UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
CARIBBEAN ENVIRONMENTAL PROTECTION DIVISION
CENTRO EUROPA BUILDING, SUITE 417
1492 PONCE DE LEON AVENUE, STOP 22
SAN JUAN, PR 00907-4127

121911

**CERTIFIED MAIL – RETURN RECEIPT REQUESTED**

Mr. Allan B. Dyer
President
AES Puerto Rico, L.P.
P. O. Box 1890
Guayama, Puerto Rico 00785

**Re: Administrative Compliance Order**
**AES-PR Coal Fire Power Plant**
**Docket Number CWA-02-2012-3100**
**NPDES Tracking Number PRU020663**

Dear Mr. Dyer:

The United States Environmental Protection Agency, Region 2, has found AES Puerto Rico, L.P. (AES) in violation of Sections 301(a), 308(a) and 402(p) of the Clean Water Act (CWA), 33 U.S.C. §§ 1311(a), 1318(a) and 1342(p), for its failure to apply for and obtain a National Pollutant Discharge Elimination System permit for the discharge of pollutants from its coal-fired power plant and marine cargo handling facilities into waters of the United States. Enclosed are two (2) originals of the Administrative Compliance Order (ORDER), Docket Number CWA-02-2012-3100, issued pursuant to Section 309(a) of the CWA, 33 U.S.C. § 1319(a), which details the findings of violation.

Please acknowledge receipt of the ORDER on one of the originals and return it by mail. Failure to comply with the ORDER may subject AES to civil and/or criminal penalties pursuant to Section 309 of the CWA. Also, failure to comply with the ORDER may subject AES to ineligibility for participation in Federal contracts, grants or loans.

If you have any questions regarding this ORDER, please contact Ms. Tere Rodríguez, Chief of the Multimedia Permits and Compliance Branch, at (787) 977-5804.

We urge your prompt attention to this matter.

Sincerely,

Carl-Axel P. Soderberg
Director
Caribbean Environmental Protection Division

Enclosures

cc: Roberto Ayala Prado, EQB (w/ enclosure)

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**
**REGION 2**

In the Matter of:

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

**AES-PR Coal-Fired Power Plant and Marine Cargo Handling Facility**
State Road 3, Km. 142, Barrio Jobos
Guayama, Puerto Rico 00784

**NPDES Tracking Number PRU020663**

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

**ADMINISTRATIVE COMPLIANCE ORDER**

**DOCKET NUMBER CWA-02-2012-3100**

## ACKNOWLEDGMENT OF RECEIPT OF ADMINISTRATIVE COMPLIANCE ORDER

I do hereby acknowledge the receipt of a true copy of the Order CWA-02-2012-3100. Pursuant to the signatory's requirements in 40 C.F.R. § 122.22, I certify that I am authorized to sign this acknowledgment.

_____
Print Name and Title

_____
Date

_____
Signature

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**
**REGION 2**

In the Matter of:

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

**AES-PR Coal-Fired Power Plant and Marine Cargo Handling Facility**
State Road 3, Km. 142, Barrio Jobos
Guayama, Puerto Rico 00784

**NPDES Tracking Number PRU020663**

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

**ADMINISTRATIVE COMPLIANCE ORDER**

**DOCKET NUMBER CWA-02-2012-3100**

## I. STATUTORY AUTHORITY

1 The following ORDER is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency (EPA) by the Clean Water Act (CWA), 33 U.S.C. §1251 *et seq.*

2. This authority has been duly delegated to the Regional Administrator of Region 2, EPA, and further re-delegated to the Director, Caribbean Environmental Protection Division, Region 2, EPA.

## II. DEFINITIONS AND STATUTORY AND REGULATORY PROVISIONS

1 The following definitions, and statutory and regulatory provisions apply to this ORDER:

A. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), provides in part that "[e]xcept as in compliance with this section and sections [402, and 404] of the CWA, the discharge of any pollutant by any person shall be unlawful."

B. Section 402(a)(1) of the CWA, 33 U.S.C. § 1342(a)(1), provides that "the Administrator may, after opportunity for public hearing, issue a permit for the discharge of any pollutant".

C. The term "navigable waters" includes the waters of the United States pursuant to Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

D. The term "pollutant" includes, among other things, solid waste, dredged spoil, rock, sand, cellar dirt, sewage, sewage sludge and industrial, municipal and agricultural waste discharged into water, pursuant to Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

E The term "discharge of a pollutant" means any addition of any pollutant to navigable waters from any point source, pursuant to Section 502(12) of the CWA, 33 U.S.C. § 1362(12).

F. The term "point source" means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged, pursuant to Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

G Unless otherwise specified in this ORDER, the term "outfall serial numbers 001 through 005" are those outfalls depicted in pictures 4, 5, and 6 of the October 3, 2011 Water Compliance Inspection Report.

H The term "person" includes an individual, corporation, partnership, association or municipality, pursuant to Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

The term "C.F.R." means the Code of Federal Regulations.

J. The term "owner" or "operator" means the owner or operator of any "facility" or "activity" subject to regulation under the NPDES program, pursuant to 40 C.F.R. § 122.2.

K. The term "facility" or "activity" means any NPDES point source or any other facility or activity (including land appurtenances thereto) that is subject to regulation under the NPDES program, pursuant to 40 C.F.R. § 122.2.

