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Mr. José A. Rivera
Clean Water Act Team
Caribbean Environmental Protection Division
US Environmental Protection Agency, Region 2
City View Plaza, Suite 7000
#48 165 RD Km 1.2
Guaynabo, PR 00968-8069

Re: Notice of Site Visit Findings and Proposed Actions Pursuant to Sections301(a) and 402 of the Clean Water Act: 2015 MSGP Tracking Number PRR053093

Dear Mr. Rivera:

We acknowledge receipt of your Site Visit Findings and Proposed Actions letter dated August 3, 2017 on August 11, 2017, signed by Carmen Guerrero (Caribbean Environmental Protection Division, Director) based in you site visit in companion with Eduardo R. Gonzalez (Caribbean Environmental Protection Division, RCRA Enforcement Area). AES-PR had fifteen (15) calendar days from the receipt of the letter to submit a response. As requested, AES-PR is hereby addressing each of the findings and required actions.

The following presents AES-PR's response to EPA findings noted during the **Facility walkthrough**:

- ***EPA Finding 1***

  - A rain event took place during the walkthrough at the Agremax pile area and outfall 002

AES-PR Response: AES-PR agrees.

  - The iron discharge concentration through storm water outfall 002 continues to be greater than the benchmark value established in Part 8.O.1 of the MSGP.

AES-PR Response: AES-PR disagrees that the concentration "continues" to be above the benchmark. Iron concentrations sampled at storm water outfall 002 have varied, at times above benchmark values and at times below.

In fact, beginning in Q3 in 2014 and continuing for all four quarters during 2015, iron concentrations in sampling at outfall 002 were well below the relevant benchmark level in the 2015 Multi-Sector General Permit ("Permit") that applies to AES-PR's facility. See Quarterly Progress Report No. 5, Administrative Compliance Order No. CWA-02-2015-3102 (April 15, 2016) (table captioned "Benchmark Monitoring Results Summary" including all 2015 data).

During Q1 and Q2 of 2016, the iron concentration levels from sampling at outfall 002 were above the benchmark. In response, AES-PR reviewed the situation and implemented corrective measures in the form of additional best management practices (BMPs), in accordance with its Permit. E.g., Permit § 4.2-4.5, 6.2.1.2. AES-PR notified EPA of these additional BMPs. See Quarterly Progress Report No. 5 (exposed soil areas were stabilized and additional silt fencing was installed); Quarterly Progress Report No. 6 Administrative Compliance Order No. CWA-02-2015-3102 (July 15, 2016) (wash station road and other road areas improved/paved and rip rap on south side of facility improved). Thereafter, the iron data from Q3 and Q4 2016 were below the applicable benchmark. See Quarterly Progress Report No. 8, Administrative Compliance Order No. CWA-02-2015-3102 (Jan. 13, 2017) (with 002 data for October through December 2016); Quarterly Progress Report No. 7, Administrative Compliance Order No. CWA-02-2015-3102 (Oct. 15, 2016) (with 002 data for June through September 2016).

However, in Q1 2017, the iron concentration levels from sampling at outfall 002 was above the benchmark, and only slightly above the benchmark in Q2 2017. In response, AES-PR reviewed the situation and is following the corrective action process, in accordance with the Permit (described further below).

- The storm water runoff reaching outfall 002 had the same color as Agremax.

AES-PR Response: AES-PR disagrees with this finding. No storm water runoff was observed at outfall 002 during the walkthrough. AES-PR is not aware that a sample of the storm water runoff reaching outfall 002 was taken and analyzed to make this determination.

Required Actions:

- Direct and reuse the runoff first flush in all storm water discharges thru (sic)outfall 002.

AES-PR Response: Requiring this new BMP through this letter is not the process provided by the Permit EPA has issued and with which AES-PR is complying. Rather, when there are data above a benchmark value, the process under the Permit is to conduct a "SWPPP Review to Determine if Modifications Are Necessary." Permit §4.2. AES-PR urges EPA to allow AES-PR to follow the procedures in its Permit to review the circumstances and determine what, if any, additional measures are needed based on these benchmark results. EPA has not provided and AES-PR has no data or other evidence to demonstrate that this proposed requirement is "technologically available and economically practicable and achievable in light of best industry practice" and

would reduce iron observed at outfall 002 at this time. E.g., Permit at §4.2, 6.2.1.2. AES-PR has retained a Hydrologist/ Hydraulic Professional to conduct an engineering evaluation and develop a preliminary design of this proposed BMP.

