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September 1, 2015

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Puerto Rico Environmental Quality Board

Edificio de Agencias Ambientales Cruz A. Matos
Urbanización San José Industrial Park
1375 Avenida Ponce de León
San Juan, PR 00926-2604

P.O. Box 11488
San Juan, PR 00910

Mr. Weldin Franco-Ortiz, **Executive Director and President**
Suzette Melendez-Colón, **Vice President and Associate Member**
Rebeca Acosta-Pérez, **Associate Member**
María de los Ángeles-Ortiz, **Alternate Member**

Re: AES Puerto Rico, L.P.

Dear Board Members:

We write on behalf of AES Puerto Rico, L.P. ("AESPR") to provide notice to the Puerto Rico Environmental Quality Board, Weldin Franco-Ortiz, in his official capacity as Executive Director and President, Suzette Meléndez-Colón, in her official capacity as Associate Member and Vice-President, Rebeca Acosta Pérez, in her official capacity as Associate Member and María de los Ángeles-Ortiz, in her official capacity as Alternate Member of the Environmental Quality Board (collectively, here, "EQB") of the matters addressed in this letter.

1. First, we hereby provide notice that AESPR and the Puerto Rico Electric Power Authority ("PREPA") have amended their Power Purchase and Operating Agreement ("PPA") to allow AESPR to dispose in Puerto Rico "any combustion waste or by-product produced" by AESPR. PPA §6.6, as amended. This amendment expressly allows for the disposal of the manufactured aggregate marketed under the trade name AGREMAX™ ("Agremax") which is a by-product produced by the facility. A copy of the PPA amendment is attached to this letter.

The facts surrounding AESPR's operations are well known to EQB. The company operates a 454 MW (net) coal-fired power plant in Guayama. A baseload, coal-fired power plant, AESPR is a critical resource on the island, as it produces 15-20% of the electricity consumed by the citizens of Puerto Rico. AESPR is the lowest cost producer of electricity in Puerto Rico, an essential service at a time of considerable economic distress across the island.

AESPR supplies power to Puerto Rico under the PPA, a 1994 contract between AESPR and PREPA, which was amended in 1999. PREPA, in turn, distributes the electricity across the island. The PPA sets out the general commercial terms and conditions for operating AESPR, including the price PREPA pays for the electricity AESPR generates. The PPA also addressed the combustion waste and by-products AESPR produces. In the course of producing electricity, AESPR produces each year approximately 200,000 to 250,000 tons of coal ash in the form of fly ash and bed ash. Coal ash is a necessary by-product of the combustion process used to generate electricity from coal – and AESPR has used the coal ash to manufacture Agremax as a further by-product of facility operations. To produce Agremax, the fly and bed ash are mixed with water in an on-site pugmill to create a conditioned coal ash mixture which is compacted, cured, and stockpiled for future use.

The PPA originally provided that any combustion waste or by product could be used beneficially, but could not be disposed of in Puerto Rico. As a result, AESPR has marketed and supplied coal ash and its by-products, including Agremax, for beneficial use in various applications, including to lined landfills to solidify liquid wastes before disposal or for daily cover over solid wastes. These beneficial uses conserve valuable native materials and AESPR intends to continue to supply its by-products for those purposes, including Agremax, as the market permits.

However, because various restrictions currently are limiting the ability of AESPR to make beneficial use of these by-products, to ensure AESPR can continue to provide electricity reliably, it is critical for AESPR to have as an option the ability to dispose of coal ash and Agremax on the island of Puerto Rico. The United States Environmental Protection Agency has agreed, issuing an August 14, 2014 letter finding that the prohibition on disposal in the PPA is "not necessary" and that "an appropriate disposal option needs to be available" in Puerto Rico. A copy of EPA's letter is attached to the PPA amendment. PREPA has likewise agreed, and thus the amended PPA now allows AESPR to dispose of "any combustion waste or by-product produced by the operation of the [AESPR] Facility, which cannot be used for beneficial commercial uses" as provided or authorized by law. PPA §6.6, as amended.

