5/20/2022

11:11 AM

Received by
EPA Region VIII
Hearing Clerk

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8
1595 WYNKOOP STREET
DENVER, CO 80202-1129
Phone 800-227-8917
http://www.epa.gov/region08

DOCKET NO.: RCRA-08-2022-0008

IN THE MATTER OF:	)	
	)	
PUBLIC SERVICE COMPANY OF COLORADO	)	**FINAL ORDER**
COMANCHE STATION	)	
	)	
	)	
	)	
RESPONDENT	)	

Pursuant to 40 C.F.R. § 22.13(b) and §§ 22.18(b)(2) and (3) of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order.

The Respondent is hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon filing this Consent Agreement and Final Order.

SO ORDERED THIS 20th **DAY OF** May**, 2022.**

KATHERIN HALL

Digitally signed by KATHERIN HALL
Date: 2022.05.20 11:09:09 -06'00'

Katherin E. Hall
Regional Judicial Officer

5/9/2022

9:51 AM

Received by
EPA Region VIII
Hearing Clerk

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

IN THE MATTER OF: **Public Service Company of Colorado** **Comanche Station** **2005 Lime Road** **Pueblo, Colorado 81006** **Respondent**	)	**CONSENT AGREEMENT** Docket No. RCRA 08-2022-0008 Proceeding Under Section 3008(a) of the Resource Conservation and Recovery Act, as Amended, 42 U.S.C. § 6928(a)

I. INTRODUCTION

1. This consent agreement is entered into as part of an administrative proceeding brought pursuant to sections 3008(a) and 4005(d)(4)(A) of the Resource Conservation and Recovery Act, as amended (RCRA, or the Act), 42 U.S.C. §§ 6928(a) and 6945(d)(4)(A), 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 of Practice, codified at 40 C.F.R. Part 22).
2. Complainant is the United States Environmental Protection Agency Region 8 (EPA). The Administrator's authority under section 3008(a) of the Act has been delegated to the undersigned Chief, RCRA and OPA Enforcement Branch, Enforcement and Compliance Assurance Division, EPA Region 8.
3. Respondent is Public Service Company of Colorado (PSCo, or Respondent). PSCo is a corporation doing business in the State of Colorado.
4. Complainant, having determined that settlement of this action is in the public interest, and Complainant and Respondent, having agreed that the execution and issuance of this Consent Agreement without further litigation and without adjudication of any issue of fact or law is the most appropriate means of resolving this matter, consent to the entry of this Consent Agreement (Consent

Agreement, or Agreement), and the final order to be issued by the Regional Judicial Officer for Region 8 approving this Agreement (Final Order, or Order), without adjudication of any issues of law or fact herein, and Respondent agrees to comply with the terms of this Consent Agreement and Final Order.

II. JURISDICTION

5. Section 4005(d)(4)(A) of RCRA, 42 U.S.C. § 6945(d)(4)(A) (Section 4005(d)(4)(A)), specifies that the EPA Administrator may use the authority set forth in section 3008 of RCRA, 42 U.S.C. § 6928 (Section 3008) to enforce the prohibition on open dumping under section 4005(a) of RCRA, 42 U.S.C. § 6945(a), with respect to coal combustion residuals units.
6. Pursuant to section 4005(a) of RCRA, 42 U.S.C. § 6945(a), open dumping is prohibited on promulgation of criteria pursuant to section 1008(a)(3) of RCRA, 42 U.S.C. § 6907(a)(3).
7. In April 2015, EPA promulgated a comprehensive set of requirements for the management of coal combustion residuals (CCR) in landfills and impoundments, at 40 C.F.R. Part 257, Subpart D (CCR Regulations). The CCR Regulations became effective on October 19, 2015.
8. Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), authorizes the Administrator of EPA, among other things, to assess civil penalties for any past or current violation, and to order persons to come into compliance.
9. For purposes of this settlement only, Respondent admits the jurisdictional allegations contained herein and neither admits nor denies EPA's specific factual allegations and legal conclusions contained herein.
10. The Regional Judicial Officer for EPA Region 8 is authorized to ratify this Agreement and incorporate it into a final order pursuant to 40 C.F.R. §§ 22.4(b) and 22.18(b). (Final Order)
11. The issuance of this Consent Agreement and Final Order simultaneously commences and concludes this proceeding. 40 C.F.R. § 22.13(b).

12. Respondent waives its right to a hearing before any tribunal to contest any issue of law or fact set forth in this Consent Agreement and waives its right to appeal the Final Order.

III. PARTIES BOUND

13. Upon ratification of this Agreement by the Regional Judicial Officer through issuance of the Final Order, this Agreement applies to and is binding upon Complainant and upon Respondent, and Respondent's officers, directors, agents, successors, and assigns. Any change in ownership of, or corporate organization, structure, or status of Respondent as such change may relate to Respondent's ownership or operation of the Facility, shall not alter Respondent's responsibilities under this Agreement, unless EPA, Respondent and the transferee agree in writing to allow the transferee to assume such responsibilities.
14. Respondent shall notify EPA as soon as practicable prior to any transfer described in or contemplated under the paragraph immediately above.