- *Implement additional best management practices to bring the iron concentration below the benchmark value.*

AES-PR Response: As noted, the process under the Permit is to conduct a "SWPPP Review to Determine if Modifications Are Necessary." Permit §4.2.

Moreover, based on its review, AES-PR installed a speed bump segment since the walkthrough inspection that diverts stormwater flow to vegetated areas on the AES-PR property. As a further immediate action, AES-PR has cleaned the access road to further reduce the constituents that could get carried by stormwater runoff.

Picture 1

➢ ***EPA Finding 2***

- The filter fabric installed at the metal bar grate near outfall 002 was observed with significant accumulation of solids and deteriorated.

AES-PR Response: Sediment is expected to accumulate in this sediment control practice which is cleaned periodically. The observed accumulation of solids in the filter fabric or its frayed exterior edge did not hamper the ability of this control to perform as designed.

At the time of the walkthrough, none of the filters had an excess of 6 inches of sediment accumulation as per the manufacturer's instruction (See Attachment 1).

Required Actions:

- *Clean the catch basin.*

AES-PR Response: The catch basin where the filter fabric - based best management practice is installed, is already cleaned periodically in accordance with AES-PR's SWPPP.

- *Replace the filter fabric.*

AES-PR Response: The filter fabric of this best management practice is replaced periodically if its interception surface is breached. After the inspection walkthrough, AES-PR replaced all fabrics filters.

Picture 2

➢ ***EPA Finding 3***

- The storm water pond was not properly maintained, and was covered with significant vegetation growth.

AES-PR Response: The storm water pond is properly maintained. The pond is inspected regularly and cleaned when necessary.

Required Action:

- *Remove all vegetation from the storm water pond.*

AES-PR Response: A small patch of emergent aquatic vegetation observed at the fringe of this pond has been partially removed. All observed vegetation will be removed from the Stormwater pond and that work should be finished in the next 10 days.

Picture 3

➢ ***EPA Finding 4***

- A portion of the concrete storm water conveyance ditch located at the south side of the Agremax pile was observed covered with Agremax.

AES-PR Response: The ditch section was not "covered" with Agremax. This portion of the concrete storm water conveyance ditch contained Agremax that by design had been settled out of the storm water runoff from the Agremax stockpile that is carried by the conveyance. This is part of normal operations as further explained below.

Required Action:

- *The concrete storm water conveyance ditch shall be cleaned to allow for free/ uninterrupted flow.*

AES-PR Response: The concrete storm water conveyance ditch has a secondary sediment retention function performed by in-stream check dams that pool the water and restrict flow to settle out suspended solids, and therefore an accumulation of sediment in the ditch is expected as part of its routine operation. This ditch is cleaned periodically when necessary, often at the end of the work shift. The sediment accumulation observed during the walkthrough was cleaned in accordance with our customary practice.

Picture 4

Picture 5

- ***EPA Finding 5***

  - *The diesel spill control tank had a discolored water accumulation and floating material.*

AES-PR Response: Direct rainfall, rainwater from the diesel fuel tank and tank truck unloading area secondary containment area and wind-blown material accumulate periodically in this below ground level tank.

Required Action:

  - *The diesel spill control tank shall be emptied and cleaned of sediments and other materials.*

AES-PR Response: The diesel spill control tank was emptied and cleaned. This tank is emptied and cleaned periodically to ensure that adequate spill retention capacity is available. The observed water accumulation and floating material did not hamper the tank's ability to work as designed.

Picture 6

➢ ***EPA Finding 6***

- The water sprinkler system for dust minimization at the Agremax pile was not in use.

AES-PR Response: AES-PR agrees that the sprinkler system was not in use at the time of the walkthrough. The sprinkler system is fully operational and was at the time of the inspection. Dust control water is applied daily to all areas of the Agremax stockpile.

- Certain areas of the Agremax pile were dry and without dust control water application.

AES-PR Response: Dust control water is applied daily to all areas of the Agremax stockpile. Moreover, after it dries, the Agremax surface develops a protective crust that prevents the formation of fugitive dust unless the integrity of the protective crust is breached by mechanical means.