2. Second, we also provide notice to EQB that AESPR believes current applicable law already authorizes the company to dispose of Agremax at the El Coqui Landfill in Humacao ("EC Landfill"). The EC Landfill is a municipal solid waste landfill operated by EC Waste, Inc. that complies with the applicable requirements of Subtitle D of the federal Resource Conservation and Recovery Act, 42 U.S.C. § 6941, *et seq.*, as well as the Sanitary Landfill System (SLS) requirements of EQB's 1997 Regulations. As such, the EC Landfill has SLS cells which have been authorized to operate by EQB, the cells have composite or geosynthetic material liners, and the cells meet the design and operation criteria set forth in US EPA's subtitle D regulations (40 C.F.R. Part 258) and in EQB's 1997 Regulations. This necessarily includes all

of the other regulatory requirements of a subtitle D landfill, including a leachate collection system and groundwater monitoring program.

Without question, coal ash and Agremax would be non-hazardous solid waste if, instead of being used beneficially, they were disposed of at a disposal facility. That has long been the law in the United States, and the EPA affirmed that approach in its recent Coal Combustion Residuals Rule ("EPA CCR Rule"). *See generally* 80 Fed. Reg. 21,302 (April 17, 2015). EPA likewise confirmed that disposal of coal combustion residuals in a municipal solid waste landfill that meets the subtitle D requirements would be appropriate – and did not promulgate any new regulations for lined, subtitle D landfills.

Moreover, the EC Landfill has a permit to accept non-hazardous solid waste. *See* Permit to Operate a Facility for Final Disposal of Non-Hazardous Solid Waste, Permit No. IDF-36-0016 (July 14, 2014) (EC Landfill Permit). The EC Landfill Permit is written broadly to authorize the disposal of non-hazardous solid waste in which "all waste" which meets the definition of Non-Hazardous Solid Waste. EC Landfill Permit at Section II (Type of Facility and Description of the Waste Included in the Permit). This waste is "including not limited to" assorted wastes that are described in the Permit, but the only limitation expressed in the Permit is that the wastes be non-hazardous solid waste. *Id.*

The facility's approved Operations Plan likewise makes clear that the EC Landfill has "a permit for the disposal of non-hazardous solid waste," without restrictions on the types of non-hazardous solid waste that may be accepted for disposal at the Landfill. Operation and Contingency Plan for Non-Hazardous Waste, El Coqui Company, Inv. Humacao, Puerto Rico at 2 (Oct. 2013). On the contrary, while the approved plan identifies some types of wastes, the plan makes plain that the list is not exhaustive. "**NOTE: The types of waste listed above are only examples of the types of waste that may be accepted at the sanitary landfill. This list is not intended as an exhaustive list of all non-hazardous solid waste that may be accepted by the El Coquí Landfill. All non-hazardous solid waste as defined by the Environmental Quality Board's Non-Hazardous Solid Waste Management Regulations will be accepted.**" *Id.* at 14 (emphasis in original).

In fact, not only are there no restrictions on the types of non-hazardous solid wastes that may be disposed of in the EC Landfill, but the Operations Plan approved by EQB has expressly approved the use of "Rock Ash from the AES power plant in Guayama" as an available alternative cover material. *Id.* at 21. EQB has explained that "the use of CCPs or Agremax as alternate cover was presented in the facility Operating Plan and approved by permit IDF-36-0016." *See* Letter dated Mar. 26, 2015 from M. Sostre to R. Rodriguez at 1. This confirms that Agremax and coal ash have been permitted to be deposited at the EC Landfill. Indeed, it would be entirely illogical to construe the EC Landfill Permit and approved Operations Plan to allow the facility to use Agremax as alternate daily cover over a layer of solid waste – which will itself be covered by the next layer of solid waste – but not to likewise permit the disposal of the same material. Moreover, there is nothing in Puerto Rico statute or regulations that would authorize EQB to demand express approval of each non-hazardous solid waste to be disposed of in a permitted, municipal solid waste landfill.

3. Third, notwithstanding the foregoing analysis, in the event EQB, through its Board members acting in their official capacities, were to interpret its regulations and resolutions to authorize the agency to ban or otherwise prevent AESPR from disposing of its combustion waste or other by-products that are non-hazardous solid waste, including Agremax, then AESPR hereby notifies EQB that such an interpretation would render EQB (and its members) liable to AESPR under federal law and Commonwealth law.

