

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

In the Matter of:

AES Puerto Rico, L.P.
Respondent

Proceeding under Section 3008 of the Solid
Waste Disposal Act, as amended

CONSENT AGREEMENT AND FINAL ORDER

Docket No. RCRA-02-2024-7101

PRELIMINARY STATEMENT

This Consent Agreement is entered under authority of Sections 3008(a) and 4005(d)(4)(A)(i) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 and other statutes (collectively referred to hereinafter as "RCRA") and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 Code of Federal Regulations ("C.F.R.")

Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), authorizes the U.S. Environmental Protection Agency ("EPA") Administrator to assess civil penalties for any past or current violation, and to issue compliance orders requiring compliance with requirements that are subject to enforcement under Section 3008.

EPA Region 2 ("EPA" or "Complainant") and AES Puerto Rico, L.P. ("Respondent") have agreed to a settlement of this action before the filing of a complaint, and thus this action is being simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice.

The Complainant and Respondent agree, by entering this Consent Agreement, that settlement of this matter upon the terms set forth herein is an appropriate means of resolving the claims specified herein against Respondent without litigation. The parties had an initial in-person settlement conference in August 2022 and numerous discussions thereafter, which led to this settlement. The findings of fact and conclusions of law set forth below, which pertain to times relevant to this proceeding, are not intended, nor are they to be construed, as Respondent either admitting or denying such findings and conclusions. No adjudicated finding of fact or conclusions of law have been made.

STATUTORY AND REGULATORY FRAMEWORK

1. RCRA establishes a framework for the regulation of the handling and management of non-hazardous and hazardous solid wastes. 42 U.S.C. § 6901 *et seq.*
2. RCRA Subtitle D, as amended in 2016 by the Water Infrastructure Improvements for the Nation (“WIIN”) Act, establishes a framework for the regulation of the handling and management of coal combustion residuals (“CCR”) and grants the Administrator the authority to use RCRA Sections 3007 and 3008 to enforce the prohibition on open dumping under Section 4005(a), 42 U.S.C. § 6945(a), with respect to CCR units. 42 U.S.C. § 6945(d)(4)(A)(i).
3. Section 4005(d)(2) of RCRA, 42 U.S.C. § 6945(d)(2), establishes a framework for the regulation and enforcement of CCR requirements by EPA in nonparticipating states. A nonparticipating State means a State for which the Administrator has not approved a State permit program or other system of prior approval and conditions under RCRA section 4005(d)(1)(B). 40 C.F.R. § 257.53.
4. In April 2015, EPA promulgated regulatory requirements for the management of CCR in landfills and surface impoundments. The CCR regulations are set forth at 40 C.F.R. Part 257, Subpart D (Standards for the Disposal of Coal Combustion Residuals in Landfills and Surface Impoundments, hereinafter “CCR Rule”). The CCR Rule establishes requirements related to location standards, groundwater monitoring, corrective action, closure, post closure care, technical operating standards, inspections, monitoring, recordkeeping, and reporting. The regulatory requirements established in the CCR Rule took effect on October 19, 2015.
5. The term “Coal Combustion Residuals” is defined as “fly ash, bottom ash, boiler slag, and flue gas desulfurization materials generated from burning coal for the purpose of generating electricity by electric utilities and independent power producers.” 40 C.F.R. § 257.53.
6. The term “active facility” or “active electric utilities” or “independent power producers” means “any facility subject to the requirements of this subpart that is in operation on October 19, 2015. An electric utility or independent power producer is in operation if it is generating electricity that is provided to electric power transmission systems or to electric power distribution systems on or after October 19, 2015.” 40 C.F.R. § 257.53.
7. “CCR landfill” or “landfill” means “an area of land or an excavation that receives CCR and which is not a surface impoundment, an underground injection well, a salt dome formation, a salt bed formation, an underground or surface coal mine, or a cave...” “...a CCR landfill also includes sand and gravel pits and quarries that receive CCR, CCR piles, and any practice that does not meet the definition of a beneficial use of CCR.” 40 C.F.R. § 257.53.
8. “CCR Pile or pile” means any non-containerized accumulation of solid, non-flowing CCR that is placed on the land. 40 C.F.R. § 257.53.

9. “CCR unit” means “any CCR landfill, CCR surface impoundment, or lateral expansion of a CCR unit, or a combination of more than one of these units. This term includes both new and existing units, unless otherwise specified.” 40 C.F.R. § 257.53.