Required Action:

- *Operate the water sprinkler system on all areas in which the Agremax is exposed at the pile in accordance with Part 6.3 of the Dust Control Plan and the Storm Water Pollution Prevention Plan (SWPPP) developed for the Facility.*

AES-PR Response: AES-PR is operating in conformance with the Dust Control Plan and SWPPP for the Facility. For operational reasons, the water sprinkler system is activated at specific times as described in the Dust Control Plan and the SWPPP. To cover exposed areas that the sprinkler system cannot reach, a water truck with water cannon is used. After it dries, the Agremax surface develops a protective crust that prevents the formation of fugitive dust unless the integrity of the protective crust is breached by mechanical means.

Picture 7

Picture 8

- ***EPA Finding 7***

  - *The mechanical sweeper vehicle was not observed in use.*

AES-PR Response: AES-PR agrees.

Required Action:

- *Operate the vehicle in accordance with Part 6.3 of the Dust Control Plan (daily wet mechanical sweeping of paved haul roads) and the SWPPP.*

AES-PR Response: The mechanical sweeper was not operational because of a mechanical problem. As an alternative means of control, haul roads are watered more frequently than usual and their exits are swept manually to prevent fugitive dust. Repair of the mechanical sweeper was completed on August 18, 2017.

- ***EPA Finding 8***

  - *Areas of exposed soil (i.e. soil patches lacking crushed stone cover) near the water treatment facility, storm water pond, and internal road on the south side of the Facility lacked soil stabilization.*

AES-PR Response: AES-PR agrees that during the walkthrough inspection there were small areas of exposed soil as described.

Required Action:

- *Re-apply crushed stone to cover those areas lacking soil stabilization.*

AES-PR Response: Crushed stone will be applied and it will take 30 days starting on August 28, 2017. A PO has been issued to Constructora I. Melendez for the amount of $135,500. This Purchase Order it's for the maintenance of all the graver areas including the small patches that needed repair.

➢ ***EPA Finding 9***

- *The gabion barrier filter fabric was in disrepair on the west side area of the Agremax pile. Agremax accumulation was observed in said gabion area, which reduces this best management practice capacity to filter storm water.*

AES-PR Response: AES-PR disagrees that the gabion barrier was in disrepair. The gabion barrier acts as primary sediment control. Some accumulation of Agremax in the buffer area is to be expected during normal operations.

Required Action:

- *Remove material from the buffer zone between the bottom of the Agremax pile and the gabion structure.*
- *Replace filter fabric.*

AES-PR Response: The buffer zone between the toe of the Agremax stockpile and the gabion structure was cleared and the filter fabric on the gabion structure was replaced.

Picture 9

Picture 10

➢ ***EPA Finding 10***

- *A slope on the south side of the Agremax pile had eroded and Agremax reached the bottom of the slope, but was retained by the gabion structure.*

AES-PR Response: The observed erosion was caused by overwatering of the Agremax stockpile.

Required Action:

- *Monitor and reinforce the side of the slope to prevent Agremax from overreaching the gabion structure.*

AES-PR Response: Operation of the water sprinklers will be monitored more closely to prevent slope erosion due to overwatering.

In addition, EPA asked AES-PR to submit the following requirements within fifteen (15) calendars days of receipt of the letter:

1) Submit a definitive compliance plan to address all findings discussed, including estimated cost and an implementation schedule, which shall not exceed sixty (60) calendars days for those actions that are not associated with dust minimization at Agremax pile.

AES-PR Response: As outlined, the Permit does not contemplate the process EPA has outlined. Rather, the Permit provides a corrective action process for the permittee to follow in the event that certain circumstances occur or the benchmark results require action. Permit § 4.2; 6.2.1.2.

That said, AES-PR has addressed and/or will address findings 2, 3, 4, 5, 6, 7, 8, 9 and 10 during routine operation and maintenance based on our SWPPP. For Finding 1, AES-PR contracted the services of Caribe Environmental Service (CES) to perform the evaluation and preliminary design to make an economical and feasibility determination as provided by the Permit.

2) Submit to EPA a copy of the Dust Control Checklist on a weekly basis until further notice, including pictures or videos depicting that the conditions of the Agremax pile.

