



ENVIRONMENTAL PROTECTION AGENCY

[EPA-R02-OAR-2023-0370; FRL-11172-01-R2]

Air Pollution Control; Proposed Administrative Action on Clean Air Act Grant to the Puerto Rico Department of Natural and Environmental Resources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed administrative action to revoke a grant; request for comments; and notice of opportunity for public hearing.

SUMMARY: The EPA is proposing to revoke the Fiscal Year 2019 Clean Air Act (CAA) section 105 grant awarded to the Puerto Rico Department of Natural and Environmental Resources (PRDNER) because it has failed to satisfy the statutory maintenance of effort (MOE) requirement for that year. The EPA is providing prior notice of its intent to revoke PRDNER's Fiscal Year 2019 Clean Air Act section 105 grant. When the proposed action is final, PRDNER will be eligible to receive future CAA section 105 grants to support its air pollution control program.

DATES: Comments and/or requests for a public hearing must be received by EPA at the address stated below by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R02-OAR-2023-0370 at <https://www.regulations.gov>. For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Proprietary Business Information (PBI) or Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written

comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit

<https://www.epa.gov/dockets/commenting-epa-dockets>. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Carmen R. Guerrero Pérez, Director, Caribbean Environmental Protection Division, United States Environmental Protection Agency-Region 2, City View Plaza II – Suite 700, #48 Rd. 165 km 1.2, Guaynabo, PR 00968-8069. Telephone (787) 977 -5802, Email Address: guerrero.carmen@epa.gov.

SUPPLEMENTARY INFORMATION: Section 105 of the Clean Air Act (CAA) provides grant funding for the continuing air programs of eligible State, local, and Tribal agencies. In accordance with 40 CFR 35.145(a), the Regional Administrator may provide air pollution control agencies up to three-fifths of the approved costs of implementing programs for the prevention and control of air pollution. CAA section 105 grants require two types of cost share requirements, a match requirement and an MOE requirement. An eligible agency must meet a minimum 40% match. In addition, to remain eligible for CAA section 105 grants, an eligible agency must meet an MOE requirement under section 105(c)(1) of the CAA, 42 U.S.C. 7405(c)(1).

Program activities relevant to the match consist of both recurring and non-recurring (unique, one-time only) expenses. The MOE provision requires that a state or

local agency spend at least the same dollar level of funds as it did in the previous grant year, but only for the costs of recurring activities. Specifically, section 105(c)(1) of the CAA, 42 U.S.C. 7405(c)(1), provides that, “No agency shall receive any grant under this section during any fiscal year when its expenditures of non-Federal funds for recurrent expenditures for air pollution control programs [maintenance of effort or MOE level] will be less than its expenditures were for such programs during the preceding fiscal year.” The EPA's implementing regulations at 40 CFR 35.146(a) reiterate the CAA section 105(c)(1) MOE requirement.

Although the PRDNER has successfully completed a portion of its Fiscal Year 2019 air pollution control program, PRDNER has faced challenges that have impacted its ability to meet the statutory MOE requirement for its Fiscal Year 2019 CAA section 105 grant. By letter to the EPA dated May 15, 2023, PRDNER explained that compliance with the MOE has been a challenge due to natural events that affected Puerto Rico such as hurricanes and earthquakes and the interruptions to the operations of the Government of Puerto Rico due to the COVID-19 pandemic. The restrictions imposed by the Department of Health to prevent or reduce the risk of COVID-19 exposure affected PRDNER's performance of grant workplan tasks. These factors combined with fiscal constraints and the lack of sufficient human resources to complete the grant workplan tasks created an MOE shortfall. Since PRDNER did not satisfy the statutory requirement for the maintenance of effort for Fiscal Year 2019, EPA intends to revoke PRDNER's Fiscal Year 2019 CAA section 105 grant. Pursuant to section 105(e) of the CAA, the EPA is providing prior notice of its intent to revoke PRDNER's Fiscal Year 2019 CAA section 105 grant. The proposed administrative action does not otherwise impact the air pollution control program already carried out by PRDNER during Fiscal Year 2019, which ended on September 30, 2019.

This notice constitutes a request for public comment and an opportunity for public hearing as required by CAA section 105(e) and EPA's implementing regulations at 40 CFR 35.148(b). All written comments received by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** on this proposal will be considered. EPA will conduct a public hearing on this proposal if EPA finds, based on written requests for a public hearing, that the issues raised are substantial or a significant degree of public interest in this proposal has been expressed; written requests for a hearing must be received by EPA at the address above by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. If no written request for a hearing is received or if EPA determines that the issues raised are insubstantial or no significant degree of public interest in this proposed action has been expressed, EPA will proceed to the final action on this grant.

Lisa Garcia,
Regional Administrator,
Region 2.

[FR Doc. 2023-16114 Filed: 7/28/2023 8:45 am; Publication Date: 7/31/2023]