L. The term "NPDES" means National Pollutant Discharge Elimination System.

M. The term "storm water discharge associated with industrial activity" means the discharge from any conveyance which is used for

collecting and conveying storm water and which is directly related to manufacturing, processing or raw materials storage areas at an industrial plant, pursuant to 40 C.F.R. § 122.26(b)(14).

N. The term "by-monthly" means every two months

O. The term "co-permittee" means a permittee to a NPDES permit that it is only responsible for permit conditions relating to the discharges for which it is the operator, pursuant to 40 C.F.R. § 122.26(b)(1).

P. The term "Best Management Practices" or "BMPs" mean schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of "waters of the United States." BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage, pursuant 40 C.F.R. § 122.2

Q. The term "non-structural BMP" means best management practices that generally consist of processes, prohibitions, procedures, and schedule of activities, that prevent pollutants associated with industrial activity from contacting with storm water discharges and authorized non-storm water discharges. They are considered low technology, cost-effective measures, and do not involve construction and installation, and usually work by changing behavior, persuasion and/or economic instruments.

R. The term "structural BMP" means the fixed, permanent physical structures and equipment requiring planning, design construction and maintenance that are designed to remove pollutants from storm water runoff, reduce downstream erosion, provide flood control and promote groundwater recharge.

## III. FINDINGS

*With Respect to AES-PR*

1. AES Puerto Rico, L.P. (AES-PR) is a for-profit corporation organized under the laws of the State of Delaware, United States of America.

2. The Puerto Rico Department of State (DOS) electronic corporation register indicates that AES-PR was registered in the DOS on August 9, 1999, under corporate registration number 11062.

3. AES-PR is a "person" pursuant to Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

*With Respect to AES-PR's Facility*

4 AES-PR owns and operates a facility composed of a coal-fired power plant and a marine cargo handling facility (the Facility) located in State Road 3, Km. 142, Barrio Jobos, Guayama, Puerto Rico 00784.

5 AES-PR is bordered to the north by a pharmaceutical facility (TAPI Puerto Rico Inc. (TAPI)) and open land owned by the Puerto Rico Land Administration (PRLA); to the east by Chevron Phillips Chemical Puerto Rico Core, LLC. (CPC) facility, which is under demolition; to the south by wetlands and Bahía Las Mareas; and to the west by PRLA open lands.

6 AES-PR is a gated facility mainly comprised of parking facilities, a coal-fired power plant that generates approximately 454 mega watts, coal pile storage areas, limestone storage areas, a marine cargo handling facility, an office building, storage buildings, a coal pile runoff pond, a site storm water runoff pond, a Patillas Canal water pond, a make-up water pond, a cooling tower, water treatment facilities, an aggregate storage pile (Agremax™), material and equipment storage areas, and contaminated and non-contaminated storm water collection and discharge systems.

7 The storm water runoff pond collects storm water runoff and industrial wastewater.

8 The coal pile runoff pond collects runoff from the coal pile, the limestone dome area, Agremax™ storage pile and certain adjacent areas to these locations.

9. The primary operations at AES-PR are best described by the Standard Industrial Classification (SIC) Code 4911.

10 SIC Code 4911 includes establishments engaged in the generation, transmission, and/or distribution of electricity or gas or steam.

11 The secondary operations at AES-PR are best described by SIC Code 4491.

12. SIC Code 4491 includes establishments engaged in activities directly related to marine cargo handling from the time cargo, for or from a vessel, arrives a shipside, dock, pier, terminal, staging area, or in transit are until cargo loading or unloading operations are completed.

13. AES-PR has discharged and continues to discharge storm water associated with industrial activity from the coal-fired power plant through outfall serial number 001 into CPC's outfall serial number 004.

14. CPC's outfall serial number 004 discharges storm water associated with industrial activity into Bahía Las Mareas.

15. TAPI's outfall serial number 001 discharges storm water associated with industrial activity through AES-PR's outfall serial number 003.

16. AES-PR has discharged and continues to discharge storm water associated with industrial activity through outfall serial numbers 002 and 003 into wetlands adjacent to Bahía Las Mareas.

17. AES-PR has discharged industrial wastewater mixed with storm water associated with industrial activity through outfall serial number 003 into wetlands adjacent to Bahía Las Mareas.

18. AES-PR has discharged and continues to discharge storm water associated with industrial activity from the marine cargo handling facility through outfall serial numbers 004 and 005 into Bahía Las Mareas.

19 AES-PR's outfall serial numbers 001, 002, 003, 004 and 005, TAPI's outfall serial number 001 and CPC's outfall serial number 004 are point sources pursuant to Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

20. The wetlands adjacent to Bahía Las Mareas are waters of the United States pursuant to Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

21. Bahía Las Mareas is a navigable water of the United States pursuant to Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

*With Respect to Discharges without an NPDES Permit*

22 Section 301(a) of the CWA, 33 U.S.C. § 1311(a), makes it unlawful for any person to discharge any pollutant from a point source into waters of the United States, except with NPDES permit authorization and in compliance with effluent limitations and conditions established pursuant to the CWA, including Section 402 of the CWA, 33 U.S.C. § 1342.

23. By letter dated July 8, 2005, AES-PR notified EPA that it had discharged overflows from the coal pile run-off pond through outfall serial number 003 into the wetlands. The letter also indicated that discharges had occurred in the last three years, but did not provide specific dates.