AES-PR Response: AES-PR submits that providing this extraordinary level of documentation is not warranted by the EPA inspection. AES-PR has invested millions of dollars to develop and maintain its stormwater compliance program, including measures to limit fugitive dust emissions. When benchmark levels have been exceeded, AES-PR has followed the process in the Permit issued by EPA to review the issue, seek to determine the potential cause, and implement additional BMPs where appropriate. The company is now following that corrective action review process as required by EPA's

Permit, for the data collected during Q1 and Q2 2017. AES-PR should be allowed to complete that process in the ordinary course, rather than face new and additional regulatory requirements. That said, through the end of 2017, AES-PR will submit the copies of the Dust Control Checklist on a weekly basis to demonstrate the company is implementing the requirements of its SWPPP at the Agremax pile.

3) Submit to EPA a copy of the most recent version of the SWPPP developed for the Facility, including the Dust Control Plan referenced in this letter.

AES-PR Response: In Attachment 2 you will find a copy of the most recent SWPPP and Dust Control Plan.

4) Submit to EPA an assessment of the maximum safe height and slope of the Agremax pile within the perimeter formed by the gabions, and an assessment of the ability of the dust control sprinkler system to effectively control the release of fugitive dust from the Agremax pile at its maximum safe height.

AES-PR Response: In Attachment 3 you will find a copy of the most recent pile stabilization assessment performed by Winston R. Esteves, PE.

EPA: Immediately upon receipt of this letter, AES shall implement dust minimization measures to keep all exposed areas of the Agremax pile wet at all times. The dust minimization shall be implemented during day and night hours.

AES-PR Response: As detailed, AES-PR disagrees that this direction is warranted by the Permit. That said, AES-PR already implements a regular program of operating its sprinkler system, during both day and night hours. Moreover, as explained, the material forms a hardened surface layer, which itself limits dust formation. Excessive watering could lead to erosion of the inventory slopes, which EPA observed.

EPA: In the event that AES or EPA concludes that the dust control sprinkler system cannot effectively control the release of fugitive dust from the Agremax pile, AES shall implement corrective measures to allow for effective dust control.

AES-PR Response: AES-PR believes its current efforts control fugitive dust from the Agremax inventory stockpile, but AES-PR remains committed to evaluating other available options to control fugitive dust, to the extent required by and within the parameters of its Permit. As EPA has not specified any particular method ("such measures may include") AES-PR reserves all rights to object to and defend against any future actions EPA may seek to take, including, without limitation, to object to EPA's authority to mandate any further measures and to object to any specific method EPA may assert the right to select. As an example, nothing in the Clean Water Act authorizes EPA to require AES-PR to implement an "expedited schedule for increased off-site shipments" of Agremax. The CWA does not regulate the materials stored at an industrial site, but instead regulates discharges to waters of the United States from the site. That is the approach followed for stormwater. The Act seeks to regulate discharges from an

industrial operation that occur because of stormwater that runs over the property – and directs that controls and management practices be installed to minimize discharges. E.g., Permit at 14 ("You must select, design, install, and implement control measures (including best management practices)…." It would be wholly unprecedented for EPA to assert the Act authorizes it to regulate what a business may use or store on its property.

With regard to the inventory of manufactured aggregate (Agremax) that we currently are storing in a stockpile at our facility, AES-PR is committed to complying with all applicable Federal and Commonwealth laws. AES Puerto Rico is presently using available alternatives to reduce our Agremax stockpile. This includes, for example, delivering Agremax to licensed, RCRA subtitle D landfills for beneficial use here in Puerto Rico, as approved by the Puerto Rico Environmental Quality Board and in accordance with Commonwealth law. We have also made arrangements to ship material over 1000 miles to the continental United States, subject to the significant constraints imposed on shipments under the Jones Act.

We acknowledge that AES-PR's on-site inventory has increased over the past year. However, that is not due to any fault of AES-PR. We are often prevented from delivering Agremax to local subtitle D landfills because of the illegal actions of local governments (illegal ordinances) and local citizen groups (illegal blockades of public roads and other interference), despite the clear approvals of the EQB and the rulings by both federal and state courts validating supporting AES-PR's right to deliver Agremax to the landfills. With the approval of Act 40-2017 and the support of the Commonwealth government, AES-PR has resumed deliveries, but the ongoing and wrongful citizen interference means the company requires the Commonwealth government to enforce the law and the support of the EPA to educate the public, to ensure AES-PR may continue to deliver Agremax to the landfills.

If you have any questions or require additional information please feel free contact me at (787) 866-8117 ext. 2212.

Sincerely,

Manuel Mata

President