10. “Existing CCR landfill” means “a CCR landfill that receives CCR both before and after October 19, 2015, or for which construction commenced prior to October 19, 2015 and receives CCR on or after October 19, 2015.” 40 C.F.R. § 257.53.

11. “Facility” means “all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, disposing, or otherwise conducting solid waste management of CCR. A facility may consist of several treatment, storage, or disposal operational units (e.g., one or more landfills, surface impoundments, or combinations of them).” 40 C.F.R. § 257.53.

12. “Operator” means “the person(s) responsible for the overall operation of a CCR unit.” “Owner” means “the person(s) who owns a CCR unit or part of a CCR unit.” 40 C.F.R. § 257.53.

13. Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), authorizes a civil penalty of not more than \$25,000 per day for each violation. The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461, and implementing regulations at 40 C.F.R. Part 19, increased the statutory maximum penalties to \$117,468 for violations that occur after November 2, 2015, and for which penalties are assessed on or after January 6, 2023. In assessing any such penalty, EPA must take into account the seriousness of the violation and any good faith efforts to comply with applicable requirements.

EPA’S FINDINGS OF FACT AND CONCLUSIONS OF LAW

14. The Commonwealth of Puerto Rico is a “nonparticipating state” within the meaning of Section 4005(d)(2)(A) of RCRA, 42 U.S.C. § 6945(d)(2)(A) and 40 C.F.R. § 257.53.

15. Respondent is a corporation that produces electricity from coal and is a “person” within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

16. Respondent is a wholly owned subsidiary of the AES Corporation, a publicly traded corporation organized under the laws of Delaware.

17. Respondent owns and operates the AES Puerto Rico, L.P. facility, a 524-megawatt coal-fired cogeneration plant located at Km 142.0 State Road PR-3, Guayama, Puerto Rico 00784 (“AES Puerto Rico Facility”).

18. Respondent is, and was, at all times relevant, an “owner” and “operator” of the AES Puerto Rico Facility as those terms are defined at 40 C.F.R. § 257.53.

19. The AES Puerto Rico Facility is fully contracted through a long-term power purchase agreement with the Puerto Rico Electric Power Authority that expires in 2027.

20. The AES Puerto Rico Facility generates bottom ash and fly ash from the combustion of coal, which it mixes, hydrates, and allows to dry in a process that produces a solidified mixture of coal combustion fly ash and bottom ash known as “Agremax.”

21. Agremax is stored by Respondent in a stockpile located at the southeast quadrant of the AES Puerto Rico Facility prior to shipment off-site (“Agremax Stockpile”).

22. The Agremax Stockpile is an “Existing CCR landfill”, a “CCR landfill”, a “CCR pile”, and a “CCR unit.”

EPA’s Allegations of Violations

23. Complainant hereby states and alleges that Respondent has violated RCRA, and the federal regulations promulgated thereunder, as follows:

First Violation

Failure to Timely Report Results of Statistical Analyses

24. Pursuant to 40 C.F.R. § 257.93(h)(2), “within 90 days after completing sampling and analysis, the owner or operator must determine whether there has been a statistically significant increase over background for any constituent at each monitoring well.”

25. Pursuant to 40 C.F.R. § 257.90(e) and 257.90(e)(6)(iv)(A), “at a minimum, the annual groundwater monitoring and corrective action report must contain the following information, to the extent available: ... If it was determined that there was a statistically significant level above the groundwater protection standard for one or more constituents listed in appendix IV to this part pursuant to § 257.95(g) include all of the following: (A) Identify those constituents listed in appendix IV to this part and the names of the monitoring wells associated with such an increase...”

26. Respondent determined that there was a statistically significant level above the groundwater protection standard for one or more constituents at the AES Puerto Rico Facility during 2018, 2019, and 2020. The results of statistical analyses of analytical data from groundwater samples at the AES Puerto Rico Facility taken in the first half of each year during 2018 through 2020 were not included by Respondent in each year’s Annual Groundwater Monitoring and Corrective Action (GWMCA) Report for the AES Puerto Rico Facility; rather, the statistical analyses for the entire year’s analytical data (i.e., two semiannual sampling events) were included in a subsequent year’s report. The results of statistical analyses of analytical data from samples taken in the first half of 2021 were not included in Respondent’s 2021 CCR

Annual GWMCA Report for the AES Puerto Rico Facility, which states that “statistical evaluation inclusive of 2021 analytical results” was “projected...to be completed during the 2022 calendar year.” A March 2022 Addendum to Respondent’s 2021 CCR Annual GWMCA Report for the AES Puerto Rico Facility includes statistical evaluation results corresponding to semiannual groundwater sampling events in May 2020, October 2020, and April 2021.