By letter dated November 17, 2005, AES-PR notified EPA of its efforts to prevent future overflow events from the coal pile runoff pond. AES-PR indicated that approximately 31 overflow events had taken placed in 2005. AES-PR also indicated in the letter that two storm water runoff pond overflow events that discharged through outfall serial number 003 into wetlands took place on October 10, 2003 and December 6, 2003.

By letter dated September 22, 2008, AES-PR notified EPA that on September 21, 2008, AES-PR discharged overflows from the coal pile runoff pond and the storm water runoff pond through outfall serial number 003 into wetlands.

By letter dated July 23, 2010, AES-PR notified EPA that on July 22, 2010, AES-PR discharged overflows from the storm water runoff pond through outfall serial number 003 into wetlands.

27. By letter dated February 21, 2011, AES-PR notified EPA that on February 20, 2011, AES-PR discharged process wastewater from an overflow of the cooling tower basin through outfall serial number 003 into the wetlands.

28. By letter dated July 5, 2011, AES-PR notified EPA that on July 2, 2011, AES-PR discharged overflows from the storm water runoff pond through outfall serial number 003 into wetlands.

29 Section 402 of the CWA, 33 U.S.C. § 1342, authorizes the Administrator of EPA to issue NPDES permits to owners/operators of certain point sources that discharge pollutants into waters of the United States.

Section 402(p)(2)(B) of the CWA, 33 U.S.C. § 1342(p)(2)(B), authorizes the Administrator of EPA to issue NPDES permits for storm water discharges associated with industrial activity.

31 EPA promulgated New Source Performance Standards (NSPS) for the steam electric point source category, codified at 40 C.F.R. § 423.15.

EPA promulgated NPDES regulations defining the term storm water associated with industrial activity, codified at 40 C.F.R. § 122.26(b).

33. Category VII of the NPDES storm water regulations includes those facilities that are engaged in steam electric power generation (SIC Code 4911), including coal handling sites, codified at 40 C.F.R. § 122.26(b)(14)(vii).

34 EPA promulgated NPDES regulations at 40 C.F.R. § 122.26(a)(6) defining the term "non-municipal separate storm sewers." For storm water

discharges associated with industrial activity from point sources which discharge through a non-municipal or non-publicly owned separate storm sewer system, EPA, in its discretion, may issue: a single NPDES permit, with each discharger as a co-permittee to a permit issued to the operator of the portion of the system that discharges into waters of the United States; or, individual permits to each discharger of storm water associated with industrial activity through the non-municipal conveyance system.

(i) All storm water discharges associated with industrial activity that discharge through a storm water discharge system and is not a municipal separate storm sewer, must be covered by an individual permit, or a permit issued to the operator of the portion of the system that discharges to waters of the United States, with each discharger to the non-municipal conveyance a co-permittee to that permit.

(ii) Where there is more than one operator of a single system of such conveyances, all operators of storm water discharges associated with industrial activity must submit applications.

(iii) Any permit covering more than one operator shall identify the effluent limitations, or other permit conditions, if any, that apply to each operator.

On September 29, 2008, EPA issued and published the 2008 Storm Water Multi-Sector General Permit (MSGP or 2008 MSGP) in the Federal Register (73 Fed. Reg. 56,572).

36. The MSGP became effective on September 29, 2008

The MSGP expires on September 29, 2013

38. Part 1.3.1. of the MSGP indicates that an applicant must be located in a State, territory, or Indian Country, or be a Federal Facility identified in Appendix C where EPA is the permitting authority; meet Part 1.1 eligibility requirements; select, design, install, and implement control measures in accordance with Part 2.1 to meet numeric and non-numeric effluent limits; submit a complete and accurate Notice of Intent (NOI) either using EPA's electronic Notice of Intent (eNOI) system or using a paper form and then submitting that paper form to the address listed in Part 7.6.1; and develop a Storm Water Pollution Prevention Plan (SWPPP) according to the requirements in Part 5, to obtain authorization under the MSGP.

39. Table 1-2 of the 2008 MSGP indicates that based on a review of the NOI or other information, EPA may delay authorization for further review, notify that additional effluent limitations are necessary, or may deny coverage and require submission of an application for an individual NPDES permit,

as detailed in Part 1.6 of the MSGP. In these instances, EPA will notify in writing of the delay, of the need for additional effluent limits, or of the request for submission of an individual NPDES permit application.

AES-PR submitted a NOI for the marine handling facility, dated January 26, 2009.

41 EPA acknowledged receipt of the NOI by letter dated January 26, 2009.

42 The January 26, 2009 EPA letter indicated that it was issued to acknowledge receipt of a complete NOI but that was not an EPA determination on the validity of the information provided in the NOI. The EPA letter also indicated that AES-PR's eligibility for coverage under the MSGP is based on the validity of the certification provided.

43. Based on the eligibility requirements and authorization conditions of the MSGP, the NOI filed by AES-PR is inaccurate for the following reasons.

A. The estimated area of industrial activity (Part C.4) at AES-PR is inaccurate because it only considers the marine cargo handling area.

B. The primary SIC Code 4491 is inaccurate (Part D.5). This is because AES-PR is classified under the two-letter activity code SE (see NOI form instructions).

