

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

In the Matter of:

AES PUERTO RICO, L.P.
P. O. Box 1890
Guayama, Puerto Rico 00785

NPDES ID: PRR053093

Proceeding pursuant to Section 309 of the Clean
Water Act, 33 U.S.C. § 1319(a).

**ADMINISTRATIVE
ORDER ON CONSENT**

**DOCKET NUMBER
CWA-02-2024-3101**

I. PRELIMINARY STATEMENT

This Administrative Order on Consent (“Order” or “AOC”) is entered into voluntarily by the United States Environmental Protection Agency (“EPA”) Region 2 and AES PUERTO RICO, L.P., (“AES-PR” or Respondent”) under the Clean Water Act (“CWA” or the “Act”), 33 U.S.C. § 1251 *et seq.*

II. PROCEDURAL AND FACTUAL BACKGROUND

1. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), makes it unlawful for any person to discharge any pollutant from a point source to waters of the United States, except, among other things, with the authorization of, and in compliance with, a National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.
2. Section 402 of the CWA, 33 U.S.C. § 1342, authorizes the Administrator of EPA to issue a NPDES permit for the discharge of any pollutant, or combination of pollutants, subject to certain requirements of the CWA and conditions which the Administrator determines are necessary.
3. EPA is the agency within the Commonwealth of Puerto Rico with authority to administer the NPDES program. EPA maintains enforcement authority for violations of the CWA and its implementing regulations pursuant to Section 309 of the CWA, 33 U.S.C. § 1319.
4. The Administrator of EPA has promulgated regulations, 40 C.F.R. §§ 122.26(a)(1)(ii) and 122.26(b)(14), which require owners or operators to obtain a NPDES permit for stormwater discharges associated with industrial activity. The regulations at 40 C.F.R. § 122.26(b)(14) establish requirements for stormwater discharges associated with industrial activity.
5. On June 4, 2015, pursuant to Section 402(p)(2)(B) of the CWA, 33 U.S.C. § 1342(p)(2)(B), EPA issued the NPDES Multi-Sector General Permit (“MSGP”) for Storm Water Discharges Associated with Industrial Activity (“2015 MSGP”). The 2015 MSGP became effective on June 4, 2015, and was set to expire on June 3, 2020, but was administratively continued in accordance

with the Administrative Procedure Act, 5 U.S.C. § 558(c), and 40 C.F.R. § 122.6, and remained in force and effect for those owners or operators of facilities with storm water discharges associated with industrial activity who had obtained 2015 MSGP coverage prior to its expiration. On January 15, 2021, EPA reissued the NDPES MSGP for Stormwater Discharges Associated with Industrial Activity (“2021 MSGP”). The 2021 MSGP became effective on March 1, 2021, and expires on February 28, 2026.

6. Section 308(a) of the CWA, 33 U.S.C. § 1318(a), provides, in relevant part, that the Administrator of EPA may require the owner or operator of any point source to, among other things: establish and maintain such records; make such reports; install, use and maintain such monitoring equipment; sample such effluents; and provide such other information as may reasonably be required to carry out the objectives of the CWA.
7. Section 309(a) of the CWA, 33 U.S.C. § 1319(a), authorizes the Administrator to issue an order requiring compliance or to commence a civil action when any person is found to be in violation of Sections 301 or 308 of the CWA, 33 U.S.C. §§ 1311 or 1318, or in violation of any permit condition or limitation in a permit issued under Section 402 of the CWA, 33 U.S.C. § 1342.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

8. Respondent is a “person” pursuant to Section 502(5) of the CWA, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.
9. Respondent owns and operates a coal-fired steam electric power plant located at Road PR-3, Km. 142, Jobos Ward in Guayama, Puerto Rico (hereinafter referred to as the “Facility”). The Facility includes a conveyor system and a marine cargo handling dock (the “Dock”). Exhibit 1 to this AOC contains a map of the Facility that depicts the buildings, structures, and waterbodies referred to herein.
10. Stormwater associated with industrial activity discharges from three (3) permitted stormwater discharge points, designated as Outfall 001 (Exh. 1, No. 18), Outfall 002 (Exh. 1, No. 16), and Outfall 003 (Exh. 1, No. 17), into surface waters. Outfall 001 conveys stormwater from the marine cargo handling dock into Las Mareas Bay (Exh. 1, No. 19). Outfall 002 conveys stormwater from the Facility into wetlands adjacent to Las Mareas Bay (Exh. 1, No. 1). Outfall 003 conveys stormwater from areas near the Facility’s water retention ponds into wetlands adjacent to Las Mareas Bay.
11. Respondent also discharges coal combustion residuals (“CCR,” branded as AgremaxTM) and coal particles from various point sources (e.g., holes in the structure of the Ship Loader Tower (Exh. 1, No. 23), the storage tank at the Coal Transfer House (Exh. 1, No. 22), spills at Transfer House 2 (Exh. 1, No. 8), and directly from Transfer House 3 (Exh. 1, No. 9)) at its coal-fired steam electric power plant and the marine cargo handling dock into wetlands and Las Mareas Bay.
12. Respondent discharges stormwater associated with “industrial activity” as defined in 40 C.F.R. §§ 122.26(b)(14)(vii) and (viii), which includes “pollutants” within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(c), and 40 C.F.R. § 122.2, into wetlands immediately adjacent to Las Mareas Bay and/or into Las Mareas Bay, both “navigable water[s] of the United States” within the meaning of Sections 502(7) and (8) of the CWA, 33 U.S.C. § 1362(7) and (8), and 40 C.F.R. § 120.2, via the outfall pipes identified in Paragraph 10 above, “point source[s]”

within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14), and 40 C.F.R. § 122.2.

