

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

In the Matter of:

AES Puerto Rico, LP
Guayama, Puerto Rico,

Respondent,

In a proceeding under Section 113(d)
of the Clean Air Act, 42 U.S.C. § 7413(d)

**CONSENT AGREEMENT AND
FINAL ORDER**

CAA-02-2024-1215

A. PRELIMINARY STATEMENT

1. This is an administrative penalty assessment proceeding pursuant to Section 113(d) of the Clean Air Act (the “CAA” or “Act”), 42 U.S.C. § 7413(d), and Sections 22.13 and 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules”), codified at 40 C.F.R. Part 22.

2. On behalf of the United States Environmental Protection Agency (“EPA” or “Complainant”), the Director of the Caribbean Environmental Protection Division (“CEPD”) for EPA Region 2 is delegated the authority to settle civil administrative penalty proceedings under Section 113(d) of the Act. Specifically, pursuant to EPA Delegation of Authority 7-6-A and EPA Region 2 Delegation of Authority 7-6-A, the Administrator has delegated to the Director of CEPD, through the Regional Administrator of EPA Region 2, the authority to (a) make findings of violations, (b) issue CAA Section 113(d) administrative penalty complaints, and (c) agree to settlements and sign consent agreements memorializing those settlements, for CAA violations that occur in the jurisdiction of EPA Region 2.

3. Section 113(d) of the CAA authorizes the EPA Administrator to issue an order assessing civil administrative penalties against any person that has violated or is violating any requirement or prohibition of subchapters I, III, IV-A, V, or VI of the Act, or any requirement or prohibition of any rule, order, waiver, permit, or plan promulgated pursuant to any of those subchapters, including but not limited to any regulation promulgated pursuant to Sections 111 and 114 of the Act, 42 U.S.C. §§ 7411, and 7414.
4. Pursuant to EPA Delegation of Authority 7-6-C, the Administrator has delegated to the Regional Administrator of EPA Region 2 the authority to execute CAA Section 113(d) Final Orders.
5. Pursuant to Section 113(d) of the Act, the Administrator and the Attorney General, through their respective delegates, have jointly determined that this matter is appropriate for an administrative penalty proceeding. Specifically, on December 4, 2023, the United States Department of Justice granted the EPA's request for a waiver of the CAA Section 113(d) 12-month and monetary limitations on the EPA's authority to initiate an administrative penalty action in this matter.
6. Respondent AES Puerto Rico, LP ("AES-PR") is the owner and operator of coal-fired power generating facility located at PR-3 Km. 142.0, Jobos Ward, in the municipality of Guayama, Puerto Rico (the "Facility").
7. Respondent is a "person" as defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).
8. In a Notice of Violation, dated July 20, 2022 ("NOV"), EPA alleged that AES-PR violated the Puerto Rico Regulations for the Control of Atmospheric Pollution, which are part of the federally enforceable CAA State Implementation Plan; Title V of the CAA and its implementing regulations at 40 C.F.R.; the Prevention of Significant Deterioration ("PSD") regulations at 40 C.F.R. § 52.21; and 40 C.F.R. Part 63, Subpart UUUUU – the

National Emission Standards for Hazardous Air Pollutants (“NESHAPs”) from Coal -and Oil-fired Electric Utility Steam Generating Units, commonly referred to as the “Mercury and Air Toxics Standards” or “MATS,” during the operations of the Facility. This action will resolve Respondent’s alleged CAA violations, discussed below, at the Facility.

9. The violations determined by EPA are set forth in detail in Section E of this Consent Agreement, entitled “Conclusions of Law.”

B. JURISDICTION

10. This Consent Agreement is entered into pursuant to Section 113(d) of the Act, as amended, 42 U.S.C. § 7413(d), and the Consolidated Rules, 40 C.F.R. Part 22.

11. Pursuant to Section 113(d)(1)(C), the Administrator and the Attorney General, through their respective delegates, have jointly determined that this matter is appropriate for an administrative penalty assessment. *See* 42 U.S.C. § 7413(d)(1)(C); *see also* 40 C.F.R. § 19.4.

12. The Regional Administrator is authorized to ratify this Consent Agreement, which memorializes a settlement between Complainant and Respondent. 40 C.F.R. § 22.18(b)(3).

13. The issuance of this Consent Agreement and attached Final Order simultaneously commences and concludes this proceeding. 40 C.F.R. §§ 22.13(b) and 22.18(b).

C. GOVERNING LAW

14. CAA Section 302(e) states that whenever the term “person” is used in the Act, the term includes “an individual, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency, department, or instrumentality of the United States and any officer, agent, or employee thereof.” 42 U.S.C. § 7602(e).

15. CAA Section 101 states that one of the purposes of the Act is to “protect and enhance the quality of the Nation’s air resources so as to promote the public health and welfare and the productive capacity of its population.” 42 U.S.C. § 7401(b)(1).

16. Section 112(a)(4) defines a “new source” as “a stationary source the construction or reconstruction of which is commenced after the Administrator first proposes regulations under this section establishing an emission standard applicable to such source.” 42 U.S.C. § 7412(a)(4).

17. Section 112 of the Act requires the EPA Administrator to: (i) periodically review and revise the initial list of hazardous air pollutants (“HAPs”) identified by the Congress, (ii) publish and revise a list of categories and subcategories of major and area sources of those HAPs, and (iii) promulgate regulations establishing emission standards for each such category and subcategory. 42 U.S.C. §§ 7412(b)(1), (2); (c)(1), (2).

The NESHAPs MACT Standards

18. Emission standards promulgated pursuant to Section 112 are commonly known as National Emission Standards for Hazardous Air Pollutants (“NESHAPs”). NESHAPs promulgated under the CAA as it existed prior to the 1990 CAA amendments are set forth in 40 C.F.R. Part 61. NESHAPs promulgated under the CAA as amended in 1990 are set forth in 40 C.F.R. Part 63. 40 C.F.R. Part 63 NESHAPs are sometimes known as maximum achievable control technology (“MACT”) standards, because Section 112(d) of the CAA, as amended in 1990, directs EPA to promulgate emission standards based on the MACT. 42 U.S.C. § 7412(d)(2).

19. Section 112(a) of the Act, 42 U.S.C. § 7412(a), contains the following relevant definitions:

- a) “major source” means any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has

the potential to emit, considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant, or 25 tons per year or more of any combination of hazardous air pollutants. 42 U.S.C. § 7412(a)(1).

- b) “stationary source” means any building, structure, facility, or installation which emits or may emit any air pollutant. 42 U.S.C. §§ 7412(a)(3); 7411(a)(3).
- c) “new source” means a stationary source the construction or reconstruction of which is commenced after the Administrator first proposes regulations under this section establishing an emission standard applicable to such source. 42 U.S.C. § 7412(a)(4).
- d) “hazardous air pollutant” means any air pollutant listed pursuant to Section 112(b) of the Act. 42 U.S.C. § 7412(a)(6).
- e) “owner or operator” means any person who owns, leases, operates, controls, or supervises a stationary source. 42 U.S.C. § 7412(a)(9).
- f) “existing source” means any stationary source other than a new source. 42 U.S.C. § 7412(a)(10).

NESHAPs for Coal- and Oil-fired Electric Utility Steam Generating Units (the “Mercury and Air Toxics Standards” or “MATS”)

20. Pursuant to Section 112 of the Act, 42 U.S.C. § 7412, EPA promulgated the “National Emission Standards for Hazardous Air Pollutants from Coal-and Oil-fired Electric Steam Generating Units (“EGU”) and Standards of Performance for Fossil-Fuel-Fired Electric Utility, Industrial-Commercial-Institutional, and Small Industrial-Commercial-Institutional Steam Generating Units.” 77 Fed. Reg. 9304 (Feb. 16, 2012)

(the “MATS rule”). The MATS rule is codified at 40 C.F.R. Part 63 Subpart UUUUU¹ and became effective on April 16, 2012.

