

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
HEADQUARTERS

IN THE MATTER OF:)
)
 The Chemours Company FC, LLC)
 1007 Market Street)
 Wilmington, DE 19801)
)
 Respondent)
)
 Washington Works)
 8480 DuPont Road)
 Washington, WV)
 26181)
)
 Proceeding under Section 3013(a))
 of the Resource Conservation and)
 Recovery Act, 42 U.S.C. § 6934(a))
)
)

RCRA Docket No. RCRA-HQ-2024-001

**ADMINISTRATIVE ORDER
ON CONSENT**

**RCRA SECTION 3013(a) ORDER REQUIRING MONITORING, TESTING, ANALYSIS
AND REPORTING**

TABLE OF CONTENTS

I.	JURISDICTION.....	1
II.	PARTIES BOUND	2
III.	STATEMENT OF PURPOSE	2
IV.	EPA’s FINDINGS OF FACT	2
V.	ORDER	7
VI.	ADDITIONAL WORK.....	9
VII.	MINIMUM QUALIFICATIONS FOR PERSONNEL	9
VIII.	SUBMISSIONS/EPA REVIEW	9
IX.	QUALITY ASSURANCE/QUALITY CONTROL	11
X.	PROJECT COORDINATORS	13
XI.	SAMPLING AND DATA/DOCUMENT AVAILABILITY	14
XII.	ON-SITE AND OFF-SITE ACCESS	14
XIII.	RECORD PRESERVATION	14
XIV.	INFORMATION SUBMITTED TO EPA.....	15
XV.	FINANCIAL ASSURANCE	15
XVI.	DELAY IN PERFORMANCE/STIPULATED PENALTIES.....	15
XVII.	DISPUTE RESOLUTION	17
XVIII.	FORCE MAJEURE	18
XIX.	RESERVATION OF RIGHTS	18
XX.	OTHER APPLICABLE LAWS.....	19
XXI.	OTHER CLAIMS	19
XXII.	SUBSEQUENT MODIFICATION OF ORDER.....	20
XXIII.	SEVERABILITY	20
XXIV.	TERMINATION AND SATISFACTION.....	20
XXV.	SURVIVABILITY/PERMIT INTEGRATION.....	21
XXVI.	ATTORNEYS’ FEES AND COSTS	21
XXVII.	EFFECTIVE DATE.....	21

I. JURISDICTION

1. This Administrative Order on Consent (“Consent Order”) is issued pursuant to the authority vested in the Administrator of the Environmental Protection Agency (“EPA” or “Agency”) by Section 3013(a) of the Resource Conservation and Recovery Act, (“RCRA” or “the Act”), as amended, 42 U.S.C. § 6934(a). The authority to enter into this Consent Order has been duly delegated from the Administrator of the Environmental Protection Agency to the Assistant Administrator for Enforcement and Compliance Assurance pursuant to Delegation 8-20 Monitoring, Testing, Analysis and Reporting, dated January 18, 2017. This authority has been redelegated to the Office Director for the Office of Site Remediation Enforcement (“OSRE”) pursuant to Delegation 8-20-OECA-0117, dated January 17, 2017, and further redelegated to the Division Directors for the Policy and Program Evaluation Division and Regional Support Division in OSRE pursuant to Delegation 8-20-OSRE-PPED-RSD-ALLBRANCHES-0117, dated January 17, 2017.

2. This Consent Order is issued to The Chemours Company FC, LLC (“Chemours” or “Respondent”), a corporation doing business in the State of West Virginia, relating to Chemours’ Washington Works facility in Washington, WV (“Facility” or “Washington Works”). For purposes of this Consent Order, Respondent consents to and agrees not to contest EPA’s jurisdiction and authority to issue this Consent Order and to enforce its terms. Further, Respondent will not contest EPA’s authority to: compel compliance with this Consent Order in any subsequent enforcement proceedings; require Respondent’s full or interim compliance with the terms of this Consent Order; or impose sanctions for violations of this Consent Order; provided, however, that Respondent retains any and all rights it may have to dispute the merits of any such claims.

3. EPA and Respondent recognize that this Consent Order was negotiated in good faith and that Respondent has fully cooperated with the EPA with respect thereto. Respondent’s participation in this Consent Order shall not constitute or be construed as an admission of liability. Respondent does not admit, and retains the right to controvert, the factual allegations and legal conclusions set forth in this Consent Order.

4. For purposes of this Consent Order, Respondent 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 Order, including any right of judicial review under Chapter 7 of the Administrative Procedures Act, 5 U.S.C. §§ 701-706 and C.F.R. Part 24 providing for review of final agency action.

5. This Consent Order is based upon the administrative record compiled by EPA and incorporated herein by reference. The record is available for review by the Respondent and the public online at www.epa.gov/hwcorrectiveactioncleanups/hazardous-waste-cleanup-chemours-company-fc-llc-formerly-dupont. Computer and internet access are publicly available at the Parkersburg & Wood County Public Library, 3100 Emerson Avenue, Parkersburg, WV 26104.

6. The State of West Virginia’s hazardous waste program was authorized under Section 3006(b) of RCRA, 42 U.S.C. § 6926(b) on May 29, 1986. The requirements of the authorized State program are found in West Virginia Code of State Regulations, Title 33, Series

20 “Hazardous Waste Management System” (33 CSR 20). Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the Administrator of U.S. EPA granted the State of Ohio final authorization to administer a state hazardous waste program in lieu of the federal government’s base RCRA program effective June 30, 1989. Ohio; Final Authorization of State Hazardous Waste Management Program, 54 Fed. Reg. 27170 (June 28, 1989). Although EPA has authorized the states’ programs, EPA retains its authority under Section 3013 of RCRA.

II. PARTIES BOUND

7. The provisions of this Consent Order shall apply to and be binding upon Respondent and its officers, directors, employees, agents, contractors, successors, and assigns.

8. No change in ownership, corporate, or partnership status relating to the Facility described in this Consent Order will in any way alter the status or responsibility of Respondent under this Consent Order. Any conveyance by Respondent of title, easement, or other interest in the Facility described herein, or a portion of such interest, shall not affect Respondent’s obligations under this Consent Order. Respondent shall be responsible and liable for any failure to carry out all activities required of Respondent by this Consent Order, irrespective of its use of employees, agents, contractors, or consultants to perform any such tasks.