Specifically, notwithstanding the limitations imposed by federal and Commonwealth law, on September 2, 2014, the members of the EQB approved a resolution that states that "deposit of CCPs and/or Manufactured Aggregate and/or Agremax in any location other than those described in the following paragraphs of this Resolution is prohibited." September 2014 Resolution at 9, ¶ D. Thereafter, the September 2014 Resolution provides a procedural mechanism for obtaining approval of beneficial use of CCPs, *id.* ¶ D, disposal of CCPs generated by the facility, *id.* ¶ E, and use of CCPs as daily cover material, *id.* ¶ G. However, on July 2, 2015, the members of the EQB approved the July 2015 Resolution, which rejects the assertion that the September 2014 Resolution "makes no distinction between Agremax and CCPs." September 2015 Resolution at 1. Rather, EQB states that, in the prior September 2014 Resolution, "EQB only mentions the term [Agremax] in Part II, Section D, to clearly establish the existence of a general prohibition on depositing materials directly or indirectly related to power produced by coal combustion." *Id.* at 1-2. ("'[T]he EQB decided that '[t]he deposit of CCPs and/or Manufactured Aggregate and/or Agremax in any location other than those described in the following paragraphs in this Resolution is prohibited.'" (quoting September 2014 Resolution at 9, ¶ D)). EQB further stated that "the Board only evaluated the potential authorization of beneficial uses of CCPs." *Id.* at 2.

To the extent that EQB, through its members, acting in their official capacities, were to impose a ban on the disposal of coal ash or Agremax in Puerto Rico ("EQB Disposal Ban"), then that EQB Disposal Ban would violate federal law, the Constitutions of the United States and Puerto Rico and Puerto Rico law. As a result, AES-PR would be entitled to damages, injunctive and declaratory relief, and attorneys' fees under 28 U.S.C. §§ 2201 and 2202, and 42 U.S.C. §§ 1331, 1983 and 1988, and the Constitution and laws of the Commonwealth of Puerto Rico, including but not limited to the constitutional provisions detailed below, the Uniform Administrative Procedure Act of Puerto Rico and Arts. 4 and 1802 of the Civil Code of Puerto Rico. Indeed, such a ban would substantially harm AESPR by jeopardizing AESPR's efforts to implement measures to satisfy EPA's Final Rule which takes effect on October 19, 2015.

Specifically, AESPR has planned to construct a storage area at the AESPR facility that would include an impermeable liner beneath the existing inventory of Agremax and a leachate collection system to ensure that any rainwater that percolates through our inventory is collected. AESPR already has a system of controls and best management practices that ensures storm water that runs on and off the inventory is properly routed and collected in our lined process water control basin, as well as a sprinkler system to keep the inventory adequately wet to limit dust emissions. However, due to the limited space at the plant site, the only place where AESPR could build a lined area is where the inventory is currently stored. Hence, to make room for the first phase of AESPR's planned project, AESPR must deliver, pursuant to existing contracts, more than half of its existing inventory of Agremax to municipal solid waste landfills in Puerto Rico that are permitted by Puerto Rico's EQB to accept and beneficially use Agremax for daily

cover or other purposes. By delivering Agremax to these landfills, AESPR would then have the necessary space to install the liner and other components to store inventory temporarily under the new EPA Final Rule.

As noted, AESPR recently received approval from PREPA to authorize disposal of Agremax in landfills in Puerto Rico. If AESPR's options to deliver Agremax for beneficial use and/or disposal in Puerto Rico are prohibited by an EQB Disposal Ban, AESPR will have no place on the island to deliver Agremax to allow AESPR to complete the new containment area at the AESPR Facility. Indeed, due to restrictions placed by EQB, AESPR is already in jeopardy of not being able to complete the installation by October 19. This irreparable harm would support multiple legal claims against EQB and its members acting in their official capacities, including but not limited to claims for damages, declaratory and equitable relief under applicable state and federal law, as detailed below.

An EQB Disposal Ban would violate AESPR's legal rights and support the following claims against EQB:

- Violation of the Commerce Clause of the United States Constitution. An EQB Disposal Ban would violate the Commerce Clause by discriminating against products derived from coal imported to Puerto Rico by prohibiting the disposal of coal ash and Agremax. The EQB Disposal Ban would treat a product derived from imported coal less favorably than products derived from materials native to Puerto Rico. The Supreme Court has explained that solid waste can qualify as a product for purposes of the dormant Commerce Clause.[1] The discrimination against coal ash and Agremax could not be justified under strict scrutiny. An EQB Disposal Ban would impose substantial burdens on AESPR in their conduct of interstate and foreign commerce that are not justified by any valid public welfare, consumer protection, or pro-competitive purpose unrelated to economic protectionism.