27. Respondent’s failure to timely include the results of statistical analyses of analytical data from samples taken at the AES Puerto Rico Facility in the first half of each year during 2018 through 2020 in each year’s Annual GWMCA Report for the AES Puerto Rico Facility is a violation of 40 C.F.R. § 257.90(e)(6)(iv)(A).

Second Violation

Failure to Place Notifications of Groundwater Protection Standard Exceedances

28. Pursuant to 40 C.F.R. § 257.95(g), “If one or more constituents in appendix IV to this part are detected at statistically significant levels above the groundwater protection standard established under paragraph (h) of this section in any sampling event, the owner or operator must prepare a notification identifying the constituents in appendix IV to this part that have exceeded the groundwater protection standard. The owner or operator has completed the notification when the notification is placed in the facility’s operating record as required by 40 C.F.R. § 257.105(h)(8).”

29. Pursuant to 40 C.F.R. §§ 257.107(h)(6), “the owner or operator of a CCR unit subject to this subpart must place the following information on the owner or operator’s CCR Web site: . . . (6) The notification that one or more constituents in appendix IV to this part have been detected at statistically significant levels above the groundwater protection standard and the notifications to land owners specified under § 257.105(h)(8).”

30. Respondent placed notification of its January 2019 determination of exceedance of the 40 C.F.R. Part 257 Appendix IV groundwater protection standards for lithium, molybdenum, and selenium at the AES Puerto Rico Facility on its CCR Web site for the AES Puerto Rico Facility (2019 notification). No notification of subsequent groundwater protection standard exceedances for these constituents, as reported by Respondent in its 2020 and 2021 CCR Annual GWMCA Reports for the AES Puerto Rico Facility, was placed on Respondent’s CCR Web site for the AES Puerto Rico Facility.

31. Respondent’s failure to place notifications of groundwater protection standard exceedances at the AES Puerto Rico Facility on its CCR Web site for the AES Puerto Rico Facility is a violation of 40 C.F.R. §§ 257.95(g) and 257.107(h)(6).

Third Violation

Failure to Monitor at Least Semiannually

32. Pursuant to 40 C.F.R. §§ 257.90(e) and 257.90(e)(3), “... At a minimum, the annual groundwater monitoring and corrective action report must contain the following information, to the extent available: ... (3) In addition to all the monitoring data obtained under §§ 257.90 through 257.98, a summary including the number of groundwater samples that were collected for analysis for each background and downgradient well, the dates the samples were collected, and whether the sample was required by the detection monitoring or assessment monitoring programs.”

33. Pursuant to 40 C.F.R. §§ 257.95(d) and 257.95(d)(1), “After obtaining the results from the initial and subsequent sampling events required in paragraph (b) of this section, the owner or operator must: (1) Within 90 days of obtaining the results, and on at least a semiannual basis thereafter, resample all wells that were installed pursuant to the requirements of § 257.91, conduct analyses for all parameters in appendix III to this part and for those constituents in appendix IV to this part that are detected in response to paragraph (b) of this section, and record their concentrations in the facility operating record. The number of samples collected and analyzed for each background well and downgradient well during subsequent semiannual sampling events must be consistent with § 257.93(e) and must account for any unique characteristics of the site, but must be at least one sample from each background and downgradient well.”

34. Pursuant to 40 C.F.R. §§ 257.95(g) and 257.95(g)(1), “... The owner or operator of the CCR unit also must: (1) Characterize the nature and extent of the release and any relevant site conditions that may affect the remedy ultimately selected. The characterization must be sufficient to support a complete and accurate assessment of the corrective measures necessary to effectively clean up all releases from the CCR unit pursuant to § 257.96. Characterization of the release includes the following minimum measures: (i) Install additional monitoring wells necessary to define the contaminant plume(s); (ii) Collect data on the nature and estimated quantity of material released including specific information on the constituents listed in appendix IV of this part and the levels at which they are present in the material released; (iii) Install at least one additional monitoring well at the facility boundary in the direction of contaminant migration and sample this well in accordance with paragraph (d)(1) of this section; and (iv) Sample all wells in accordance with paragraph (d)(1) of this section to characterize the nature and extent of the release.”

