



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
CARIBBEAN ENVIRONMENTAL PROTECTION DIVISION
CITY VIEW PLAZA II BUILDING, 7TH FLOOR
ROUTE 165 GUAYNABO, PUERTO RICO 00968

June 8, 2020

VIA EMAIL

Mr. Jesús Bolinaga
Director
Caribbean Complex
AES Puerto Rico, L.P.
P. O. Box 1890
Guayama, Puerto Rico 00785

**Re: Transmittal of NPDES Inspection Reports
Request for Information pursuant to Section 308 of the Clean Water Act
Notice of Potential Violation of Sections 301 and 402 of the Clean Water Act
2015 MSGP ID: PRR053093**

Dear Mr. Bolinaga:

This letter addresses the issues raised by the National Pollutant Discharge Elimination System (“NPDES”) inspections that the United States Environmental Protection Agency (“EPA”) conducted at the AES Puerto Rico, L.P (“AES”) facility located in Guayama, Puerto Rico (the “Facility”), on November 25-26, 2019 and December 17, 2019, pursuant to Section 308(a) of the Clean Water Act (“CWA” or the “Act”), 33 U.S.C. § 1318(a). The findings from the inspections and information currently available to EPA suggest that AES may be in violation of Sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a) and 1342. By this letter, EPA is providing you with an opportunity to advise the Agency, via teleconference or in writing, of any further information that EPA should consider with respect to the potential violation[s] described in Section A, below. EPA also requests the information described in Section B of this letter pursuant to its investigative authority under Section 308(a) of the CWA. The potential violations described in this letter are very serious and require that AES take immediate corrective actions as described below or consult with EPA on the matter.

A. EPA’s Inspections Findings and Potential Non-Compliance Issues Requiring Corrective Actions

On November 25-26, 2019, EPA conducted an NPDES Stormwater Inspection (the “November 2019 Inspection”), and on December 17, 2019, EPA conducted an NPDES Focused Compliance Inspection (the “December 2019 Inspection”) (collectively, “NPDES Inspections”) to determine AES’s compliance with the CWA. Specifically, EPA sought to determine whether AES complied with Sections 301 and 402(p) of the CWA, CWA implementing regulations, and the requirements and conditions of the NPDES Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity

(“MSGP”)¹ issued in compliance with the provisions of the CWA, as amended (33 U.S.C. § 1251 et seq.) The two (2) inspection reports, enclosed, describe EPA’s observations and findings resulting from the NPDES Inspections. The inspection reports also identify areas of concern where EPA believes that the Facility’s operations present the potential for CWA violations.

The NPDES Inspections revealed that AES may have violated Sections 301(a) and 402 of the CWA, and EPA believes that the potentially violative actions are ongoing. EPA believes that AES’s operations at the Facility potentially violate the requirements and conditions of the MSGP and Section 301(a) of the CWA. The inspection report for the November 2019 Inspection, dated March 20, 2020, identifies over 38 findings of potential violations. EPA provides detailed descriptions of each potential violation and substantiates its findings through photo-documentation and interviews with AES’s officials. EPA’s inspection report of the December 2019 Inspection, dated April 6, 2020, identifies additional findings of potential violations and describes what EPA believes to be AES’s failure to implement, or to timely implement, corrective actions that would remedy the potential violations EPA identified to AES officials during the November 2019 Inspection.^{2,3}

Part 4 of the MSGP provides a framework for the required actions that AES must take to comply with the control measures, requirements, and effluent limits set forth in Part 2 of the MSGP, when noncompliant conditions are made known to AES and/or EPA as a result of an inspection, by monitoring, or by any other means.

A.1 *Compliance Plan of Action to Address Corrective Actions*

Pursuant to Parts 2 and 4 of the MSGP, AES is required to prepare and submit to EPA a definitive Compliance Plan of Action (“CPA”) to address each of the findings included in the enclosed inspection reports as well as the amendment and implementation of the Dust Control Plan referenced, below. The CPA must include, at a minimum, the following:

- a. a response to each finding included in each inspection report, including the enclosures included therein;
- b. a description of the corrective action(s) taken or to be taken, including whether the corrective action is a temporary or a permanent action;
- c. a detailed implementation schedule for each temporary action and each permanent action;
- d. a requirement for the submittal of bi-weekly progress reports with documentation of the corrective actions taken;

¹ The MSGP, which is commonly known as the “2015 MSGP”, was issued by EPA on June 4, 2015, became effective on June 4, 2015, and expires on June 4, 2020. AES obtained MSGP’s coverage for the Facility on October 3, 2015. In accordance with Sub-part 1.2.2 of the MSGP, if the MSGP is not re-issued or replaced prior to the expiration date, it will be administratively continued in accordance with the Administrative Procedure Act, 5 U.S.C. § 558(c), and 40 C.F.R. 122.6, and remain in force and effect for the discharges that were covered prior to expiration.

