC

The facility map and flow schematic are attached as provided by the discharger in the application.