35. Analytical data from the June 2019 sampling of nine additional wells installed by Respondent at the AES Puerto Rico Facility, TW-101 through TW-109, designated as “Nature & Extent Temporary Groundwater Monitoring Wells,” were included in Respondent’s 2019 Corrective Measures Assessment, as referenced in its 2019 CCR Annual GWMCA Report for the AES Puerto Rico Facility. Respondent did not provide analytical data from any subsequent sampling of wells TW-101 through TW-109 in its 2019, 2020, or 2021 CCR Annual GWMCA Reports for the AES Puerto Rico Facility, or in any other document placed on its CCR Web site

for the AES Puerto Rico Facility.

36. Respondent's failure to conduct semiannual sampling and analysis of its "nature & extent" Wells is a violation of 40 C.F.R. § 257.95(g)(1).

CONSENT AGREEMENT

1. Pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928, and 40 C.F.R. § 22.18 of the Consolidated Rules of Practice, it is hereby agreed by and between the parties hereto, and voluntarily and knowingly accepted by Respondent, that Respondent, for purposes of this Consent Agreement and in the interest of settling this matter expeditiously without the time, expense, or uncertainty of a formal adjudicatory hearing on the merits:

- a. admits the jurisdictional basis for EPA prosecuting this case;
- b. neither admits nor denies the allegations relating to the four violations specified in EPA's Findings of Fact and Conclusions of Law section, above;
- c. consents to the assessment of a civil penalty, as set forth below;
- d. consents to the issuance of the Final Order incorporating all the provisions of this Consent Agreement;
- e. consents to the assessment of the civil penalty specified herein and the requirement to perform the compliance actions described below.
- f. waives any right to contest EPA's Findings of Fact and Conclusions of Law including EPA's allegations regarding the AES Puerto Rico Facility set forth herein; and
- g. waives its right to contest and appeal the Final Order accompanying this Consent Agreement.

2. Respondent and EPA agree to the terms of this Consent Agreement and Final Order and Respondent agrees to comply with the terms specified herein.

3. Respondent and EPA agree to resolve this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

4. EPA will mail to Respondent (to the representative designated in Paragraph 15 below, a copy of the fully executed CA/FO. Respondent consents to service of the CA/FO upon it by email and by an employee of EPA other than the Regional Hearing Clerk.

Penalty Payment

5. Respondent agrees that, in settlement of the claims alleged herein, Respondent shall pay a civil penalty to EPA in the total amount of seventy-one thousand, eight hundred and forty-five dollars (**\$71,845**) in one payment. Such payment shall be made by cashier's or certified check or by electronic fund transfer (EFT).

6. If the payment is made by check, then the check shall be made payable to the Treasurer, United States of America, and shall be mailed as follows:

If using UPS or FedEx:

**U.S. Environmental Protection Agency
Fines and Penalties Cincinnati Finance Center
P.O. Box 979078
St. Louis, MO 63197-9000**

If using the United States Postal Service (including Certified Mail):

**U.S. Environmental Protection Agency
P.O. Box 979078
St. Louis, MO 63197-9000**

The check shall be identified with a notation thereon listing the following: **In the Matter of AES Puerto Rico, L.P.** and shall bear thereon the **Docket No. RCRA-02-2024-7101**.

7. If Respondent chooses to make the payment by EFT, then Respondent shall provide the following information to its remitter bank:

- a. Amount of Payment - **\$71,845**
- b. WIFT address: FRNYUS33, 33 Liberty Street, New York, NY 10045.
- c. Account Code for Federal Reserve Bank of New York receiving payment: 68010727.
- d. Federal Reserve Bank of New York ABA routing number: 021030004.
- e. Field Tag 4200 of the Fedwire message should read: D 8010727
Environmental Protection Agency.
- f. Name of Respondent and Matter: **AES Puerto Rico, L.P.**
Docket Number: RCRA-02-2024-7101

8. If Respondent chooses to make on-line payments, Respondent shall go to www.pay.gov and enter SFO 1.1 in the search field on the tool bar on the Home Page; select Continue under "EPA Miscellaneous Payments – Cincinnati Finance Center;" and open the form and complete the required fields. Once payment has been effected, Respondent shall email

proof of payment to melendez-colon.suzette@epa.gov and wise.milton@epa.gov and list In the Matter of **AES Puerto Rico, L.P.** , Docket No.: RCRA-02-2024-7101 in the subject line.

9. The payment of seventy-one thousand, eight hundred and forty-five dollars (**\$71,845**) must be received at the above address (or account of EPA) on or before thirty (30) calendar days after the date of the signature of the Final Order, which is located at the end of this CA/FO.