IV. GENERAL ALLEGATIONS

15. RCRA, enacted on October 21, 1976, and subsequently amended, establishes a framework for the regulation of the handling and management of non-hazardous and hazardous solid wastes. 42 U.S.C. § 6901 *et seq*.
16. RCRA Subtitle D, as amended in 2016 by the Water Infrastructure Improvements for the Nation Act, establishes a framework for the regulation of the handling and management of CCR and authorizes the Administrator to use sections 3007 and 3008 of RCRA, 42 U.S.C. §§ 6927 and 6928, to enforce the prohibition on open dumping under section 4005(a) of RCRA, 42 U.S.C. § 6945(a), with respect to CCR units. *See*, 42 U.S.C. § 6945(d)(4).
17. Section 4005(d)(4)(A)(i) of RCRA, 42 U.S. C. § 6945(d)(4)(A)(i), establishes a framework for the enforcement of CCR requirements by EPA in nonparticipating states.

18. The State of Colorado is a "nonparticipating state" within the meaning of section 4005(d)(2)(A) of RCRA, 42 U.S.C. § 6945(d)(2)(A), and 40 C.F.R. § 257.50.

19. **Definitions**

Unless otherwise specified, terms in this Consent Agreement shall have the meaning attributed to them in section 1004 of RCRA, 42 U.S.C. § 6903, or 40 C.F.R. § 257.53.

a. "Acceptable" shall mean that the quality of submissions or completed work is sufficient to warrant EPA review to determine whether the submission or work meets the requirements of this Agreement. A determination by EPA that a submission or work is acceptable, does not necessarily mean the submission or work meets the requirements of this Agreement. Approval by EPA of a submission or work, however, establishes that the submission was prepared, or work was completed in a manner acceptable to EPA.

b. "Aquifer" is defined at 40 C.F.R. § 257.53 as "a geologic formation, group of formations, or portion of a formation capable of yielding usable quantities of groundwater to wells or springs."

c. "Coal combustion residuals" (CCR) is defined at 40 C.F.R. § 257.53 as "fly ash, bottom ash, boiler slag, and flue gas desulfurization materials generated from burning coal for the purpose of generating electricity by electric utilities and independent power producers."

d. "CCR landfill" is defined at 40 C.F.R. § 257.53 as "an area of land or an excavation that receives CCR and which is not a surface impoundment, an underground injection well, a salt dome formation, a salt bed formation, an underground or surface coal mine, or a cave. For purposes of this subpart, a CCR landfill also includes sand and gravel pits and quarries that receive CCR, CCR piles, and any practice that does not meet the definition of a beneficial use of CCR."

e. "CCR surface impoundment" is defined at 40 C.F.R. § 257.53 as "a natural topographic depression, man-made excavation, or diked area, which is designed to hold an accumulation of CCR and liquids, and the unit treats, stores, or disposes of CCR."

f. “CCR unit” is defined at 40 C.F.R. § 257.53 as “any CCR landfill, CCR surface impoundment, or lateral expansion of a CCR unit, or a combination of more than one of these units…. This term includes both new and existing units, unless otherwise specified.”

g. “Comply or compliance” may be used interchangeably and shall mean completion of work required by this Order including submittal of documents of a quality acceptable to EPA, in accordance with work plans approved by EPA and in the manner and time specified in an approved work plan, this Agreement or any modification thereof. Respondent must meet both the quality (see definition of Acceptable) and timeliness components of a particular requirement to be considered to be in compliance with this Agreement.

h. “Constituent” shall mean both hazardous constituents and other monitoring parameters listed in either appendix III or IV to 40 C.F.R. Part 257.

i. “Day” shall mean a calendar day unless expressly stated to be a business day. In computing any period of time under this Consent Agreement, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next business day (5 p.m. Mountain Time).

j. “Existing CCR landfill” is defined at 40 C.F.R. § 257.53 as “a CCR landfill that receives CCR both before and after October 19, 2015, or for which construction commenced prior to October 19, 2015. and receives CCR on or after October 19, 2015.”

k. “Existing CCR surface impoundment” is defined at 40 C.F.R. § 257.53 as “a CCR surface impoundment that receives CCR both before and after October 19, 2015, or for which construction commenced prior to October 19, 2015. and receives CCR on or after October 19, 2015.”

l. “Facility” is defined at 40 C.F.R. § 257.53 as “all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, disposing, or otherwise conducting solid waste management of CCR. A facility may consist of several treatment, storage, or disposal operational units (e.g., one or more landfills, surface impoundments, or combinations of them).” The term Facility as used herein includes the Impoundment and the Landfill.

m. “Groundwater” is defined at 40 C.F.R. § 257.53 as “water below the land surface in a zone of saturation.”

n. “Imminent Threat” shall mean any release, or threatened release, of “solid waste” or Constituents, on or from the Facility, which may present an imminent and substantial endangerment to human health and/or the environment.

o. “Operator” is defined at 40 C.F.R. § 257.53 as “the person(s) responsible for the overall operation of a CCR unit.”

p. “Owner” is defined at 40 C.F.R. § 257.53 as “the person(s) who owns a CCR unit or part of a CCR unit.”

q. “Paragraph” shall mean a portion of this Agreement identified by an Arabic numeral.

r. “Person” is defined at Section 1004(15) of RCRA, 42 U.S.C. § 6903(15) as “an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, or any interstate body and shall include each department, agency, and instrumentality of the United States.”

s. “Section” shall mean a portion of this Agreement identified by an uppercase roman numeral.

t. “Subsection” shall mean a portion of this Agreement identified by an uppercase roman numeral and uppercase letter.

u. “Solid Waste” is defined at Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