C The identification of the applicable sector and co-located industrial activities is incorrect (Part D.6). The applicable sector for AES-PR is O.1 (Steam Electric Generating Facilities – Industrial Code SE). The applicable co-located industrial activities are classified as O.2 (Coal Storage Piles at Steam Electric Generating Facilities) and Sector Q.1 (Water Transportation Facilities).

D. Criterion A is inaccurate because federally-listed species (e.g manatee) are likely to occur.

Pursuant to Parts 1.1.2.5 and 1.1.4.4 of the MSGP *(Discharges Subject to NSPS – 40 C.F.R. § 423.15)*, discharges from AES-PR's coal pile runoff pond are not authorized unless AES-PR seeks and obtains a "*No Significant Impact*" determination from EPA or completes an "*Environmental Impact Statement*" in accordance with an environmental review conducted by EPA pursuant to 40 C.F.R. § 6.102(a)(6).

45. Pursuant to Part 1.1.4.1 of the MSGP (*Prohibition on Discharges mixed with Non-Storm Water*), the overflow discharges from the storm water

runoff pond through outfall serial number 003 into wetlands are not authorized under the MSGP.

AES-PR has not submitted to EPA an individual permit application for storm water discharges associated with industrial activity or storm water mixed with non-storm water in accordance with Sections 308 and 402(p)(4)(A) of the CWA, and applicable regulations at 40 C.F.R. §§ 122.21 and 122.26.

*With Respect to Inspections and Other Activities*

47. On April 12, 2011, EPA sent to AES-PR a request for information (RFI) letter (RFI Number CEPD-CWA-02-IR-2011-002) pursuant to Section 308(a) of the CWA, 33 U.S.C. 1318(a).

48. The April 12, 2011 letter addressed the notification from AES-PR about the unauthorized discharge of pollutants from AES-PR's cooling tower basin through outfall serial number 003 into wetlands that took place on February 20, 2011.

49 By letter dated May 12, 2011, AES-PR submitted its response to the RFI.

50 On July 20, 2011 and July 26, 2011, EPA performed a Compliance Evaluation Inspection (Inspection) of AES-PR.

51 The findings of the Inspection were included in the Water Compliance Inspection Report (Report), dated October 3, 2011.

52 By letter dated October 11, 2011, EPA sent AES-PR a copy of the Report, and requested that AES-PR provide a response indicating the actions that it had taken or would take, including a compliance schedule, to address the findings and observations included in the Report; a proposed NPDES permit application schedule in accordance with requirements and application forms in 40 C.F.R. § 122; and a cost report for those actions already taken and projected costs for those actions to be implemented.

By letter dated November 23, 2011, AES-PR submitted its response to the Report, including the actions taken since the Inspection, the actions to be taken under a proposed compliance schedule, proposed permit application schedule, and a cost report.

54. By letter dated November 23, 2011, AES-PR proposed to implement a series of BMPs to become eligible under the terms and conditions of the MSGP, and that upon completion/implementation of such BMPs, it would file a NOI for coverage under the MSGP by February 28, 2013.

*Post Inspection Meetings between AES-PR and EPA*

55. On October 20, 2011, representatives of AES-PR and EPA met to discuss the Report and AES-PR's actions following the Inspection.

56. Pursuant to 40 C.F.R. § 122.6(c)(1), during the October 20, 2011 meeting, EPA notified AES-PR that when a person is not in compliance with the CWA, EPA is authorized to initiate an enforcement action under Section 309 of the CWA, 33 U.S.C. § 1319.

57 On December 8, 2011, representatives of AES-PR and EPA met at AES-PR to discuss its response to the Report, and the proposed compliance plan and proposed permit application schedule.

## IV. CONCLUSIONS OF LAW

1 AES-PR is subject to the provisions of the CWA, 33 U.S.C. § 1251 *et seq.*

2. AES-PR has discharged and continues to discharge storm water associated with industrial activity though outfall serials numbers 001 through 005 into waters of the United States, without an NPDES permit, in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

3. AES-PR has discharged industrial wastewater and/or storm water associated with industrial activity through outfall serial number 003 into a water of the United States, without an NPDES permit, in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

4. Based on the findings above, AES-PR does not have coverage under the MSGP.

5 Pursuant to Section 301(a), 308(a) and 402(p) of the CWA, 33 U.S.C. §§ 1311(a), 1318(a) and 1342(p), respectively, and 40 C.F.R. §§ 122.21 and 122.26(e), AES-PR is required to apply for and obtain NPDES permit coverage for all its non-storm water and storm water discharges associated with industrial activity from AES-PR into waters of the United States.

6 Section 309(a)(5)(A) of the CWA, 33 U.S.C. 1319(a)(5)(A), provides that "[a]ny order issued under this subsection shall be by personal service, shall state with reasonable specificity the nature of the violation, and shall specify a time for compliance not to exceed thirty (30) days in the case of a violation of an interim compliance schedule or operation and maintenance requirement and not to exceed a time the Administrator determines to be reasonable in the case of a violation of a final deadline,

taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements."

## V. ORDERED PROVISIONS

In consideration of the above FINDINGS, and pursuant to the provisions of Section 309(a) of the CWA, 33 U.S.C. §1319(a), EPA has determined that compliance with the following requirements is reasonable.