- a. Failure to pay the requisite civil penalty amount in full according to the above provisions may result in the referral of this matter to the United States Department of Justice or Department of the Treasury for collection or other appropriate action.
- b. Furthermore, if payment is not made on or before the date specified in this document, interest for said payment shall be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, on the overdue amount from the date said payment was required to have been made through the date said payment has been received. In addition, a late payment handling charge of \$15.00 will be assessed for each thirty (30) calendar day period or any portion thereof, following the date any payment was to have been made, in which payment of the amount remains in arrears.
- c. In addition, a 6% per annum penalty will be applied to any principal amount that has not been received by the EPA within ninety (90) calendar days of the deadline for any payment. Any such non-payment penalty charge on the debt will accrue from the date any penalty payment becomes due and is not paid.
- d. The civil penalty provided for herein constitutes a “penalty” within the meaning of 26 U.S.C. § 162(f) and is not a deductible expenditure for purposes of federal or Commonwealth law.

Compliance Actions

10. Respondent shall take the following actions within the time periods specified, according to the terms and conditions specified below.

- a. Respondent shall, within thirty (30) days of the effective date of this Consent Agreement and Final Order, place retroactive notifications of all past exceedances of groundwater protection standards that occurred after its 2019 notification at statistically significant levels above the groundwater protection standard established under 40 C.F.R. § 257.95(h) at the AES

Puerto Rico Facility both in its operating record and on its CCR Web site for the AES Puerto Rico Facility.

- b. Within ninety days (90) calendar days of the effective date of the Consent Agreement and Final Order, Respondent shall: a) amend its 2017 through 2022 Annual GWMA Reports to include reasonably available laboratory analytical reports, statistical analysis reports, groundwater monitoring well installation reports, and groundwater monitoring well purging and sampling field data sheets for each groundwater sampling event at the Facility; and b) post the amended Reports on its CCR website.
- c. Commencing no later than October 30, 2024, Respondent shall conduct sampling and analysis of groundwater monitoring wells TW-101, TW-102, TW-103, TW-105, TW-106, TW-107, TW-108, MW-1, MW-2, MW-3, MW-4, and MW-5, as indicated in Figure 3 of Respondent's 2022 Annual GWMA Report for the AES Puerto Rico Facility, annually for all constituents in 40 C.F.R. Part 257 appendix IV, and semiannually for all constituents in 40 C.F.R. Part 257 appendix III and for those constituents in 40 C.F.R. Part 257 appendix IV that have ever been detected in any of Respondent's groundwater monitoring wells. Respondent may demonstrate the need for an alternative monitoring frequency in the future in accordance with 40 C.F.R. § 257.95(c).
- d. If sampling and analysis of Respondent's monitoring well TW-101 reveals any exceedance of the groundwater protection standards established under 40 C.F.R. § 257.95(h), Respondent shall thereafter conduct sampling and analysis of groundwater monitoring well TW-104 annually for all constituents in 40 C.F.R. Part 257 appendix IV, and semiannually for all constituents in 40 C.F.R. Part 257 appendix III and for those constituents in 40 C.F.R. Part 257 appendix IV that have ever been detected in any of Respondent's groundwater monitoring wells.
- e. If sampling and analysis of Respondent's monitoring well MW-5 reveals any exceedance of the groundwater protection standards established under 40 C.F.R. § 257.95(h), Respondent shall thereafter conduct sampling and analysis of groundwater monitoring well TW-109 annually for all constituents in 40 C.F.R. Part 257 appendix IV, and semiannually for all constituents in 40 C.F.R. Part 257 appendix III and for those constituents in 40 C.F.R. Part 257 appendix IV that have ever been detected in any of Respondent's groundwater monitoring wells.
- f. Respondent shall include groundwater monitoring wells TW-101, TW-102, and TW-103 in its groundwater monitoring well system established pursuant

to 40 C.F.R § 257.91.