20. Respondent is and was at all relevant times a corporation organized under the laws of Colorado. Respondent's principal office is located at 1800 Larimer Street, Suite 1400, Denver, Colorado, 80202. Respondent's principal office mailing address is 414 Nicollet Mall, 401-9, Minneapolis, Minnesota 55401.
21. Respondent is a wholly owned subsidiary of Xcel Energy, Inc., a publicly traded corporation organized under the laws of Minnesota.
22. Respondent is a "person" as defined in section 1004(15) of the Act, 42 U.S.C. § 6903(15).
23. The Comanche Station is a 1,450-megawatt (MW) coal-fired, steam turbine power plant located at 2005 Lime Road, Pueblo, Colorado 81006 (Facility, or Comanche Station).
24. Respondent owns and operates the Comanche Station.
25. The Facility has three units that generate power. Unit 1 (325 MW), commissioned in 1973, and unit 2 (335 MW), commissioned in 1975, are planned for retirement in 2022 and 2025, respectively. Unit 3 (750 MW), commissioned in 2010, will continue to operate beyond 2025. Comanche Station is the largest electricity-generating power plant in Colorado.
26. Until June 18, 2021, bottom ash, economizer ash, and associated transport water from Units 1 and 2 were sent to a surface impoundment at the Facility commonly known as the Bottom Ash Pond. (Impoundment)
27. Solid wastes remain in the Impoundment. The Impoundment was used to dewater and temporarily store CCR solids before they are removed for either beneficial use off-site or disposal to a landfill at the Facility commonly known as the Ash Disposal Facility.
28. Until January 31, 2021, the Impoundment also accepted non-CCR waste streams, including capacitive deionization (CDI) softener waste, CDI softeners brine and rinse, activated carbon filter backwash and rinse, and reverse osmosis reject water.

29. Liquid from the Impoundment is discharged into an adjacent polishing pond and is either recycled to the plant for reuse or discharged under Comanche Station's Colorado Discharge Permit System permit.

30. Respondent has installed temporary storage capacity for CCR waste streams that meets the requirements of 40 C.F.R. Part 257, Subpart D.

31. The Impoundment is an "Existing CCR surface impoundment," a "CCR surface impoundment," and a "CCR unit,".

32. The landfill (Ash Disposal Facility), to which dewatered waste from the Impoundment is sent, is an "Existing CCR landfill", a "CCR landfill", and a "CCR unit" (Landfill).

33. Respondent was, at all relevant times, and is the owner and operator of an Existing CCR surface impoundment and owner and operator of an Existing CCR landfill.

V. VIOLATIONS

COUNT I

Failure to Install A Required Groundwater Monitoring System

34. 40 C.F.R. § 257.90 provides in pertinent part:

> "(b) *Initial timeframes*—(1) *Existing CCR landfills and existing CCR surface impoundments.* No later than October 17, 2017, the owner or operator of the CCR unit must be in compliance with the following groundwater monitoring requirements: (i) Install the groundwater monitoring system as required by § 257.91…."

35. 40 C.F.R. § 257.91, subsections (a), (b), (c) and (e) provide in pertinent part:

> "(a) *Performance standard.* The owner or operator of a CCR unit must install a groundwater monitoring system that consists of a sufficient number of wells, installed at appropriate locations and depths, to yield groundwater samples from the uppermost aquifer that: (1) Accurately represent the quality of background groundwater that has not been affected by leakage from a CCR unit. . . . and (2) Accurately represent the quality of groundwater passing the waste boundary of the CCR unit. The downgradient monitoring system must be installed at the waste boundary that ensures detection of groundwater contamination in the uppermost aquifer. All potential contaminant pathways must be monitored."

"(b) The number, spacing, and depths of monitoring systems shall be determined based upon site-specific technical information that must include thorough characterization of: (1) Aquifer thickness, groundwater flow rate, groundwater flow direction including seasonal and temporal fluctuations in groundwater flow; and (2) Saturated and unsaturated geologic units and fill materials overlying the uppermost aquifer, materials comprising the uppermost aquifer, and materials comprising the confining unit defining the lower boundary of the uppermost aquifer, including, but not limited to, thicknesses, stratigraphy, lithology, hydraulic conductivities, porosities and effective porosities."

"(c) The groundwater monitoring system must include the minimum number of monitoring wells necessary to meet the performance standards specified in paragraph (a) of this section, based on the site-specific information specified in paragraph (b) of this section…."

"(e) Monitoring wells must be cased in a manner that maintains the integrity of the monitoring well borehole. This casing must be screened or perforated and packed with gravel or sand, where necessary, to enable collection of groundwater samples. The annular space (i.e., the space between the borehole and well casing) above the sampling depth must be sealed to prevent contamination of samples and the groundwater."

36. 40 C.F.R. § 257.93(d) provides in pertinent part:

"(d) The owner or operator of the CCR unit must establish background groundwater quality in a hydraulically upgradient or background well(s) for each of the constituents required in the particular groundwater monitoring program that applies to the CCR unit as determined under § 257.94(a) or § 257.95(a). Background groundwater quality may be established at wells that are not located hydraulically upgradient from the CCR unit if it meets the requirements of § 257.91(a)(1)."

37. In 2016, Respondent certified a groundwater monitoring system comprised of monitoring wells W-3, W-4, W-5, W-6, MW-1, MW-2, MW-3, MW-4 (2015 Monitoring System). (*See* Attachment A to this Agreement for a map of the location of all wells described in this Agreement.) Groundwater samples were collected and analyzed from the 2015 Monitoring System from December 2015 until August 2017. In 2017 the network was updated to include wells MW-5 and MW-6 (2017 Monitoring System). Groundwater samples were collected and analyzed from August 2017 (MW-6) and September 2017 (MW-5) through December 2017.