9. Any documents transferring ownership and/or operational control of the Facility described herein from Respondent to a successor-in-interest shall include written notice of this Consent Order. In addition, Respondent shall, no less than thirty (30) days prior to transfer of ownership or operation of the Facility, provide written notice of this Consent Order to its successor-in-interest, and written notice of said transfer of ownership and/or operation to EPA.

III. STATEMENT OF PURPOSE

10. In entering into this Consent Order, the mutual objectives of EPA and Respondent are the protection of human health and the environment through Respondent’s implementation of further sampling, analysis, monitoring, and reporting to determine the nature and extent of certain PFAS contamination at and from the Facility. EPA’s priorities are to evaluate the nature and off-site extent of certain PFAS from the facility. Respondent has represented that it has completed some of the tasks required by this Consent Order and/or that Respondent may have data available to determine the nature and extent of certain PFAS contamination at and from the facility. This previous work may be used to meet some of the requirements set forth in Paragraphs 49 and 50 of this Consent Order, upon submission to and approval by EPA after the Effective Date.

IV. EPA’s FINDINGS OF FACT

11. Respondent, The Chemours Company FC, LLC, was incorporated in Delaware in 2014 and is a corporation doing business in the State of West Virginia.

12. Respondent is the owner and/or operator of the Facility, which is a hazardous waste management facility located at Washington Works, 8480 DuPont Road, Washington, West Virginia, on the southeastern bank of the Ohio River.

13. Prior to 2015, the Facility was owned and operated by E.I. du Pont de Nemours and Company (“DuPont”).

14. Beginning in 1951, and at various times, a number of per-and polyfluoroalkyl substances (“PFAS”) have been manufactured, produced, generated, or used at the Facility. PFAS detected at or from the Facility include but are not limited to:

Analyte	Abbreviation	CAS Number
Perfluorobutanesulfonic acid	PFBS	375-73-5
Perfluorohexanoic acid	PFHxA	307-24-4
Perfluorohexanesulfonic acid	PFHxS	355-46-4
Perfluorooctanoic acid	PFOA	335-67-1
Perfluorooctanesulfonic acid	PFOS	1763-23-1
Perfluorononanoic acid	PFNA	375-95-1
Perfluorodecanoic acid	PFDA	335-76-2
Perfluoropropionic acid	PFPrA	422-64-0
Hexafluoropropylene oxide dimer acid	HFPO-DA	13252-13-6
Ammonium perfluorooctanoate	APFO	3825-26-1
1-Propene, 1,1,2,3,3,3-hexafluoro-	C7H2F12*	25190-89-0
Perfluorodecyl iodide	C10F21I*	423-62-1
Pentafluoroethyl iodide	C2F5I*	354-64-3
Polytetrafluoroethylene	PTFE	9002-84-0
Hexafluoropropene	HFP	116-15-4
Perfluorohexyl iodide	C6F13I*	355-43-1
Perfluorohexane	C6F14*	355-42-0
Nonafluoro-1-iodobutane	C4F9I*	423-39-2
Perfluorocyclobutane	C4F8*	115-25-3
Perfluorooctyl iodide	C8F17I*	507-63-1
Tetrafluoroethene	TFE	116-14-3

* There are currently no acronyms for these analytes, therefore their molecular formulas are listed instead.

15. DuPont evaluated PFAS in on-site environmental media at the Facility in 1992 during the RCRA Verification investigation. Since then, further investigations of PFAS have been undertaken. As of the end of 2022, approximately 33,450 samples consisting of 15 types of environmental media from on-site and off-site locations in West Virginia and Ohio have been analyzed for PFAS as part of those investigations.

16. PFOA was used in manufacturing of fluoropolymers at the Facility from 1951 until approximately 2013.

17. PFOA was replaced at the Facility by DuPont with HFPO-DA, which has been used at the Facility as a polymer processing aid since 2013. In 2008, DuPont submitted a pre-manufacture notice (PMN) to EPA under the Toxic Substances Control Act (TSCA) regarding HFPO-DA and its ammonium salt. In 2009, EPA issued a TSCA Section 5(e) Consent Order to DuPont governing the manufacture and use of HFPO-DA and its ammonium salt.

18. Current PFAS-related operations at the Facility include manufacturing of fluoropolymers and related chemicals, precursors for fluoropolymers and other fluorocarbons.

19. Current and historic operations at the Facility have resulted in the release and/or disposal of PFAS to air, drinking water, surface water, groundwater, soils, and sediment at and from the Facility.

20. Land disposal of PFOA-bearing wastes occurred in three landfills: the Local Landfill, Dry Run Landfill and the Letart Landfill, which are managed under the West Virginia Solid Waste Management Program and the West Virginia NPDES Stormwater Program.

21. The Facility is subject to a Title V Air permit, a National Pollutant Discharge Elimination System permit, and a RCRA permit.

22. West Virginia Department of Environmental Protection (“WVDEP”) issued DuPont a Hazardous Waste Management Permit, #WVD045875291 (“RCRA Permit”), to operate a hazardous waste management unit at the Facility. In December 2014, DuPont requested that the RCRA Permit be transferred to Chemours, its wholly-owned subsidiary at the time.

23. On May 11, 2015, WVDEP issued a Statement of Basis in which it proposed a Final Remedy for the Facility that consisted of: monitored natural attenuation in conjunction with the continued control, capture, and treatment of contaminated groundwater and the implementation of Institutional Controls. The Statement of Basis was subject to a 30-day public comment period. On July 9, 2015, WVDEP issued a Final Decision Response to Comments in which it selected the proposed Final Remedy, as set forth in the Statement of Basis, as the Final Remedy. The Final Remedy is incorporated into Module IV Facility Wide RCRA Action Module of the RCRA Permit.

24. WVDEP issued a Permit Modification on June 15, 2016, to the RCRA Permit, which incorporated the Final Remedy into the RCRA Permit.