21. 40 C.F.R. § 63.9981 provides that anyone who owns or operates an EGU as defined in 40 C.F.R. § 63.10042, *i.e.*, “a fossil fuel-fired combustion unit of more than 25 megawatts electric (“MWe”) that serves a generator that produces electricity for sale,” is subject to the MATS rule.

22. Pursuant to 40 C.F.R. § 63.9991(a)(1), the owner or operator of an affected source subject to the MATS rule must meet the applicable emission limits and work practice standards in Tables 1 through 3 of the MATS rule for each EGU, except as provided in 40 C.F.R. § 63.10009.

23. Pursuant to 40 C.F.R. § 63.10000(a), the owner or operator of a MATS affected source must be in compliance with the MATS emission and operating limits, which apply at all times, except during periods of startup and shutdown and except as provided in 40 C.F.R. § 63.10009. The owner or operator of a MATS affected unit must also meet the work practice requirements for periods of startup or shutdown identified in Table 3 of the MATS rule.

24. Pursuant to 40 C.F.R. § 63.10000(b), the owner or operator of a MATS unit must operate and maintain at all times, any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions. Determination of whether such operation and maintenance procedures are being used will be based on information

¹ MATS rulemaking summary, history, and resources can be found in the following link: <https://www.epa.gov/stationary-sources-air-pollution/mercury-and-air-toxics-standards>

available to the EPA Administrator which may include, but is not limited to, monitoring results, review of operation and maintenance procedures, review of operation and maintenance records, and inspection of the source.

25. Pursuant to 40 C.F.R. § 63.10000(c)(1), initial performance testing for coal-fired units is required for all pollutants, to demonstrate compliance with the applicable emission limits.

26. 40 C.F.R. § 63.10000(c)(1)(vi) establishes that coal-fired EGUs that do not qualify as low-emitting EGUs (“LEE”) for mercury (“Hg”) must demonstrate initial and continuous compliance through the use of a Hg Continuous Emission Monitoring System (“CEMS”) or a sorbent trap monitoring system, in accordance with Appendix A of the MATS rule.

27. Pursuant to 40 C.F.R. § 63.10000(d)(1), if an owner or operator demonstrates compliance with any applicable emissions limit through use of a continuous monitoring system (“CMS”), where a CMS includes a continuous parameter monitoring system (“CPMS”) as well as a CEMS, the owner or operator must develop a site-specific monitoring plan, and submit it if requested, at least 60 days before the initial performance evaluation (where applicable) of the CMS.

28. Pursuant to 40 C.F.R. §§ 63.10000(d)(2) and (d)(5), a site-specific monitoring plan shall include the following information:

- a) Installation of the CMS or sorbent trap monitoring system sampling probe or other interface at a measurement location relative to each affected process unit such that the measurement is representative of control of the exhaust emissions (*e.g.*, on or downstream of the last control device).
- b) Performance and equipment specifications for the sample interface, the pollutant concentration or parametric signal analyzer, and the data collection

and reduction systems.

- c) Schedule for conducting initial and periodic performance evaluations.
- d) Performance evaluation procedures and acceptance criteria (*e.g.*, calibrations), including the quality control program in accordance with the general requirements of 40 C.F.R. § 63.8(d).
- e) Ongoing operation and maintenance procedures, in accordance with the general requirements of 40 C.F.R. §§ 63.8(c)(1)(ii), (c)(3), and (c)(4)(ii).
- f) Conditions that define a CMS that is out of control consistent with 40 C.F.R. § 63.8(c)(7)(i) where appropriate, and for responding to out-of-control periods consistent with 40 C.F.R. §§ 63.8(c)(7)(ii) and (c)(8).
- g) Ongoing recordkeeping and reporting procedures, in accordance with the general requirements of 40 C.F.R. §§ 63.10(c), (e)(1), and (e)(2)(i), or as specifically required by the MATS rule.

29. Alternatively, the site-specific monitoring plan requirements are considered to be met for a particular CMS or sorbent trap monitoring system if:

- a) The CMS or sorbent trap monitoring system is installed, certified, maintained, operated, and quality-assured either according to 40 C.F.R. Part 75, or Appendix A or B of the MATS rule; and
- b) The recordkeeping and reporting requirements of 40 C.F.R. Part 75 or Appendix A or B of the MATS rule that pertain to the CMS are met.

30. Pursuant to 40 C.F.R. § 63.10006(c), coal-fired EGUs without a particulate matter (“PM”) CEMS or CPMS must conduct all applicable periodic emissions tests for filterable PM, individual, or total HAP metals emissions according to Table 5 of the MATS rule, 40 C.F.R. §§ 63.10007 and 63.10000(c).

31. Pursuant to 40 C.F.R. § 63.10006(d), coal-fired EGUs that do not use either an

HCl CEMS to monitor compliance with the HCl limit or an SO₂ CEMS to monitor compliance with the alternate equivalent SO₂ emission limit, the owner or operator must conduct all applicable periodic HCl emissions tests according to Table 5 of the MATS rule, and 40 C.F.R. § 63.10007, at least quarterly.

32. Pursuant to 40 C.F.R. § 63.10010(b), if the owner or operator uses an oxygen (O₂) or carbon dioxide (CO₂) CEMS to convert measured pollutant concentrations to the units of the applicable emissions limit, the O₂ or CO₂ concentrations shall be monitored at a location that represents emissions to the atmosphere, *i.e.*, at the outlet of the EGU, downstream of all emission control devices. The owner or operator must install, certify, maintain, and operate the CEMS according to part 75 of the MATS rule. Only quality-assured O₂ or CO₂ data in the emissions calculations shall be used.

33. Pursuant to 40 C.F.R. § 63.10010(c), if an owner or operator is required to use a stack gas flow rate monitor, either for routine operation of a sorbent trap monitoring system, or to convert pollutant concentrations to units of an electrical output-based emission standard in Table 1 or 2 of the MATS rule, it must install, certify, operate, and maintain the monitoring system and conduct on-going quality-assurance testing of the system according to part 75 of the MATS rule. Only unadjusted, quality-assured flow rate data in the emissions calculations shall be used. Bias adjustment factors to the flow rate data shall not be applied, and the use of substitute flow rate data in the calculations is not permitted.

34. Pursuant to 40 C.F.R. § 63.10010(g), if an owner or operator uses a mercury CEMS or a sorbent trap monitoring system, it must install, certify, operate, maintain and quality-assure the data from the monitoring system in accordance with Appendix A to the MATS rule. The owner or operator must calculate and record a 30- (or, if alternate emissions averaging is used, 90-) boiler operating day rolling average Hg emission rate,

in units of the standard, updated after each new boiler operating day.

35. Pursuant to 40 C.F.R. § 63.10020(d), periods of monitoring system malfunctions or monitoring system out-of-control periods, repairs associated with monitoring system malfunctions or monitoring system out-of-control periods, and required monitoring system quality assurance or quality control activities excluding zero and span checks must be reported at the time the monitor was inoperative (downtime). Failure to collect required quality-assured data during monitoring system malfunctions, monitoring system out-of-control periods, or repairs associated with monitoring system malfunctions or monitoring system out-of-control periods is a deviation from the monitoring requirements.