38. On or about January 30, 2018, Respondent concluded that (1) none of the wells comprising the 2017 Monitoring System could be identified as upgradient and, therefore, background threshold values could not be established; and (2) the shallow perched water beneath the Facility did not constitute an aquifer. Based on these conclusions, Respondent ceased its groundwater monitoring efforts.

39. In response to Respondent's cessation of groundwater monitoring, on or about June 23, 2020, EPA advised Respondent that its January 30, 2018 conclusions were erroneous and did not demonstrate that the shallow groundwater does not constitute an aquifer as defined by 40 C.F.R. § 257.53, and that Respondent failed to identify background conditions. EPA recommended that Respondent reinstate groundwater monitoring of all CCR wells at the site, improve the monitoring network and conduct field-based yield tests, and of the potential necessity of installing additional wells at appropriate depths to sample groundwater in the uppermost aquifer, establish hydraulic gradient, and collect background samples.
40. Respondent had resumed monitoring of the existing wells in March 2020 and had planned additional investigation prior to EPA's June 23, 2020, communication. Respondent therefore agreed to install additional wells and further characterize hydrogeologic conditions at the Facility. Respondent submitted a proposal to EPA in July 2020.
41. In August 2020, Respondent installed three new wells, MW-1B, MW-2B, and MW-4B, around the Landfill. The wells were drilled adjacent to existing wells MW-1, MW-2, and MW-4, but were drilled deeper and into the weathered shale. Water was present in all three of the newly installed wells and sampled.
42. In August 2020, Respondent installed wells W-2A and W-2B east of existing well W-2. All three of those wells, according to Respondent, are upgradient of both the Landfill and Impoundment. Both W-2A and W-2B were drilled deeper than W-2, and into the weathered shale.
43. Well W-2 has historically been intermittently dry. Well W-2A, screened into the weathered shale, contains groundwater on a consistent basis.
44. In August 2020, Respondent installed wells W-7, W-8A, and W-8B along the southeastern property boundary of the Facility. Wells W-7 and W-8A were drilled into the weathered shale. Well W-8B was drilled in the consolidated shale.

45. In December 2020, Respondent installed wells W-5B, W-9, W-10A, W-10B, W-11, W-12, and W-13. Well W-5B was installed adjacent to well W-5, but was drilled deeper and was screened in the weathered shale.

46. The wells installed in August and December 2020 show that Respondent's January 30, 2018, conclusions were erroneous, and that shallow groundwater encountered at a greater depth than the bottom of the 2017 Monitoring System wells constitutes an aquifer as defined at 40 C.F.R. § 257.53.

47. Respondent did not drill the wells comprising Respondent's 2017 Monitoring System to a sufficient depth to encounter the uppermost aquifer by October 17, 2017.

48. Because Respondent failed to drill the wells to sufficient depth, the wells comprising Respondent's 2017 Monitoring System could not have been screened, and, therefore, were not screened to enable the collection of groundwater samples by October 17, 2017.

49. Respondent's 2017 Monitoring System could not have, and did not, establish background groundwater quality by October 17, 2017.

50. Respondent's failure to install, no later than October 17, 2017, and continuing until at least 2021, a groundwater monitoring system consisting of a sufficient number of wells, installed at appropriate locations and depths, to yield groundwater samples from the uppermost aquifer that: (1) accurately represent the quality of background groundwater that has not been affected by leakage from a CCR unit; and (2) accurately represent the quality of groundwater passing the waste boundary of the CCR unit, is a violation of 40 C.F.R. § 257.90(a).

COUNT II

Failure to Properly Prepare Annual Groundwater Monitoring and Corrective Action Reports

51. 40 C.F.R. § 257.90 provides in pertinent part:

> (e) *Annual groundwater monitoring and corrective action report*. For existing CCR landfills and existing CCR surface impoundments, no later than January 31, 2018, and annually thereafter, the owner or operator must prepare an annual groundwater monitoring and corrective action report. . . .

For the preceding calendar year, the annual report must document the status of the groundwater monitoring and corrective action program for the CCR unit, summarize key actions completed, describe any problems encountered, discuss actions to resolve the problems, and project key activities for the upcoming year. . . . At a minimum, the annual groundwater monitoring and corrective action report must contain the following information, to the extent available: . . . (3) In addition to all the monitoring data obtained under §§ 257.90 through 257.98, a summary including the number of groundwater samples that were collected for analysis for each background and downgradient well, the dates the samples were collected, and whether the sample was required by the detection monitoring or assessment monitoring programs.

52. Respondent failed to prepare an annual groundwater monitoring and corrective action report for calendar year 2018.

53. Although Respondent prepared a report dated January 30, 2020, entitled "Comanche Station CCR Groundwater Monitoring 2019 Annual Report," the report only documented the measuring of water levels during 2019 in the ten improperly completed wells comprising the 2017 Monitoring System.

54. Respondent's failure to prepare an annual groundwater monitoring and corrective action report for calendar year 2018 and failure to prepare an annual groundwater monitoring and corrective action report for calendar year 2019 that contained all required information are violations of 40 C.F.R. § 257.90(e).