13. Respondent is therefore subject to the provisions of the CWA, 33 U.S.C. § 1251, *et seq.*, and the applicable NPDES regulations found at 40 C.F.R. Part 122.
14. On October 3, 2015, AES-PR obtained coverage pursuant to the 2015 Multi Sector General Permit (“MSGP”) for the Facility’s three (3) outfalls: Outfall 001 (receiving water: Las Mareas Harbor), Outfall 002 (receiving water: wetland), and Outfall 003 (receiving water: wetland). AES-PR obtained coverage under the 2021 MSGP on June 27, 2021.
15. Pursuant to Section 308(a) of the CWA, 33 U.S.C. § 1318(a), EPA conducted compliance evaluation inspections (“CEIs”) on November 25-26 and December 17, 2019, and May 6, 2021 to determine Respondent’s compliance with the 2015 MSGP.¹
16. The November 25-26 and December 17, 2019 CEIs (collectively referred to as the “2019 Inspections”) documented in inspection reports dated March 30, 2020 and April 6, 2020, respectively, revealed the following:
 - a. wastewater, sludge, and scum around the Cooling Tower (Exh. 1, No. 4), in violation of Part 2.1.2.2 of the 2015 MSGP;
 - b. presence of coal particles near the Coal Crusher House (Exh. 1, No. 10), including under areas covered with crushed stone, in violation of Parts 2.1.2.1 and 2.1.2.2 of the 2015 MSGP;
 - c. automatic sampling equipment for the collection of stormwater discharges that was out of service, including rain gauge recording capabilities, in violation of Appendix B.10 of the 2015 MSGP;
 - d. CCR exposed to rain in areas outside the Ship Loader Tower (Exh. 1, No. 23), in violation of Parts 2.1.2.1 and 2.1.2.2 of the 2015 MSGP;
 - e. lack of adequate engineering control measures to eliminate stormwater discharges containing CCR from the Ship Loader Tower (Exh. 1, No. 23) into the Las Mareas Bay, in violation of Part 2.1 of the 2015 MSGP;
 - f. inadequate engineering control measures to manage CCR and coal particle releases from Transfer House 2 (Exh. 1, No. 8) into wetlands, in violation of Part 2.1.2.1 of the 2015 MSGP;
 - g. lack of adequate housekeeping to remove CCR and coal particles in areas outside of Transfer House 2 (Exh. 1, No. 8), in violation of Part 2.1.2.2 of the 2015 MSGP;

¹ As noted above, Respondent did not obtain coverage under the 2021 MSGP until June 27, 2021. Accordingly, EPA’s May 2021 CEI evaluated compliance under the 2015 MSGP.

- h. lack of stormwater management to prevent stormwater runoff discharges from areas near the west side of Transfer House 3 (Exh.1, No. 9) into wetlands, in violation of Part 2.1.2.6 of the 2015 MSGP;
 - i. incomplete performance of inspections of the Facility's component areas, including the Conveyor (Exh. 1, No. 21), in violation of Part 3.1 of the 2015 MSGP;
 - j. lack of housekeeping of concrete swales, in violation of Part 2.1.2.2 of the 2015 MSGP; and
 - k. storm sewer inlet protection material in disrepair and/or missing, in violation of Part 2.1.2.3 of the 2015 MSGP.
17. Based on the findings of the 2019 Inspections and information available to EPA, on June 8, 2022, EPA issued to Respondent a Notice of Potential Violations ("NOPV Letter") of Sections 301(a) and 402 of the CWA, which required Respondent to take immediate corrective actions. Under the NOPV Letter, Respondent was also required to perform additional stormwater discharge monitoring at Outfalls 001, 002, and 003 (Exh. 1, Nos. 18, 16, and 17), and to submit documentation to EPA within thirty (30) days of receipt of the last laboratory report.
18. Based upon EPA's review of Respondent's submittals pursuant to the NOPV Letter, EPA found Respondent to be in non-compliance with Section 308(a) of the CWA for its failure to complete the additional stormwater discharge monitoring and its failure to submit documentation to EPA within thirty (30) days of receipt of the last laboratory report, as requested in the NOPV Letter.
19. During the May 6, 2021 CEI (the "2021 Inspection"), EPA found, among other things, the following:
- a. stormwater discharge samples were not taken under conditions that represented free/uninterrupted flow at the sampling points for Outfall 001 and Outfall 002 (Exh. 1, Nos.18 and 16), in violation of Appendix B.10 of the 2015 MSGP;
 - b. the location of the automatic sampling equipment flow sensor for the Outfall 003 (Exh. 1, No. 17) sampling point is inadequate to detect flow accurately, in violation of Appendix B.5 of the 2015 MSGP;
 - c. the location of the metal piece at the end of the automatic sampling equipment's tubing for the Outfall 003 sampling point is inadequate to detect flow accurately, in violation of Appendix B.5 of the 2015 MSGP;
 - d. the surface of the Coal Pile Runoff Pond (Exh. 1, No. 7) had numerous locations in which the liner was floating and/or unanchored, several areas had significant accumulation of sediments and other solids and floating materials, and the volume capacity was significantly reduced due to the liner's displacement to the surface, in violation of Part 2.1.2.3 and Appendix B.5 of the 2015 MSGP;
 - e. coal particles were observed on the ground and under gravel at the shoulder of an internal road located south of the Mechanical Shop (Exh. 1, No. 13), and near the Coal Crusher House (Exh. 1, No. 10), in violation of Part 2.1.2.2 of the 2015 MSGP;