36. Pursuant to 40 C.F.R. § 63.10021(b), if an owner or operator uses a CEMS to measure SO₂, PM, HCl, HF, or Hg emissions, or a sorbent trap monitoring system to measure Hg emissions, it must demonstrate continuous compliance by using all quality-assured hourly data recorded by the CEMS (or sorbent trap monitoring system) and the other required monitoring systems (*e.g.*, flow rate, CO₂, O₂, or moisture systems) to calculate the arithmetic average emissions rate in units of the standard on a continuous 30-boiler operating day (or, if alternate emissions averaging is used for Hg, 90-boiler operating day) rolling average basis, updated at the end of each new boiler operating day.

37. Pursuant to 40 C.F.R. § 63.10031(a)(1), if an owner or operator is required to (or elects to) monitor Hg emissions continuously, it must meet the electronic reporting requirements of Appendix A to the MATS rule, which requires using the Emissions Collection and Monitoring Plan System (“ECMPS”) Client Tool to submit electronic reports to the EPA.

38. Pursuant to 40 C.F.R. § 63.10031(b), semi-annual compliance reports must be submitted as follows:

- a) The first compliance report must cover the period beginning on the compliance date that is specified for the affected source in 40 C.F.R. § 63.9984 (or, if applicable, the extended compliance date approved under 40 C.F.R. § 63.6(i)(4)) and ending on June 30 or December 31, whichever date is the first date that occurs at least 180 days after the compliance date that is specified for the source in 40 C.F.R. § 63.9984 (or, if applicable, the extended compliance date approved under 40 C.F.R. § 63.6(i)(4)).
- b) The first compliance report must be submitted electronically no later than July 31 or January 31, whichever date is the first date following the end of the first six months of the calendar year after the compliance date that is specified for the source in 40 C.F.R. § 63.9984 (or, if applicable, the extended compliance date approved under 40 C.F.R. § 63.6(i)(4)).
- c) Each subsequent compliance report must cover the semi-annual reporting period from January 1 through June 30 or the semi-annual reporting period from July 1 through December 31.
- d) Each subsequent compliance report must be submitted electronically no later than July 31 or January 31, whichever date is the first date following the end of the semi-annual reporting period.

39. Pursuant to 40 C.F.R. § 63.10031(d), for EGUs whose owners or operators rely on a CMS to comply with an emissions or operating limit, the semi-annual compliance reports described in 40 C.F.R. § 63.10031(c) must include the excess emissions and monitor the downtime summary report described in 40 C.F.R. § 63.10(e)(3)(vi). If there were no deviations, the owner or operator must include a statement to that effect in the quarterly compliance report.

40. Pursuant to 40 C.F.R. § 63.10031(f), for each performance stack test completed

prior to January 1, 2024, the owner or operator must submit a test report in a portable document format (“PDF”) in accordance with 40 C.F.R. § 63.10031(f)(6), no later than 60 days after the date on which the testing is completed.

41. Pursuant to 40 C.F.R. § 63.10031(f)(1), for each Relative Accuracy Test Audits (“RATA”) of an Hg, HCl, HF, or SO₂ monitoring system completed prior to January 1, 2024, the owner or operator must submit a PDF test report in accordance with 40 C.F.R. § 63.10031(f)(6), no later than 60 days after the date on which the test is completed.

42. Pursuant to 40 C.F.R. § 63.10031(f)(4), the owner or operator must submit semi-annual compliance reports as required under 40 C.F.R. § 63.10031(b) through (d), ending with a report covering the semi-annual period from July 1 through December 31, 2023, and Notifications of Compliance Status as required under 40 C.F.R. § 63.10030(e), as PDF files.

43. Pursuant to 40 C.F.R. § 63.10031(f)(6), all reports and notifications described in 40 C.F.R. § 63.10031(f)(1) and (4) must be sent to the EPA in the specified format and the specified frequency, using the ECMPS Client Tool.

44. Pursuant to 40 C.F.R. § 63.10032(a), the owner or operator must keep records according to 40 C.F.R. §§ 63.10032(a) and (b). If the owner or operator is required to (or elects to) continuously monitor Hg and/or HCl and/or HF and/or PM emissions, or if it elects to use a PM CPMS, it must keep the records required under Appendices A, B, C, and/or D to the MATS rule. It must also keep records of all data elements and other information in Appendix E to the MATS rule that apply to its compliance strategy. The owner or operator must also keep records of compliance according to 40 C.F.R. § 63.10032(a)(1) and (2).

45. Pursuant to 40 C.F.R. § 63.10032(c), the owner or operator must keep the records required in Table 7 of the MATS rule, including records of all monitoring data and

calculated averages for applicable PM CPMS operating limits to show continuous compliance with each emission limit and operating limit that applies to the source.

46. Pursuant to 40 C.F.R. § 63.10032(h), the owner or operator must keep records of actions taken during periods of malfunction to minimize emissions in accordance with 40 C.F.R. § 63.10000(b), including corrective actions to restore the air pollution control and monitoring equipment to its normal or usual manner of operation.

Prevention of Significant Deterioration

47. On June 19, 1978, EPA promulgated regulations pursuant to Part C of Title I of the Act, “Prevention of Significant Deterioration of Air Quality” (“PSD”). *See* 43 Fed. Reg. 26403 (June 19, 1978).

48. The PSD provisions of Part C of Title I of the Act establish specific requirements applicable to the construction and modification of sources located in areas designated as either attainment or unclassifiable for purposes of meeting the National Ambient Air Quality Standards (“NAAQS”). *See* 42 U.S.C. §§ 7470-7492. These statutory provisions and their implementing regulations at 40 C.F.R. § 52.21, collectively known as the “PSD program,” provide that if a major stationary source located in an attainment area is planning to make a major modification, then that source must obtain a PSD permit before beginning actual construction. The source must comply with all of the conditions of a PSD permit issued pursuant to 40 C.F.R. § 52.21.

49. 40 C.F.R. § 52.21(a)(1) provides that the PSD regulations apply to any State Implementation Plan (“SIP”) which has been disapproved with respect to prevention of significant deterioration of air quality in any portion of any state that is in attainment with the applicable NAAQS.

50. Pursuant to Sections 110 and 161 of the Act, EPA (1) disapproved Puerto Rico's prevention of significant deterioration of air quality rules, and (2) incorporated by reference, and made part of the applicable Puerto Rico SIP, the provisions at 40 C.F.R. §§ 52.21(a)(2) through (w). See 40 C.F.R. §§ 52.2720 through 52.2732; 62 Fed. Reg. 3211, 3213 (January 22, 1997); 68 Fed. Reg. 74491 (Dec. 24, 2003); 42 U.S.C. §§ 7410, 7471.

Clean Air Act Title V Operating Permit

51. Title V of the Act ("Title V") consists of CAA Sections 501 to 507, 42 U.S.C. §§ 7661-7661f.

52. In general, Title V requires each "major source" to obtain an operating permit setting forth all the air pollution requirements that apply to that source; Title V also provides for the creation of state and federal programs to issue such permits.

53. Section 501 of the CAA, 42 U.S.C. § 7661(2), defines a "major source," as used in Title V, as any stationary source or group of stationary sources located within a contiguous area and under common control that is a major source as defined in either Section 112 of the Act, Section 302 of the Act, or Part D of Subchapter I of the Act.

54. Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), makes unlawful the operation of any source subject to Title V, except operation in compliance with a permit issued by a permitting authority pursuant to Title V.

55. Section 502(b) of the CAA, 42 U.S.C. § 7661a(b), requires EPA to promulgate regulations establishing the minimum elements of a Title V operating permit program; it also sets forth the procedures by which EPA would approve, oversee, and withdraw approval of state operating permit programs.

56. Section 502(d) of the CAA, 42 U.S.C. § 7661a(d), requires each state to develop and submit to EPA a permit program meeting the requirements of Title V.