COUNT III

Failure to Select Statistical Method; Failure to Conduct Statistical Analysis; and Failure to Establish Background

55. 40 C.F.R. § 257.90 provides in pertinent part:

"(b) *Initial timeframes*—(1) *Existing CCR landfills and existing CCR surface impoundments.* No later than October 17, 2017, the owner or operator of the CCR unit must be in compliance with the following groundwater monitoring requirements: … (ii) Develop the groundwater sampling and analysis program to include selection of the statistical procedures to be used for evaluating groundwater monitoring data as required by § 257.93; (iii) Initiate the detection monitoring program to include obtaining a minimum of eight independent samples for each background and downgradient well as required by § 257.94(b); and (iv) Begin evaluating the groundwater monitoring data for statistically significant increases over background levels for the constituents listed in appendix III of this part as required by § 257.94."

56. 40 C.F.R. § 257.93(f) and (h) provide in pertinent part:

"(f) The owner or operator of the CCR unit must select one of the statistical methods specified in paragraphs (f)(1) through (5) of this section to be used in evaluating groundwater monitoring data

for each specified constituent. The statistical test chosen shall be conducted separately for each constituent in each monitoring well."

"(h) The owner or operator of the CCR unit must determine whether or not there is a statistically significant increase over background values for each constituent required in the particular groundwater monitoring program that applies to the CCR unit, as determined under § 257.94(a) or § 257.95(a)."

57. 40 C.F.R. § 257.93(d) provides in pertinent part:

"(d) The owner or operator of the CCR unit must establish background groundwater quality in a hydraulically upgradient or background well(s) for each of the constituents required in the particular groundwater monitoring program that applies to the CCR unit as determined under § 257.94(a) or § 257.95(a). Background groundwater quality may be established at wells that are not located hydraulically upgradient from the CCR unit if it meets the requirements of § 257.91(a)(1)."

58. As set forth in Paragraph 38, Respondent ceased its groundwater monitoring efforts, other than measuring water levels, in 2017, including the cessation of semiannual detection monitoring of its groundwater monitoring wells.

59. Respondent did not resume groundwater monitoring until March 2020.

60. Because Respondent did not collect groundwater samples for analysis until 2020, Respondent failed to select one of the statistical methods specified in 40 C.F.R. § 257.93(f)(1) through (5) to be used in evaluating groundwater monitoring data for each specified Constituent in violation of 40 C.F.R. §§ 257.90(b) and 257.93(f).

61. Because Respondent did not collect groundwater samples for analysis until 2020, Respondent failed to conduct a statistical analysis to determine whether or not there is a statistically significant increase over background values for each required Constituent by October 17, 2017, in violation of 40 C.F.R. §§ 257.90(b) and 257.93(h).

COUNT IV

Failure to Monitor at Least Semiannually

62. 40 C.F.R. § 257.94(a) provides in pertinent part:

"(a) The owner or operator of a CCR unit must conduct detection monitoring at all groundwater monitoring wells consistent with this section. At a minimum, a detection monitoring program must include groundwater monitoring for all constituents listed in appendix III to this part. (b) Except as

provided in paragraph (d) of this section, the monitoring frequency for the constituents listed in appendix III to this part shall be at least semiannual during the active life of the CCR unit and the post-closure period. For existing CCR landfills and existing CCR surface impoundments, a minimum of eight independent samples from each background and downgradient well must be collected and analyzed for the constituents listed in appendix III and IV to this part no later than October 17, 2017."

63. Because Respondent did not collect groundwater samples for analysis until 2020, Respondent failed to conduct semiannual detection monitoring in 2018 and 2019, in violation of 40 C.F.R. § 257.94(a).

COUNT V

Failure to Timely Cease Receipt of CCR Waste in CCR Units

64. 40 C.F.R. § 257.101(a)(1) provides in pertinent part:

Except as provided by paragraph (a)(3) of this section, as soon as technically feasible, but not later than April 11, 2021, an owner or operator of an existing unlined CCR surface impoundment must cease placing CCR and non-CCR wastestreams into such CCR surface impoundment and either retrofit or close the CCR unit in accordance with the requirements of § 257.102.

65. Respondent placed CCR wastestreams into the Impoundment until June 18, 2021.

66. Respondent's placement of CCR wastestreams into the Impoundment from April 12, 2021, to June 18, 2021, is a violation of 40 C.F.R. § 257.101(a)(1).

COUNT VI

Failure to Maintain Records; Failure to Place Records on the Web; and Failure to Provide Notifications

67. 40 C.F.R. § 257.105(a) and (h) provide in pertinent part:

"(a) Each owner or operator of a CCR unit subject to the requirements of this subpart must maintain files of all information required by this section in a written operating record at their facility."

"(h) The owner or operator of a CCR unit subject to this subpart must place the following information, as it becomes available, in the facility's operating record: (1) The annual groundwater monitoring and corrective action report as required by § 257.90(e). . . . (4) The selection of a statistical method certification as required by § 257.93(f)(6)."

68. 40 C.F.R. § 257.107(a) and (h) provide in pertinent part:

"(a) Each owner or operator of a CCR unit subject to the requirements of this subpart must maintain a publicly accessible Internet site (CCR Web site) containing the information specified in this section. The owner or operator's Web site must be titled 'CCR Rule Compliance Data and Information.'"

"(h) The owner or operator of a CCR unit subject to this subpart must place the following information on the owner or operator's CCR Web site: (1) The annual groundwater monitoring and corrective action report specified under § 257.105(h)(1). . . . (3) The selection of a statistical method certification specified under § 257.105(h)(4)."