25. Respondent represents it has performed a number of studies and investigations of releases of PFOA at and from the Facility since the early 1990s, including, without limitation, the following:

- 1992 - Verification Investigation Report
- 1998 - RCRA Facility Investigation Report
- 2001 - Multimedia Consent Order between WVDEP, WVDHHR-BPH and DuPont
- 2002 - Drinking Water Consent Order between DuPont and EPA Region 3
- 2003 - Groundwater Investigation Steering Team Report
- 2003 - Revised Ground Water Flow Model in 2003
- 2004 - Geohydrology and Simulation of Ground-Water Flow in Ohio River Alluvial Aquifers Near Point Pleasant, Lubeck, Parkersburg, Vienna, Moundsville, and Glendale, West Virginia, Scientific Investigations Report 2004-5088
- 2005 - EPA-OPPT Memorandum of Understanding between EPA and DuPont
- 2006 - Safe Drinking Water Act Consent Order
- 2008 - Data Assessment Report

- 2008 - Screening Level Exposure Assessment
- 2009 - SDWA Consent Order Docket Nos. SDWA-03-2009-0127 DS & SDWA-05-2009-0001, as Amended in 2016
- 2012 - Revised Final Amended Screening Level Exposure Assessment
- 2013 - Riverbank Landfill IRM Completion Report
- 2014 - Corrective Measures Study Report

26. Respondent represents it has performed a number of studies and investigations of releases of PFOA in addition to certain other PFAS at and from the Facility since 2019, including, without limitation, the following:

- 2019 - Per- and Polyfluoroalkyl Substances (PFAS) Sampling Results – August 21, 2018, and September 20, 2018 Sampling Events
- 2023 - PFAS Non-Targeted Analysis and Summary of the Chemours Washington Works Outfall and Groundwater Samples
- 2023 - Annual Corrective Measures Assessment Reports, 2022
- 2023 - Annual Report and Quarterly Progress Report No. 25– 2009 Consent Order as Amended, Chemours Washington Works, Docket Nos. SDWA-03-2009-0127 DS & SDWA-05-2009-0001

27. Respondent developed a conceptual site model (CSM) for PFAS for the Site in 2007 (see Davis et. al., 2007). This CSM was updated on multiple occasions thereafter, in consultation with EPA, including through 2016.

28. A 2020 EPA study of PFOA and HFPO-DA used at the Facility supports a finding that atmospheric transport from the Facility and deposition of such PFAS occurred onto the soils as much as 48 kilometers (km) from the Facility and 41 km onto surface waters from the Facility.

29. Additionally, PFAS atmospheric transport studies, including studies performed by EPA, of major PFAS manufacturing facilities found evidence of extensive atmospheric transport of PFAS from the facilities and deposits of such PFAS onto soils as far as 150 km from source facilities; into surface waters that are hydraulically upgradient and downwind from source facilities; and into Public and Private Water Systems. These studies suggest a likelihood that PFAS compounds from the Facility have been transported via the air and deposited into soils and waters in Ohio and/or West Virginia.

30. Upon information and belief, certain PFAS that have been released or disposed of, at and from the Facility, may have been improperly managed including improper disposal.

31. Studies have found that some PFAS are highly persistent and bioaccumulative in the environment with little or no degradation occurring in air, water, or soil.

32. PFAS released to the environment can migrate through the soil into groundwater.

33. Rain events in locations where air emissions from a facility deposit PFAS onto the ground and soil may cause the release of PFAS into surface waters and migration of PFAS into the groundwater and underground sources of drinking water.

34. Studies involving humans and animals have shown that certain PFAS can bioaccumulate and persist in the body for long periods of time.

35. EPA has found, as stated in EPA’s Final Rule, Toxic Substances Control Act Reporting and Recordkeeping Requirements for Perfluoroalkyl and Polyfluoroalkyl Substances, 88 Fed. Reg. 70516, 70517 (October 11, 2023), that: “There is evidence that exposure to some PFAS in the environment may be linked to harmful health effects in humans and animals, and that continued exposure above specific levels to certain PFAS may lead to adverse health effects.”

IV. DETERMINATIONS AND CONCLUSIONS OF LAW

36. Respondent’s Facility is a “facility or site” within the meaning of Section 3013(a) of RCRA, 42 U.S.C. § 6934(a).

37. Respondent is a “person” as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

38. Respondent is an “owner” and “operator” of the Facility located at 8480 DuPont Road, Washington, West Virginia within the meaning of Section 3013(a) of RCRA, 42 U.S.C. § 6934(a).

39. Section 1004(27) of RCRA, 42 U.S.C. § 6903(27) defines the term “solid waste” to mean “any garbage, refuse . . . and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations . . . but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permit under section 1342 of Title 33”

40. Section 1004(5) of RCRA, 42 U.S.C. § 6903(5), defines the term “hazardous waste” to mean a solid waste, or combination of solid wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may:

a. cause or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or

b. pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed.

41. EPA regulations authorize the issuance of an order under RCRA Section 3013, 42 U.S.C. § 6934, where EPA has reason to believe that the material subject to the order may be a solid waste within the meaning of Section 1004(27) of RCRA and a hazardous waste within the meaning of Section 1004(5) of RCRA and 40 C.F.R. § 261.1(b)(2)(i).

42. Based on the foregoing Findings of Fact, and pursuant to Section 3013(a) of RCRA, 42 U.S.C. § 6934(a), EPA has hereby determined that the Facility, owned and operated by Chemours, is a facility at which material that may be hazardous waste (as defined in Section 1004(5) of RCRA) is or has been stored, treated, or disposed of.

43. Based on the foregoing Findings of Fact, and pursuant to Section 3013(a) of RCRA, 42 U.S.C. § 6934(a), EPA has hereby determined that the presence of hazardous wastes (as defined in Section 1004(5) of RCRA) at, and the release of hazardous wastes from, the Facility may present a substantial hazard to human health or the environment.

44. EPA has further determined that Respondent, as owner and operator of the Facility, is the party responsible for conducting the actions ordered herein, which are necessary to ascertain the nature and extent of any potential hazard to human health or the environment.

V. ORDER

45. Pursuant to Section 3013(a) of RCRA, 42 U.S.C. § 6934(a), Respondent consents to and is hereby ordered to perform the following actions in the manner and by the dates specified herein.

46. All work undertaken pursuant to this Consent Order should be performed in a manner consistent with *Interim Final RCRA Facility Investigation (“RFI”) Guidance*, Volumes I-IV, EPA/530/SW-89-031, May 1989, and all other applicable Federal, State, and local laws and regulations, and this Consent Order. Except as otherwise provided in this Order, Respondent shall direct all submissions required by this Order to EPA’s Project Coordinator(s) in accordance with Section XI (Reporting and Document Certification). EPA’s Project Coordinator(s) has the authority to oversee Respondent’s implementation of this Order. The absence of EPA’s Project Coordinator(s) from the Facility shall not be cause for the stoppage of Work unless specifically directed by EPA’s Project Coordinator(s).