² The corrective actions requirements are found in Part 4 of the MSGP.

³ EPA conducted at least three (3) prior NPDES inspections of the Facility and found potential violations which EPA notified AES of in the inspection reports associated with each inspection. Several findings of potential violation documented in the inspection reports associated with the NPDES Inspections were also observed and documented in the prior inspection reports that EPA sent to AES – *see* the EPA inspection reports dated January 5, 2017, August 3, 2017, and September 4, 2018.

- e. a modification of the SWPPP [to include the permanent actions that need to be taken]; and
- f. the estimated costs for the design and implementation of each temporary action and each permanent action.

In addition, the CPA must include the placement into operation and maintenance of all three (3) automatic samplers, including placing into operation the rain data collection capability.⁴

The implementation schedule in the CPA must be based on the deadlines established in Sub-part 4.3 of the MSGP to the maximum extent possible. For those corrective actions that will take more than forty-five (45) calendar days to implement, AES must submit a detailed explanation of the causes that prevent AES from implementing the corrective action(s) sooner than forty-five (45) days, the interim actions that AES has taken and will take toward achieving the overall goal of the corrective action(s), and any other information AES deems necessary for EPA to gain a complete understanding of the limitations on AES's ability to complete the corrective action(s) sooner. EPA may, at its discretion, review and submit comments to AES regarding the CPA.

The CPA must be submitted to EPA via electronic mail ("email") within sixty (60) calendar days of receipt of this letter.

A.2 *Potential Dust Emission Violations of the MSGP*

a. EPA's Inspection of the Facility's Dust Emissions

During the November 2019 Inspection of the Facility, EPA found and documented, among other things, that the Facility maintains an Agremax™ Pile (the "Pile") which emitted visible emissions in the form of dust into the atmosphere. EPA observed that several areas along the slopes of the Pile were not wet and that the sprinkler system installed to wet the Pile was not operated after, at, or about 3:30 pm, on the day of the November 2019 Inspection. Moreover, EPA has evidence that the sprinkler system and water tank-mount truck were incapable of wetting all areas of the Pile. The dust emissions from the Pile are of particular concern and may have been ongoing since at least 2017.

On August 3, 2017, EPA issued a Notice of Violation letter ("NOV"), identifying problematic dust emissions from the Pile. The NOV stated that, to comply with Sub-part 2.1.2.10 of the MSGP, AES must implement dust minimization measures to keep all exposed areas of the Pile wet, and that those measures would have to be continued throughout the day – that is, during both daytime and nighttime hours. Further, the NOV indicated that if AES or EPA concluded that the dust control sprinkler system could not effectively control the release of fugitive dust from the Pile, AES would be required to implement corrective measures to effectively control the dust.⁵

During an ensuing NPDES inspection of the Facility on July 16-17, 2018 (the "July 2018 Inspection"), EPA found and documented, among other things, that the spraying nozzles on the sprinkler system were not in operation to control dust. In fact, EPA found during the July 2018 Inspection a number of deficiencies with AES's design and operation of the sprinkler system,

⁴ These automatic samplers are situated near the sampling points for Outfall 001, Outfall 002 and Outfall 003.

⁵ The NOV indicated that the required dust control measures could include physical reconfiguration of the dust control system; installation of fabric filter on the slopes of the Pile; and/or an expedited schedule for increased off-site shipping of material from the Pile to reduce it to a size for which fugitive dust may be effectively controlled.

including that: three (3) of the system's nine (9) nozzles were out of service – either undergoing repairs or out for replacement; the top and some areas along the slopes of the Pile were not wet; and the Pile was actively emitting dust into the air (i.e., transportation and deposit of Agremax™ on the top areas of the Pile).