69. 40 C.F.R. § 257.106(a) and (h) provide in pertinent part:

"(a) The notifications required under paragraphs (e) through (i) of this section must be sent to the relevant State Director and/or appropriate Tribal authority before the close of business on the day the notification is required to be completed."

"(h) The owner or operator of a CCR unit subject to this subpart must notify the State Director and/or appropriate Tribal authority when information has been placed in the operating record and on the owner or operator's publicly accessible internet site."

70. Respondent did not prepare an annual groundwater monitoring and corrective action report for 2018 and its annual groundwater monitoring and corrective action report for 2019 did not contain the information required pursuant to 40 C.F.R. § 257.90(e).

71. Respondent did not timely select one of the statistical methods in 40 C.F.R. § 257.93(f).

72. Respondent did not place the required reports or its selection of a statistical method certification into the Facility's operating record in violation of 40 C.F.R. § 257.105(h)

73. Respondent did not place the required reports or its selection of a statistical method certification on the Facility's CCR Web site, in violation of 40 C.F.R. § 257.107(h).

74. Because Respondent did not place required documents in the operating record and did not post them to the CCR Web site, Respondent failed to notify the State Director of such placement and posting in violation of 40 C.F.R. § 257.106(h).

VI. COMPLIANCE ORDER

75. Respondent consents and agrees to implement the following compliance requirements, and Respondent will comply with all applicable requirements in 40 C.F.R. Part 257, Subpart D not explicitly set forth herein.

A. General Requirements

76. Monthly Reports. Beginning the second calendar month after the Effective Date Respondent shall submit monthly progress reports to EPA.

    a. Each monthly progress report shall be submitted no later than the 10th Day of the next calendar month and shall include detailed updates on the status and performance of all activities required to be undertaken pursuant to this Agreement that were undertaken in the previous calendar month.

    b. Each monthly progress report also shall contain up-to-date information on the retention of professional consultants and laboratories (Paragraph 80), updates on compliance with the recordkeeping, notification, and internet posting requirements of 40 C.F.R. §§ 257.105(h), 257.106(h), and 257.107(h), and all significant developments during the prior month, including, for example, detection of statistically significant increases over background levels or groundwater protection standards for any Constituent.

    c. After submittal of 18 monthly reports, Respondent may request that progress reports be submitted on a quarterly basis. EPA may grant or deny this request at its sole discretion and may revoke its grant of such a request as EPA determines is necessary to properly oversee Respondent's implementation of this Agreement.

77. Health and Safety Plans. All work performed under this Agreement shall be conducted pursuant to one or more appropriate Health and Safety Plans (HASP) that specify personal protective equipment and other requirements for each task to be performed and meet all applicable OSHA requirements. The training, supplies and equipment specified in the HASP(s), and a copy of the HASP, shall be provided to each individual that will perform the associated work. Copies of all HASPs shall be provided to EPA promptly upon EPA request, but in no event later than 7 Days after the request is made.

78. Handling of Materials Generated During Implementation. Handling of materials generated during implementation of this Consent Agreement, including contaminated media, shall comply with all applicable state, federal, tribal, and local requirements.

79. Sampling Plans. Where sampling is required pursuant to this Consent Agreement or pursuant to the CCR Regulations, such sampling shall be conducted pursuant to a sampling plan which shall include, at a minimum, the following:

a. a requirement to use a low-flow sampling technique, where possible, or where well yield is too low to perform a low-flow sampling technique, a minimum purge technique, such that a dedicated pump is used, and the well is not evacuated, but a minimum of one equipment volume is purged prior to sampling;

b. a description of how sampling, including background sample collection, will be conducted; a schedule; the media and analytes to be sampled; the number, types, locations, and depths of samples to be taken; and how the sampling will determine whether and when the sampling requirement objectives have been met;

c. field and laboratory Quality Assurance/Quality Control requirements, including lab method detection limits and the collection of Quality Assurance samples;

d. chain of custody requirements that will be followed in submitting samples to an accredited analytical lab; and

e. the following requirements regarding EPA participation or oversight: (i) Respondent shall provide EPA email notification of sampling at least 7 Days prior to the collection date; (ii) Respondent shall allow oversight of each sampling event by EPA or a representative of EPA, including contractors, as identified by EPA; and (iii) upon request from EPA, Respondent shall provide split samples to the Agency.

80. Retention of Professional Consultants and Laboratories**.** Respondent shall retain one or more professional consultants to design all plans required pursuant to this Agreement, and one or more contractors, subcontractors, and laboratories to perform the work pursuant to the plans. Within 14 Days of the Effective Date shall notify EPA of the names, titles, addresses, telephone numbers, email addresses, and qualifications of such consultants, contractors, subcontractors, and laboratories, and shall renotify EPA within 7 Days of any proposed changes. If EPA notifies Respondent that it disapproves of a selected consultant, contractor, subcontractor or laboratory, Respondent shall propose a different consultant, contractor, subcontractor, or laboratory and shall notify EPA of the names, titles, addresses, telephone numbers, email addresses, and qualifications of such consultants, contractors, subcontractors, or laboratories within 14 Days of EPA's disapproval. The qualifications of the persons undertaking the work for Respondent shall be subject to EPA's review for verification based on objective assessment criteria (e.g., experience, capacity, technical expertise, and whether such contractor is disbarred or suspended by the federal government at that time). Proposed changes to consultants, contractors, subcontractors, or laboratories shall not excuse noncompliance with the schedules or other requirements of this Agreement.