- g. Respondent shall by June 30, 2027, collect and analyze a minimum of eight independent samples from groundwater monitoring wells TW-101 through TW-103 for all constituents listed in 40 C.F.R. Part 257 Appendices III and IV (Respondent may at its discretion use existing data from samples previously collected and analyzed from groundwater monitoring wells TW-101 through TW-103 in 2023 and 2024 that includes all constituents listed in 40 C.F.R. Part 257 Appendices III and IV).
- h. Respondent shall timely conduct statistical analyses, pursuant to 40 C.F.R § 257.93, of analytical data from each groundwater sampling event of groundwater monitoring wells MW-1 through MW-5 and TW-101 through TW-103, and timely report the results of its statistical analyses in its Annual GWMCA Reports. This includes statistical analysis of data from monitoring wells TW-101 through TW-103 for all constituents listed in 40 C.F.R. Part 257 Appendix III for each sampling event, and for those constituents listed in 40 C.F.R. Part 257 Appendix IV that have ever been detected in any of Respondent's groundwater monitoring wells for each sampling event after eight independent samples are obtained and analyzed pursuant to Subparagraph 10.g., above.
- i. If sampling and analysis of any of Respondent's groundwater monitoring wells MW-3 through MW-5 and TW-101 through TW-103 reveal any constituent in 40 C.F.R. Part 257 appendix IV at a statistically significant level above the groundwater protection standard established under 40 C.F.R § 257.95(h), Respondent shall comply with the requirements of 40 C.F.R § 257.95(g). Additionally, for any constituent in 40 C.F.R. Part 257 appendix IV detected at a statistically significant level above the groundwater protection standard established under 40 C.F.R § 257.95(h) in any of Respondent's groundwater monitoring wells MW-3 through MW-5 and TW-101 through TW-103, if contemporaneous or subsequent sampling and analysis of any of Respondent's monitoring wells TW-104 through TW-109 reveal exceedance of the groundwater protection standard established under 40 C.F.R. § 257.95(h) for that constituent, then Respondent shall do the following:
 - i. Within 45 days Respondent shall seek approval(s) to access appropriate off-site location(s) for the installation of additional groundwater monitoring well(s).
 - ii. Upon receipt of final access approval(s), Respondent shall promptly seek all necessary permit(s) to install at least one, or as necessary more, off-site groundwater monitoring wells to define the contaminant plume(s).

- iii. After Respondent receives off-site access approvals and all required permits, Respondent shall within 120 days install and sample at least one, or as necessary more, off-site groundwater monitoring well(s) to define the contaminant plume(s). Failure to obtain the necessary off-site access and permits after making reasonable efforts and submitting timely and complete permit application(s) shall be deemed a force majeure event authorizing delay of compliance with this provision of this Consent Agreement and Final Order until access and permits are obtained.
 - iv. Respondent shall conduct sampling and analysis of its off-site groundwater monitoring well(s) annually for all constituents in 40 C.F.R. Part 257 appendix IV, and semiannually for all constituents in 40 C.F.R. Part 257 appendix III and for those constituents in 40 C.F.R. Part 257 appendix IV that have ever been detected in any of Respondent's groundwater monitoring wells.
- j. Respondent may, upon placement of a written certification by a qualified Professional Engineer in the facility's operating record, discontinue sampling and analysis of any groundwater monitoring well after demonstrating that concentrations of constituents listed in 40 C.F.R. Part 257 Appendix IV in that groundwater monitoring well have not exceeded any of the groundwater protection standards established under 40 C.F.R. § 257.95(h) in six consecutive semiannual monitoring events using the statistical procedures and performance standards in § 257.93(f) and (g). Respondent shall thereafter maintain the Professional Engineer's written certification(s) in the facility's operating record for at least 5 years.
- k. Respondent may, upon placement of a written certification by a qualified Professional Engineer in the facility's operating record, discontinue sampling and analysis of any newly installed off-site groundwater monitoring well after demonstrating that concentrations of constituents listed in 40 C.F.R. Part 257 Appendix IV in that groundwater monitoring well have not exceeded any of the groundwater protection standards established under 40 C.F.R. § 257.95(h) in the initial two consecutive semiannual monitoring events (or in more consecutive semiannual monitoring events, as determined necessary to define the contaminant plume(s) by the qualified Professional Engineer) for that well. Respondent shall thereafter maintain the Professional Engineer's written certification(s) in the facility's operating record for at least 5 years.
- l. Nothing contained in Subparagraphs 10.j. and 10.k. of this Consent Agreement and Final Order shall be construed as an approval or denial by EPA of any certification made on behalf of Respondent by a qualified

Professional Engineer.

11. Respondent shall, on a semiannual basis commencing with a report on March 1, 2025, and concluding with a final report, submit via email to EPA a summary report of the work required pursuant to this Consent Agreement and Final Order that was completed during the reporting period and that is expected to be performed during the next reporting period. Respondent's final report shall be the semiannual report submitted once Respondent has completed the requirements in Subparagraphs 10.a and 10.b and has complied with the requirements in Subparagraphs 10.c and 10.h for two years, and Respondent is in compliance with all other applicable terms of this Consent Agreement and Final Order. Respondent's final report should include a certification to this effect. This certification will be presumed to have been accepted by EPA unless EPA informs Respondent in writing within ninety (90) days that it does not accept some or all aspects of the certification, stating the reasons for EPA's position.