47. Respondent shall provide a copy of this Consent Order to all contractors, subcontractors, laboratories, and consultants retained to conduct or monitor any portion of the work performed pursuant to this Consent Order within fourteen (14) calendar days of the date of Respondent’s receipt of this Consent Order or date of such retention, and shall condition all such contracts on compliance with terms of this Consent Order.

48. Respondent shall submit to EPA’s Project Coordinator(s) an updated CSM addressing data that has become available since the last CSM update, in accordance with EPA’s systematic planning process (*Environmental Cleanup Best Management Practices: Effective Use of the Project Life Cycle Conceptual Site Model, EPA 2011*) within seventy-five (75) calendar days of the Effective Date.

49. Respondent shall submit to EPA’s Project Coordinator(s), a Sampling and Analysis Workplan (“Workplan”) within ninety (90) calendar days of EPA’s approval of the updated CSM. Such Workplan shall at a minimum include the following, as applicable based on coordination with EPA’s Project Coordinator in the development of the Workplan:

a. Sections on the sampling and analysis of (i) soils, (ii) surface water, (iii) sediment, and (iv) groundwater to collect and analyze representative samples to determine the nature and extent of any PFAS soil, surface water, sediment, and groundwater contamination at and from the Facility using ASTM D7968.17a with HFPO-DA added for sediment and soils and EPA Methods 3512 (preparation method) and 8327 with HFPO-DA added for surface water and groundwater. The soil samples shall include near surface soils and extend to the depth or extent of contamination. The Workplan shall also include the number, location, depth of samples, the parameters of the analyses, and quality assurance measures. Respondent shall conduct and document the procedures used to investigate and characterize the contamination. The Workplan shall include a data management and visualization plan. The investigation shall include the following information:

- (1) Specific origin (source) of each contamination area;
- (2) Description of likely discharge locations of any immiscible or dissolved plumes;
- (3) Description of the vertical and horizontal extent and direction of contamination in all media;
- (4) Description of contaminant and soil chemical properties within the contaminant source area and plume (e.g., contaminant solubility, adsorption, leachability) that might affect contaminant migration and transformation;
- (5) Specific contaminant concentrations;
- (6) Velocity and direction of contaminant movement;
- (7) Extrapolation of future contaminant movement;
- (8) Characterization of all plumes of contamination including the procedures used to characterize the plumes (e.g., geophysics, modeling, pump tests, slug tests, nested piezometers);
- (9) Evaluation of factors influencing plume movement;
- (10) Horizontal and vertical concentration profiles of the contamination;
- (11) Evaluation of the physical, biological, and chemical factors influencing contaminant movement in each media; and
- (12) Description of the chemistry of the impacted surface waters (e.g., pH, total dissolved solids, specific contaminant concentrations).

b. A solid waste sampling section and schedule to sample and analyze continuous and intermittently generated (i) solid waste, (ii) hazardous waste, and (iii) spent material to determine the extent of the presence of PFAS in representative samples based upon the characteristics and nature of wastes generated in the following processes: monomers, PTFE,

FEP, PFA, telomers, and Amorphous Fluoropolymer. Respondent shall use: (i) EPA Methods 3512 (preparation method) and 8327 with HFPO-DA added to the method for liquid samples with 20% matrix spikes or (ii) ASTM Method D7968.17a for non-liquid samples with 20% matrix spikes and HFPO-DA added to the method. The Workplan shall include the number, the location of, and the process related to the samples, the parameters of the analyses, and quality assurance measures. The Workplan shall address the collection of split samples for independent third-party analysis by EPA.

50. Respondent may propose, subject to EPA approval, that the field work to be done under the Workplan be done in two or more phases, with the delineation of the work in the later phases to be based on the results of the earlier phases.

51. EPA acknowledges that Respondent has completed some of the tasks required by this Consent Order and/or that Respondent may have available some of the information and data required by this Consent Order. This previous work may be used to meet some of the requirements of this Consent Order, upon submission to and approval by EPA.

VI. ADDITIONAL WORK

52. Based on the work performed under the Work Plan described above, EPA may determine that additional monitoring, testing, analysis, and/or reporting is necessary to ascertain the nature and extent of any hazard to human health and the environment which may be presented by the presence or release of materials subject to this Consent Order. If EPA determines that such additional work is necessary, EPA will notify Respondent in writing and specify the basis for its determination that additional work is necessary. Within thirty (30) calendar days after the receipt of such determination, Respondent shall have the opportunity to meet or confer with EPA to discuss the additional work. If required by EPA, Respondent shall submit for EPA review and approval a Workplan for the additional work. EPA will specify the contents of such Workplan. Such Workplan shall be submitted by Respondent within ninety (90) calendar days of receipt of EPA's determination that additional work is necessary, or according to an alternative schedule established by EPA.

VII. MINIMUM QUALIFICATIONS FOR PERSONNEL

53. All work performed by Respondent pursuant to this Consent Order shall be under the direction and supervision of an individual who has demonstrated expertise in hazardous waste site investigation. Before any work is performed, Respondent shall submit to EPA's Project Coordinator(s), in writing, the name, title, and qualifications of the supervisory personnel and of any contractors or subcontractors to be used in carrying out the terms of this Consent Order. Additionally, Respondent shall ensure that when a license is required, only licensed individuals shall be used to perform any work required by this Consent Order.

VIII. SUBMISSIONS/EPA REVIEW

54. EPA will review Respondent's revised CSM, workplans, draft and final reports, and any other documents submitted pursuant to this Consent Order ("submissions"), with the exception of progress reports, and will notify Respondent in writing of EPA's approval or disapproval of each such submission. In the event of EPA's disapproval, EPA shall specify in

writing any deficiencies in the submission. Such disapproval shall not be subject to the dispute resolution procedures of Section XVII (Dispute Resolution), below.

55. Within sixty (60) calendar days of receipt of EPA's comments on the submission, Respondent shall submit to EPA's Project Coordinator(s) for approval a revised submission that responds to any comments received and/or corrects any deficiencies identified by EPA. Respondent may request additional time within which to submit a revised submission. In the event that EPA disapproves the revised submission, Respondent may invoke the dispute resolution procedures of Section XVII (Dispute Resolution), below. EPA reserves the right to revise such submission and to seek to recover from Respondent the costs of revising the subsequent submission in accordance with RCRA, the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), and any other applicable law. Any submission approved or revised by EPA or upheld through dispute resolution under this Consent Order shall be deemed incorporated into and made an enforceable part of this Consent Order.