Based on EPA's findings from the NPDES inspections that EPA performed from 2016 to 2019, a review of AES's most recent Dust Control Plan (Revision 4, dated October 2018), and the requirements in Sub-part 2.1.2 of the MSGP, EPA has determined that the current dust control measures do not reduce and/or eliminate the generation of dust at the Pile to the extent achievable.⁶ This determination is based on the findings that the control measures are:

- i. not stringent enough to meet non-numeric technology-based effluent limits in the MSGP; and
 - ii. not properly operated and maintained.
- b. Corrective Actions to Comply with MSGP Dust Generation and Vehicle Tracking of Industrial Materials Requirements

According to Sub-parts 2.1, 4.1 and 5.3 of the MSGP, AES is required to amend the Dust Control Plan to describe and incorporate the following:

- i. the design and installation of rubber, plastic blankets and/or similar products to cover all slopes in the Pile exposed to rain and wind;
- ii. the design of and installation of crushed stone to those areas around the Pile (e.g., between the bottom of the slopes and gabions), including the access road to the top areas of the Pile;
- iii. the relocation of all water sprinklers to effectively wet the top areas of the Pile;
- iv. the regrading of all top areas of the Pile to eliminate piles of lesser size to allow the water tank-mounted truck to move freely and apply water through the top of the Pile;
- v. a timeframe for the maintenance and repair of the water sprinkler system;
- vi. the purchase and storage of spare parts for the entire water sprinkler system;
- vii. the daily inspection and preparation of the Stockpile Inspection Form; and
- viii. an amended Stockpile Inspection Form (the "Checklist") that includes the following:⁷
 1. signature of the inspector;
 2. information about rainfall during the preceding twenty-four (24) hour period;

⁶ The control measures are a water sprinkler system and a water tank-mount truck.

⁷ The Checklist is found as an appendix to the Dust Control Plan.

3. rain forecast for the next twenty-four (24) hours;
4. surface areas (in square feet) of the Pile including the bottom, slopes and top areas;
5. the date, time and duration when water sprinkler system was operated;
6. the date, time and duration when the water tank-mounted truck was operated;
7. the location of all water sprinkler nozzles;
8. areas of the Pile that are and are not wet;
9. wind direction;
10. scheduled repairs to the water sprinkler system and the water Tank-mounted truck;
and
11. signature and date of authorized official.

The revised Dust Control Plan must be incorporated in the most recent edited version of Stormwater Pollution Prevention Plan (“SWPPP”) prepared for the Facility and implemented, as required by Parts 2 and 5 of the MSGP.

In accordance with Appendix B.8 (Duty to Provide Information), AES must send to EPA via email the amended Dust Control Plan within forty-five (45) calendar days of receipt of this letter.

A.3 *Permit Coverage under an Individual NPDES Permit*

In accordance with Sub-part 1.2.3 of the MSGP (Coverage under the Alternative Permits), AES is required to apply for an individual NPDES permit for all its discharges of pollutants into waters of the United States. This determination relies on EPA’s findings from the November 2019 Inspection and December 2019 Inspection, including the following: non-stormwater waste streams from the Facility commingled with stormwater streams; the Facility caused unauthorized discharges of process wastewater into wetlands; the presence of coal materials in areas of the Facility that are carried by stormwater runoff and subsequently discharged into wetlands and Las Mareas Bay; and the current monitoring requirements under the MSGP are not stringent enough to characterize the discharge of pollutants from the Facility into Las Mareas Bay and wetlands.

AES must prepare and submit to EPA the following application forms:

- ⇒ NPDES Application Form 1: General Information (“Form 1”);
- ⇒ NPDES Application Form 2C: Existing Manufacturing, Commercial, Mining and Silvicultural Operations (“Form 2C”); and
- ⇒ and NPDES Application Form 2F: Stormwater Discharges Associated with Industrial Activity (“Form 2F”).

The application forms are found at <https://www.epa.gov/npdes/npdes-applications-and-forms>.

AES must complete and submit the application forms by email to EPA within thirty (30) calendar days of receipt of this letter. Please send the application forms to:

Virginia Wong, Chief
NPDES Section
Clean Water Regulatory Branch
Water Division
U.S. Environmental Protection Agency, Region 2
290 Broadway
New York, New York 10007
wong.virginia@epa.gov

and

Region2_NPDES@epa.gov.