12. Respondent shall retain its retroactive notifications made pursuant to Subparagraph 10.a and its amended GWMCA reports made pursuant to Subparagraph 10.b in its operating record for at least five years following the date of the new notifications and amended reports, and shall make the notifications and reports available to the public on its CCR Web site for the AES Puerto Rico Facility for at least five years following the date on which the new notifications and amended reports were first posted to its CCR Web site.

Submittal and Certification

13. All documents that are required pursuant to this Consent Agreement and Final Order to be submitted or provided to EPA may be signed electronically, so long as Respondent uses a "particular electronic signature device" that complies with the requirements of 40 C.F.R. § 3.4(d).

14. All documents submitted by Respondent pursuant to this Consent Agreement and Final Order which make any representation concerning Respondent's compliance or noncompliance with any requirement of this Consent Agreement and Final Order shall be certified by a duly authorized representative of Respondent. A person is a "duly authorized representative" only if: (a) the authorization is made in writing; and (b) the authorization specifies either an individual or position having responsibility for overall operation of the AES Puerto Rico Facility or relevant AES Puerto Rico Facility activity. The certification required by this Paragraph shall be in the following form:

"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 gather and evaluate 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.”

Signature: Name: Title:

15. Except as the parties may agree otherwise in writing, all documentation and information required to be submitted in accordance with the terms and conditions of this Consent Agreement shall be sent to:

Leonard Grossman, RCRA Senior Enforcement Team Leader
Enforcement & Compliance Assurance Division
US Environmental Protection Agency, Region 2
290 Broadway, 21st Floor
New York, New York 10007-1866
Grossman.Lenny@epa.gov

and

Suzette M. Meléndez Colón, Assistant Regional Counsel
Office of Regional Counsel
United States Environmental Protection Agency, Region 2
City View Plaza II, Suite 7000
#48 RD. 165 km 1.2
Guaynabo, Puerto Rico 00968-8069
Melendez-Colon.Suzette@epa.gov

Unless the above-named EPA contacts are later advised otherwise in writing, EPA shall address any future written communications related to this matter (including any correspondence related to payment of the penalty) to Respondent at the following addresses:

Jesus I. Bolinaga
AES Puerto Rico, L.P.
350 Avenida Carlos E. Chardon. Piso 10.
San Juan, Puerto Rico 00918
Jesus.Bolinaga@aes.com

Karen Ortiz
AES Puerto Rico, L.P.
350 Avenida Carlos E. Chardon. Piso 10.
San Juan, Puerto Rico 00918
Karen.Ortiz@aes.com

Effect of Settlement and Reservation of Rights

16. Full payment of the penalty in this Consent Agreement and Final Order shall only resolve Respondent's liability for federal civil penalties for the three violations described herein in EPA's Findings of Fact and Conclusions of Law.

17. The effect of settlement described in the immediately preceding paragraph is conditioned upon the accuracy of Respondent's representations to the EPA.

18. Full payment of the penalty in this Consent Agreement and Final Order shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Consent Agreement and Final Order does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable provisions of RCRA and regulations promulgated thereunder.

19. Notwithstanding any other provision of this Consent Agreement and Final Order, EPA reserves the right to enforce the terms and conditions of this Consent Agreement and Final Order by initiating a judicial or administrative action under Section 3008 of RCRA, 42 U.S.C. § 6928, and to seek penalties against Respondent in an amount not to exceed \$73,045 per day, per violation, pursuant to Section 3008(c) of RCRA, for each day of non-compliance with the terms of this Consent Agreement and Final Order, or to seek any other remedy allowed by law.

20. Nothing contained in this Consent Agreement and Final Order shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, Commonwealth, and local environmental statutes and regulations and applicable permits.

21. Nothing contained in this Consent Agreement and Final Order can be construed as an approval or denial of Respondent's selection of remedy under 40 C.F.R. § 257.97.

22. Nothing contained in this Consent Agreement and Final Order shall alter or otherwise affect Respondent's obligation to comply with 40 C.F.R. § 257.98(b).

General Provisions

23. By signing this Consent Agreement, the undersigned representative of Respondent certifies that he or she is fully authorized to execute and enter into the terms and conditions of this Consent Agreement and has the legal capacity to bind the party he or she represents to this Consent Agreement.

