

**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)

**CONSENT AGREEMENT  
AND FINAL ORDER**

**DOCKET NUMBER  
CWA-02-2012-3452**

REGIONAL  
ADMINISTRATOR  
HEARING  
CLERK

2017 MAR 27 A 9 45

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II

**I. PRELIMINARY STATEMENT**

1. This is a civil administrative proceeding for the assessment of a civil penalty instituted pursuant to Section 309(g) of the Clean Water Act ("CWA" or "the Act"), 33 U.S.C. § 1319(g).
2. The following Findings of Fact are made and Order issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency (EPA) by the Act, as amended, 33 U.S.C. § 1251 *et. seq.*, and in particular Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B). Such authority has been duly-delegated by the Administrator to the Regional Administrator of Region 2 of EPA, which authority has been duly-delegated to the undersigned Director of the Caribbean Environmental Protection (CEPD) of Region 2 of EPA.
3. EPA is initiating and concluding this proceeding for the assessment of a civil penalty, pursuant to Section 309(g)(2)(B) of the Clean Water Act, 33 U.S.C. § 1319(g)(2)(B) and 40 C.F.R. § 22.13(b) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Rules of Practice).

4. The Rules of Practice set forth the procedures for simultaneous commencement and conclusion of administrative civil penalty assessment proceedings through issuance of a Consent Agreement and Final Order (CA/FO), pursuant to 40 C.F.R. §22.18 (b)(2) and (3).

## II. FINDINGS OF FACT

### *With Respect to the Person*

5. AES Puerto Rico, L.P. (AES-PR) is a limited partnership, organized under the laws of the State of Delaware, and is a person pursuant to Section 502(5) of the CWA, 33 U.S.C. § 1362(5).
6. At all times relevant to this CA/FO, AES-PR owned and operated a facility composed of a coal-fired power plant and a marine cargo handling facility (the "Facility") located at State Road 3, Km. 142, Barrio Jobos, Guayama, Puerto Rico 00784.

### *With Respect to Point Sources*

7. The Facility 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.
8. The Facility is gated and is mainly comprised of employee parking areas, 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, material and equipment storage areas, and contaminated and non-contaminated storm water collection and discharge systems.
9. The Facility has five discharge points namely outfall serial numbers 001, 002, 003, 004 and 005, all of which are point sources pursuant to Section 502(14) of the CWA, 33 U.S.C. § 1362(14).
10. TAPI's outfall serial number 001 discharges storm water associated with industrial activity through the Facility's outfall serial number 003.



11. AES-PR has discharged and continues to discharge storm water associated with industrial activity through the Facility's outfall serial numbers 002 and 003 into wetlands adjacent to Bahía Las Mareas.
12. AES-PR has discharged and continues to discharge storm water associated with industrial activity from the coal-fired power plant through the Facility's outfall serial number 001 into CPC's outfall serial number 004.
13. CPC's outfall serial number 004 discharges storm water associated with industrial activity into Bahía Las Mareas.
14. 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.
15. 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.

*With Respect to Discharge of Pollutants*

16. 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.
17. 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 place 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.
18. 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.
19. 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.
20. 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.



21. 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.
22. At all times relevant to this CA/FO, AES-PR discharged storm water associated with industrial activity through outfall serial numbers 001 through 005, during the period between November 2002 and the effective date of this CA/FO.

*With Respect to Waters of the United States*

23. 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).
24. 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 a Permit*

25. 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 (e.g., industrial wastewater, or storm water associated with industrial activity) into waters of the United States.
26. At all times relevant to this CA/FO, AES did not have a National Pollutant Discharges Elimination System permit to discharge pollutants from the facility into waters of the United States.

*With Respect to Compliance with the Act*

27. EPA and AES-PR have jointly developed a Compliance Schedule that incorporates the development and implementation of Best Management Practices, Standard Operating Procedures, Monitoring and Reporting, and the submittal of relevant permit applications to properly address all the above-referenced violations.
28. On December 16, 2011, EPA Region 2, issued Administrative Compliance Order CWA-02-20012-3100, which includes a Compliance Schedule to bring AES-PR into compliance with all the requirements of the Act.



### **III. CONCLUSIONS OF LAW AND JURISDICTION**

29. AES-PR is subject to the provisions of the CWA, 33 U.S.C. § 1251 *et. seq.*
30. 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."
31. AES-PR has discharged and continues to discharge storm water associated with industrial activity through outfall serial 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).
32. 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).
33. EPA has jurisdiction over the subject matter of this action, pursuant to Section 309 of the Act, 33 U.S.C. § 1319, and over AES-PR.