An email copy must be concurrently submitted to:

Nancy Rodríguez, P.E., Chief
Multimedia Permits and Compliance Branch
Caribbean Environmental Protection Division
U.S. Environmental Protection Agency, Region 2
City View Plaza II, Suite 7000
48 RD. 165 Km. 1.2
Guaynabo, PR 00968-8069
rodriguez.nancy@epa.gov.

See EPA websites for more information about the following topics:

- Final NPDES Application and Updates Rule: www.epa.gov/npdes/npdes-application-and-program-updates;
- NPDES Regulatory History: www.epa.gov/npdes/npdes-regulatory-history; and
- NPDES Technical Resources: www.epa.gov/npdes/npdes-technical-resources.

A.4 *Monitoring of Water Discharges into 100-Year Storm Water Concrete Channel*

Based on the observations and findings of the NPDES Inspections, EPA has determined that AES discharged unpermitted pollutants during dry weather conditions from pipes embedded in the concrete retaining structure into the 100-Year Storm Water Concrete Channel and wetlands. In accordance with Part 4 and Sub-part 6.2.5 of the MSGP, AES must take corrective actions to eliminate such unpermitted dry weather discharges and conduct monitoring, as described below:

- a. Monitoring Locations
 - 1) All pipes embedded in the concrete retaining wall north of the Cooling Tower, as pictured in the December 2019 Inspection report, that are discharging into the 100-Year Storm Water Concrete Channel;⁸ and
 - 2) the concrete pipe embedded in the concrete retaining wall depicted with a yellow arrow in Picture 8 in Attachment 2 of the December 2019 Inspection report.
- b. Monitoring Period – AES must take the samples on two (2) distinct days within thirty (30) days of receipt of this letter.
- c. Sample Type – AES must take grab samples at each location.
- d. Parameters to be Analyzed – AES must conduct laboratory analysis for the following pollutants: Ammonia, 5-Day Biochemical Oxygen Demand (BOD₅), pH, Chemical Oxygen Demand, Enterococcus Bacteria, Residual Chlorine, Surfactants, Temperature, and Total Coliforms.
- e. Sampling and Analysis Procedures – Each grab sample must be taken and analyzed in accordance with 40 C.F.R. § 136.
- f. Documentation – For each sampling location, AES must prepare documentation indicating, among other things, the time when the sampling event began; the time that the grab sample was taken; the personnel participating in the sampling event; and other information relevant to the sampling event, including chain of custody record.

Within fifteen (15) calendar days of receipt of the last laboratory report, AES must send the documentation requested in Sub-paragraph f, above, to EPA via email in accordance with the instructions set forth in Section B.3, below.

B. Request for Information

Section 308(a) of the CWA states that whenever it is necessary to carry out the objectives of the CWA, including determining whether a person is in violation of Section 301(a) of the CWA, EPA shall require the submission of any information reasonably necessary to make such a determination. Pursuant to the authority of Section 308 of the CWA, EPA may require the submission of information necessary to assess the compliance status of any facility and its related appurtenances.

EPA issues this Request for Information (“RFI”) to AES pursuant to the authority vested in the Administrator of EPA by Section 308(a) of the CWA. This authority has been duly delegated to the Regional Administrator of EPA Region 2, and further re-delegated to the Director, Caribbean Environmental Protection Division.

⁸ Refer to Attachment 2 of the Inspection Report, dated April 6, 2020, prepared for the December 2019 Inspection, and pictures 7, 9 and 11 included therein.

B.1 *Additional Stormwater Discharge Monitoring*⁹

Based on the observations and findings of the NPDES Inspections, EPA has determined that AES's monitoring of stormwater discharges thru Outfall 001, Outfall 002 and Outfall 003 is insufficient to comply with Sections 301(a) and 308(a) of the CWA. AES must conduct additional storm water discharge monitoring, as described below:

