

Environmental Protection Agency and Environmental Quality Board Waive Power Generator Requirements

The Waivers aim to address the current circumstances after Hurricane María

On September 18, 2017, the Environmental Quality Board (EQB) published Resolution 17-22, temporarily waiving power generators' permit requirements. A week later, the United States Environmental Protection Agency ("EPA") issued two communications temporarily exempting Puerto Rico from the diesel fuel and mobile power generators' Clean Air Act environmental compliance requirements.

Through its Resolution, the EQB waives operating time and fuel consumption requirements for power generators that had a permit before Hurricane María. In the case of power generators without a permit, the Resolution authorizes them to operate as long as: (i) the installation complies with the technical requirements of applicable laws and regulations; (ii) they have a manufacturer's certificate of compliance with emission standards; (iii) the generator has an hour meter; and (iv) the opacity of the gases emitted by the generator does not exceed 20%. As an exception, an opacity of up to 60% will be permitted, but only for a period of less than 4 minutes in any consecutive 30-minute interval.

Through a letter to the Governor of Puerto Rico dated September 26, the EPA issued a waiver to allow the use of high sulfur heating oil and marine fuel designated for use in Emission Control Areas (ECA marine fuel) in mobile nonroad generators used for emergency purposes. The requirements of the waiver include that the generator or pump in which the fuel is used must be from a model year 2010 or older, or be above 750 horsepower and be used for emergency purposes. The waiver has been extended through subsequent letters until November 15, 2017.

Subsequently, on September 27, the EPA published a No Action Assurance (NAA), which permits the importation, sale, donation or distribution of mobile power generators that are not covered by an EPA issued Certificate of Conformity. The NAA classifies the generators in two categories: Category A, for generators that meet EPA standards but have yet to be certified, and Category B for generators that do not meet EPA standards.



Category A generators must be imported to Puerto Rico by January 31, 2018, and can be sold, leased, donated or transferred until March 31, 2018. Category B generators can only be available for lease or donation. They must also be imported to Puerto Rico by January 31, 2018, but can only be operated until March 31, 2018. Category B generators must be destroyed or exported from Puerto Rico by April 30, 2018.

Through these temporary compliance exemptions, the EQB and the EPA contribute to solve the current electric power and fuel scarcity in Puerto Rico after the impact of Hurricane María.

You may contact the attorneys at Vidal, Nieves & Bauzá should you have any questions regarding these EPA communications, or need support with respect to any requirement to do business in Puerto Rico.

Pedro I. Vidal-Cordero
pvidal@vnblegal.com • 787.413.8883

Pedro J. Nieves-Miranda
pnieves@vnblegal.com • 787.413.8881

Arline V. Bauzá-Figueroa
abauza@vnblegal.com • 787.413.8884

Cristina E. Moscoso-D'Abate
cmoscoso@vnblegal.com • 787.625.0882

Joserrlando Emmanuelli
jemmanuelli@vnblegal.com • 787.413.8880

Vidal, Nieves & Bauzá
info@vnblegal.com

T. +1 787.413.8880
F. +1 787.625.0889

www.vnblegal.com

P.O. Box 366219 San Juan, Puerto Rico 00936-6219
B7 Tabonuco Street, Suite 1108, Guaynabo, Puerto Rico 00968



[linkedin.com/company/vnblegal](https://www.linkedin.com/company/vnblegal)



[Facebook.com/vnblegal](https://www.facebook.com/vnblegal)



[Twitter.com/@vnblegal](https://twitter.com/vnblegal)