- Violation of the Commerce Clause of the United States Constitution. An EQB Disposal Ban also would violate the Commerce Clause by imposing unreasonable burdens on AESPR's conduct of interstate and foreign commerce by increasing the costs associated with the production of electric power from imported coal at the AESPR facility, and by banning the legitimate and beneficial disposal of coal ash and Agremax. These burdens would clearly exceed any purported local benefit because there is no legitimate basis for concluding that the disposal of coal ash or Agremax in a lined, subtitle D landfill would harm human health or the environment. Further, by requiring AESPR to find alternative locations to dispose of coal ash and Agremax would increase the costs to produce electricity and shift the burdens of the use or disposal of coal ash and Agremax on elsewhere in the United States.

- Violation of the Supremacy Clause of the United States Constitution. An EQB Disposal Ban would also violate Article VI, Clause 2 of the United States Constitution because it would conflict with Congress' objectives in empowering EPA to regulate solid and hazardous waste

[1] *See, e.g.*, *Philadelphia v. New Jersey*, 437 U.S. 617 (1978); *Chemical Waste Management, Inc. v. Hunt*, 504 U.S. 334 (1992); *Fort Gratiot Sanitary Landfill, Inc. v. Michigan Dept. of Natural Resources*, 504 U.S. 353 (1992); *Oregon Waste Systems, Inc. v. Department of Environmental Quality of Oregon*, 511 U.S. 93 (1994); *C & A Carbone v. Clarkstown*, 511 U.S. 383 (1994).

under the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §§ 6901, *et seq.* RCRA provides for "cradle-to-grave" management of hazardous wastes and also establishes a framework for solid waste disposal. Under RCRA, EPA has concluded that coal combustion residuals can be disposed of in landfills that comply with subtitle D of RCRA. See, *e.g.*, 80 Fed. Reg. 21302 (Apr. 17, 2015) (EPA Final Rule); *see generally* 47 C.F.R. Part 258. Under RCRA, a state or locality cannot impose a ban on activity that RCRA authorizes or encourages. An EQB Disposal Ban would therefore conflict with and stands as an obstacle to the purposes and goals of RCRA by attempting to ban all disposal of coal ash and Agremax in Puerto Rico contrary to the express policies in RCRA of encouraging safe handling of solid waste in subtitle D landfills.

- Violation of the Contracts Clauses of the United States Constitution and the Constitution of the Commonwealth of Puerto Rico. An EQB Disposal Ban would also violate Article I, Section 10, Clause 1 of the United States Constitution and Article II, Section 7 of the Constitution of the Commonwealth of Puerto Rico because it substantially impairs AESPR's contracts by prohibiting the disposal of coal ash and Agremax. AESPR has contracted with PREPA to allow for the disposal of coal ash including Agremax in Puerto Rico as authorized by law. An EQB Disposal Ban's impairment of these contracts is neither reasonable nor necessary to serve any important governmental goal because the disposal of coal ash and Agremax in a lined, subtitle D compliant landfill does not present any risk to human health or the environment or otherwise present a general social or economic problem.

- Violation of the Due Process Clauses of the United States Constitution and the Constitution of the Commonwealth of Puerto Rico. An EQB Disposal Ban would violate the Fourteenth Amendment of the United States Constitution and Article II, Section 7 of the Constitution of the Commonwealth of Puerto Rico because it would deprive AESPR of its liberty or property without due process of law. AES has a property interest, reflected in its amended PPA with PREPA, in the continued operation of its power plant which necessarily produces coal combustion residuals and by products, including Agremax. An EQB Disposal Ban would deprive AESPR of its property right, including the ability to dispose of solid waste.

We submit this letter, and extrajudicial claim to notify you of AES-PR's intent to sue for the aforementioned damages and injunctive relief, pursuant to 28 U.S.C. §§ 2201 and 2202, and 42 U.S.C. §§ 1331, 1983 and 1988, as well as the Constitution and laws of the Commonwealth of Puerto Rico, including but not limited to the constitutional provisions detailed above, the Uniform Administrative Procedure Act of Puerto Rico and Arts. 4 and 1802 of the Civil Code of Puerto Rico, and to toll against you any applicable statute of limitations under federal and Puerto Rico law, including but not limited to the statute of limitations provided for in Art. 1868 of the Civil Code of Puerto Rico.