- f. AES-PR's routine facility inspections at the Coal Hopper Tower (Exh. 1, No. 24) failed to examine all areas in which materials come into contact with stormwater runoff and/or precipitation, in violation of Part 3.1 of the 2015 MSGP;
 - g. AES-PR's routine facility inspections at the Ship Loader Tower (Exh. 1, No. 23) failed to examine all areas in which materials come into contact with stormwater runoff and/or precipitation during stormwater events, in violation of Part 3.1 of the 2015 MSGP;
 - h. AES-PR's routine facility inspections at the ground areas between the Cooling Tower (Exh. 1, No. 4) and Mechanical Shop (Exh. 1, No. 13) failed to examine all areas in which materials come into contact with stormwater runoff and/or precipitation during stormwater events, in violation of Part 3.1 of the 2015 MSGP;
 - i. lack of good housekeeping practices, as evidenced by, among other things, debris and CCR spread haphazardly on the lower and upper decks at the Ship Loader Tower (Exh. 1, No. 23) and the Coal Hopper Tower (Exh. 1, No. 24), allowing for unpermitted discharges into Las Mareas Bay, constitute a violation of Part 2.1.2.2 of the 2015 MSGP;
 - j. unpermitted discharges from the Ship Loader Tower (Exh. 1, No. 23) into Las Mareas Bay constitute a violation of Parts 1.1.3.1 and 1.1.4.1 of the 2015 MSGP and Section 301(a) of the CWA, 33 U.S.C. § 1311(a);
 - k. unpermitted discharges from Transfer House 3 (Exh. 1, No. 9) into wetlands, in violation of Parts 1.1.3.1 and 1.1.4.1 of the 2015 MSGP and Section 301(a) of the CWA, 33 U.S.C. § 301(a);
 - l. unpermitted discharges from the Coal Hopper Tower (Exh. 1, No. 24) into Las Mareas Bay, in violation of Parts 1.1.3.1 and 1.1.4.1 of the 2015 MSGP and Section 301(a) of the CWA, 33 U.S.C. § 1311(a);
 - m. the Coal Hopper Tower's stormwater storage tank can overflow and carry coal particles into Las Mareas Bay, in violation of Parts 2.1.1 and 2.1.2.6 of the 2015 MSGP;
 - n. CCR on ground areas underneath, around, and near Transfer House 2 (Exh. 1, No. 8) allowing for unpermitted stormwater runoff into jurisdictional wetlands, in violation of Part 2.1.2.2 of the 2015 MSGP;
 - o. CCR on areas immediately adjacent to Transfer House 3 (Exh. 1, No. 9) allowing for unpermitted stormwater runoff into jurisdictional wetlands, in violation of Part 2.1.2.2 of the 2015 MSGP; and
 - p. certain slopes and areas where CCR is stored were not wet, in violation of Part 2.1.2.10 of the 2015 MSGP.
20. On May 28, 2021, Respondent submitted an electronic Notice of Intent (the "NOI") to obtain coverage under the 2021 MSGP that failed to include Las Mareas Bay as an impaired water for oil and grease, turbidity, temperature, and pH, in violation of Part 1.3.2 of the MSGP.

21. On February 3, 4, and 17, 2022, EPA performed site visits of the Facility (the “2022 Visits”) to evaluate Respondent’s progress toward compliance with the NOPV Letter and 2021 MSGP. The 2022 Visits revealed that:
- a. AES-PR’s environmental coordinator resigned on or about November 2021, and on-site compliance activities were assigned to a contractor and a newly hired employee. These individuals were not identified in the Storm Water Pollution Prevention Plan (“SWPPP”) as required in Part 6 of the 2021 MSGP, had not been trained as required in Part 2.1.2.8 of the 2021 MSGP, and were unaware of different Standard Operating Procedures (“SOPs”) (i.e., SWPPP, rain gauge, sampling, dust control) developed by Respondent to implement storm water compliance measures at the Facility;
 - b. the automatic sampling equipment for sampling at Outfalls 001 and 002 (Exh. 1, Nos. 18 and 16) was out of service, in violation of Appendices B.6 and B.10 of the 2021 MSGP;
 - c. the automatic sampling equipment for sampling at Outfall 003 (Exh. 1, No. 17) did not turn on, in violation of Appendices B. 6 and B.10 of the 2021 MSGP;
 - d. the location of the automatic sampling equipment flow sensor for the Outfall 003 (Exh. 1, No. 17) sampling point was inadequate to detect flow accurately, in violation of Appendix B.10 of the 2021 MSGP;
 - e. the location of the metal piece at the end of the automatic sampling equipment’s tubing for the Outfall 003 sampling point was inadequate to detect flow accurately, in violation of Appendix B.10 of the 2021 MSGP;
 - f. there were coal particles in areas covered with crushed stone near the Mechanical Shop (Exh. 1, No. 13), in violation of Part 2.1.2.1 of the 2021 MSGP;
 - g. there was a lack of housekeeping in areas exposed to rain within and near the power production areas, in violation of Part 2.1.2.1 of the 2021 MSGP;
 - h. the Rain Gauge SOPs had not been updated, in violation of Part 5.2.5.3 and Appendix B.10 of the 2021 MSGP;
 - i. there was a lack of adequate soil stabilization in areas located near the Cooling Tower (Exh. 1, No. 4) and Power Generation Areas (Exh. 1, No. 14), in violation of Part 2.1.2.5 of the 2021 MSGP;
 - j. the Storm Water Sampling SOPs had not been updated, in violation of Parts 4 and 6.2.5.3 of the 2021 MSGP; and
 - k. the SWPPP had not been updated to address stormwater sampling and rain gauge SOPs, in violation of Parts 5.2.5.3 6 and Appendix B.10 of the 2021 MSGP;
22. As described in Paragraphs 8-21 above, EPA finds Respondent violated the CWA, 33 U.S.C. §§ 1251 *et seq.*, and the regulations promulgated pursuant to the CWA, by its failure to comply with the requirements and conditions of the 2015 and 2021 MSGP at the Facility, which permits were authorized by the EPA pursuant to Section 402 of the CWA, 33 U.S.C. § 1342(p).