56. Upon disapproval by EPA of a revised submission, and, in the event Respondent does not invoke the dispute resolution procedures of Section XVII (Dispute Resolution), below, Respondent shall within thirty (30) calendar days submit to EPA's Project Coordinator(s) for approval a subsequent revised submission which responds to any comments received and/or corrects any deficiencies identified by EPA. Respondent may request additional time within which to submit a subsequent revised submission.

57. In the event EPA and Respondent cannot resolve issues relating to EPA's comments and EPA disapproves of any subsequent revised submission, Respondent may invoke the dispute resolution procedures of Section XVII (Dispute Resolution). EPA reserves the right to revise such revised submission and to seek to recover from Respondent the costs of revising the subsequent submission in accordance with RCRA, CERCLA and any other applicable law. Any submission approved or revised by EPA or upheld through dispute resolution under this Consent Order shall be deemed incorporated into and made an enforceable part of this Consent Order.

58. Beginning ninety (90) calendar days after the Effective Date, and quarterly thereafter, Respondent shall submit Progress Reports in electronic format to EPA's Project Coordinator(s). Each Progress Report shall comprehensively summarize for each section of the EPA approved Workplan the completed and planned future activities under the EPA approved Workplan. Respondent shall append the detailed information that it relied upon to develop the Progress Report. EPA may direct Respondent to include additional information in Progress Reports and Respondent shall timely submit that information and incorporate the requested information in subsequent Progress Reports.

59. EPA shall endeavor to timely approve or disapprove any deliverable submitted by Respondent for approval pursuant to this Consent Order. Nothing in this paragraph shall be construed to confer any enforceable rights upon Respondent, nor shall any failure to comply with the provisions of this paragraph be subject to the dispute resolution provisions set forth in Section XVII (Dispute Resolution), below.

60. Respondent shall submit all notices and deliverables to EPA's Project Coordinator(s) in electronic form unless otherwise specified. Sampling and monitoring data should be submitted in electronic format.

61. Any notice, report, certification, data presentation, or other document submitted by Respondent pursuant to this Consent Order which discusses, describes, demonstrates, or supports any finding or makes any representation concerning Respondent's compliance or noncompliance with any requirement of this Consent Order shall be certified by a duly authorized representative of Respondent. A person is a duly authorized representative only if: (a) the authorization is made in writing; (b) the authorization specifies either an individual or position having responsibility for overall operation of the facility or activity (a duly authorized representative may thus be either a named individual or any individual occupying a named position); and (c) the written authorization is submitted to the Project Coordinators designated by EPA pursuant to Section X, Project Coordinator(s), of this Consent Order.

62. The certification required by Paragraph 61 above, shall be in the following form:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Signature: _____

Name: _____

Title: _____

IX. QUALITY ASSURANCE/QUALITY CONTROL

63. As part of the Workplan, Respondent shall include and maintain an updated Quality Assurance Project Plan ("QAPP") for EPA's review and approval. The QAPP shall address all sampling, monitoring, and analyses activities to be performed pursuant to the Workplan.

64. Commencing on the date of EPA's approval of the initial QAPP and continuing thereafter, Respondent shall ensure all work performed pursuant to the Workplan is conducted in accordance with the current EPA-approved QAPP.

65. The QAPP shall address quality assurance and quality control procedures for all sampling, monitoring and analyses activities performed pursuant to the Workplan including but

not limited to groundwater level monitoring, sample collection, sample analysis, sample management, chain of custody, data management, data validation, and data reporting.

66. Respondent shall develop the QAPP in accordance with “EPA Requirements for Quality Assurance Project Plans,” QA/R-5, EPA/240/B-01/003 (Mar. 2001, reissued May 2006), “Guidance for Quality Assurance Project Plans,” QA/G-5, EPA/240/R 02/009 (Dec. 2002), and “Uniform Federal Policy for Quality Assurance Project Plans,” Parts 1-3, EPA/505/B-04/900A through 900C (Mar. 2005), or other applicable guidance as identified by EPA. The QAPP also must include procedures:

- a. To ensure that all analytical data used in decision making relevant to this Consent Order are of known and documented quality;
- b. To ensure that EPA and its authorized representatives have reasonable access to laboratories used by Respondent (“Respondent’s Labs”) in implementing the Consent Order;
- c. To ensure that Respondent’s Labs analyze all samples submitted by EPA pursuant to the QAPP for quality assurance monitoring;
- d. To ensure that Respondent’s Labs perform all analyses using EPA-accepted methods according to the latest approved edition of “Test Methods for Evaluating Solid Waste (SW-846)” or other methods approved by EPA;
- e. To ensure that Respondent’s Labs participate in an EPA-accepted quality assurance/quality control (“QA/QC”) program or other QA/QC program acceptable to EPA;
- f. For Respondent to provide EPA with notice at least fourteen (14) calendar days prior to any sample collection activity;
- g. For Respondent to provide split samples or duplicate samples to EPA’s Project Coordinator(s) upon request; any analysis of such samples shall be in accordance with the approved QAPP;
- h. For EPA to take any additional samples that it deems necessary;
- i. For EPA to provide to Respondent, upon request, split samples or duplicate samples in connection with EPA’s oversight sampling; and
- j. For Respondent to submit to EPA’s Project Coordinator(s) all sampling and test results and other data in connection with the implementation of this Consent Order.

X. PROJECT COORDINATORS

67. EPA hereby designates as its Project Coordinators:

Susanne Haug, Remedial Project Manager
U.S. Environmental Protection Agency
Region III (3LC11)
Four Penn Center
1600 John F. Kennedy Boulevard
Philadelphia, PA 19103-2852
haug.susanne@epa.gov
215-814-3394

Jay Kim
U.S. Environmental Protection Agency
Region 5
77 W. Jackson Blvd.
Chicago, IL 60604
kim.jay@epa.gov
312-353-8049

Justin Young
U.S. Environmental Protection Agency
Office of Civil Enforcement
Waste Enforcement Branch
young.justin@epa.gov
202-564-5436

Jennifer Wilson
U.S. Environmental Protection Agency
Office of Site Remediation and Enforcement
Policy and Guidance Branch
wilson.jennifera@epa.gov
202-565-0212

68. Within ten (10) calendar days of Respondent's receipt of this Consent Order, Respondent shall designate a Project Coordinator and submit the designated Project Coordinator's name, address, email, and telephone number in writing to EPA.

