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

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RECEIPT CONFIRMATION REQUESTED
jesus.bolinaga@aes.com

Mr. Jesus Bolinaga
President
AES Puerto Rico, LP
P.O. Box 1890
Guayama, Puerto Rico 00785

Re: Notice of Potential Violations/Opportunity to Confer
AES Puerto Rico, LP, Guayama, Puerto Rico

Dear Mr. Bolinaga:

This Notice of Potential Violations/Opportunity to Confer concerns the compliance of AES Puerto Rico, LP (AES-PR) coal-fired power plant in Guayama, Puerto Rico with the requirements for the management coal combustion residuals (CCR) found at 40 Code of Federal Regulations (C.F.R.) Part 257, Subpart D (the CCR Rule). After review of the information posted on your publicly accessible CCR compliance web site (AES-PR CCR web site),[1] the U.S. Environmental Protection Agency (the EPA or the Agency) has identified some areas in which it appears that AES-PR is not in compliance with the CCR Rule. The Agency is still evaluating the remedy that AES-PR selected for the facility and will follow up with you later about that matter.

The Agency has reviewed the following documents posted on the AES-PR CCR web site for a CCR landfill designated by AES-PR as its "Temporary Stockpile Area," a six-acre area located behind the generating station at the plant site:

- Annual Groundwater Monitoring and Corrective Action (GWMCA) Reports (2017 through 2021)
- Statistical Method Certification (2017)
- SSL Notification (2019)

This review identified what appear to be several missing, erroneous, or incomplete elements, which represent potential violations, as detailed in Enclosure 1. The EPA's priority is to ensure that AES-PR is operating in compliance with the CCR Rule. While we appreciate AES-PR's efforts to date to comply with the CCR Rule, the EPA is concerned that AES-PR may not be in compliance with all applicable

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[1] *AES PR CCR Rule Compliance Data and Information,* https://www.aespuertorico.com/en/ccr-0 (last visited June 8, 2022).

requirements. The EPA is interested in discussing the issues identified in this letter and developing an agreed-upon compliance schedule to address these areas of noncompliance. A proposed compliance schedule is set forth in Enclosure 2.

The terms of any agreed-upon resolution of areas of noncompliance, including a compliance schedule and a civil penalty, would be incorporated into an administrative Consent Agreement and Final Order issued pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).

Any submittal that AES-PR prepares to comply with the CCR Rule must be maintained, placed in the operating record, and placed on the AES-PR CCR web site in accordance with the recordkeeping, notification, and publicly accessible CCR web site requirements pursuant to 40 C.F.R. §§ 257.105, 257.106, and 257.107. Please note that original versions of documents must remain on the AES-PR CCR web site for 5 years, in accordance with 40 C.F.R. § 257.107(c).

To schedule a call to discuss this matter, please contact Suzette M. Meléndez-Colón, Associate Regional Counsel, at (787) 977-5822 or melendez-colon.suzette@epa.gov; or Leonard Grossman, at (212) 637-4039 or grossman.lenny@epa.gov, within 15 calendar days of receipt of this letter. To the extent you want to respond in writing, please do so within the same 15 calendar day period.

Thank you for your prompt attention to this important matter.

Sincerely,

LEONARD VOO

Digitally signed by LEONARD VOO
Date: 2022.06.17 15:44:33 -04'00'

Leonard Voo, Chief
RCRA Compliance Branch

cc: Ms. Anaíse Rodríguez Vega, Acting Secretary
Puerto Rico Department of Natural and Environmental Resources
anaise.rodriguez@drna.pr.gov

ENCLOSURE 1

Potential Violations
AES-PR

1) Statistical Method Certification

40 C.F.R. § 257.93(f)(6)
The owner or operator of the CCR unit must obtain a certification from a qualified professional engineer or approval from the Participating State Director or approval from EPA where EPA is the permitting authority stating that the selected statistical method is appropriate for evaluating the groundwater monitoring data for the CCR management area. The certification must include a narrative description of the statistical method selected to evaluate the groundwater monitoring data.

- The statistical method certification posted on the AES-PR CCR web site is for the Indianapolis Power and Light Company's Eagle Valley Generating Station, Ash Ponds A, B, and C. AES-PR has not posted a statistical method certification on the AES-PR CCR web site stating that the selected statistical method is appropriate for evaluating the groundwater monitoring data for the CCR management area (CCR landfill) at its Guayama, Puerto Rico, facility.

2) Statistical Analyses Reporting

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

40 C.F.R. § 257.90(e)
At a minimum, the annual groundwater monitoring and corrective action report must contain the following information, to the extent available:

40 C.F.R. § 257.90(e)(6)(iv)(A)
If it was determined that there was a statistically significant level above the groundwater protection standard for one or more constituents listed in appendix IV to this part pursuant to § 257.95(g) include all of the following:

(A) Identify those constituents listed in appendix IV to this part and the names of the monitoring wells associated with such an increase[.]