IV. CONSENT

23. Respondent and EPA have negotiated this Order in good faith, which Order is fair, reasonable, and consistent with the goals of the CWA.
24. Respondent neither admits nor denies the factual allegations contained herein, neither admits nor denies that it has violated the CWA, and neither admits nor denies the Conclusions of Law asserted herein. Respondent admits that EPA has the jurisdiction and authority under Section 309(a) of the CWA to issue this Order and agrees to be bound by this Order.
25. The Compliance Requirements (Part V) of this Order shall be binding upon Respondent, its officers, directors, agents, servants, authorized representatives and successors and assigns.

V. COMPLIANCE REQUIREMENTS

In consideration of the Legal Authority, Findings of Fact, and Conclusions of Law and Findings of Violations, and pursuant to the authority in Section 309 of the CWA, 33 U.S.C. § 1319, EPA has determined that compliance with the following requirements is reasonable, and Respondent hereby consents to the following²:

NOTICE OF INTENT

26. No later than thirty (30) calendar days after the Effective Date of this Order, Respondent shall amend the AES-PR NOI to include the causes of impairment and pollutants causing such impairment for Las Mareas Bay.

EMPLOYEE TRAINING / QUALIFIED PERSONNEL

27. No later than sixty (60) calendar days after the Effective Date of this Order, Respondent shall provide a stormwater training program for all employees who work in areas where industrial materials or activities are exposed to stormwater or who are responsible for implementing activities necessary to comply with the 2021 MSGP (including Pollution Prevention Team members). This training shall include the topics listed in Appendix A.
28. No later than fifteen (15) calendar days after the Effective Date of this Order, Respondent shall submit to EPA a certification that Respondent has created and filled the position of Senior Environmental Coordinator (“Coordinator”) at the Facility who meets the “qualified personnel” requirements of the 2021 MSGP as that term is defined in Appendix A of the 2021 MSGP. Respondent’s certification shall attach the job description for the position and the Coordinator’s resume.

² The violations cited above occurred under the 2015 MSGP and/or were violations that continued from the 2015 MSGP to the 2021 MSGP. The Compliance provisions in this Order reference the 2021 MSGP to ensure that Respondent brings itself into compliance with the most recent version of the applicable permit. EPA notes that the 2015 MSGP contained similar provisions.³ Detailed training associated with Stormwater Sampling SOP may be conducted in a separate session.

COMPREHENSIVE STORMWATER FACILITY INSPECTION

29. No later than May 1, 2024, Respondent shall begin to conduct a Comprehensive Stormwater Inspection of all areas of the Facility (the “Comprehensive Inspection”). The Comprehensive Inspection shall conclude no later than June 30, 2024. The Comprehensive Inspection shall be performed by a qualified inspection team, where each member of the inspection team meets the “qualified personnel” requirements of the 2021 MSGP, as defined in Appendix A to the 2021 MSGP. The Comprehensive Inspection shall include the following:
- a. Performance of a comprehensive inspection of all areas of the Facility according to the requirements and conditions in Condition 3 (excluding 3.1.1, 3.1.4, and 3.1.6.7) of the 2021 MSGP. Consistent with the 2021 MSGP requirements to inspect stormwater discharges, the Comprehensive Inspection shall include visual observations of the Facility during a rain event of 0.25 inches or more, if such rain event takes place during the on-site portion of the Comprehensive Inspection. If no such rain event takes place during the on-site portion of the Comprehensive Inspection, AES-PR’s Coordinator and/or another AES-PR employee that meets the definition of “qualified personnel” shall perform a site inspection to assess the effectiveness of AES-PR’s BMPs if a rain event occurs on a weekday during daylight hours. The Comprehensive Inspection shall include the segment of the Conveyor from the Ship Loader Tower to Transfer House 3 and every tower found within such segment to the extent that such areas are reasonably accessible without disturbing wetlands and heavily vegetated areas.
 - b. Respondent shall provide EPA notice five (5) calendar days in advance of the date the Comprehensive Inspection is scheduled to begin. EPA, in its sole discretion, may choose to observe, but shall not conduct nor advise on, the Comprehensive Inspection.
 - c. Review and evaluation of the most recent version of the SWPPP developed for the Facility in accordance with the requirements and conditions in Parts 6 and 8.O of the 2021 MSGP.
 - d. Evaluation of the functionality and adequacy of all rain gauge equipment installed at the Facility, including the rain gauge equipment associated with the stormwater automatic samplers for Outfall 001, Outfall 002, and Outfall 003.
 - e. Review and evaluation of the most recent version of the Rain Gauge SOP.
 - f. Evaluation of the functionality and programming of the stormwater automatic samplers for Outfall 001, Outfall 002, and Outfall 003, including the sampling structures and locations. This evaluation shall include equipment’s capacity to detect when flow starts and ends, and sampler end of tubing locations and conditions.
 - g. Review and evaluation of the most recent version of the Stormwater Sampling Procedure under the inspection requirements and monitoring conditions in Parts 3.2, 4, 8.O, and Appendix B of the 2021 MSGP.
 - h. Review and evaluation of Respondent’s visual assessments and stormwater monitoring activities at Outfall 001, Outfall 002 and Outfall 003, according to the requirements in Parts 3.2, 4 and 8.O of the 2021 MSGP.