57. Section 502(e) of the CAA, 42 U.S.C. § 7661a(e), authorizes EPA to retain the authority to enforce Title V operating permits issued by a state.

58. On July 21, 1992, pursuant to CAA Section 502(b), EPA promulgated 40 C.F.R. Part 70 (“Part 70”), which governs state operating permit programs. *See* 57 Fed. Reg. 32295 (July. 21, 1992).

59. Section 502(d) of the Act, 42 U.S.C. § 7661a(d), and 40 C.F.R. § 70.4 require each state to submit a permitting program, developed in accordance with Part 70, to EPA for approval. States are authorized to administer their own EPA-approved Title V operating permit programs.

60. On November 14, 1995, the EPA granted interim approval (60 Fed. Reg. 57204), and effective March 27, 1996, the EPA granted final full approval of the Commonwealth of Puerto Rico’s Title V Operating Permit Program (61 Fed. Reg. 7073, Feb. 26, 1996).

61. The Puerto Rico Title V Facility Permit Regulations, located at Part VI of the Puerto Rico Regulations for the Control of Atmospheric Pollution (“RCAP”), implement numerous requirements of the CAA, and apply to, among other things, any “major source.” RCAP Rule 601.

Commonwealth of Puerto Rico Regulations for the Control of Atmospheric Pollution

62. Pursuant to the Puerto Rico Environmental Public Policy Act Law No. 9 of June 18, 1970,² the Puerto Rico Environmental Quality Board (“EQB”) developed the Puerto Rico RCAP.

63. By virtue of Law No. 122 of December 18, 2017, EQB’s functions, services, programs, and/or powers were transferred to the Puerto Rico Department of Natural and

² Repealed and superseded by Act No. 416 of September 22, 2004.

Environmental Resources (“DNER”).³

64. On January 22, 1997, the EPA approved DNER’s RCAP, as submitted to the EPA on September 29, 1995, as part of the federally approved SIP for the Commonwealth of Puerto Rico. 62 Fed. Reg. 3211 (Jan. 22, 1997).

65. RCAP Rule 403(A)(1) establishes that no person shall cause or permit the emission of visible air pollutants of an opacity greater than 20 percent (6-minute average).

66. RCAP Rule 410(F) and Section V.B of the Title V permit establish that the owner or operator of the source shall submit a monthly report indicating on a daily basis the sulfur content in the fuels burned or combusted by such source during the reporting period, including all other information as may be required by the DNER.

67. RCAP Rule 602(c)(2)(ix)(C) and Section III.7 of the Title V permit establish that an annual compliance certification must be submitted to both the DNER and the EPA no later than April 1 of each year covering the previous calendar year.

68. RCAP Rule 603(a)(5)(i) and Section III.15 of the Title V permit establish that any required monitoring reports must be submitted to the DNER at least every six months, October 1 and April 1 of every year, or more frequently if required by the underlying applicable requirement. All instances of deviations from permit requirements must be clearly identified in such reports. All required reports must be certified by a responsible official.

³ All actions taken by the EQB prior to December 18, 2017 will be referenced as actions taken by the DNER.

D. FINDINGS OF FACT

The following findings of fact are based on a review of Facility records and inspection of the Facility performed by the EPA in December 2021:

69. Respondent owns and operates the Facility, which has been in operation since 2002.

70. The Facility produces approximately 454 MW of net electricity, which is sold to LUMA Energy (Puerto Rico's electrical transmission and distribution lines operator).

The main process emission units consist of two 227 MW (net, each) bituminous coal-fired circulating fluidized bed boilers ("CFB") with cyclones, which supply superheated steam to two extraction/condensing turbines to drive electric generators. The two boilers have a combined maximum heat input rate of 4,922.7 MMBtu/hr. The emissions are controlled through the use of the CFB and a circulating dry scrubber with limestone and lime injection, respectively, for SO₂ control, a dry electrostatic precipitator for PM control, and a selective non-catalytic reduction system using urea for additional nitrogen oxides (NO_x) control. The CFB have two individual stacks with CEMS for NO_x, SO₂, carbon monoxide (CO), O₂, and CO₂, and a Flow Rate Monitoring System for exhaust gas volumetric flow rate, as well as a Sorbent Trap Monitoring System for Hg and a Continuous Opacity Emissions Monitoring System.

71. The Facility operates under a Title V permit (Permit No. PFE-TV-4911-30-0703-1130), issued to Respondent by DNER pursuant to 40 C.F.R. Part 70 on November 15, 2011 (hereinafter, the "Title V permit").

72. The Title V permit was issued with an expiration date of November 15, 2016.

73. On November 16, 2015, AES-PR submitted a Title V permit renewal application to DNER.

74. On January 7, 2016, DNER determined AES-PR's Title V permit renewal application was administratively complete and in compliance with RCAP Rule 602 and issued a permit shield in accordance with RCAP Rule 605. However, AES-PR is still waiting for DNER to issue the Facility Title V permit renewal.

75. On October 29, 2001, the EPA issued a revised final PSD permit (the "PSD permit") to AES-PR for the construction and operation of a 454-megawatt coal-fired steam electric generation facility located in Guayama, Puerto Rico.

76. On August 12, 2003, and April 19, 2004, AES-PR proposed a series of changes to the final PSD permit. On August 10, 2004, the EPA approved these changes and issued a second revised PSD Permit to AES-PR (the "Revised PSD permit").

77. Section XIV.5 of Attachment 2 of the Revised PSD permit establishes that AES-PR shall submit a quarterly written report of all excess emissions to the EPA. Each quarterly report shall be postmarked by the thirtieth day following the end of each quarter and shall include the following: a) the magnitude of excess emissions, b) identification of each period of excess emissions; c) the date and time identifying each period; and d) if no excess emissions have occurred or the CEMS has not been inoperative, repaired, or adjusted, such information shall be stated in the report.

78. On December 13 and 14, 2021, EPA Region 2, accompanied by an inspector from Eastern Research Group ("ERG"), conducted an on-site inspection of the Facility (the "Inspection"). The report of the Inspection was provided to AES-PR on February 14, 2022, by electronic mail.

79. During the Inspection, the EPA and ERG inspectors (the "Inspectors") conducted a walkthrough of the Facility, reviewed and requested information to evaluate

Respondent's compliance with the MATS rule and the permits, and had a discussion with AES-PR representatives about the Facility's operations.

80. During the Inspection closing meeting, the Inspectors requested that AES-PR provide the following documents and information via electronic mail by January 20, 2022:

- a) Documentation from LUMA requesting that AES-PR postpone maintenance-related shutdown events.
- b) The Title V permit shield letter from DNER.
- c) Compliance matrix from AES-PR's former environmental health and safety ("EHS") manager.
- d) Tank emission estimates for 2020.
- e) Method 9 opacity certifications from 2021.
- f) One year of boiler records showing shutdown and startup periods to confirm that post-outage startups and shutdowns are the appropriate durations.
- g) Most recent two toxicity characteristic leaching procedure ("TCLP") analyses of bed and fly ash.
- h) Performance tests for the limestone dryer.
- i) Completed copies of fugitive dust plan training form, complaint log, and weekly inspections for June 2021 through December 2021.
- j) Black start generator construction permit.
- k) Semi-Annual Title V permit Monitoring Report for 2020 and January-June 2021 for both units.
- l) Semi-Annual MATS Compliance Reports for 2020 and January-June 2021 for both units.