It is hereby ordered

*With Respect to Acknowledgement of Receipt*

1 **That immediately upon receipt of the originals of this ORDER**, an authorized representative of AES-PR shall complete the acknowledgment of receipt on one of the originals of the ORDER and return said original to the Chief, Multimedia Permits and Compliance Branch, Caribbean Environmental Protection Division, EPA, Region 2, to the address specified below.

*With Respect to Request for Information*

2 **That within thirty (30) calendar days of receipt of this ORDER**, AES-PR shall submit to EPA the following information:

A. a copy of all rain gauge data gathered at AES-PR from January 2007 to the date of receipt of this ORDER;

B a legible copy of the as-built drawings for the coal pile runoff pond;

C. a legible copy of the as-built drawings for the storm water runoff pond;

D a copy of the hydraulic and hydrology study (H-H study) (and amendments thereto) endorsed by the Puerto Rico Department of Natural and Environmental Resources on October 1, 2001; and

E a legible copy of the topographic survey used for the design and construction of AES-PR.

3 **Not later than seven (7) calendar days from receipt of this ORDER**, AES-PR must submit a written request to the Chief, Multimedia Permits and Compliance Branch, at the address specified below, to request a meeting with representatives of EPA. The request must include a proposed agenda and at least two proposed dates for the meeting.

Pursuant to Section 309(a)(4) of the Act, 33 U.S.C. § 1319(a)(4), EPA is providing AES-PR with an opportunity to confer with EPA concerning Provision 2 of this ORDER. If AES-PR does not request the meeting within the seven (7) calendar days of receipt of this ORDER, EPA may deem that AES-PR has waived its right to confer with EPA.

*With Respect to Topographic Survey and Hydrology/Hydraulic Study*

4 **That within sixty (60) calendar days of receipt of the originals of this ORDER**, AES-PR shall conduct and submit an as-built topographic survey of its Facility.

5. **That within one hundred and twenty (120) calendar days of receipt of the originals of this ORDER**, AES-PR shall conduct and submit a storm water runoff hydrology and hydraulic study (H/H Study) covering all areas from which storm water runoff is discharged or may be discharged through outfall serial numbers 001, 002 and 003, or any other location through the Facility, to determine the quantity of storm water to be managed at AES-PR and that may reach the wetlands and/or waters of the United States. The H/H shall be based on as-built topographic survey and the 2006 Precipitation-Frequency Atlas of the United States (Volume 3, Version 4.0: Puerto Rico and the U.S. Virgin Islands), for 24-hour storm events with a return period of 2 years, 10 years, 25 years and 100 years.

*With Respect to Engineering Analysis, Design and Construction*

6 **That within one-hundred and eighty (180) calendar days of receipt of the originals of this ORDER**, AES-PR shall conduct an engineering analysis (Engineering Analysis) of feasible structural and non-structural BMPs to meet the requirements in Part 1.1, Part 2, Part 8.O.4, Part 8.O.5, Part 8.Q.3 and Part 8.Q.4 of the MSGP. The Engineering Analysis shall include the storage capacity of the coal pile runoff pond and storm water runoff pond.

7. **That within two hundred and ten (210) calendar days of receipt of the originals of this ORDER**, AES-PR shall submit to EPA for review and approval, an Engineering Analysis Report containing the following:

A. a detailed discussion of the feasible structural and non-structural BMPs evaluated to meet the requirements in Part 1.1 and Part 2 of the MSGP;

B. the estimated cost for each BMP evaluated;

C. the findings and recommendations of the Engineering Analysis;

D a detailed discussion and submittal schedule of whether filing either an NPDES application for an individual permit to seek coverage for those discharges under Part 1.1.4 of the MSGP, or whether a NOI for coverage under the MSGP will be submitted by not later than by February 28, 2013. The NPDES permit application forms (Forms 1, 2-C, and 2-F) are available at www.epa.gov/owm/npdes.htm.

E. a plan to implement the structural and non-structural BMPs (BMP Implementation Plan), which at a minimum shall include:

a) the BMPs AES-PR selected to implement based on the findings and recommendations of the Engineering Analysis; and

b) the schedule for implementing the BMPs, which shall be completed by January 31, 2013.

F Upon approval or conditional approval by EPA, the BMP Implementation Plan shall be incorporated by reference into this ORDER and shall be enforceable as a part of this Order.

8. **Upon implementation of the measures set forth in the BMP Implementation Plan approved by EPA,** AES-PR shall provide notification pursuant to the Reporting and Notification requirements in this ORDER, that the measures in the BMP Implementation Plan approved by EPA have been implemented.

*With Respect to Rainfall Precipitation Collection, Measurement and Record Keeping*

9. **That within fifteen (15) calendar days of receipt of the originals of this ORDER**, AES-PR shall install and maintain a rain gauge at a suitable location at its Facility. AES-PR shall provide a certification indicating that the rain gauge was located and installed properly in accordance with the manufacturer's specifications, in the corresponding Bi-Monthly Status Report.

10. **That within thirty (30) calendar days of receipt of the originals of this ORDER**, AES-PR shall develop, submit and implement a standard operating procedure for rainfall data collection, management, and record-keeping (Rain Gauge SOP). The Rain Gauge SOP shall address, at a minimum, procedures for adequate operation, maintenance and calibration (per manufacturer's specifications) of the rain gauge, description of precipitation data collection and management procedures (e.g., person(s) authorized to read and record data), Rain Gauge SOP

employee training, and record-keeping and reporting requirements. A precipitation data log shall be prepared monthly and shall include the certification language and authorized signature in accordance with this ORDER.