- i. Review and evaluation of Respondent's most recent Fugitive Dust Control Plan developed for the Facility.
 - j. Review and evaluation of Respondent's practices for dust control and sediment track out.
30. No later than forty-five (45) calendar days after the completion of the Comprehensive Inspection, Respondent shall submit to EPA a Comprehensive Inspection Report (the "Inspection Report"), which shall be signed by each member of the inspection team that conducted the Comprehensive Inspection and certified by an authorized representative of AES-PR under Paragraph 42 of this Order. The Inspection Report shall include a detailed description of the activities performed and findings. If AES-PR personnel performed the inspection of stormwater discharges during a rain event pursuant to Paragraph 29.a., AES-PR shall prepare a written report in accordance with the requirements of Part 3.1.6 of the 2021 MSGP with the next Quarterly Compliance Progress Report. Within thirty (30) calendar days of submitting the Inspection Report, Respondent shall prepare and submit an appropriate implementation schedule to perform corrective actions identified by the Comprehensive Inspection. Respondent shall include corrective action documentation for each activity under Part 5.3 of the 2021 MSGP.

COMPLIANCE MEASURES

31. No later than one hundred twenty (120) calendar days after the Effective Date of this Order, Respondent shall remove the crushed stone in the area identified in Figure 1 around the Coal Crusher Tower and near the section of the Conveyor from the Coal Crusher Tower to the Water Treatment facilities, remove coal particles, if present, and re-apply crushed stone or install pavement. Respondent shall submit to EPA documentation of such activities, including photographs of the area with the corresponding QCPR.
32. No later than sixty (60) calendar days after the Effective Date of this Order, Respondent shall remove CCR, if present, from the ground at Transfer House 2 (Exh. 1, No. 8) and at Transfer House 3 (Exh. 1, No. 9), and apply soil stabilization, as needed. Respondent shall submit to EPA documentation of the removal and stabilization actions it took, the area where CCR was removed, and photographs of the area post-removal with the corresponding QCPR.
33. No later than ninety (90) calendar days after the Effective Date of this Order, Respondent shall extend the low concrete wall on the west side of Transfer House 3 (Exh. 1, No. 9) westward 100 feet. No later than one-hundred twenty (120) calendar days after the Effective Date of this Order, Respondent shall retain a licensed surveyor to survey the road from the end of the extended wall to the 100-Year Channel, where Gate 2 is located (Figure 2). The surveyor will evaluate and provide a written report ("Surveyor's Report") on the road elevation to determine if stormwater runoff will flow toward the coal pile runoff pond or whether it will flow through the existing cyclone fence into wetlands or into the 100-Year Channel. Within thirty (30) calendar days or a mutually agreeable time of submission of the Surveyor's Report, AES-PR and EPA will confer on whether further action is required based on the data and conclusions in the Surveyor's Report. However, if the survey indicates that stormwater runoff will flow toward the coal pile run-off pond and will not flow toward the existing cyclone fence into wetlands or into the 100-Year Channel, AES-PR shall inspect and maintain conditions such that stormwater runoff continues to flow toward the coal pile run-off pond. If the survey indicates that stormwater runoff will flow toward the 100-Year Channel, AES-PR shall submit a proposal to

address such flow to ensure compliance with the applicable inspection and monitoring requirements of the 2021 MSGP.

STORMWATER SAMPLING / MONITORING

34. No later than thirty (30) calendar days after the Effective Date of this Order, Respondent shall submit the currently existing and available documentation requested in Part B.1 of the NOPV Letter for the sampling and laboratory analyses that have been completed as of the Effective Date of this Order and that have not yet been submitted to EPA. Upon signature by Respondent of this Order, Respondent shall be relieved from any and all requirements contained in Condition B.1 (Additional Stormwater Discharge Monitoring) of EPA’s June 8, 2020 Request for Information and Notice of Potential Violation.
35. No later than sixty (60) calendar days after the Effective Date of this Order, Respondent shall program and place in operation automatic stormwater sampling equipment, including rain gauge equipment for each sampling location for Outfall 001, Outfall 002, and Outfall 003. This equipment shall be capable of measuring rainfall and detecting the initiation and termination of flow through each sampling location for Outfall 001, Outfall 002, and Outfall 003.
36. No later than sixty (60) calendar days after the Effective Date of this Order, Respondent shall develop and implement an SOP for each piece of automatic stormwater sampling equipment, including flow and rain data recording and recordkeeping.
37. No later than sixty (60) calendar days after the Effective Date of this Order, Respondent shall begin to conduct “year one” of impaired waters monitoring according to Part 4.2.5.1.a.i of the 2021 MSGP.
38. No later than sixty (60) calendar days after the Effective Date of this Order, Respondent shall, in addition to the monitoring requirements in Part 4 and 8.O of the 2021 MSGP, begin to perform discharge monitoring of stormwater discharges through Outfall 001, Outfall 002, and Outfall 003, as described below:
 - a. *Monitoring Locations* – Sampling points for Outfall 001, Outfall 002, and Outfall 003.
 - b. *Measurable Storm Events and Monitoring Period* – Beginning no later than sixty (60) calendar days after the Effective Date of this Order, for any storm event that results in a discharge through Outfall 001, Outfall 002, and/or Outfall 003, regardless of the time of day that such discharge takes place. This additional discharge monitoring must be conducted until either at least 4 discharge monitoring events are completed or one year after the Effective Date of this Order, whichever is sooner. A 48 hour no discharge period must precede each stormwater discharge event to be sampled.
 - c. *Sample Type* – For each stormwater discharge monitoring event at the sampling points for Outfall 001, Outfall 002, and/or Outfall 003, Respondent must take a grab sample every 5 minutes from the commencement of the discharge event to the end of the discharge event, or for the first 45 minutes of the discharge, whichever occurs first. In the event that the discharge lasts 30 minutes or less, such monitoring event shall be discarded and shall not be included as one of the additional monitoring activities required herein.