69. Each Project Coordinator shall, on behalf of the party that designated him/her, oversee the implementation of this Consent Order and function as the principal project contact.

70. EPA and Respondent shall have the right, subject to this Section, to change their designated Project Coordinator. Respondent shall provide EPA with a written notice of any change in its Project Coordinator. Such notice shall be provided at least seven (7) calendar days prior to the change in Project Coordinator.

XI. SAMPLING AND DATA/DOCUMENT AVAILABILITY

71. Respondent shall submit to EPA's Project Coordinators the results of all sampling and/or tests or other data generated by, or on behalf of, Respondent pursuant to the requirements of this Consent Order and the Attachments appended hereto and incorporated herein.

72. Respondent shall notify EPA, in writing, at least fourteen (14) calendar days in advance of engaging in any field activities at the Facility conducted pursuant to this Consent Order. Respondent shall also notify either the West Virginia Department of Environmental Protection or the Ohio Environmental Protection Agency, in writing, at least fourteen (14) calendar days in advance of engaging in any field activities in their respective state. At the request of EPA, Respondent shall provide or allow EPA or its authorized representatives to take split and/or duplicate samples of all samples collected by Respondent pursuant to this Consent Order. Similarly, at the request of Respondent, EPA will allow Respondent or its authorized representatives to take split and/or duplicate samples of any samples collected by EPA under this Consent Order, provided that such sampling shall not delay EPA's proposed sampling activities. Upon request, Respondent shall submit to EPA's Project Coordinator(s) the results of all sampling and/or tests or other data generated by, or on behalf of, the Respondent pursuant to this Consent Order. Nothing in this Consent Order shall limit or otherwise affect EPA's authority to collect samples pursuant to applicable law, including, but not limited to, RCRA and CERCLA.

XII. ON-SITE AND OFF-SITE ACCESS

73. Respondent shall provide access at reasonable times to the Facility and to all records and documentation relating to conditions at the Facility and the activities conducted pursuant to this Consent Order to EPA and its employees, contractors, agents, consultants, and representatives. These individuals shall be permitted to move freely at the Facility in order to conduct activities which EPA determines to be necessary and in accordance with applicable law.,

74. To the extent that activities required by this Consent Order, or by any approved workplans prepared pursuant hereto, must be performed on property not owned or controlled by Respondent, Respondent will use its best efforts to obtain site access agreements in a timely manner from the present owners of such property. Best efforts, as used in this paragraph, shall include the payment of reasonable compensation in consideration of granting access. Respondent shall ensure that EPA's Project Coordinator(s) have a copy of any access agreements.

75. Nothing in this Consent Order limits or otherwise affects EPA's right of access and entry pursuant to applicable law, including, but not limited to, RCRA and CERCLA.

XIII. RECORD PRESERVATION

76. Respondent shall retain, during the pendency of this Consent Order and for a minimum of five (5) years after its termination, a copy of all data, records, and documents now in its possession or control, or in the possession or control of its contractors, subcontractors, or representatives, or which come into the possession or control of the Respondent, its contractors, subcontractors, or representatives, which relate in any way to this Consent Order.

77. Respondent shall provide data, records and documents retained under this Section at any time before the expiration of the five (5) year period at the written request of EPA.

XIV. INFORMATION SUBMITTED TO EPA

78. Respondent may assert a business confidentiality claim in the manner described in 40 C.F.R. §2.203(b) covering all or part of any information submitted to EPA pursuant to this Consent Order. Information submitted for which Respondent has asserted a claim of confidentiality as specified above shall be disclosed by EPA only to the extent and manner permitted by 40 C.F.R. Part 2, Subpart B, as well as the U.S. Supreme Court's decision in *Food Marketing Institute v. Argus Leader Media* (Argus), 139 S. Ct. 2356 (2019), which evaluated the definition of "confidential" as used in Exemption 4 under the Freedom of Information Act. If no such confidentiality claim accompanies the information when it is submitted to EPA, the information may be made available to the public by EPA without further notice to the Respondent. Respondent agrees not to assert any confidentiality or privilege claim with respect to any physical, sampling, monitoring, or analytical data.

79. In the event that Respondent wishes to assert a privilege with regard to any document which EPA seeks to inspect or copy pursuant to this Consent Order, Respondent shall identify the document, the privilege claimed and the basis in writing. For the purposes of this Consent Order, privileged documents are those documents exempt from discovery from the United States in litigation under the Federal Rules of Civil Procedure and/or any applicable case law. EPA may dispute any such claim of privilege pursuant to the dispute resolution provisions set forth in Section XVII (Dispute Resolution).

XV. FINANCIAL ASSURANCE

80. Should EPA determine after January 1, 2025, that Respondent should provide financial assurance with respect to any aspect of the Work not yet completed, the parties agree to confer in good faith to establish and maintain financial assurance for the benefit of EPA in the amount of the estimated costs of the Work in accordance with this Consent Order. Notwithstanding such deferral, EPA reserves fully its authorities with respect to requiring financial assurances, and Respondent reserves its defenses with respect thereto.

XVI. DELAY IN PERFORMANCE/STIPULATED PENALTIES

81. Unless there has been a written modification of a compliance date by EPA, or excusable delay as defined below in Section XVIII (Force Majeure), in the event that Respondent fails to comply with any requirement set forth in this Consent Order, Respondent shall pay stipulated penalties, as set forth below, upon receipt of written demand by EPA.

82. Compliance by Respondent shall include commencement or completion, as deemed appropriate by EPA, of any activity, plan, study or report required by this Consent Order, and in the manner required by this Consent Order and within the specified time schedules in and approved under this Consent Order. Stipulated penalties shall accrue as follows:

a. For any failure to commence, perform or complete work as prescribed in this Consent Order: \$500 per day for one (1) to seven (7) days or part thereof of noncompliance, and \$1000 per day for each day of noncompliance, or part thereof, thereafter;

b. For any failure to submit any draft or final workplans, plans, or reports as required by this Consent Order: \$500 per day for one (1) to seven (7) days or part thereof of noncompliance, and \$1000 per day for each day of noncompliance, or part thereof, thereafter; and

c. For any failure to submit other deliverables as required by this Consent Order: \$250 per day for one (1) to seven (7) days or part thereof of noncompliance, and \$500 per day for each day of noncompliance, or part thereof, thereafter.