81. Certifications of Qualified Professional Engineers. During implementation of this Agreement, determinations on Respondent's compliance with this Agreement will be made solely by EPA. Certifications of compliance from qualified professional engineers, however, may be used, at Respondent's discretion, as support for Respondent's position that compliance with specific requirements of this Agreement have been achieved.

82. Notifications, Certifications, Demonstrations and Certain Progress Reports. All notifications, certifications, demonstrations, postings, and progress reports required pursuant to the provisions in 40 C.F.R. §§ 257.90 through 257.107 shall, in addition to the recordkeeping and notification requirements set forth in 40 C.F.R. §§ 257.105 through 257.107, be submitted to EPA via email

within 7 Days after the deadline for the generation of the notice, certification, demonstration, or progress report. All notifications required pursuant to 40 C.F.R. § 257.106 to be provided to the State Director shall simultaneously be submitted to EPA.

B. IMMINENT THREAT

83. In the event Respondent identifies a potential Imminent Threat at or originating from the Impoundment or Landfill, Respondent shall orally notify the EPA Project Manager within 24 hours of discovery and notify EPA in writing within 10 Days of such discovery, summarizing the immediacy and magnitude of such threat(s), and proposed appropriate response action(s) on the part of the Respondent to mitigate the threat(s). EPA will review reported potential Imminent Threats and determine if and when a work plan or immediate action is necessary.

84. Proper notification as required in this Agreement, does not relieve Respondent of any other notification responsibility Respondent may have under any other law, including, but not limited to, Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act123, 42 U.S.C. § 9603; section 304 of the Emergency Planning and Community Right to Know Act, 42 U.S.C. § 11003; the Migratory Bird Treaty Act; or state law.

85. If EPA identifies an Imminent Threat at or originating from the Impoundment or Landfill, EPA will notify Respondent in writing. Within 15 Days of receiving EPA's written notification, Respondent shall submit a proposed work plan that identifies measures which will be implemented to mitigate the threat(s). These measures should include proposing amendment of the Remedy Implementation Plan if such plan has already been approved by EPA.

86. If EPA determines that immediate action is required, the EPA Project Manager may orally authorize or require Respondent to act prior to Respondent's receipt of EPA's written notification, including the taking of immediate action to abate the threat or harm.

87. Any oral requirements made pursuant to this subsection shall be immediately incorporated into this Order by reference and are immediately enforceable, unless EPA does not provide to Respondent in writing, a description of such requirements within 5 Days of oral notification.

C. ADDITIONAL WORK

88. Based upon new information and/or changed circumstances, EPA may determine, or Respondent may propose that certain tasks are necessary in addition to or in lieu of the work included in any EPA-approved plan.

89. If EPA determines that it is necessary for Respondent to perform additional work, EPA shall specify in writing the technical support and other basis for its determination.

90. Within 14 Days of receipt of such determination, Respondent shall have the opportunity to meet or confer with EPA to discuss the additional work prior to beginning such work.

91. If required by EPA, Respondent shall submit for EPA approval a work plan for the additional work, or a proposed amendment to an EPA-approved work plan. Such work plan(s) shall be submitted within thirty (30) days of receipt of EPA's determination that additional work is to be performed unless an extension has been requested by Respondent and approved by EPA in writing.

92. Upon approval of a work plan modified to reflect additional work, Respondent shall implement the work plan in accordance with the revised schedule and provisions contained therein.

D. GROUNDWATER MONITORING SYSTEM, GROUNDWATER ANALYSIS, AND REPORTING

93. Annual Groundwater Monitoring and Corrective Action Report. For at least the first three calendar years of implementation of this Consent Agreement, the annual groundwater monitoring and corrective action report (Annual Report) required pursuant to 40 C.F.R. § 257.90(e) shall be prepared semiannually.

a. In calendar year 2022, the first Annual Report must be submitted by July 31, and must address the period from January 1, 2020, through June 30, 2022. In subsequent calendar years, the report that must be prepared by July 31 may provide information for the first 6 months of that year.

b. For calendar year 2022, and thereafter, the full year report must be prepared by January 31 of the following year and must address the entire prior calendar year. The 6 month report may be submitted as an appendix or attachment to the full year report.

c. Each Annual Report must contain the minimum information required in 40 C.F.R. § 257.90(e) as well as the following information, which will assist EPA in assessing Respondent's compliance:

   i. for each Constituent, identify all tolerance or prediction intervals or limits and how they were determined, and present this information in table or chart format for the reporting period;

   ii. all statistical reports identifying the statistical methods and parameters used to calculate the tolerance or prediction intervals or limits, and a table of the data used to calculate the tolerance or prediction intervals or limits value for each Constituent for the reporting period;

   iii. for each monitoring well, graphical representation demonstrating the trend(s), if any, of the concentrations of Constituents in Appendix III to 40 C.F.R. Part 257, Subpart D, from the commencement of monitoring through the date for which the report was prepared;

   iv. all lab reports for all analyses, including all chain of custody documentation for the reporting period;

   v. all statistical data generated during the reporting period, including tests for normality, outliers, trends, spatial variability, autocorrelation, and any statistical limits or comparisons;

   vi. copies of all boring logs, well completion logs, and field sampling logs from any boring or well installation, well development, water level testing, hydraulic testing, or testing of groundwater or other environmental media from any sampling, testing or installation conducted during the reporting period; and

vii. updated potentiometric surface maps with groundwater flow direction(s) indicated for each sampling event for the reporting period.