Cordially,

José L. Ramírez-Coll, Esq.

CC: Raquel Román Hernández, Esq.
Mariana Pérez Cordero, Esq.

SECOND AMENDMENT
TO
POWER PURCHASE AND OPERATING AGREEMENT
BETWEEN
PUERTO RICO ELECTRIC POWER AUTHORITY
AND
AES PUERTO RICO, L.P.

AS FIRST PARTY: The Puerto Rico Electric Power Authority, hereinafter referred to as "PREPA", a public corporation and government instrumentality of the Commonwealth of Puerto Rico, created by Act No. 83 of May 2, 1941, as amended, represented in this act by its Acting, Executive Director, Eng. Carlos J. Castro Montalvo, of legal age, married, and resident of Guaynabo, Puerto Rico, who is legally authorized to sign this Agreement on its behalf.

AS SECOND PARTY: AES Puerto Rico, L.P., hereinafter referred to as "Operator", a limited partnership organized in accordance with the laws of the state of Delaware, whose principal place of business is located at Guayama, Puerto Rico, and authorized to do business in Puerto Rico, represented in this act by its President, Mr. Manuel Mata, of legal age, married, and resident of San Juan, who is duly authorized to sign this Agreement on its behalf, as certified by the Corporate Resolution dated June 15, 2015, which is hereby included.

All capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to such terms in the Power Purchase and Operating Agreement, as amended by the First Amendment thereto, referred to below.

RECITALS

Whereas, Operator and PREPA entered into a Power Purchase and Operating Agreement (PPOA) dated and effective as of October 11, 1994, as amended by the First Amendment dated as of November 16, 1999 (as so amended, the "Existing Agreement"), for the sale of energy and capacity to PREPA from a 454.3 megawatt

(MW) Qualifying Facility consisting of two circulating fluidized bed (CFB) boilers, two steam turbine generators and its respective Interconnection Facilities in the vicinity of Guayama, Puerto Rico, as more fully defined in the Existing Agreement, the "Facility".

Whereas, under Article 6.6 of the Existing Agreement the Operator warrants that any combustion waste or by-product produced by the operation of the Facility which cannot be used for beneficial commercial uses ("Non-Beneficially Used Combustion By-Products") will not be stored anywhere in the Commonwealth of Puerto Rico for a period in excess of one hundred and eighty (180) Days and that it will not be disposed anywhere in the Commonwealth of Puerto Rico or its neighboring waters.

Whereas, on May 14, 2014, a meeting was held between PREPA, Operator, United States Environmental Protection Agency ("EPA") and Puerto Rico Environmental Quality Board ("EQB") representatives to discuss the coal combustion residuals ("CCR") management and disposal issues, as related to Operator's Facility and to the federal government national rulemaking effort.

Whereas, EPA issued a letter dated August 14, 2014, in which it addresses CCR and disposal issues related to Operator's Facility. Copy of this letter is included as Annex A of this Amendment.

Whereas, EPA acknowledged in the above-mentioned communication, and referring to the storage and disposal prohibition established in Article 6.6 of the Existing Agreement, that it "believes that such a prohibition is not necessary". EPA also affirms that "[A]n appropriate disposal option needs to be available for the material".

Whereas, PREPA sent a letter to EQB dated August 26, 2014, asking for an official determination regarding the CCR management and disposal issue.

Whereas, on August 27, 2014, EQB issued Resolution R-14-27-20 establishing its determination and administrative steps to allow Operator to dispose CCR material in

Puerto Rico. EQB concluded that CCR material disposal should be allowed in permitted landfills in full compliance with 40 CFR Part 258 under Subtitle D of the Resource Conservation and Recovery Act (RCRA) 42 USC §6901. Copy of the Resolution is included as Annex B of this Amendment

Whereas, Operator sent to PREPA a letter dated September 10, 2014, requesting the expeditious resolution of this important matter by means of an amendment to the Existing Agreement, as suggested by EPA in its letter. Operator also provided a list of all the landfills in Puerto Rico that provide disposal cells in compliance with RCRA Subtitle D, 40 CFR Part 258.

Whereas, the EPA has published a final rule to regulate the disposal of CCR as solid waste under Subtitle D of the RCRA.