- a. Monitoring Locations – Sampling points for Outfall 001, Outfall 002 and Outfall 003.
- b. Measurable Storm Events and Monitoring Period – AES must conduct the additional stormwater discharge monitoring beginning on July 1, 2020, for any storm event that results in a discharge through Outfall 001, Outfall 002 and Outfall 003, regardless of the time of day that such discharge takes place. This additional discharge monitoring must be conducted, once per month, until at least six (6) discharge monitoring events are completed. 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 Outfall 003, AES must take a grab sample every five (5) minutes from the commencement of the discharge event to the end of the discharge event or the first forty-five (45) minutes of the discharge, whichever occurs first. In the event that the discharge lasts thirty (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 – AES 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; Radium; 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, AES must prepare documentation indicating, among other things: i) the time when the storm event began; ii) the time when the discharge through the sampling point began; iii) the time that the first grab sample was taken; iv) the time when the discharge thru the sampling point ended; v) the time when the last grab sample was taken; vi) the personnel participating in the sampling event; vii) information about the automatic sampling equipment, if used; and viii) any other information relevant to the monitoring event.

Within thirty (30) calendar days after receipt of the last laboratory report, AES must send the requested documentation as set forth in Sub-paragraph f, above, to EPA via email, at the contact information provided in Section B.3, below.

⁹ Sub-part 6.2.5 of the MSGP provides that EPA may notify AES if additional discharge monitoring requirements that EPA determines are necessary to meet the MSGP's effluent limitation. This additional storm water monitoring is based on EPA's determination and justification in Section A.4 of this letter.

B.2 *Description of Information Requested*

As a result of EPA's findings based on the NPDES Inspections, and EPA's assessments and investigations, EPA requests that AES submit the information described herein to determine AES's compliance with Sections 301(a), 308(a), and 402 of the CWA. The instructions for responding to this Request for Information ("RFI") are also enclosed.

General Information

- 1) Submit a legible copy of the topography land survey prepared by land surveyor Mr. Iván Menchaca, dated February 2019.
- 2) Submit a legible copy of the most recent topographic land survey prepared for the Facility.
- 3) Submit a copy of the most recent topographic land surveys prepared for portions and sub-basins of the Facility.
- 4) Submit the time that Mr. Héctor Ávila arrived at the Facility on the morning of June 27, 2019. Submit any and all documentation available, including, but not limited to, sign-in sheets, timesheets, etc., to support your response.
- 5) Submit the time that Mr. Héctor Ávila arrived at the Facility's dock area on the morning of June 27, 2019. Submit any and all documentation available, including, but not limited to, inspection forms, sign-in sheets, etc., to support your response.
- 6) Submit the time that Mr. Héctor Ávila arrived at the Facility on the morning of July 30, 2019. Submit any and all available documentation, including but not limited to, sign-in sheets, timecards, etc., to support your response.
- 7) Submit the time that Mr. Héctor Ávila arrived at the Facility's dock area on the morning of July 30, 2019. Submit any and all documentation available, including, but not limited to, inspection forms, sign-in sheets, etc., to support your response.

Compliance Plan of Action

- 8) Submit the CPA, in accordance with the requirements described in Section A.1 of this letter.

Dust Plan

- 9) Submit the revised Dust Plan, in accordance with the requirements described in Section A.2 of this letter.

Application Forms

- 10) Submit Form 1, Form 2C and Form 2F, in accordance with the requirements described in Section A.3 of this letter.

Monitoring of Water Discharges into 100-Year Storm Water Concrete Channel

- 11) Submit the documentation concerning the monitoring of water discharges into 100-Year Storm Water Concrete Channel, in accordance with the requirements described in Section A.4 of this letter.

Automatic Sampler Equipment

- 12) Submit the operational status of each piece of automatic sampler equipment situated near the sampling points for Outfall 001, Outfall 002, and Outfall 003, for the period between April 1, 2018 and the date of this letter.
- 13) Submit the dates that AES used each piece of automatic sampler equipment at the sampling points for Outfall 001, Outfall 002, and Outfall 003, for the period between April 1, 2018 and the date of this letter.
- 14) For the dates that each piece of automatic sampler equipment was not in operation, submit the period of time, the reason why it was not in operation, and the actions AES took to place it in operation.
- 15) Submit a copy of the rain data collected by each piece of automatic sampler equipment situated near the sampling point for Outfall 001, Outfalls 002 and Outfall 003, for the period between April 1, 2018 and the date of this letter.