*With Respect to Development and Modification of the SWPPP*

11 **That within two hundred and fourth (240) calendar days of receipt of the originals of this ORDER**, AES shall develop and submit a modified SWPPP according to the Engineering Analysis and the requirements of Part 2, Part 5, Parts 8.O.4-5 and Part 8.Q.4 of the MSGP. The modified SWPPP shall include all non-structural BMPs.

12. **That within thirty (30) calendar days of implementation of the BMP Implementation Plan, but not later than January 31, 2013, whichever occurs first**, AES-PR shall amend and submit a final SWPPP that includes all the structural BMPs according to: the BMP Implementation Plan, Part 2, Part 5, Parts 8.O.4-5, and Part 8.Q.4 of the MSGP.

*With Respect to Implementation of the SWPPP*

13. **That within two hundred and ten (210) calendar days of receipt of the originals of this ORDER**, AES-PR shall implement all the non-structural BMPs included in the modified SWPPP.

14. **That upon implementation of all the non-structural BMPs in the SWPPP**, AES-PR shall provide notification in the corresponding Bi-Monthly Status Report.

15. **That not later than January 31, 2013**, AES-PR shall fully implement the final SWPPP.

    In the event that AES-PR determines, based on the H/H Study and Engineering Analysis, that additional storage capacity for the coal pile runoff pond is not required, AES-PR shall repair and bring the coal pile runoff to its maximum storage capacity by December 31, 2012.

    In the event that AES-PR determines, based on the H/H Study and Engineering Analysis, that additional storage capacity for the storm water pond is not required, AES-PR shall bring the storm water pond to its maximum storage capacity by October 31, 2012.

16. **That upon full implementation of the final SWPPP**, AES-PR shall provide notification in the corresponding Bi-Monthly Status Report.

*With Respect to Operation and Maintenance of the On-Site and Off-Site Conveyance Systems*

17. **<u>That within one hundred and eighty (180) calendar days of receipt of the originals of this ORDER</u>**, AES-PR shall inspect for the presence of non-storm water, and clean and repair (where necessary), all the components of the on-site conveyance system and the off-site conveyance systems, including the runoff collection and discharge system located at the marine cargo handling facility. The inspection shall include a "Closed-Circuit Television Survey" or comparable survey (CCTV Survey) for those components of the system that are underground.

18. **<u>That within two hundred and ten (210) calendar days of receipt of the originals of this ORDER</u>**, AES-PR shall prepare and submit a Conveyance System Inspection Report documenting the following:

    A. the As-Built Site Drainage/Storm Sewer Drawings for the on-site conveyance system and the off-site conveyance systems;

    B. the dates of the test and/or evaluation;

    C the names of the persons who conducted the test and/or evaluation;

    D. the methods used;

    E a description of the results from the test and evaluation;

    F. identification of the source and location of non-storm water (where found). The identification of the non-storm water shall be based on the Part 1.1.3 (Allowable Non-storm Water) and Part 1.1.4 (Limitations on Coverage) of the MSGP; and

    G. a schedule to eliminate unallowable non-storm water into the on-site conveyance system, the off-site conveyance systems and the runoff collection and discharge system located at the marine cargo handling facility.

    H. The activities and measures to eliminate unallowable non-storm water shall be conducted by January 31, 2013. The schedule and measures shall be incorporated by reference into this ORDER and shall be enforceable as of this Order.

*With Respect to Routine Inspections*

19. **<u>That beginning on January 1, 2012 and until termination of this ORDER</u>**, AES-PR's qualified personnel shall conduct routine facility inspections and prepare routine facility inspection reports according to Part 4.1.1 and Part 4.1.2 of the MSGP. A copy of the routine facility inspection reports shall be included in the corresponding Bi-Monthly Status Report.

*With Respect to Comprehensive Site Inspections*

20 **<u>That during the November–December 2012 period</u>**, AES-PR's qualified personnel shall conduct an annual comprehensive site inspection according to 4.3.1 and 8.O.6 of the MSGP.

21 **<u>That not later than forty five (45) calendar days of completion of the annual comprehensive site inspection</u>**, AES-PR's shall document the comprehensive site inspection report according to Part 4.3.2 of the MSGP. A copy of such document shall be included in the corresponding Bi-Monthly Status Report.

*With Respect to Annual Report*

22. **<u>That not later than forty five (45) calendar days of completion of the annual comprehensive site inspection or January 31, 2013, whichever occurs first</u>**, AES-PR shall prepare an annual report according to Part 7.2 of the MSGP. A copy of the annual report shall be included in the corresponding Bi-Monthly Status Report.

*With Respect to Temporary Sampling Points and Visual Assessments*

23. **<u>That not later than January 16, 2012</u>**, AES-PR shall eliminate outfall serial number 005 and re-route all flows into outfall serial number 004. AES-PR shall provide notification of the elimination of outfall serial number 005 in the corresponding Bi-Monthly Status Report.