- m) Mercury sorbent trap sampling results from 2020 and 2021 year-to-date for each unit.
- n) 2020 and 2021 year-to-date 30-day rolling average mercury values used to demonstrate MATS compliance for each unit.
- o) Unit 1 and 2 MATS/Part 75 RATA results corresponding to 2020 and 2021 year-to-date.
- p) Unit 1 and 2 quarterly PM/HCl MATS compliance performance testing corresponding to 2020 and 2021 year-to-date.
- q) Records of all startups and shutdowns from 2020 to 2021 year-to-date, including occurrence and duration of startup and shutdown events.
- r) Standard operating procedures for bringing control equipment online during a startup on each unit electrostatic precipitator, lime injection, and dry scrubber.
- s) Records of the occurrence of any malfunctions to process or control equipment and steps taken to minimize emissions during malfunctions.
- t) Revised MATS monitoring plan to include changes needed to Table 2-2 of AES-PR's MATS site-specific monitoring plan, to update the serial number of the CO₂ analyzers currently in use.
- u) Confirmation that AES-PR's last submission to the ECMPS Client Tool was in April 2017.
- v) Expected schedule for the next AGREMAXTM and coal barges.

81. In a virtual meeting held on January 27, 2022, AES-PR informed EPA about a series of MATS compliance issues found as a result of an internal compliance audit, AES-PR's proposed corrective actions, and next steps.

82. On January 28, 2022, AES-PR electronically submitted information that EPA had requested (listed in paragraph 81) via a secure file transfer protocol (“FTP”) link hosted by AES-PR’s outside counsel, entitled, “AESPR Document Production.” The EPA was able to access the documents on that same day.

83. On February 3, 2022, AES-PR informed EPA via email that revised Part 75 RATA Reports for 2020 and 2021 were added to the FTP site as Attachment 11A_rev and Attachment 11B_rev.

84. On April 1, 2022, the DNER received AES-PR’s 2021 annual air emissions statement, including the air emissions inventory; AES-PR’s authorized representative’s certification; and copies of the calculations used to determine actual emissions from the Facility.

85. On April 4, 2022, the DNER received AES-PR’s 2021 Title V Annual Compliance Certification (the “2021 TVACC”); the semi-annual compliance monitoring reports for the reporting period from January 1, 2021, through June 30, 2021, and the period from July 1, 2021, through December 31, 2021; and the Risk Management Program compliance certification.

86. On April 29, 2022, EPA received AES-PR’s CEMS Quarterly Report corresponding to the first quarter of 2022, in accordance with the requirements of the Revised PSD permit, 40 C.F.R. § 60.49a, and 40 C.F.R. Part 60, Appendix F.

87. On May 19, 2022, AES-PR and EPA held a meeting in which AES provided EPA a status of the MATS compliance issues disclosed on January 27, 2022. AES-PR discussed its corrective action plan, including which of the actions were completed. AES-PR also informed EPA about the compliance issues with the Facility mercury limit triggered by power outages that affected the Facility in March and April of 2022. EPA

requested that AES-PR provide further details about the events and which corrective actions were taken.

88. On June 9, 2022, EPA sent an email to AES-PR requesting further information about the Facility, including (1) reports of an outage(s) at Unit 2 in 2022, including issues related to the mercury control-injection system; (2) reports related to issues with the mercury sorbent traps that occurred between 2018 and 2022; (3) copies of lab results of the sorbent traps sent to a U.S. laboratory for analysis, including chain-of-custody documents; and (4) standard operating procedures or manuals for the on-site analysis of the sorbent traps, including accountability procedures to ensure that the testing was completed according to the established procedures.

89. On June 24, 2022, AES-PR submitted to EPA copies of the laboratory analysis of the sorbent traps and associated chain-of-custody documentation.

90. On July 1, 2022, AES-PR submitted to EPA information about the issues that affected the Facility's mercury control-injection system, including the measures taken to reduce the emissions and to prevent future occurrences. AES-PR confirmed that the mercury control-injection system for Unit 2 was affected by several issues, including two forced outages from between March 25, 2022, and March 31, 2022, and also from April 6, 2022, to April 11, 2022, the latter of which was caused by an island-wide blackout. These outages and other issues caused the Facility to exceed the MATS Hg limit from March 17-21, 2022, and from April 5-12, 2022.

91. Based on the observations made during the Inspection and the evaluation of relevant Facility documents, EPA found and confirmed that:

- a) AES-PR failed to properly operate its Hg sorbent trap monitoring system and CO₂ analyzer at all times, in a manner consistent with the requirements

contained in 40 C.F.R. § 63.10032(c).⁴ Pursuant to 40 C.F.R. §§ 63.10020(d) and 63.10032(h), records of periods of malfunction and actions taken during malfunctions must be kept. AES-PR provided sorbent trap sample analysis results and chain-of-custody documentation showing that samples collected from 2018 through 2021 were analyzed on or about December 13, 2021, and in several instances, in 2022. Furthermore, AES-PR's records indicate that the Hg sorbent trap monitoring systems were not functioning from July 1, 2021, through December 31, 2021 (*i.e.*, 4,415 consecutive hours for the Unit 1 system and 3,910 consecutive hours for the Unit 2 system). AES-PR's semi-annual compliance reports indicated that the CO₂ monitor failed its RATA performed on December 16, 2020, and linearity checks were not performed during the third and fourth quarters of 2021.

- b) As indicated above, AES-PR provided sorbent trap sample analysis results and chain-of-custody documentation showing that samples collected from 2018 through 2021 were analyzed on or about December 13, 2021, and in several instances in 2022. During these periods, AES-PR failed to calculate and record a 30-boiler-operating-day rolling average Hg emission rate, in units of the standard, updated after each new boiler operating day.

⁴ Consistent with 40 C.F.R. § 63.10000(c)(1)(vi)(B), AES has opted to operate Hg sorbent trap monitoring systems to demonstrate compliance with the Hg emission limit.

- c) AES-PR failed to comply with the applicable Hg emission limit on two occasions, specifically during the periods of March 17-21, 2022, and April 5-12, 2022.
- d) AES-PR failed to conduct adequate PM and HCl quarterly performance testing. Through records obtained from DNER and AES-PR's responsive records provided after the Inspection, the EPA determined that several quarterly reports between 2017 and 2021 were not submitted, and some were not submitted timely in violation of the MATS rule.
- e) AES-PR failed to certify the CO₂ CEMS and flow rate monitors. AES-PR's CO₂ analyzer failed its certification during the December 16, 2020, RATA test for both Units 1 and 2. No further certification efforts were conducted until the next annual RATA on December 15, 2021, during which the CO₂ analyzer for both units passed its certification. The December 16, 2020, RATA test report indicated that the CO₂ analyzer recertification was going to be reattempted in the quarter following the quarter in which the analyzer was repaired. Moreover, the flow rate monitor for Unit 1 failed its certification during the December 15, 2021 RATA test. Section 2-2 of the RATA test report indicates that Unit 1's Flow Rate Monitoring System could not be considered representative of stack emissions and required recertification RATA at all three operating load ranges of Low, Mid, and High.
- f) AES-PR failed to comply with the requirements under Appendix A to the MATS rule, containing Hg monitoring provisions, by failing to follow the quality assurance and quality control and Hg sorbent trap monitoring system RATA certification requirements.

