March 30, 2023

Via email

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Acting Deputy Assistant Administrator
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U.S. Environmental Protection Agency
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Dear Mr. Breen and Ms. Heard:

The undersigned groups are writing to formally request a meeting with the U.S. Environmental Protection Agency ("EPA") to continue discussions regarding significant coal ash contamination issues related to the AES coal plant in Guayama, Puerto Rico ("AES-PR"). We commend the agency and Administrator Michael S. Regan for their announcement last November of the initial actions that EPA is planning in response to the Administrator's Journey to Justice tour in Puerto Rico last summer. However, as you are aware, coal ash contamination caused by AES-PR has polluted the groundwater and adversely impacted nearby communities - making timely and proper cleanup vital. As such, we would like to follow up on and raise the issues listed below.

- **AES-PR's failure to respond to EPA's compliance obligation letter**. It has now been over a year since EPA sent AES-PR a compliance obligation letter dated January 11, 2022, which highlighted the deficiencies in its "remediation plan" of Monitored Natural Attenuation ("MNA") and installation of a liner less than five feet from the underlying aquifer. In the Agency's letter, EPA failed to include a deadline by which AES-PR must respond. It has been nearly four years since AES-PR initiated the corrective measures assessment process, and based on AES-PR's past conduct, we are highly concerned that the company has continued to move forward with a corrective action process that does not meet the requirements of the CCR Rule and that will not protect nor clean up groundwater. The company is, in effect, creating conditions that will be difficult to reverse unless EPA intervenes forcefully. As we have raised with the Agency in previous discussions, AES-PR does not appear to have ever put the liner construction on hold, and in fact, has now potentially completed the installation. We would like to discuss the status of the liner construction project and the Agency's plan.

- **Updates on AES-PR's noncompliance issues.** In June 2022, EPA sent AES-PR a Notice of Potential Violations/Opportunity to Confer concerning AES-PR's noncompliance with the federal CCR Rule's groundwater monitoring and reporting requirements. Shortly after, in July 2022, EPA issued a Notice of Violation under the Clean Air Act identifying violations of both federal and Puerto Rico law, including hazardous air pollutant emissions (including mercury), required pollution observations, recordkeeping, and reporting, among many other violations. We are not aware of any agreement resolving these issues nor is there anything on AES-PR's CCR website that indicates that it has an EPA-approved plan

or schedule to resolve its noncompliance issues. We would like to discuss the status of the Agency's Notices of Violation and the Agency's plans.

- **AES-PR's groundwater monitoring data.** In AES-PR's 2021 CCR Annual Groundwater Monitoring and Corrective Action Report, groundwater samples from April and October 2021 revealed exceedances of the federal drinking water standard for arsenic, including levels *over twice the standard* in October. Although these exceedances were documented in the tables attached to the report, AES-PR did not mention them in the report. Failure to report these exceedances and to file a notification on AES-PR's publicly available website is a violation of 40 C.F.R. § 257.95(g). After we raised this issue with EPA in June 2022, the Agency conducted a statistical comparison of arsenic groundwater data from monitoring well MW-5. Although EPA determined that there was no statistically significant increase in arsenic, arsenic is and has been trending upward in MW-5.

  In addition, we have reviewed AES-PR's 2022 Annual Groundwater Monitoring Report dated January 31, 2023. This report continues to reinforce our prior concerns. Specifically:

  - In contravention of the regulations, the 2022 report is incomplete because it fails to contain the statistical analyses of the facility's semi-annual sampling events. The report only contains the statistical analysis of the April 2022 groundwater sampling round (completed in June 2022, i.e., taking AES-PR roughly two months to complete) and not the subsequent October 2022 sampling round – even though the annual report was submitted three months after this sampling round was completed. AES-PR provided no explanation regarding why the analysis of the October sampling round was omitted.
  - The groundwater samples were only collected at three groundwater monitoring wells (MW-3, MW-4, and MW-5), even though there are nine additional wells (TW-101 through TW-109) in the same area. As a result, the sampling is not representative of the entirety of downgradient groundwater conditions in the area.
  - AES-PR has not updated site background levels since October 2020 even though four additional upgradient sampling rounds at wells MW-1 and MW-2 have been collected since that time (two in 2021 and two more in 2022).

  We cannot therefore be confident that AES-PR's statistical analysis is properly being conducted and that its conclusions from such analyses are valid. We would like to discuss this issue as well as the faulty statistical methodology being implemented by AES-PR.

- **Updates on EPA's plans for air monitoring and water sampling.** In November of last year, EPA announced plans to sample groundwater used as drinking water in areas in southern Puerto Rico where coal was historically placed, and to conduct a fine particle pollution (PM2.5) pilot project in AES-PR fenceline communities. In November and December, EPA held meetings with community groups to discuss both plans. Additionally, EPA met with the community in February to discuss the Agency's plans to conduct air monitoring and sediment sampling in Las Mareas Bay. We would like to continue those discussions and to receive updates on the Agency's plans.

- **AES-PR's coal ash waste was disposed of at dozens of sites overlying the South Coast Aquifer** in the municipalities of Guayama, Salinas, Arroyo, and Santa Isabel in southeastern Puerto Rico. The heavy metals in the AES-PR waste are leaching into the soil and groundwater. At many of these sites, the coal ash waste is uncovered and exposed to the elements, which generates fugitive dust and erodes into nearby waterbodies. Exposure

to coal ash waste presents imminent and substantial endangerment to the health of the residents in the communities where it has been disposed of and threatens ecosystems. We ask again that EPA require AES to remove all uncovered or inadequately covered waste deposits.

- **Update on the status of AES-PR's coal ash being exported offsite.** AES-PR is supposed to transfer the coal ash stored onsite to marine vessels in the dock area and ship it overseas. However, we have received reports from community members that there do not appear to have been any shipments in the past several months. We would like to discuss these concerns with EPA and to receive any information the Agency has on the status of AES-PR's shipments.

- **EPA's authority to enforce the CCR Rule**. We again urge EPA to commence an enforcement action against AES-PR for its failures to comply with the federal rule, as we did in our letter dated March 2022. In addition to the violations and noncompliance issues discussed above, we hold notable concerns with the proximity of AES-PR's proposed liner to the groundwater and the liner's compatibility with the coal ash. Thus, it is critical that EPA accounts for groundwater elevations that could make portions of the liner material wet, since the liner is proposed to be within three feet of the groundwater. Placement of the waste pile in a manner that allows the CCR to be in contact with groundwater would not constitute adequate source control and would be a violation of 40 C.F.R. § 257.97(a)(3).

AES-PR has a well-documented and extensive history of failing to protect the people of Puerto Rico from its toxic waste and violating the CCR Rule, despite EPA and public interest groups illuminating these violations for years. Based on these most recent violations and the company's lack of action in response to EPA's compliance obligation letter and violation notices, our communities will continue to suffer, face a decline in health, and be left in limbo until EPA takes action to enforce the federal rule.

We appreciate EPA's continued willingness to meet with our groups and would like to request an additional meeting in the near future to discuss both our ongoing and latest concerns, and to receive updates from the Agency.

Sincerely,

Comité Diálogo Ambiental, Inc.

Comunidad Guayamesa Unida por Tu Salud

Acción Social y Proyeccion Ambiental

Campamento Contra las Cenizas en Peñuelas, Inc.

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