24. This Consent Agreement shall not dispose of the proceeding without a final order from the Regional Judicial Officer or Regional Administrator ratifying the terms of this Consent Agreement. This Consent Agreement and Final Order shall be effective upon filing with

the Regional Hearing Clerk for EPA, Region 2. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

25. For purposes of the identification requirement in Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 1.162(f)(2)(A)(ii), and 26 C.F.R. § 1.162-21(b)(2), performance of Compliance Actions set forth in Paragraphs 10 through 12 in the Consent Agreement portion of this Consent Agreement and Final Order is restitution, remediation, or required to come into compliance with the law.

26. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, EPA is required to send to the Internal Revenue Service (“IRS”) annually, a completed IRS Form 1098-F (“Fines, Penalties, and Other Amounts”) with respect to any court order or settlement agreement (including administrative settlements), that requires a payor to pay an aggregate amount that EPA reasonably believes will be equal to, or in excess of, \$50,000 for the payor’s violation of any law or the investigation or inquiry into the payor’s potential violation of any law, including amounts paid for “restitution or remediation of property” or to come “into compliance with a law.” EPA is further required to furnish a written statement, which provides the same information provided to the IRS, to each payor (*i.e.*, a copy of IRS Form 1098-F). Failure to comply with providing IRS Form W-9 or Tax Identification Number (“TIN”), as described below, may subject Respondent to a penalty, per 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and 26 C.F.R. § 301.6723-1. In order to provide EPA with sufficient information to enable it to fulfill these obligations, EPA herein requires, and Respondent herein agrees, that:

- a. Respondent shall complete an IRS Form W-9 (“Request for Taxpayer Identification Number and Certification”), which is available at <https://www.irs.gov/pub/irs-pdf/fw9.pdf>
- b. Respondent shall therein certify that its completed IRS Form W-9 includes Respondent’s correct TIN or that Respondent has applied and is waiting for issuance of a TIN;
- c. Respondent shall email its completed Form W-9 to EPA’s Cincinnati Finance Center at wise.milton@epa.gov, within thirty (30) days after the Final Order ratifying this Agreement is filed, and EPA recommends encrypting IRS Form W-9 email correspondence; and
- d. In the event that Respondent has certified in its completed IRS Form W-9 that it has applied for a TIN and that TIN has not been issued to Respondent within thirty (30) days after the Effective Date, then Respondent, using the same email address identified in the preceding sub-paragraph, shall further:
 - i. notify EPA’s Cincinnati Finance Center of this fact, via email, within thirty (30) days from the date on which the Regional Administrator signs the Final Order located at the end of this CAFO; and
 - ii. provide EPA’s Cincinnati Finance Center with Respondent’s TIN, via email, within five (5) days of Respondent’s receipt of the TIN.

27. This Consent Agreement and Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms, or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.

28. The headings in this Consent Agreement and Final Order are for convenience of reference only and shall not affect interpretation of this Consent Agreement and Final Order.

29. This Consent Agreement and Final Order shall not be construed to create rights in, or grant any cause of action to, any third party not party to this agreement.

COMPLAINANT:

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date

Kate Anderson, Director
Enforcement and Compliance Assurance Division
United States Environmental Protection Agency
Region 2

RESPONDENT:

AES Puerto Rico, L.P.

A handwritten signature in black ink, appearing to be "J. S. ...", written over a horizontal line.

Date

Signature

Printed Name

Title

FINAL ORDER

The Regional Administrator of EPA, Region 2 concurs in the foregoing Consent Agreement in the case of **In the Matter of: AES Puerto Rico, L.P.**, bearing **Docket Number RCRA-02-2024-7101**. Said Consent Agreement, having been duly accepted and entered into by the parties, is hereby ratified and incorporated into this Final Order, which is hereby issued pursuant to Section 3008(a) of RCRA and shall take effect when filed with the Regional Hearing Clerk of EPA, Region 2. 40 C.F.R. § 22.31(b). This Final Order is being entered pursuant to the authority of 40 C.F.R. § 22.18(b)(3).

Lisa F. Garcia

Regional Administrator

United States Environmental Protection Agency

Region 2

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing fully executed CONSENT AGREEMENT and FINAL ORDER, bearing the above-referenced docket number, in the following manner to the respective addressees below:

By Email:

Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection Agency- Region 2
290 Broadway, 17th Floor
New York, New York 10007-1866
Maples.Karen@epa.gov

By Email:

Jesus I. Bolinaga
AES Puerto Rico, L.P.
350 Avenida Carlos E. Chardon. Piso 10.
San Juan, Puerto Rico 00918
Jesus.Bolinaga@aes.com

Samuel B. Boxerman
sboxerman@sidley.com

Signed

Date (if not indicated by electronic signature):