- g) AES-PR failed to submit Hg emissions data reports, MATS semi-annual compliance reports, and quarterly performance test reports electronically via the ECMPS Client Tool from the reporting periods of October 2017 through October 2021.
- h) AES-PR failed to submit the semi-annual compliance reports required in Section III.15 of the Permit and Rule 603(a)(5)(i) of the RCAP to be submitted by April 1 and October 1 of each year.
- i) AES-PR failed to perform routine weekly visible emissions (“VE”) observations at the limestone dryer location, as required in Section V.B.2.b.3 of the Title V permit, which requires AES-PR to observe the stack for a period of six minutes (when the unit is in operation) to identify if there are visible emissions that are not water vapor. As requested during the Inspection, AES-PR provided two years of VE records to the EPA. During this two-year period, 35 observations were missing (out of the required total of 103); moreover, there was a 28-week period (from June 2021 through mid-December 2021) where no observations were made.
- j) AES-PR failed to perform Method 9 VE observations by a certified reader, in violation of Section V.B.2.b.3 of the Title V permit, which requires that the person who performs the VE observations be certified by a program endorsed by the EPA or the DNER in order to identify if the unit is potentially exceeding the opacity limit stated in Rule 403 of the RCAP and/or any other applicable requirement.
- k) AES-PR failed to provide records of occurrences, duration, and actions taken during periods of malfunction, including corrective actions to restore malfunctioning processes and monitoring equipment. EPA requested

compliance monitoring data related to the mercury sorbent trap on December 20, 2021, which AES-PR did not provide. In accordance with AES-PR's MATS compliance semi-annual report submitted to EPA on January 31, 2022 and corresponding to the reporting period from July through December 2021, the mercury CMS reported 100% of downtime during this period. No explanation about this malfunction and which corrective actions taken to restore the mercury CMS were provided.

- l) AES-PR failed to comply with the Facility's site-specific monitoring plan, including reporting through the ECMPS Client Tool, proper operation of the Hg sorbent trap monitoring system, and performance testing frequency.
- m) AES-PR failed to submit the 2020 annual compliance certification to the EPA.
- n) AES-PR failed to submit the CEMS quarterly reports required by Section XIV.5 of Attachment 2 of the Revised PSD Permit, for the time period from the second quarter of 2017 through the third quarter of 2021.
- o) According to the 2021 TVACC Deviation summary report, the Facility failed to comply with the following Title V permit conditions:
 - i. Section III.7 – Respondent submitted the 2020 Title V Annual Compliance Certification after April 1, 2021.
 - ii. Section III.14 – Respondent was not able to locate certain records required by the Title V permit.
 - iii. Section III.15 – Respondent did not submit a semi-annual report for the first half of 2021.
 - iv. Section III.28 – Respondent did not communicate any change in the Responsible Official.

- v. Section V.A.2 – Respondent failed on 18 occasions to comply with the requirement for the CEMS to be on-line and in operation 95% of the time when CFBs were in operation.
- vi. Section V.B.1.b.(3).iii.(A) – Respondent failed on 18 occasions to comply with requirement for the CEMS non-operating time not to exceed 5% of the CFBs’ operating time.
- vii. Section V.B.1.b.(4).i – Respondent reported 86 deviations of its CFBs opacity limit in the second, third, and fourth quarters of 2021.
- viii. Section V.B.1.b.(6).i – Respondent reported 57 deviations of its CFBs NO_x emission limit.
- ix. Section V.B.1.b.(7).i. – Respondent reported 25 deviations of its CFBs CO emission limit.
- x. Section V.B.1.b.(8).i. - Respondent reported 51 deviations of its CFBs SO₂ emission limit.
- xi. Section V.B.1.b.(8).v – Respondent failed to submit the CFBs monthly report of the sulfur content in the coal and diesel for the month of August 2021.
- xii. Section V.B.1.b.(14).i – Unit 2’s start-up time exceeded 14 hours four times in the reporting period.
- xiii. Section V.B.1.b.(14).iii – Unit 1’s shutdown time exceeded eight hours on one occasion during the reporting period. Unit 2’s shutdown time exceeded eight hours twice during the reporting period.
- xiv. Section V.B.1.b.(15).iii – Respondent failed to provide valid CO₂ concentration data to determine compliance with heat input limits of its CFBs due to failed RATA.

- xv. Section V.B.2.b.(2).iv – Respondent failed to locate the daily records of the hours of operation of the limestone dryer.
- xvi. Section V.B.2.b.(3).iii – Respondent failed to notify DNER at least 15 days prior to conducting an opacity reading to show compliance with the limestone dryer opacity limit.
- xvii. Section V.B.2.b.(3).v – Respondent failed to locate documentation of the required limestone dryer visual emission inspections conducted by a certified observer for the months of January 2021, as well as June through December 2021. Additionally, the February 2021 through May 2021 readings were conducted by an observer with an expired certification.
- xviii. Section V.B.2.b.(3).vi and vii – in 2021, Respondent failed to locate documentation of corrective measures taken immediately to eliminate excess opacity from the limestone dryer, documentation of the cause of the emissions with such elevated opacity, or documentation of the steps taken to correct any deficiency.
- xix. Section V.B.2.b.(4).vi – Respondent failed to locate records of baghouse pressure drops between January 1, 2021 and September 23, 2021 related to the limestone processing building.
- xx. Section V.B.2.b.(10).ii – Respondent failed to locate the monthly sulfur content report for the month of August 2021 related to the limestone processing building.
- xxi. Section V.B.3.b.(5).iv – Respondent failed to provide DNER an opportunity to observe performance testing related to cooling towers.

- xxii. Section V.B.5.b.(5) – Respondent failed to submit the monthly sulfur content report for August 2021 related to the emergency equipment.
- xxiii. Sections V.B.6.b.(2).i, vi, and (4).iii – Throughout 2021, Respondent failed to conduct the required monthly visual observations and the required weekly baghouse pressure drop inspections related to the coal handling activities.
- xxiv. Sections V.B.7.b.(2).i, iv, and (3).iii – Throughout 2021, Respondent failed to conduct the required visual observations with a certified observer and the weekly baghouse pressure drop inspections related to the limestone handling operations.
- xxv. Sections V.B.9.b.(1).ii, vii, x, and (3).iii – Throughout 2021, Respondent failed to conduct the required visual observations and the required weekly baghouse pressure drop inspections related to the ash aggregate handling operations for 2021.
- xxvi. Section V.C.1.a – Respondent failed to submit to EPA and DNER the required coal sampling reports corresponding to the first quarter of 2021.
- xxvii. Section V.C.1.b – Respondent failed to conduct the required composite coal sample analysis for 2021.

92. Throughout 2022 and 2023, AES-PR provided the EPA with additional technical documents and information that EPA requested. The parties held a technical meeting on September 13, 2023.

93. Around February 8, 2023, AES-PR installed mercury process monitors at Unit 1 and Unit 2 in order to monitor mercury emissions in real-time. The monitors are manufactured by Ohio Lumex, model 915 J Mercury Process Monitors, Version 5.6. The monitors are intended to provide useful, real-time information to inform injection of

mercury control chemicals and unit operation, but AES-PR continued to demonstrate compliance with the MATS rule through its sorbent traps.

E. CONCLUSIONS OF LAW

Based on the Findings of Fact set forth above, EPA reaches the following Conclusions of Law:

94. Respondent is a “person” within the meaning of Section 302(e) of the Act.
95. Respondent is the owner and operator of the Facility within the meaning of Section 112(a)(9) of the CAA, 42 U.S.C. § 7412(a)(9), and 40 C.F.R. § 63.2.
96. The Facility is a “major source,” as defined in RCAP Rule 601, Section 501 of the Act, 42 U.S.C. § 7661(2), and the PSD program, 40 C.F.R. § 52.21.
97. The Facility is subject to the applicable requirements in the MATS rule, NESHAP Subpart UUUUU.
98. Respondent failed to comply with 40 C.F.R. §§ 63.9991(a)(1), 63.10000(a), and 63.10000(b) for exceeding the Hg emission limit during the periods of March 17-21, 2022, and April 5-12, 2022.
99. Respondent failed to operate the Hg sorbent trap monitoring system at all times in a manner consistent with the requirements in 40 C.F.R. § 63.10000(c)(1)(vi)(B).
100. Respondent failed to conduct adequate PM and HCl quarterly performance testing, in contravention of 40 C.F.R. § 63.10006(c) & (d).
101. Respondent failed to certify its CO₂ CEMS in accordance with 40 C.F.R. Part 75 and in contravention of 40 C.F.R. § 63.10010(b).
102. Respondent failed to comply with the Facility’s site-specific monitoring plan (*i.e.*, ECMPS reporting, Hg sorbent trap and testing frequency issues), in contravention of 40 C.F.R. § 63.10000(d).