83. Whether or not Respondent has received notice of a violation, all stipulated penalties shall begin to accrue the first day that a violation occurs, and shall continue to accrue through correction of the violation. Nothing herein shall prevent the simultaneous accrual of separate stipulated penalties for separate violations of this Consent Order.

84. All stipulated penalties under this section shall be due within thirty (30) calendar days of receipt of a demand for payment, unless Respondent invokes the dispute resolution procedures under Section XVII (Dispute Resolution), below. Such demand for payment shall describe the noncompliance and shall indicate the amount of stipulated penalties due. If EPA sends a written demand for payment of stipulated penalties, a copy of the demand will be sent:

- a. Via email to: CINWD_AcctsReceivable@epa.gov; and
- b. Via email to: R3_Hearing_Clerk@epa.gov.

85. All stipulated penalty payments shall indicate that the payment is for stipulated penalties and shall be paid to EPA at <https://www.pay.gov> to the U.S. EPA account in accordance with instructions to be provided to Respondent by EPA. The payment shall reference the Respondent's name and address, and the EPA docket number for this action.

86. At the time of payment, Respondent shall send notice that payment has been made in accordance with the following:

- a. Via email to: CINWD_AcctsReceivable@epa.gov;
- b. Via email to: R3_Hearing_Clerk@epa.gov;
- c. Via email to: eiseman.rob@epa.gov; and
- d. Via email to the Project Coordinators identified in Paragraph 67.

Each notice required hereunder shall reference the Respondent's name, street/P.O. Box address, email address, and telephone number; the EPA Docket Number of this Settlement; the amount of the payment; and the method of payment.

87. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the cost of process and handling a delinquent claim in accordance with applicable law. Stipulated penalties paid pursuant to this Consent Order are not deductible for federal purposes under 26 U.S.C. § 162(f).

88. Respondent may dispute EPA's demand for payment of stipulated penalties for any alleged violation of this Consent Order by invoking the dispute resolution procedures below under Section XVII (Dispute Resolution). Stipulated penalties shall continue to accrue, but are not required to be paid, for any alleged noncompliance which is the subject of dispute resolution during the period of such dispute resolution. To the extent that Respondent does not prevail upon resolution of the dispute, Respondent shall remit to EPA within twenty-one (21) calendar days of receipt of EPA's written decision as to said dispute, any outstanding penalty payment in the manner described above in Paragraph 86 of this Section.

89. Neither the filing of a petition to resolve a dispute nor the payment of stipulated penalties shall alter in any way Respondent's obligation to comply with the requirements of this Consent Order.

90. The assessment of stipulated penalties set forth in this Section shall not preclude EPA from pursuing any other remedies or sanctions which may be available to EPA by reason of Respondent's failure to comply with any of the requirements of this Consent Order.

XVII. DISPUTE RESOLUTION

91. If a dispute arises under this Consent Order, the procedures of this Section shall apply. The Parties shall make reasonable efforts to informally resolve disputes at the Project Coordinator or immediate supervisor level.

92. If Respondent disagrees, in whole or in part, with any EPA disapproval, modification or other decision or directive made by EPA pursuant to this Consent Order, Respondent shall notify EPA's Project Coordinators in writing of its objections, and the basis therefore, within fourteen (14) calendar days of receipt of EPA's disapproval, decision or directive. Such notice shall set forth the specific points of the dispute, the position which Respondent asserts should be adopted as consistent with the requirements of this Consent Order, the basis for Respondent's position, and any matters which it considers necessary for EPA's determination. EPA and Respondent shall have an additional fourteen (14) calendar days from the receipt by EPA of the notification of objection, during which time representatives of EPA and Respondent shall confer in person or by telephone to resolve any disagreement. If an agreement is reached, the resolution shall be written and signed by an authorized representative of each party. If resolution is not reached within the twenty-eight (28) calendar days, EPA will furnish to Respondent, in writing, its decision on the pending dispute.

93. Except as provided in Paragraphs 91 and 92 above, the existence of a dispute, as defined in this Consent Order, and EPA's consideration of matters placed into dispute, shall not excuse, toll or suspend any other compliance obligation or deadline required pursuant to this Consent Order during the pendency of the dispute resolution process

XVIII. FORCE MAJEURE

94. Respondent shall perform the requirements of this Consent Order in the manner and within the time limits set forth herein, unless the performance is prevented or delayed by events which constitute a *force majeure*. Respondent shall have the burden of proving such a *force majeure*. A *force majeure* is defined as any event arising from causes not reasonably foreseeable and beyond the control of Respondent, which cannot be overcome by due diligence and which delays or prevents performance in the manner or by a date required by this Consent Order. A *force majeure* does not include: increased costs of performance; changed economic circumstances; failure to obtain federal, State or local permits; reasonably foreseeable weather conditions; or weather conditions which could have been overcome by due diligence.

95. Respondent shall notify EPA's Project Coordinators, in writing, within ten (10) calendar days after it becomes or should have become aware of any event which Respondent claims constitutes a *force majeure*. Such notice shall estimate the anticipated length of delay, including necessary demobilization and remobilization, its cause, measures taken or to be taken to prevent or minimize the delay, and an estimated timetable for implementation of these measures. Failure to comply with the notice provision of this paragraph shall constitute a waiver of Respondent's right to assert a *force majeure* claim with respect to such event. If, in EPA's sole and unreviewable discretion, EPA determines that the failure to give notice was not prejudicial to EPA's efforts to protect human health or the environment, Respondent's failure to give notice shall not constitute a waiver. In addition to the above notification requirements, Respondent shall undertake all reasonable actions to prevent or to minimize any delay in achieving compliance with any requirement of this Consent Order after it becomes or should have become aware of any event which may delay such compliance.

96. If EPA determines that the failure to comply or delay has been or will be caused by a *force majeure*, the time for performance of that requirement of this Consent Order may be extended, upon EPA approval, for a period equal to the delay resulting from such *force majeure*. This shall be accomplished through a written EPA acknowledgement of a revised compliance date. Such an extension shall not alter the schedule for performance or completion of any other tasks required by this Consent Order unless these tasks are unavoidably affected by the delay. In the event that EPA and Respondent cannot agree that any delay or failure has been or will be caused by a *force majeure*, or if there is no agreement on the length of the extension, Respondent may invoke the dispute resolution procedures set forth in Section XVII (Dispute Resolution).