- d. *Parameters to be Analyzed* – Respondent must conduct laboratory analysis for the following pollutants: Antimony; Arsenic; Barium; Beryllium; Boron; Cadmium; Chemical Oxygen Demand; Total Chromium; Cobalt; Lead; Lithium; Mercury; Molybdenum; pH; Selenium; Silver; Thallium; Total Dissolved Solids; and Total Suspended Solids.
- e. *Sampling and Analysis Procedures* – AES must take and analyze each grab sample in accordance with 40 C.F.R. § 136.
- f. *Documentation* – For each stormwater monitoring event, Respondent shall prepare documentation indicating:
 - 1) the time when the storm event began;
 - 2) the time when the discharge through the sampling point began;
 - 3) the time that the first grab sample was taken;
 - 4) the time when the discharge through the sampling point ended;
 - 5) the time when the last grab sample was taken;
 - 6) the personnel participating in the sampling event;
 - 7) product information about the automatic sampling equipment and rain gauge connected to such equipment; and
 - 8) any other information, such as chain of custody records.

REPORTING REQUIREMENTS

39. Until Termination of this Order, Respondent shall prepare and submit Quarterly Compliance Progress Reports (“QCPR”) that describe the current status and progress of the actions that Respondent has taken to comply with the provisions of this Order. Respondent shall:
- a. submit each QCPR to EPA no later than thirty (30) calendar days following the quarter that is the subject of the report; and
 - b. indicate in the QCPR, at a minimum, the following:
 - 1) the specific activities undertaken by Respondent relating to the completion of work required under this Order, including, but not limited to, the expected date for “substantial completion,” defined as the date, as certified by an authorized representative, when the project is sufficiently completed such that it can be used to accomplish the purposes for which it was intended, and identification of those requirements which have been accomplished since the previous QCPR, including the dates of substantial completion of any of the remedial actions, capital improvements, or any other actions identified in this Order; and

- 2) any impediments Respondent encountered in meeting the compliance schedules, the steps that Respondent has taken to overcome such impediments, and the steps that Respondent will take to overcome such impediments, including the anticipated dates by which such steps will be taken; and
 - 3) routine facility documentation prepared in accordance with Part 3.1.6 during the applicable quarter; and
 - 4) visual assessment documentation prepared in accordance with Part 3.2.3 during the applicable quarter; and
 - 5) rain data collected by AES-PR at Outfall 001, Outfall 002, and Outfall 003 pursuant to AES-PR's rain data collection procedures during the applicable quarter.
- c. include in the last QCPR under this Order a cost report approximating expenses incurred by Respondent to comply with this Order.

If Respondent has already submitted a deliverable to EPA, Respondent shall reference that deliverable in the QCPR and its date of submission, instead of submitting another copy of that deliverable to EPA.

VI. GENERAL PROVISIONS

40. Any technical questions concerning this Order should be directed to the following EPA designated official: Mr. José A. Rivera, Lead Environmental Engineer, Clean Water Act Team, Multimedia Permits and Compliance Branch, Caribbean Environmental Protection Division, at (787) 977-5842, or by email at rivera.jose@epa.gov. Any legal questions concerning this Order should be directed to the following EPA designated official:

Lauren Fischer
Assistant Regional Counsel
Office of Regional Counsel
Water and General Law Branch
Email: fischer.lauren@epa.gov.

41. All documents to be submitted by Respondent as part of this Order shall be sent by electronic mail, as a PDF, to:

José A. Rivera
Lead Environmental Engineer
Clean Water Act Team
Multimedia Permits and Compliance Branch
Caribbean Environmental Protection Division
U.S. Environmental Protection Agency, Region 2
Email: rivera.jose@epa.gov.

42. Pursuant to 40 C.F.R. § 122.22, all information or documents required to be submitted by Respondent by electronic mail shall be signed by an authorized representative of Respondent, and shall include the following certification:
- “I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”
43. Respondent waives any and all claims for relief and otherwise available rights to administrative or judicial review of any issue of law or fact, or any other provision, set forth in this Order, including, but not limited to, any right of judicial review of this Order under the Administrative Procedure Act, 5 U.S.C. §§ 701-708.
44. Notwithstanding any other provision of this Order, Respondent reserves its right to contest liability in any subsequent action filed by EPA to seek penalties for a violation of this Order, and reserves its right to contest liability in any subsequent action for any violations EPA has alleged in this Order. Respondent reserves all defenses to any action asserted or taken by EPA under its reservations in this Order or otherwise, and Respondent, by its consent to this Order, does not waive any defenses as to any claims of any kind by a third party, or third parties, not a party to this Order.
45. This Order does not constitute a waiver from compliance with, or a modification of, the effective terms and conditions of the CWA, its implementing regulations, or any applicable permit, which remain in full force and effect. This Order is an enforcement action taken by EPA to ensure swift compliance with the CWA. Issuance of this Order shall not be deemed an election by EPA to forego any civil or criminal actions for penalties, fines, imprisonment, or other appropriate relief under the CWA. Notice is hereby given that should EPA commence an action in a United States District Court for a violation of Section V (Compliance Provisions) of this Order, Respondent may be subject to:
- a. civil penalties up to \$64,618 per day under Section 309(d) of the CWA, as modified by 40 C.F.R. Part 19, pursuant to Section 309(d) of the Act, 33 U.S.C. § 1319(d); and/or
 - b. injunctive relief, pursuant to Section 309(b) of the Act, 33 U.S.C. § 1319(b), as imposed by the Court.
46. If any provision of this Order is held by a court of competent jurisdiction to be invalid, any surviving provisions shall remain in full force and effect.

VII. DELAY OF PERFORMANCE/FORCE MAJEURE

47. “Force Majeure,” for purposes of this Order, is any event entirely beyond the control of Respondent or any entity controlled by Respondent that delays or prevents performance of any obligation under this AOC, notwithstanding Respondent’s best efforts to avoid the delay. The

requirement of best efforts includes using best efforts to anticipate any such event and to minimize the delay caused by any such event to the greatest extent practicable. Examples of events that are not force majeure events include, but are not limited to, increased costs or expenses of any work to be performed under this AOC or Respondent's financial or business difficulties.