100-Year Storm Water Concrete Channel

- 16) Submit photo-documentation that AES took of the 100-Year Storm Water Concrete Channel for the last three (3) years;
- 17) Submit the dates when the 100-Year Storm Water Concrete Channel was cleaned for the last three (3) years;

The Cooling Tower

- 18) If groundwater monitoring wells exist near the Cooling Tower, submit their coordinates.
- 19) If groundwater monitoring wells exist near the Cooling Tower, submit any groundwater monitoring results for groundwater sampling taken for the last three (3) years.
- 20) Submit the dates when AES discovered leaks and/or overflows outside the Cooling Tower perimeter concrete berm for the past three (3) years.
- 21) Submit the dates during which the leaks, identified above in response to Question 20, were repaired for the past three (3) years.
- 22) Submit the dates when the overflows outside the Cooling Tower perimeter concrete berm, identified above in response to Question 20, ceased for the last three (3) years.

- 23) Submit any and all documentation concerning the identification, review and/or corrective action taken to address leaks and/or overflows outside the Cooling Tower perimeter concrete berm for the last three (3) years.

Coal Crusher Tower

- 24) Submit the date(s) [or approximate date(s)] when AES personnel discovered or were informed about coal on the ground around the Coal Crusher Tower during the last three (3) years.
- 25) Submit a description and documentation of the actions that AES took to remove coal from the ground around the Coal Crusher Tower, including the dates when such removal was conducted.
- 26) Submit a description and submit documentation of the repairs AES made to the bottom and siding of the Coal Crusher Tower, and associated Conveyor structure, for the last three (3) years.

Conveyor and Associated Structures

- 27) For the period between, October 1, 2017 and the date of this letter, submit the dates and times when AES:
 - a) used the Conveyor to transfer AgremaxTM to the Facility's dock;
 - b) used the Conveyor to transfer coal from Facility's dock to the coal pile area at the Facility;
 - c) performed inspections, cleaning, maintenance, and repairs of the Conveyor's system;
 - d) first learned that there were openings at the metal cover on all structures supporting the Conveyor's belt. These structures include, but are not limited to: Transfer House 1, Transfer House 1-A, Transfer House 2, and Transfer House 3;
 - e) began to repair and completed the repair of the roof structures;
 - f) first learned that sidings were missing on the structures that support the Conveyor. These structures include, but are not limited to: Transfer House 1, Transfer House 1-A, Transfer House 2, and Transfer House 3;
 - g) first learned that there were holes in the concrete low wall along the perimeter of the bottom concrete slab found at the Transfer House 2 and Transfer House 3;
 - h) began to repair and completed the repair of the holes in the concrete low wall perimeter of the bottom concrete slab found at the Transfer House 2 and Transfer House 3;

- i) began to repair and completed the repair of the sidings on the Conveyor's supporting structures;
 - j) first learned that the Conveyor's belt cover was missing structural elements;
 - k) began the repair and completed the repair of the Conveyor's belt cover structure;
 - l) first learned that AgremaxTM and coal were found around and below the Transfer House 2;
 - m) applied and/or re-applied erosion and sediment controls alongside and in the vicinity of the Conveyor and its structures; and
 - n) performed housekeeping activities along, inside, and near the Conveyor and its structures.
- 28) For the period between, October 1, 2017, and the date of this letter, submit the following for the Transfer House 2:
- a) Submit the dates that rain occurred;
 - b) Submit the dimensions (in feet) of the bottom concrete slab;
 - c) Submit the elevation of the concrete low wall along the perimeter of the bottom concrete slab;
 - d) Submit the dates when AES discovered leaks and/or overflows outside the bottom concrete slab;
 - e) Submit any and all documentation concerning the identification, review and/or corrective action taken to address leaks and/or overflows outside the bottom concrete slab.
- 29) For the period between, October 1, 2017, and the date of this letter, submit the following:
- a) all documents submitted to and received from the United States Army Corps of Engineers and the Puerto Rico Department of Natural and Environmental Resources concerning the clean-up of the AgremaxTM and coal found around and under the Transfer House 2;
 - b) all documents that concern the application of erosion controls along and near the Conveyor and its structures; and
 - c) contract documents between AES and other entities and individuals that concern the repair and cleaning of transfer houses, including, but not limited to siding, the roof, and perimeter of the concrete base.