24 **<u>That beginning on January 16, 2012 and until termination of this ORDER</u>**, AES-PR shall conduct quarterly visual assessments and document quarterly visual assessments according to Part 4.2.1 and Part 4.2.2 of the MSGP at the following temporary locations:

A. outfall serial number 002 (re-configured to allow for sampling of unobstructed – free flow);

B. outfall serial number 004 (re-configured to allow for sampling of unobstructed – free flow);

C. internal sampling point 003-A (e.g., constructed rectangular or V-notch weir to allow for sampling of unobstructed – free flow) as shown in **Figure 1** (approximate location) below; and

D. internal sampling point 003-B (e.g., constructed rectangular or V-notch weir to allow for sampling of unobstructed – free flow) as shown in **Figure 2** (approximate location) below. The quarterly visual assessment documentation shall be included in the corresponding Bi-Monthly Status Report.

E The quarterly visual assessment documentation shall be included in the corresponding Bi-Monthly Status Report.

**Figure 1**

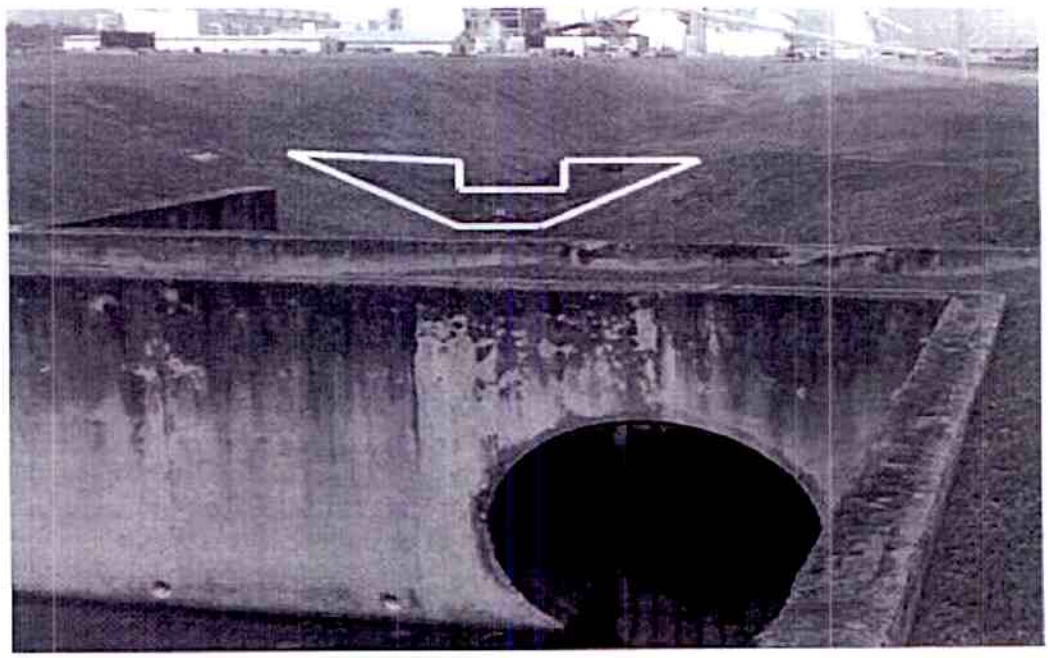
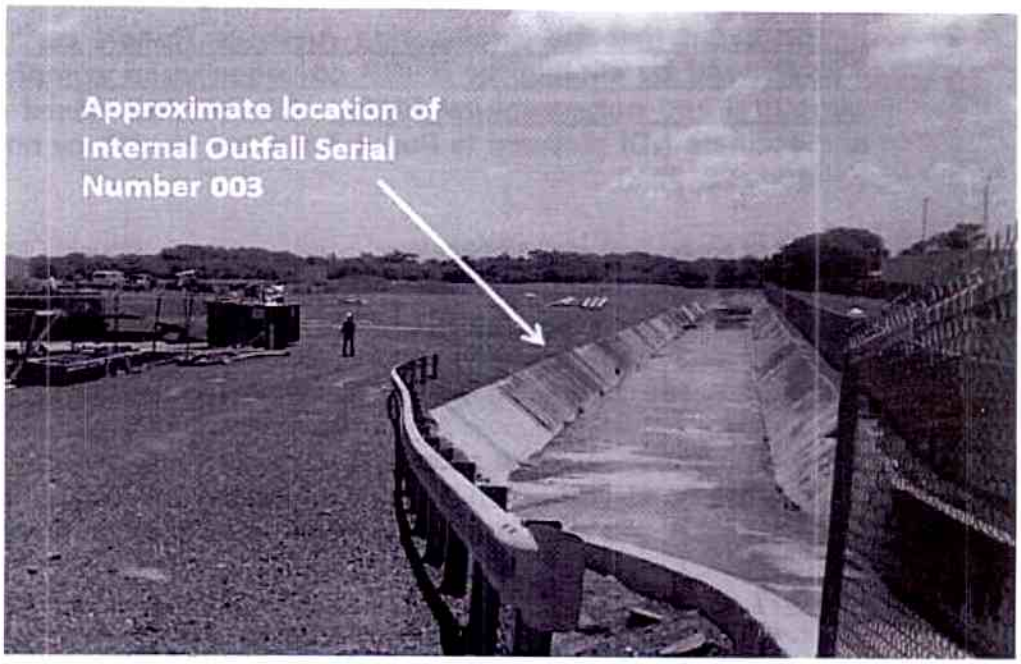


**Figure 2**




*With Respect to Monitoring*

25. **<u>That beginning on January 16, 2012 and until termination of this ORDER</u>**, AES-PR shall conduct benchmark monitoring and analyze samples according to Part 6.1.3 (measurable storm event), Part 6.1.4 (sample type), Part 6.1.5 (adverse weather condition), Part 6.1.7 (monitoring periods), Part 6.2.1.1 (applicability of benchmark monitoring), Part 6.2.1.2 (benchmark monitoring schedule), Part 8.O.7 (sector-specific benchmark for steam electric power generating facilities) and Part 8.Q.6 (sector-specific for water transportation) of the MSGP. A copy of the NOI shall be included in the corresponding Bi-Monthly Status Report.