XIX. RESERVATION OF RIGHTS

97. EPA expressly reserves all rights and defenses that it may have, including the right both to disapprove of work performed by Respondent pursuant to this Consent Order, to require that Respondent correct and/or re-perform any work disapproved, and to request that Respondent perform tasks in addition to those required by this Consent Order, consistent with the objectives of this Consent Order.

98. EPA hereby reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, including any which may pertain to Respondent's failure to comply with any of the requirements of this Consent Order. This Consent Order shall not be

construed as a covenant not to sue, or as a release, waiver or limitation of any rights, remedies, defenses, powers and/or authorities, civil or criminal, which EPA has under RCRA, CERCLA, the Clean Water Act, the Safe Drinking Water Act, the Clean Air Act, or any other statutory, regulatory, or common law enforcement authority of the United States.

99. EPA reserves the right to perform any portion of the work required herein and seek reimbursement as specified in RCRA § 3013(d) and any other right EPA may have under applicable law.

100. EPA reserves whatever rights it may have under any environmental law or authority, or in equity, to seek to recover from Respondent any costs incurred by EPA in overseeing the implementation of this Consent Order.

101. Respondent reserves its defenses to any authorities reserved by EPA herein.

XX. OTHER APPLICABLE LAWS

102. All actions required to be taken by Respondent pursuant to this Consent Order shall be undertaken in accordance with the requirements of all applicable federal, state, and local laws, regulations, permits, and ordinances.

103. Compliance by Respondent with the terms of this Consent Order shall not relieve Respondent of its obligations to comply with RCRA, or any other applicable federal, state, or local laws, regulations, permits, and ordinances.

104. This Consent Order is not and shall not be interpreted to be a permit, or as a ruling or a determination of any issue related to a permit under federal, state or local law. This Consent Order shall not in any way affect Respondent's obligation, if any, to secure such a permit, nor shall this Consent Order be interpreted in any way to affect or waive any of the conditions or requirements that may be imposed by such permit, nor of Respondent's right to appeal any conditions of such permit. Respondent shall obtain or cause its representatives to obtain all permits and approvals necessary under such laws and regulations.

XXI. OTHER CLAIMS

105. Nothing in this Consent Order shall constitute or be construed as a release from any claim, cause of action, demand, or defense in law or equity, against any person, firm, partnership, or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any solid wastes, hazardous wastes, hazardous constituents, hazardous substances, pollutants, or contaminants found at, taken to, or migrating from the Facility.

106. Neither the United States nor EPA shall be deemed a party to any contract involving Respondent and relating to activities at the Facility and shall not be liable for any claim or cause of action arising from or on account of any act, or omission of Respondent, its officers, employees, contractors, receivers, trustees, agents or assigns, in carrying out the activities required by this Consent Order.

XXII. SUBSEQUENT MODIFICATION OF ORDER

107. Except as provided in Paragraph 109 below, the provisions of this Consent Order may be amended only by mutual agreement of EPA and Respondent. Any such amendment shall be in writing, shall be signed by an authorized representative of each party, shall be effective the date it is signed by EPA, and shall be deemed incorporated into this Consent Order. Any oral agreement between EPA and Respondent, the purpose of which is to modify this Consent Order to address exigent circumstances, and which is subsequently ratified in writing by EPA and Respondent, shall be effective on the date of such oral agreement.

108. Any reports, plans, specifications, schedules, other submissions and attachments required by this Consent Order are, upon written approval by EPA, incorporated into this Consent Order. Any noncompliance with such EPA-approved reports, plans, specifications, schedules, other submissions, and attachments shall be considered a violation of this Consent Order and shall subject Respondent to the stipulated penalty provisions included in Section XVI (Delay in Performance/Stipulated Penalties).

109. Minor modifications in the studies, techniques, procedures, designs or schedules utilized in carrying out this Consent Order and necessary for the completion of the project may be made by written agreement of the Project Coordinators. Such modifications shall be effective the date the agreement is signed by the EPA Project Coordinator(s).

110. No informal advice, guidance, suggestions, or comments by EPA regarding reports, plans, specifications, schedules, and any other writing submitted by Respondent shall be construed as relieving Respondent of its obligation to obtain written approval, if and when required by this Consent Order.

XXIII. SEVERABILITY

111. If any provision or authority of this Consent Order, or the application of this Consent Order to any party or circumstances, is held by any judicial or administrative authority to be invalid, the application of such provisions or circumstances and the remainder of the Consent Order shall not be affected thereby and shall remain in full force.

XXIV. TERMINATION AND SATISFACTION

112. The provisions of this Consent Order shall be deemed satisfied upon Respondent's receipt of written notice from EPA that Respondent has demonstrated to the satisfaction of EPA that the terms of the Consent Order, including any additional tasks determined by EPA to be required pursuant to this Consent Order, have been satisfactorily completed. Such notice shall not be unreasonably withheld. This notice shall not, however, terminate Respondent's obligations to comply with any continuing obligations hereunder, including, but not limited to, Section XIII, Record Preservation; Section XIX, Reservation of Rights; Section XX, Other Applicable Laws; and Section XXI, Other Claims.

XXV. SURVIVABILITY/PERMIT INTEGRATION

113. Subsequent to the issuance of this Consent Order, a permit or order may be issued to the Facility incorporating the requirements of this Consent Order by reference.

114. Any requirement of this Consent Order shall not terminate upon the issuance of a permit or order unless all relevant Consent Order requirements are expressly replaced by the requirements in the permit or all provisions of this Consent Order have been fully complied with to EPA’s satisfaction in accordance with Section XIX (Reservation of Rights) of this Consent Order.

XXVI. ATTORNEYS’ FEES AND COSTS

115. Except as otherwise provided herein, Respondent shall bear its own costs and attorneys’ fees.

XXVII. EFFECTIVE DATE

116. The Effective Date of this Consent Order shall be the date on which Respondent received the fully executed Consent Order.

IT IS SO AGREED AND ORDERED:

U.S. ENVIRONMENTAL PROTECTION AGENCY:

DATE: _____

Kenneth Patterson, Director
Office of Site Remediation Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency

Signature Page for Agreement Regarding Washington Works Facility.

FOR: The Chemours Company FC, LLC

DATE: _____

Tom Ei
Director, Environmental Remediation
The Chemours Company
1007 Market Street, Wilmington, DE 19801