### **IV. CONSENT AGREEMENT**

34. Paragraphs 1 through 33 are re-alleged and incorporated herein by reference.
35. EPA and AES-PR agree that it is in the public interest to resolve the issues alleged in this Consent Agreement without further litigation and the expense and effort that litigation entails.
36. Based upon the foregoing and pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g), and the Rules of Practice, it is hereby agreed by and between EPA and AES-PR, and AES-PR voluntarily and knowingly agrees as follows:

### **V. TERMS OF SETTLEMENT**

37. For the purpose of this proceeding, AES-PR:
  - a. Admits the jurisdictional allegations of this CA/FO;
  - b. Neither admits or denies the factual allegations contained herein;



- c. Waives its right to contest the allegations, a judicial or administrative hearing, or to appeal this CA/FO; and,
- d. Consents to the payment of the civil penalty in the amount of *one hundred and seventy thousand dollars (\$170,000.00)*, as stated in Paragraph 38 below.

**VI. PAYMENT OF CIVIL PENALTY**

- 38. AES-PR shall pay a civil penalty in the amount of *one hundred and seventy thousand dollars (\$170,000.00)* to the "**Treasurer of the United States of America.**"
- 39. The checks (cashier's or certified checks only) shall be identified with a notation of the name and docket number of this case, set forth in the caption on the first page of this document. Payment methods are described below:

**CHECK PAYMENTS:**

US Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
PO Box 979077  
St. Louis, MO 63197-9000.

**WIRE TRANSFERS:**

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York NY 10045

Field Tag 4200 of the Fedwire message should read " D 68010727 Environmental Protection Agency "

**OVERNIGHT MAIL:**

U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
ATTN Box 979077  
St. Louis, MO 63101  
Contact: Natalie Pearson  
314-418-4087

**ACH (also known as REX or remittance express)**  
Automated Clearinghouse (ACH) for receiving US currency  
PNC Bank  
808 17<sup>th</sup> Street, NW  
Washington, DC 20074  
Contact – Jesse White 301-887-6548  
ABA = 051036706  
Transaction Code 22 - checking  
Environmental Protection Agency  
Account 310006  
CTX Format

**ON-LINE PAYMENT:**

There is now an On Line Payment Option, available through the Dept. of Treasury. This payment option can be accessed from the information through WWW.PAY.GOV. Enter sfo 1.1 in the search field. Open form and complete required fields.

AES-PR shall also send copies of this payment to each of the following:

Roberto Durango, Esq.  
Assistant Regional Counsel – Caribbean Team  
U.S. Environmental Protection Agency, Region 2  
Centro Europa Building, Suite 417  
1492 Ponce de León Avenue  
San Juan, Puerto Rico 00907;

and

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, New York 10007.

The payment must be received at the above address on or before forty-five (45) calendar days after the date of signature of the Final Order at the end of this document (the date by which payment must be received shall hereafter be referred to as the “due date”).

40. Failure to pay the penalty in full according to the above provisions will result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for Collection.
41. Further, if the payment is not received on or before the due date, interest will be assessed at the annual rate established by the Secretary of Treasury pursuant to the Debt Collection Act, 31 U.S.C. § 3717, on the overdue amount from the due

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date through the date of payment. In addition, a late payment handling charge of \$15.00 will be assessed for each 30-day period (or any portion thereof) following the due date in which the balance remains unpaid. A 6% per annum penalty also will be applied on any principal amount not paid within 90 days of the due date.

42. In addition, pursuant to Section 309(g)(9) of the Clean Water Act, 33 U.S.C. § 1319(g)(9), if payment is not received by the due date, a quarterly nonpayment penalty will be imposed for each calendar quarter during which such nonpayment persists. The quarterly nonpayment penalty is 20% of the aggregate amount of penalties and quarterly nonpayment penalties, which are unpaid as of the beginning of such quarter. You also may be required to pay attorneys fees and costs for collection proceedings in connection with nonpayment.
43. The penalty to be paid is a civil penalty assessed by the EPA and shall not be deductible from AES-PR's federal or Commonwealth of Puerto Rico taxes.