103. Respondent failed to certify the flow-rate monitor in accordance with 40 C.F.R. Part 75 and in contravention of 40 C.F.R. § 63.10010(c).
104. Respondent failed to comply with 40 C.F.R. § 63.10010(g) (calibration, installation, maintenance requirements).
105. Respondent failed to comply with 40 C.F.R. § 63.10020(a) (monitoring and collecting data in compliance with the MATS rule and the company's site-specific monitoring plan).
106. Respondent failed to comply with the reporting requirements contained in 40 C.F.R. Subpart UUUUU, and 40 C.F.R. § 63.10031(a)(1), which requires Hg emissions data reports.
107. Respondent failed to comply with 40 C.F.R. § 63.10031(b), which requires semi-annual compliance reports, corresponding to January 1, 2018 through the second half of 2021.
108. Respondent failed to submit semi-annual reports to DNER in contravention of AES-PR's Title V permit, Section III.15, and the Puerto Rico RCAP Rule 603(a)(5)(i).
109. Respondent failed to submit the Facility's annual compliance certification to EPA, in contravention of Section III.7 of AES-PR's Title V Permit.
110. Respondent failed to comply with the reporting provisions of AESPR's Revised PSD Permit included in Attachment 2 of Section XIV.5, and 40 C.F.R. § 52.21, for failing to submit a quarterly written report of all excess emissions to the EPA for the period from January 1, 2018 through December 31, 2021.
111. Respondent failed to comply with the reporting requirement provisions contained in 40 C.F.R. § 63.10032(c), which requires a facility to maintain records of monitoring data and calculated averages for Hg CMS to show continuous compliance.

112. Respondent failed to comply with 40 C.F.R. § 63.10031(f), which requires the submission of quarterly performance test reports electronically via the ECMPS Client Tool from the reporting periods of January 1, 2018 through October 31, 2021.
113. Respondent failed to comply with 40 C.F.R. § 63.10032(a) by not keeping records of performance tests.
114. Respondent failed to perform routine weekly visible emissions (“VE”) observations at the limestone dryer location, in contravention of Section V.B.2.b.3 of the Title V permit.
115. Respondent failed to submit required coal-sampling reports to EPA and DNER from the first quarter of 2021, in contravention of AES-PR’s Title V Permit, Section V.C.1.a.
116. Respondent failed to conduct required composite coal sample analysis for 2021, in contravention of AES-PR’s Title V Permit, Section V.C.1.b.
117. Respondent failed to notify DNER about the Facility’s change of Responsible Official, in contravention of AES-PR’s Title V Permit, Section III.28.
118. Respondent failed to submit the August 2021 monthly sulfur report to DNER in contravention of Rule 410(F) of the Puerto Rico RCAP and Section V.B of AES-PR’s Title V permit.

F. TERMS OF CONSENT AGREEMENT

119. For purposes of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:

- a) admits that the EPA has jurisdiction over the subject matter alleged in this Consent Agreement;

- b) neither admits nor denies the factual allegations and alleged violations stated above, including in sections D and E of this Consent Agreement;
- c) consents to the assessment of a civil penalty as stated below;
- d) consents to the conditions specified in this Consent Agreement;
- e) agrees to maintain compliance with the MATS rule, 40 C.F.R. Part 63 Subpart UUUUU, including but not limited to the continuous use of sorbent traps to monitor mercury emissions to demonstrate compliance;
- f) agrees to operate the Ohio Lumex 915 J Mercury Process Monitors (Version 5.6 or subsequent versions if equivalent or better, so long as such subsequent versions are timely installed without undue disruption) at Units 1 and 2, maintained and calibrated according to the manufacturer's specifications, in order to support the Facility's operation of its mercury injection system, until the Facility shuts down or is no longer subject to the MATS rule;
- g) agrees to post a copy of the Facility's site-specific monitoring plan to a tab labeled "Sustainability" at the top banner of Respondent's public website within a subtab labeled "Emissions Compliance;"
- h) agrees to post a copy of the MATS quarterly emissions data files and quarterly compliance reports to a tab labeled "Sustainability" at the top banner of Respondent's public website within a subtab labeled "Emissions Compliance;"
- i) waives any right to contest the allegations set forth in this Consent Agreement; and
- j) waives its right to appeal the Final Order accompanying this Consent Agreement.

120. For purposes of this proceeding, Respondent:

- a) agrees that this Consent Agreement states a claim upon which relief may be granted against Respondent;
- b) acknowledges that this Consent Agreement constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions;
- c) consents to the issuance of the attached Final Order;
- d) waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Final Order, including any right of judicial review under Section 307(b)(1) of the Clean Air Act, 42 U.S.C. § 7607(b)(1);
- e) consents to personal jurisdiction in any action to enforce this Consent Agreement or Final Order, or both, in the United States District Court; and
- f) waives any rights it may possess at law or in equity to challenge the authority of the EPA to bring a civil action in a United States District Court to compel compliance with the Consent Agreement or Final Order, or both, and to seek an additional penalty for such noncompliance, and agree that federal law shall govern in any such civil action.

121. Civil Penalty. Respondent agrees to pay a civil penalty in the amount of \$3.125 million (\$3,125,000.00) ("Assessed Penalty") within thirty (30) days after the date the Final Order ratifying this Agreement is filed with the Regional Hearing Clerk ("Filing Date").

122. Respondent shall pay the Assessed Penalty and any interest, fees, and other charges due using any method, or combination of appropriate methods, as provided on the

EPA website: <https://www.epa.gov/financial/makepayment>. For additional instructions see: <https://www.epa.gov/financial/additional-instructions-making-payments-epa>.

123. When making a payment, Respondent shall:

- a) Identify every payment with Respondent's name and the docket number of this Agreement, **CAA-02-2024-1215**.
- b) Concurrently with any payment or within 24 hours of any payment, Respondent shall serve proof of such payment to the following person(s) via electronic mail to:

Office of Regional Hearing Clerk
U.S. Environmental Protection Agency—Region 2
290 Broadway, 16th Floor
New York, NY 10007
Maples.Karen@epa.gov

and

Nancy Rodríguez, Chief
Multimedia Permits and Compliance Branch
Caribbean Environmental Protection Division
U.S. Environmental Protection Agency - Region 2
rodriguez.nancy@epa.gov

and

Alex Rivera, Enforcement Officer
Multimedia Permits and Compliance Branch
Caribbean Environmental Protection Division
U.S. Environmental Protection Agency - Region 2
rivera.alex@epa.gov

and

Liliana Villatora, Chief, Air Branch
Office of Regional Counsel
U.S. Environmental Protection Agency – Region 2
290 Broadway – 16th Floor
New York, New York 10007
villatora.liliana@epa.gov

and

U.S. Environmental Protection Agency
Cincinnati Finance Center
CINWD_AcctsReceivable@epa.gov

“Proof of payment” means, as applicable, a copy of the check, confirmation of credit card or debit card payment, or confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with the appropriate docket number and Respondent’s name.

124. Interest, Charges, and Penalties on Late Payments. Pursuant to 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. §13.11, if Respondent fails to timely pay the full amount of the Assessed Penalty per this Agreement, EPA is authorized to recover, in addition to the amount of the unpaid Assessed Penalty, the following amounts.