48. Unless otherwise specified, if any event may occur or has occurred that may delay the performance of any obligation under this Order, whether or not caused by a force majeure, Respondent shall notify Mr. José A. Rivera, Lead Environmental Engineer, Clean Water Act Team, Multimedia Permits and Compliance Branch, Caribbean Environmental Protection Division, by telephone (787-977-5842), and by electronic mail (rivera.jose@epa.gov), within ten (10) calendar days of when Respondent knew or reasonably should have known that the event might cause a delay. Within fifteen (15) calendar days thereafter, Respondent shall provide in writing the reasons for the delay, the anticipated duration of the delay, the measures taken or to be taken to prevent or minimize the delay, and a timetable by which those measures will be implemented. Respondent shall exercise its best efforts to avoid or minimize any delay and any effects of a delay. Failure to comply with the notice requirement of this paragraph shall preclude Respondent from asserting any claim of force majeure.
49. If EPA agrees that an actual or anticipated delay is attributable to force majeure, the time for performance of the obligation shall be extended by written agreement of the parties. An extension of the time for performing an obligation directly affected by the force majeure event shall not, of itself, extend the time for performing a subsequent obligation. The time of performance of any subsequent obligation that is directly impacted by an extension of time granted for an obligation due to a force majeure event shall be extended at the request of the Respondent. EPA will review Respondent's request and will provide a new set of compliance date(s) in writing, if deemed necessary.
50. Respondent shall have the burden of demonstrating, by a preponderance of the evidence, that the actual or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay was or will be warranted under the circumstances, that Respondent did exercise or is using its best efforts to avoid and mitigate the effects of the delay, and that Respondent complied with the requirements of this section.

VIII. TERMINATION AND SATISFACTION

51. After Respondent has complied with all the Compliance Provisions of this Order, Respondent may serve upon EPA a Request for Termination, stating that Respondent has satisfied those requirements, together with all necessary supporting documentation. The Request for Termination shall:
 - a. state the actions Respondent has taken to comply with this Order; and
 - b. be signed and certified in accordance with Paragraph 42, above.
52. Following receipt by EPA of Respondent's Request for Termination, within thirty (30) calendar days or at another mutually agreed upon time, EPA and Respondent's authorized representative shall confer concerning the Request and any disagreement that EPA and Respondent may have as to whether Respondent has satisfactorily complied with the requirements for termination of

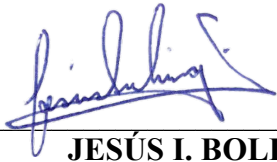
this Order. If EPA agrees, it will close-out this Order by informing Respondent in writing of such decision.

53. Any violation of this Order may be grounds for EPA to terminate this Order in its sole discretion.

IX. EFFECTIVE DATE AND EFFECT OF CONSENT

54. This Order shall become effective upon receipt by AES-PR of a fully executed copy of this Order.
55. Each undersigned signatory to this Order certifies that he is duly and fully authorized to enter into or ratify this Order and all of the applicable terms and conditions set forth herein.
56. Respondent and EPA shall bear their own costs of this Order, including attorneys' fees.
57. Respondent hereby consents to the issuance of this Order and agrees to be bound thereby.
58. Nothing in this Order limits Respondent's obligations to comply with the requirements of all applicable federal and Commonwealth of Puerto Rico laws and regulations.

FOR AES PUERTO RICO, L.P.:



JESÚS I. BOLINAGA

President

AES Puerto Rico, L.P.

P. O. Box 1890

Guayama, Puerto Rico 00785

Dated: Dec 19, 2023

FOR UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 2:

HECTOR

VELEZ-CRUZ

Digitally signed by
HECTOR VELEZ-CRUZ

Date: 2023.12.22
11:42:48 -04'00'