- The results of statistical analyses of analytical data from samples taken in the first half of each year during 2018 through 2020 were not included by AES-PR in each year's Annual GWMCA Report; rather, the statistical analyses for the entire year's analytical data (i.e., two semiannual sampling events) were included in a subsequent year's report. The results of statistical analyses of analytical data from samples taken in the first half of

2021 were not included in the January 2022 AES-PR 2021 Annual GWMCA Report, which states that "statistical evaluation inclusive of 2021 analytical results" was "projected…to be completed during the 2022 calendar year." A March 2022 AES-PR Addendum to the AES-PR 2021 Annual GWMCA Report includes statistical evaluation results corresponding to the May 2020, October 2020, and April 2021 semiannual groundwater sampling events.

3) Groundwater Protection Standard Exceedance Reporting

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

40 C.F.R. § 257.107(h)
The owner or operator of a CCR unit subject to this subpart must place the following information on the owner or operator's CCR Web site:

40 C.F.R. § 257.107(h)(6)
The notification that one or more constituents in appendix IV to this part have been detected at statistically significant levels above the groundwater protection standard and the notifications to land owners specified under § 257.105(h)(8).

- Notification of the January 2019 determination of exceedance of the groundwater protection standards for lithium, molybdenum, and selenium was placed on the AES-PR CCR web site; however, no notification of subsequent groundwater protection standard exceedances for these constituents, as reported by AES-PR in its 2020 and 2021 Annual GWMCA Reports, has been placed on the AES-PR CCR web site. 40 C.F.R. § 257.95(g) applies to "any sampling event" and therefore, to all sampling events conducted by AES-PR. The statistically significant levels notification is not a one-time notification; rather it shows over time the results of the ongoing and current sampling and provides updated information on the nature and extent of the release.

4) Assessment Monitoring

40 C.F.R. § 257.90(e)
At a minimum, the annual groundwater monitoring and corrective action report must contain the following information, to the extent available:

40 C.F.R. § 257.90(e)(3)
In addition to all the monitoring data obtained under §§ 257.90 through 257.98, a summary including the number of groundwater samples that were collected for analysis for each background and downgradient well, the dates the samples were collected, and whether the sample was required by the detection monitoring or assessment monitoring programs[.]

40 C.F.R. § 257.95(d)
After obtaining the results from the initial and subsequent sampling events required in paragraph (b) of this section, the owner or operator must:

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

40 C.F.R. § 257.95(g)
The owner or operator of the CCR unit also must:

40 C.F.R. § 257.95(g)(1)
Characterize the nature and extent of the release and any relevant site conditions that may affect the remedy ultimately selected. The characterization must be sufficient to support a complete and accurate assessment of the corrective measures necessary to effectively clean up all releases from the CCR unit pursuant to § 257.96. Characterization of the release includes the following minimum measures:

(i) Install additional monitoring wells necessary to define the contaminant plume(s);

(ii) Collect data on the nature and estimated quantity of material released including specific information on the constituents listed in appendix IV of this part and the levels at which they are present in the material released;

(iii) Install at least one additional monitoring well at the facility boundary in the direction of contaminant migration and sample this well in accordance with paragraph (d)(1) of this section; and

(iv) Sample all wells in accordance with paragraph (d)(1) of this section to characterize the nature and extent of the release.

- Analytical data from the June 2019 sampling of nine additional wells installed by AES-PR, TW-101 to TW-109, designated as "nature & extent temporary groundwater monitoring wells," was included in the AES-PR 2019 Corrective Measures Assessment, as referenced in the AES-PR 2019 Annual GWMCA Report. AES-PR did not provide analytical data from any subsequent sampling of wells TW-101 to TW-109 in its 2020 or 2021 Annual GWMCA Reports, or in any other document placed on the AES-PR CCR web site. The sampling requirement in 40 C.F.R. § 257.95(g)(1)(iv) applies to "all wells" installed by AES-PR, including those it designated as "nature & extent temporary groundwater monitoring wells." The analytical data from this sampling must be included in the Annual GWMCA reports per 40 C.F.R. § 257.90(e)(3).

ENCLOSURE 2

Proposed Compliance Schedule
AES-PR

Enclosure I Paragraph	CCR Rule Citation	Summary of Issues	Projected Completion
1	§ 257.93(f)(6)	Erroneous statistical method certification	30 days for placing an appropriate statistical method certification on the AES-PR CCR web site.
2	§ 257.93(h)(2) § 257.90(e) § 257.90(e)(6)(iv)(A)	Untimely statistical analyses reporting	Ongoing determinations whether there has been a statistically significant increase over background within 90 days of completion of sampling and analysis, and timely inclusion of statistical analyses in Annual GWMCA Reports.
3	§ 257.95(g) § 257.107(h) § 257.107(h)(6)	Missing groundwater protection standard exceedance reporting	30 days for placing notification of past statistically significant groundwater protection standard exceedances on the AES-PR web site, and ongoing timely posting of notification of any future statistically significant groundwater protection standard exceedances to the AES-PR CCR web site.
4	§ 257.90(e) § 257.90(e)(3) § 257.95(d) § 257.95(d)(1) § 257.95(g) § 257.95(g)(1)	Incomplete assessment monitoring	30 days for sampling of nature and extent wells. Ongoing semiannual sampling of nature and extent wells and required reporting and posting to the AES-PR CCR web site.