- a) Interest. Interest begins to accrue from the Filing Date. If the Assessed Penalty is paid in full within thirty (30) days, interest accrued is waived. If the Assessed Penalty is not paid in full within thirty (30) days, interest will continue to accrue until any unpaid portion of the Assessed Penalty as well as any interest, penalties, and other charges are paid in full. To protect the interests of the United States the rate of interest is set at the IRS large corporate underpayment rate (“LCU”). Any lower rate would fail to provide Respondent adequate incentive for timely payment.
- b) Handling Charges. Respondent will be assessed monthly a charge to cover EPA’s costs of processing and handling overdue debts. If Respondent fails to pay the Assessed Penalty in accordance with the Agreement, EPA will assess a charge to cover the costs of handling any unpaid amounts for the first thirty (30) day period after the Filing Date. Additional handling charges

will be assessed every thirty (30) days, or any portion thereof, until the unpaid portion of the Assessed Penalty as well as any accrued interest, penalties, and other charges are paid in full.

- c) Late Payment Penalty. A late payment penalty of six percent (6%) per annum, will be assessed monthly on all debts, including any unpaid portion of the Assessed Penalty, interest, penalties, and other charges, that remain delinquent more than ninety (90) days. Any such amounts will accrue from the Filing Date.

125. Late Penalty Actions. In addition to the amounts described in the prior Paragraph, if Respondent fails to timely pay any portion of the Assessed Penalty, interest, or other charges and penalties per this Agreement, EPA may take additional actions. Such actions EPA may take include, but are not limited to, the following.

- a) Refer the debt to a credit reporting agency or a collection agency, per 40 C.F.R. §§ 13.13 and 13.14.
- b) Collect the debt by administrative offset (*i.e.*, withholding of money payable to the United States government to, or held by the United States government for, a person to satisfy the debt the person owes the United States government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, per 40 C.F.R. Part 13, Subparts C and H.
- c) Suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds, per 40 C.F.R. § 13.17.
- d) Refer this matter to the United States Department of Justice for litigation and collection, per 40 C.F.R. § 13.33.

126. Allocation of Payments. Pursuant to 31 C.F.R. § 901.9(f) and 40 C.F.R. § 13.11(d), a partial payment of debt will be applied first to outstanding handling charges, second to late penalty charges, third to accrued interest, and last to the principal that is the outstanding Assessed Penalty amount.

127. Tax Treatment of Penalties. Penalties, interest, and other charges paid pursuant to this Agreement shall not be deductible for purposes of federal taxes.

G. EFFECT OF CONSENT AGREEMENT AND ATTACHED FINAL ORDER

128. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this Consent Agreement and Final Order resolves only Respondent's liability to the United States for federal civil penalties for the violations specifically alleged above.

129. Penalties paid pursuant to this Consent Agreement shall not be deductible for purposes of federal taxes.

130. This Consent Agreement constitutes the entire agreement and understanding of the parties and supersedes any prior agreements or understandings, whether written or oral, among the parties with respect to the subject matter hereof.

131. The terms, conditions, and compliance requirements of this Consent Agreement may not be modified or amended except upon the written agreement of both parties, and approval of the Regional Administrator or other delegate.

132. Any violation of this Consent Agreement and Final Order may result in EPA pursuing a civil judicial action for an injunction or civil penalties of up to \$121,275 per day per violation, or both, as provided in Section 113(b)(2) of the Act, 42 U.S.C.

§ 7413(b)(2) (as adjusted for inflation pursuant to 40 C.F.R. § 19.4), as well as criminal sanctions, as provided in Section 113(c) of the Act, 42 U.S.C. § 7413(c). The EPA may use any information submitted under this Consent Agreement and Final Order in an

administrative, civil judicial, or criminal action. Respondent reserves and may assert any available argument and defense and may use any information submitted under this Consent Agreement and Final Order, in response to any such action pursued by the EPA.

133. Nothing in this Consent Agreement shall relieve Respondent of the duty to comply with all applicable provisions of the Act and other federal, state, or local laws or statutes, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit. Respondent reserves and may assert any available arguments and defenses in response to any such action pursued by the EPA.

134. Nothing herein shall be construed to limit the power of the EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment. Respondent reserves and may assert any available arguments and defenses in response to any such action pursued by the EPA.

135. The EPA reserves the right to revoke this Consent Agreement and settlement penalty if and to the extent that the EPA finds, after signing this Consent Agreement, that any information provided by the Respondent in connection with the matters described in this Consent Agreement was materially false or inaccurate at the time such information was provided to the EPA. The EPA reserves the right to assess and collect any and all civil penalties for any violation described herein. Under such circumstance, Respondent reserves the right to assert any available arguments and defenses to any such claim by the EPA. The EPA shall give the Respondent notice of its intent to revoke, which shall not be effective until received by the Respondent in writing.

136. Notwithstanding any other provision of this Order, Respondent expressly reserves and does not waive any and all arguments, rights and defenses as to any claims or actions

of any kind whatsoever by any person or entity of any kind that is not a party to this Order, including, without limitation, all arguments, rights and defenses to contest the Findings of Fact (Section D) and Conclusions of Law (Section E) in this Consent Agreement in response to such claim or action by any person or entity of any kind that is not a party to this Order.

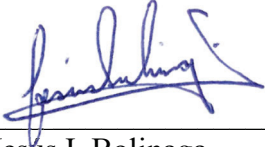
H. EFFECTIVE DATE

137. Respondent and Complainant agree to issuance of the attached Final Order. Upon filing, the EPA will transmit a copy of the filed Consent Agreement to the Respondent. This Consent Agreement and attached Final Order shall become effective after execution of the Final Order by the Regional Administrator, on the date of filing with the Hearing Clerk.

SIGNATURES

The foregoing Consent Agreement in the Matter of AES Puerto Rico, LP, Docket No. CAA-02-2024-1215, is Hereby Stipulated, Agreed, and Approved for Entry.

FOR RESPONDENT:



Aug 01, 2024

Jesus I. Bolinaga
Authorized Representative
AES Puerto Rico, LP
Carretera 3, KM 142
Bo. Pte. Jobs
Guayama, 00784
Puerto Rico
jesus.bolinaga@aes.com

FOR COMPLAINANT:

CARMEN
GUERRERO
PEREZ



Digitally signed by CARMEN
GUERRERO PEREZ
Date: 2024.08.06 00:15:18
-04'00'

August 6, 2024

Carmen R. Guerrero, Director
Caribbean Environmental Protection Division
U.S. Environmental Protection Agency - Region 2

FINAL ORDER

Pursuant to 40 C.F.R. § 22.18(b) of the EPA’s Consolidated Rules of Practice and Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d), the Regional Administrator of EPA Region 2 concurs in the foregoing Consent Agreement, *In the Matter of AES Puerto Rico, LP*, CAA-02-2024-1215. The attached Consent Agreement resolving this matter, entered into by the parties, is incorporated by reference into this Final Order and is hereby approved, ratified, and issued.

The Respondent is ORDERED to comply with all terms of the Consent Agreement, effective immediately.

SO ORDERED

**LISA
GARCIA** Digitally signed by
LISA GARCIA
Date: 2024.08.06
10:28:37 -04'00'

Lisa F. Garcia
Regional Administrator
United States Environmental Protection Agency
Region 2
290 Broadway, 26th Floor
New York, New York 10007-1866

DATE: August 6, 2024

To:

AES-Puerto Rico, LP
Jesús I. Bolinaga
Carretera 3, KM 142
Bo. Pte. Jobs
Guayama, 00784
Puerto Rico
jesus.bolinaga@aes.com