Dated: 12-22-2023

CARMEN R. GUERRERO PÉREZ

Director

Caribbean Environmental Protection Division

Environmental Protection Agency, Region 2

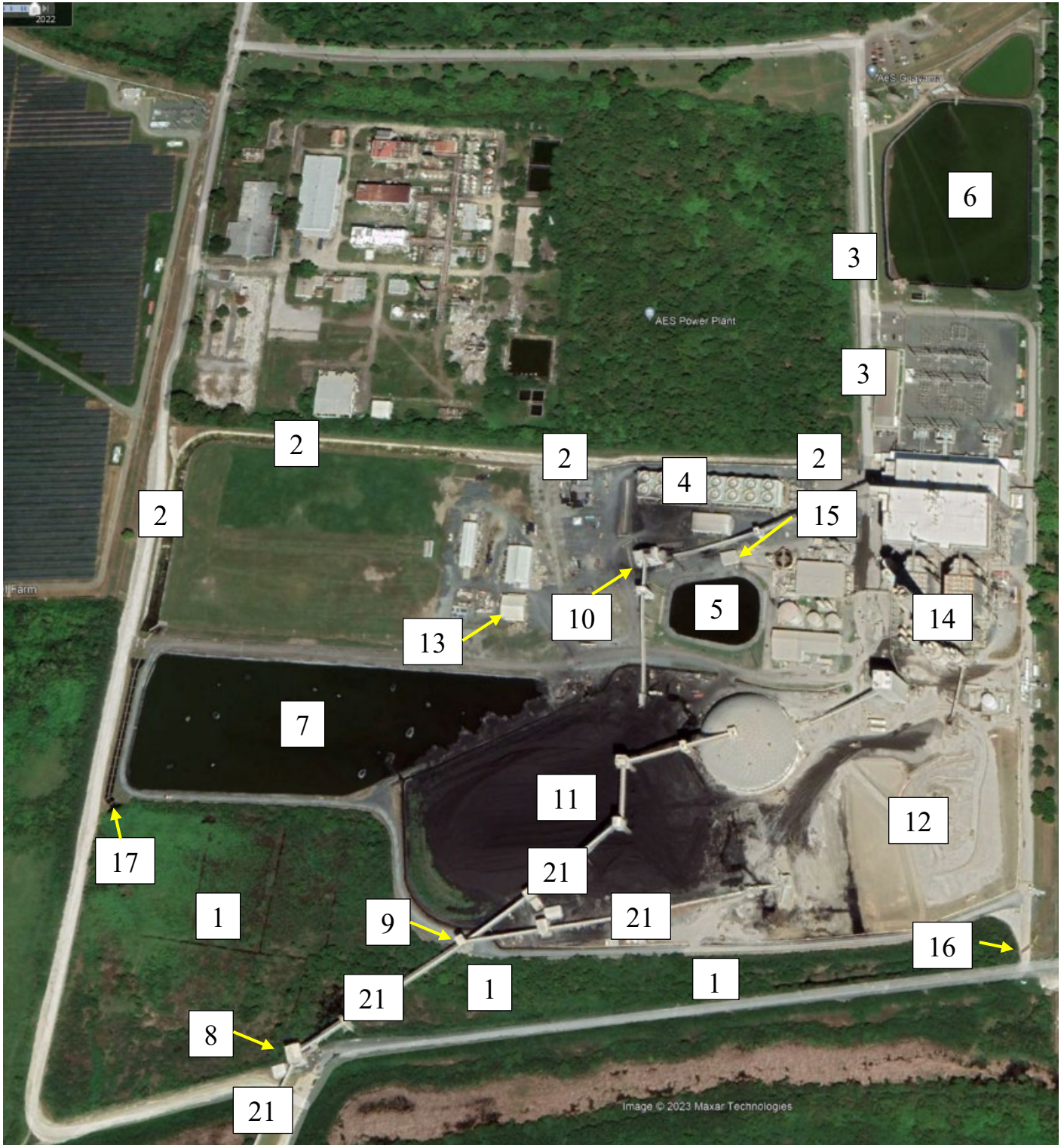
City View Plaza II, Suite 7000

48 RD. 165 Km. 1.2

Guaynabo, Puerto Rico 00968-8069

Exhibit 1: Facility Map
Image Date: October 21, 2022

| | | |
|---------------------------------|--------------------------|--|
| 1. Adjacent wetland | 7. Coal Pile Runoff Pond | 13. Mechanical Shop |
| 2. 100-Year Storm Water Channel | 8. Transfer House 2 | 14. Power Generation Area |
| 3. Stormwater Channel | 9. Transfer House 3 | 15. Sodium Hydrochloride Production Building |
| 4. Cooling Tower | 10. Coal Crusher House | 16. Outfall 002 |
| 5. Stormwater Pond | 11. Coal Pile | 17. Outfall 003 |
| 6. Make-up Water Pond | 12. CCR Pile | |



| | |
|----------------------|-------------------------|
| 18. Outfall 001 | 22. Coal Transfer House |
| 19. Las Mareas Bay | 23. Ship Loader Tower |
| 20. Transfer House 1 | 24. Coal Hopper Tower |
| 21. Conveyor | |



APPENDIX A TRAINING SYLLABUS

- 1) Background and Overview
 - a) Overview of Facility Operations
 - i. Power Plant areas
 - ii. Conveyors
 - iii. Terminal
 - b) Brief Introduction to NPDES Stormwater Regulations
 - c) 2021 MSGP / Sector O
 - d) Overview of CWA's § 309(a) Order on Consent, Penalties, Civil & Criminal Responsibility
 - e) AES-PR Stormwater Program & Implementation

- 2) Stormwater Pollution Prevention Team
 - a) Importance to Stormwater Program & Implementation
 - b) Members
 - c) Responsibilities
 - d) Substitutions/Replacements

- 3) Stormwater Pollution Prevention Plan (SWPPP)
 - a) Overview & Purpose of SWPPP
 - b) Potential Pollutant Sources
 - c) Routine Facility Inspection Requirements
 - i) Procedures and frequency
 - ii) Forms
 - iii) Documentation / Annual Reports
 - iv) Corrective Actions and Additional Implementation Measures
 1. What requires a Corrective Action and documentation?
 2. Deadlines for Corrective Actions
 3. Which corrective actions are reportable to EPA?
 - d) Discharge Monitoring Requirements¹
 - i) Quarterly visual assessment
 - (1) Procedures and frequency
 - (2) Forms
 - (3) Documentation
 - (4) Corrective Actions and Follow-up
 - ii) Monitoring
 - (1) Pollutants/parameters & Frequency
 - (2) Procedures/SOPs (location, sample preservation, laboratory interaction, reporting)
 - (3) Documentation
 - iii) Non-stormwater discharges (allowable vs. not allowable)
 - iv) SWPPP Reviews and Updates

¹ Detailed training associated with Stormwater Sampling SOP may be conducted in a separate session.

- e) Monitoring of Rain Events²
 - i) Rain Gauge SOP
- 4) Best Management Practices (BMPs)
- 5) AES-PR Control Measures
 - a) Exposure to Rain
 - b) Housekeeping
 - c) Repairs, maintenance and replacements
 - d) Spill Prevention and Response
 - e) Erosion and Sediment Control
 - f) Dust Control
 - g) Maintenance and Repair
 - h) Review and Updates

² Detailed training associated with Rain Gauge SOP may be conducted in a separate session.

Figure 1



Figure 2