Agremax™ Pile

- 30) Submit the dates and duration for each incidence when the sprinkler system was placed in operation during the past three (3) years, except for those days that AES recorded rain at the Facility.
- 31) Submit the dates and duration for each incident when the water tank-mounted truck was used during the past three (3) years.
- 32) If other equipment or methods were used for dust control and/or dust suppression during the past three (3) years, submit a description of any such equipment or method of control, along with the dates and time that each piece of identified equipment and/or method was used.
- 33) Describe the area (in square feet) that each sprinkler nozzle can wet on an hourly basis. Describe the number of sprinkler nozzles required to completely wet all areas of the entire pile, including, but not limited to, the top, slopes, and bottom, in a 24-hour period. In responding to this question, assume that the entire pile is dry.

The Facility's Dock

- 34) If inspection(s) were conducted for the concrete structure where the sampling point for Outfall 001 is located ("concrete structure"), submit the dates of each time when the concrete structure was inspected during the past three (3) years; indicate whether the specific inspection event(s) occurred after the transfer of Agremax™ and coal took place. Submit documentation for all instances of concrete structure cleaning (e.g., vacuum truck) that occurred during the past three (3) years.
- 35) If housekeeping activities were conducted at the Facility's dock concrete slab, submit the dates and duration when the housekeeping activities were conducted during the past three (3) years; indicate whether each housekeeping activity reported occurred after the transfer of Agremax™ and coal took place. Submit documentation for all such housekeeping activities during the past three (3) years.
- 36) Submit the dates when the drain filters at the Facility's dock concrete slab were cleaned or replaced during the past three (3) years.
- 37) For the Coal Transfer House Tower, describe: the dimensions (in feet) of the bottom concrete slab; the elevation of the concrete berm around the bottom concrete slab; and the storage capacity of the water collection tank hydraulically connected to the bottom concrete slab. Indicate the dates when the water collection tank was cleaned, and the cleaning methods used for the past three (3) years. Submit documentation for all instances of such cleaning (e.g., vacuum truck) of the water collection tank for the past three (3) years.
- 38) Submit the dates when AES discovered leaks and/or overflows outside the bottom concrete slab of the Coal Transfer House Tower for the past three (3) years.

- 39) Submit any and all documentation concerning the identification, review and/or corrective action taken to address leaks and/or overflows outside the bottom concrete slab of the Coal Transfer House Tower for the past three (3) years.
- 40) For the Agremax™ Transfer House Tower, indicate the dates AES discovered leaks and/or overflows outside the bottom concrete slab for the past three (3) years.
- 41) Submit any and all documentation concerning the identification, review and/or corrective action taken to address leaks and/or overflows outside the bottom concrete slab of the Agremax™ Transfer House Tower for the past three (3) years.
- 42) Indicate the dates that rain occurred at the Facility's Dock for the past three (3) years.

B.3 Time and Delivery of Documents and Information Requested

Please acknowledge receipt of this letter via electronic mail upon receipt. Pursuant to 40 C.F.R. § 122.22, all information required to be submitted shall be signed by an authorized representative of AES, 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."

The acknowledgement of receipt and all information submitted to EPA in response to this letter, other than those specified hereinabove (e.g., Form 1, Form 2C and Form 2F), shall be sent by email to the following designated EPA official no later than forty-five (45) calendar days of receipt of this letter:

José A. Rivera, Team Leader
Clean Water Act Team
Multimedia Permits and Compliance Branch
Caribbean Environmental Protection Division
U.S. Environmental Protection Agency, Region 2
City View Plaza II, Suite 7000
48 RD. 165 Km. 1.2
Guaynabo, PR 00968-8069
email: rivera.jose@epa.gov.

The EPA acknowledges that the COVID-19 pandemic may be impacting AES and/or the operation at the Facility. If that is the case, EPA will consider, at its sole discretion, AES's specific circumstances that could affect a timely response to this letter, while ensuring that the EPA receives the relevant information it needs to effectively evaluate AES's compliance with Sections 301(a), 308(a) and 402(p) of the CWA.

C. Notifications

Please be advised that AES is under a continuing obligation to supplement the response if information not known or not available to AES as of the date of submission of AES's response should later become known or available to AES. In this instance, AES must supplement AES's response to EPA within ten (10) business days of when AES becomes aware of such information.