Whereas, this rule establishes nationally applicable minimum criteria for the safe disposal of CCR in landfills and surface impoundments.

Whereas, Operator and PREPA agreed to amend the Existing Agreement as provided herein;

Therefore, in consideration of the premises and of the mutual covenants and agreements set forth herein and for other good and valuable considerations the receipt of which are hereby acknowledged, Operator and PREPA, intending to be legally bound, hereby agree as follows:

1. Section 6.6 of the Existing Agreement is hereby deleted in its entirety and replaced by the following:

   "6.6 Operator warrants that any combustion waste or by product produced by the operation of the Facility, which cannot be used for beneficial commercial uses, will not be stored anywhere in the Commonwealth of

Puerto Rico for a period in excess of one hundred eighty (180) Days and that it will not be disposed anywhere in the Commonwealth of Puerto Rico or its neighboring waters, except as provided or authorized by any applicable environmental law, rule, resolution, regulation or ordinances governing the handling, storage, transportation, disposal and use of any CCR and/or CCR based product (combustion waste, by-product, manufactured aggregate or Agremax) produced by the operation of the Facility.

The Parties agree that, all other terms, conditions, specifications and requirements established in the Existing Agreement shall remain unaltered and fully enforceable and the parties reaffirm their respective obligations under the Existing Agreement as amended hereby.

IN WITNESS WHEREOF, the parties hereto have agreed to execute this Second Amendment in San Juan, Puerto Rico, on this 17th day of July, 2015.

Puerto Rico Electric Power Authority

Carlos J. Castro Montalvo
Acting, Executive Director
[redacted]

AES Puerto Rico, L.P.

Manuel Mata
President
[redacted]

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

AUG 14 2014

Ms. Laura Velez-Velez
Chairman
Puerto Rico Environmental Quality Board
Apartado 11488
San Juan, Puerto Rico 00910

Mr. Juan F. Alicea Flores
Executive Director
Puerto Rico Electric Power Authority
G.P.O. Box 364267
San Juan, Puerto Rico 00936-4267

Dear Chairman Velez and Mr. Alicea:

The Puerto Rico Electric Power Authority (PREPA) has asked the U.S. Environmental Protection Agency (EPA) and the Puerto Rico Environmental Quality Board (EQB) to confirm in writing whether they believe that the 1994 Power Purchase and Operating Agreement (PPA) between PREPA and AES Puerto Rico, L.P. (AES) should be modified to allow the coal combustion residuals (CCRs), *i.e.*, coal ash, generated by AES's power plant in Guayama, P.R. to be disposed of in a landfill in Puerto Rico.

As you know, the PPA currently states that AES's CCRs "will not be disposed anywhere in the Commonwealth of Puerto Rico." (PPA, ¶6.6.) EPA believes that such a prohibition is not necessary. An appropriate disposal option needs to be available for the material.

As you may be aware, EPA is engaged in a rulemaking effort, at the national level, to determine whether to regulate CCRs, and if so, how.[1] If the final rule establishes requirements or prohibitions with respect to the disposal of CCRs, then the disposal of AES's CCRs will need to comply with those requirements or prohibitions, as applicable. In the interim, EPA believes the

[1] See http://www.epa.gov/solidwaste/nonhaz/industrial/special/fossil/ccr-rule/index.htm.

disposal of AES's CCRs in Puerto Rico should be in a composite lined, permitted landfill that complies with the regulations established in 40 CFR Part 258 under Subtitle D of the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, *et seq.*, or in a composite lined permitted monofill dedicated to the disposal of such CCRs either in Puerto Rico or in another jurisdiction. The groundwater monitoring and corrective action program for either type of unit should include sampling for arsenic, among other substances; EPA's 2010 CCR regulatory proposal should be consulted regarding this issue. EPA can provide additional details and assistance in this area. EQB may have additional and/or more stringent requirements that need to be met as well.

EPA recommends that the PPA be amended to allow the disposal of AES's CCRs in accordance with this letter. Please note that this letter is not a permit and does not waive, modify or otherwise change any legally applicable requirements.

If you have any questions, please let me know or have your staff contact Leonard Grossman of EPA at 212-637-4039 or grossman.lenny@epa.gov. Thank you.

Sincerely yours,

Judith A. Enck
Regional Administrator