## **VII. GENERAL PROVISIONS**

44. The provisions of this CA/FO shall be binding upon AES-PR, its officers, directors, agents, servants, authorized representatives and successors or assigns, including but not limited to, subsequent purchasers. No transfer of ownership or operation shall relieve AES-PR of its obligation to comply with this CA/FO.
45. AES-PR waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during discussions with or to be served with and to reply to any memorandum or communication addressed to the Director or the Regional Administrator where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the accompanying Final Order.
46. Except for the specific violations alleged herein, nothing in this agreement shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of AES-PR's violation of this agreement or of the statutes and regulations upon which this agreement is based, or for AES-PR's violation of any applicable provision of law.
47. This CA/FO shall not relieve AES-PR of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit.
48. This CA/FO constitutes a settlement by EPA of all claims for civil penalties pursuant to the CWA for the violations by AES-PR alleged herein. Nothing in this



CA/FO is intended to nor shall be construed to operate in any way to resolve any criminal liability of AES-PR. Compliance with this CA/FO shall not be a defense to any actions subsequently commenced pursuant to Federal laws and regulations administered by EPA, and it is the responsibility of AES-PR to comply with such laws and regulations.

49. Each undersigned representative of the parties to this Consent Agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this Consent Agreement and to execute and legally bind that party to it.
50. Each party shall bear its own costs and attorney's fees in connection with the action resolved by this CA/FO.



For AES-PR: AES Puerto Rico, L.P. hereby consents to the issuance of the ORDER and agrees to be bound thereby.

BY:



**ALLAN B. DYER**

President

AES Puerto Rico, L.P.

P. O. Box 1890

Guayama, Puerto Rico 00785

DATE: 12-23-11



For the Complainant, the United States Environmental Protection Agency:

BY:   
\_\_\_\_\_

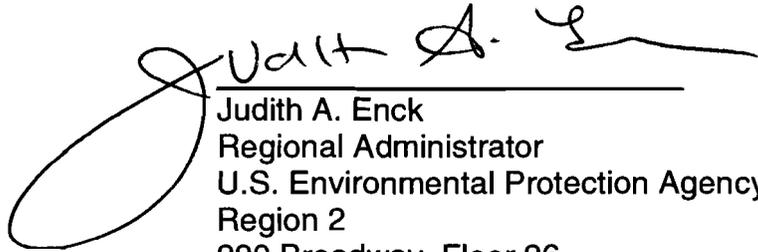
**JOSE C. FONT**  
Acting Director  
Caribbean Environmental Protection Division  
U.S. Environmental Protection Agency, Region 2  
City View Plaza II-Suite 7000  
48 RD. 165 Km. 1.2  
Guaynabo, PR 00968-8069

DATE: 3-1-2012

**VII. FINAL ORDER**

The Regional Administrator of the United States Environmental Protection Agency, Region 2, ratifies the foregoing Consent Agreement. The Agreement entered into by the parties is hereby approved, incorporated herein, and issued as an Order. The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, United States Environmental Protection Agency, Region 2, New York, New York.

DATED: 3/20/12

  
\_\_\_\_\_  
Judith A. Enck  
Regional Administrator  
U.S. Environmental Protection Agency  
Region 2  
290 Broadway, Floor 26  
New York, NY 10007-1866

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing **Consent Agreement and Final Order**, Docket Number CWA-02-2012-3452, dated March 20, 2012, was sent in the following manner to the addresses listed below:

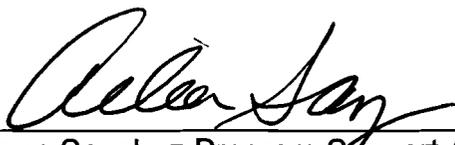
Original and Copy by **Overnight**:

Karen Maples  
Regional Hearing Clerk  
U.S. EPA, Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, NY 10007-1866

Copy by **Overnight**:

Eduardo M. Negron Navas, Esq.; and  
Pedro J. Reyes Bibiloni, Esq.  
Fiddler Gonzalez & Rodriguez  
Counsel for Respondent,  
Allied Waste of Ponce, Inc.  
P.O. Box 363507  
San Juan, PR 00936-3507  
Tel. (787) 759-3106  
Fax (787) 759-3108  
E-mail: enegron@fgrlaw.com

Dated: 3/26/2012

  
\_\_\_\_\_  
Aileen Sanchez, Program Support Assistant  
EPA, Region 2, Office of Regional Counsel