If, at any time in the future, AES becomes aware that any portion of the submitted information is false, misleading or misrepresents the truth, AES must notify EPA of this fact immediately and submit a corrected response within ten (10) business days of obtaining such information. If any part of the response is found to be untrue, AES may be subject to criminal prosecution.

This Request for Information is not subject to the approval requirements of the Paperwork Reduction Act of 1980, 44 U.S.C. §§ 3501-3520. AES may, if AES so desires, assert a business confidentiality claim covering all or part of the information requested by this letter. A business confidentiality claim may be asserted by placing on (or attaching to) the information, at the time it is submitted, a cover sheet, a stamped or typed legend, or other suitable form of notice employing language such as "trade secret" or "proprietary" or "company confidential." Information covered by such a claim will be disclosed by EPA only in accordance with, and by means of, procedures set forth in Sub-part B, 40 C.F.R. Part 2.

If no such claim accompanies the information contained in the response to the request for information when it is received by EPA, it may be made available to the public by EPA without further notice to you. AES should read the above-cited statutory and regulatory provisions carefully before asserting a business confidentiality claim, since certain categories of information are not properly the subject of such a claim. Allegedly confidential portions of otherwise non-confidential documents should be clearly identified by you. If AES desires confidential treatment of information only until a certain date or until the occurrence of a certain event, your response should so state.

D. Retention of Rights

EPA's receipt of AES's submittal of the CPA, documentation of the implementation of corrective actions, and any other matter related to the issues addressed in this letter, shall not be deemed as an election by EPA to forego any administrative or judicial action for penalties, fines, or other appropriate relief under Section 309 of the CWA, 33 U.S.C. § 1319, arising from EPA's investigation of AES's compliance with the CWA.

Failure to comply in all respects with the current Request for Information and/or implementation of corrective actions may also result in the initiation of an enforcement action under Section 309 of the Act, pursuant to which injunctive relief and penalties may be sought. Such an enforcement action may include the assessment of penalties of up to \$55,800 per day for each day of continued non-compliance.

E. EPA's Contacts

We appreciate your prompt attention to this matter. If you have any questions or concerns regarding compliance with this matter, please contact Mr. José A. Rivera, Lead Environmental Engineer, Clean Water Act Team, at (787) 977-5887, or at rivera.jose@epa.gov. Legal questions should be addressed to Ms. Lauren Fischer, Esq., Assistant Regional Counsel, Water and General Law Branch, at (212) 637-3231, or by email at fischer.lauren@epa.gov.

Sincerely,

Carmen R. Guerrero Pérez
Director
Caribbean Environmental Protection Division

Enclosures

cc: Mr. Rafael Machargo, DNER (via email with enclosures)
Mr. Ángel Meléndez, DNER (via email with enclosures)
Mr. Elías Sostre, AES (via email with enclosures)

ATTACHMENT 1

ATTACHMENT 2

ATTACHMENT 3

REQUEST FOR INFORMATION INSTRUCTIONS

In responding to the Request for Information (“RFI”), apply the following instructions, definitions and information:

- a. The signatory should be an officer or agent who is authorized to respond pursuant to the signatory requirements regulations codified at 40 C.F.R. § 122.22.
- b. A complete separate response must be made for each individual question in this RFI. Identify each answer with the number of the question it addresses and precede each answer with the question to which it is addressed.
- c. Interpret “and” as well as “or” to include within the scope of the question as much information as possible. If two interpretations of a question are possible, use the one that provides more information.
- d. In preparing your response to each question, consult with all present and former employees, agents and/or contractors whom you have reason to believe may be familiar with the matter to which the question pertains, regardless of whether the source is in your immediate possession.
- e. In answering each question, identify all contributing sources of information.
- f. If you are unable to answer a question in a detailed and complete manner, or if you are unable to submit any of the information or documents requested, indicate the reason for your inability to do so. If you have reason to believe that there is an individual who may be able to submit more detail or documentation in response to any question, state that person's name, last known address and phone number, in addition to the reasons for your belief.
- g. If anything is deleted from a document produced in response to this RFI, state the reason for, and the subject matter of the deletion.
- h. For each document produced in response to this RFI, indicate on the document or in some other reasonable manner, the number of the question to which it applies. If a document is requested but is not available, state the reason for its unavailability.