26. **<u>That beginning on January 16, 2012 and until termination of this ORDER</u>**, AES-PR shall conduct quarterly benchmark monitoring; analyze the samples for total aluminum, total iron, total lead and total zinc; and document monitoring activities and laboratory reports for outfall serial numbers 002, 004, and internal sampling points 003-A and 003B. The quarterly benchmark monitoring documentation shall be included in the corresponding Bi-Monthly Status Report.

*With Respect to MSGP Coverage*

27 **<u>In the event that the Engineering Analysis Report concludes that AES-PR will be eligible for MSGP coverage upon completion of all structural and non-structural BMPs,</u>** AES-PR shall submit a complete and accurate NOI pursuant to Part 1.3.1 of the MSGP, by not later than February 28, 2013.

*With Respect to Reporting and Notification*

28 **<u>That immediately upon receipt of the originals of this ORDER</u>**, AES-PR shall submit the following reports, certifications, permit applications, and notifications concerning the Provisions of this ORDER.

A. Any document to be submitted by AES-PR as part of this ORDER shall be signed by an authorized representative (see 40 C.F.R. § 122.22), 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."

B AES-PR shall submit to EPA bi-monthly Status Reports by the 15th day of the following month with the actions taken as of the date of the Status Report concerning the milestones and activities performed towards meeting the Provisions of this ORDER. The first Status Report is due on January 16, 2012. The Status Report shall include a cost report detailing the expenses incurred as of the date of the Status Report.

C. All information and/or submissions required by this ORDER shall be sent by registered mail or its equivalent to the following addresses:

Director, Water Quality Area
Environmental Quality Board
P. O. Box 11488
San Juan, Puerto Rico 00910

and

Chief, Multimedia Permits and Compliance Branch
Caribbean Environmental Protection Division
U.S. Environmental Protection Agency, Region 2
Edificio Centro Europa, Suite 417
1492 Avenida Ponce de León
San Juan, Puerto Rico 00907-4127.

D Any questions concerning this ORDER should be directed to Ms. Tere Rodríguez, Chief, Multimedia Permits and Compliance Branch, at (787) 977-5865.

## VI. EFFECT OF ADMINISTRATIVE COMPLIANCE ORDER/RESERVATION OF RIGHTS

1 This ORDER is a partial remedy for the violations alleged herein. Specifically, this ORDER does not resolve any civil or criminal liability of AES-PR related to the violations alleged herein and is without prejudice to EPA's right to seek further relief to address such violations or future violations including, but not limited to, further injunctive relief or civil or criminal penalties.

2 EPA reserves all legal and equitable remedies available to enforce the provisions of this ORDER. This ORDER shall not be construed to prevent or limit the rights of EPA to obtain penalties or injunctive relief under the CWA or implementing regulations, or under other federal laws, regulations, or permit conditions. EPA further reserves all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, AES-PR's Facilities, whether related to the violations addressed in this ORDER or otherwise. AES-PR reserves all legal and equitable defenses to enforcement under this ORDER, except as expressly stated herein.

3 This ORDER is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. AES-PR is responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits; and AES-PR's compliance with this ORDER shall be no defense to any action commenced pursuant

to any such laws, regulations, or permits, except as set forth herein. EPA does not warrant or aver in any manner that AES-PR's compliance with any aspect of this ORDER will result in compliance with provisions of the CWA, 33 U.S.C. §§ 1251-1387, or with any other provisions of federal, State, or local laws, regulations, or permits.

4. This ORDER does not limit or affect the rights of AES-PR or of the United States against any third parties not party to this ORDER, nor does it limit the rights of third parties not party to this ORDER, against AES-PR, except as otherwise provided by law.

5 This ORDER shall not be construed to create rights in, or grant any cause of action to, any third party not party to this ORDER.

6 Any modification to this ORDER shall be effective only upon approval in writing by EPA. Such modifications will be granted upon showing of good cause.

## VII. EFFECTIVE DATE AND TERMINATION

1 This ORDER shall become effective upon the date of execution by the Director, Caribbean Environmental Protection Division.

2. EPA may terminate this ORDER, in its sole discretion, for any violation of this ORDER.

3. After AES-PR has complied with the Provisions of this ORDER, AES-PR shall submit a Final Compliance Report (including costs), and may serve upon the EPA a Request for Termination, stating that AES-PR has satisfied those requirements, together with all necessary supporting documentation.

4. Following receipt by EPA of AES-PR's Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether AES-PR has satisfactorily complied with the requirements for termination of this ORDER. If the EPA agrees that this ORDER may be terminated, EPA shall submit to AES-PR its determination in writing.

Dated 12-16-11

Signed: 

**CARL-AXEL P. SODERBERG**
Director
Caribbean Environmental Protection Division