94. Groundwater Monitoring System (GMS) Plan. Within 45 Days of the Effective Date, Respondent shall submit a proposed GMS plan to EPA for approval pursuant to Section VII. The proposed GMS plan shall

a. describe each step taken by Respondent prior to the date of the proposed GMS plan since June 2020 to develop a GMS, or individual elements of a GMS, at the Facility,

b. describe how Respondent proposes to meet each requirement, component and objective of a GMS set forth in 40 C.F.R. § 257.91,

c. require installation and use of dedicated pumps for sampling in all groundwater monitoring wells, except those wells used for monitoring water level only, used in the detection and assessment monitoring programs due to the low yield and high suspended solids in many wells developed in the weathered shale, and

d. provide all documents and other information Respondent relies on to support its conclusion that the actions in the GMS plan will meet each requirement, component and objective of a GMS as set forth in 40 C.F.R. § 257.91.

95. Groundwater Sampling and Analysis (GSA) Plan. Within 60 Days of the Effective Date, Respondent shall submit a proposed GSA plan to EPA for approval pursuant to Section VII. The plan shall contain all information required in the Sampling Plan requirements in Paragraph 79 above, and all other information required in 40 C.F.R. § 257.93, 40 C.F.R. § 257.94 for detection monitoring, and 40 C.F.R. § 257.95 for assessment monitoring. The proposed GSA plan also shall provide detail on how Respondent proposes to complete the statistical analysis required under 40 C.F.R. § 257.93(f) - (i), and include any other information required by this Agreement.

a. Respondent has preliminarily identified statistically significant increases over background levels for pH, boron, calcium, cobalt, and molybdenum and has initiated assessment monitoring.

b. During assessment monitoring, Respondent may propose to return to detection monitoring pursuant to 40 C.F.R. § 257.95(e). Respondent may not return to detection monitoring until Respondent's proposal is approved by EPA.

c. Unless Respondent has received approval of an alternative source demonstration by EPA pursuant to 40 C.F.R. § 257.94(e)(2), or other written notice from EPA prior to the Effective Date, Respondent shall continue assessment monitoring immediately on the Effective Date.

d. During assessment monitoring, if one or more Constituents in 40 C.F.R. Part 257, Appendix IV are detected above the groundwater protection standard established under 40 C.F.R. § 257.95(h) and this Agreement, Respondent shall, in addition to the requirements of 40 C.F.R. § 257.95(g)(2):

   i. notify EPA by email as quickly as practicable after validated analytical results are received, and provide sampling results to EPA with the Monthly Progress Report, unless requested to be delivered more quickly by EPA;

      a. if validated analytical results are not received within 9 weeks of the sampling event Respondent shall notify EPA as quickly as practicable, and shall submit the unvalidated analytical results with the Monthly Progress Report, unless requested to be delivered more quickly by EPA;

   ii. sample all perimeter monitoring wells located hydraulically downgradient of the monitoring well(s) where Appendix IV concentrations exceeding the groundwater protection standard occurred and complete laboratory analysis for the presence of Constituents (in 40 C.F.R. Part 257, Appendices III and IV); and

iii. after the Effective Date, and within 14 days of detecting a statistically significant level above groundwater protection standards Respondent shall inform EPA by email whether it intends to prepare a demonstration pursuant to 40 C.F.R. § 257.95(g)(3)(ii). Unless EPA determines that, based on the totality of information at that time that Respondent must immediately initiate an assessment of corrective measures (in compliance with Section VI.E immediately below), Respondent may delay initiation of an assessment of corrective measures until EPA makes a determination pursuant to 40 C.F.R. § 257.95(g)(3)(ii) on Respondent's demonstration. If Respondent does not complete its demonstration and submit it to EPA within 90 Days of detecting a statistically significant level over background, Respondent shall initiate assessment of corrective measures immediately after the 90 Day period is complete.

e. During detection monitoring, if one or more Constituents in 40 C.F.R. Part 257, Appendix III are detected at a statistically significant increase above background levels established under 40 C.F.R. § 257.93(d) and this Agreement, Respondent shall initiate assessment monitoring in compliance with the approved GSA Plan, and notify EPA by email as quickly as practicable, and provide all pertinent sampling and validated analytical results regarding such detection with the next Monthly Progress Report. If validated analytical results are not received within 9 weeks of the sampling event Respondent shall notify EPA as quickly as practicable, and shall submit the unvalidated analytical results with the Monthly Progress Report, unless requested to be delivered more quickly by EPA.

i. After the Effective Date, and within 14 days of detecting a statistically significant increase over background Respondent shall inform EPA by email whether it intends to prepare a demonstration pursuant to 40 C.F.R. § 257.93(e)(2).

ii. Unless EPA determines that, based on the totality of information at that time, that Respondent must initiate assessment monitoring, Respondent may delay initiation of assessment monitoring until EPA makes a determination pursuant to 40 C.F.R. § 257.93(d) on Respondent's demonstration.

iii. If Respondent does not complete its demonstration and submit it to EPA within 90 Days of detecting a statistically significant increase over background, Respondent shall initiate assessment monitoring immediately after the 90 Day period is complete.

E. ASSESSMENT OF CORRECTIVE MEASURES

96. For the landfill, if Respondent determines, or EPA determines on review of information submitted by Respondent, that any Constituent listed in Appendix IV to 40 C.F.R. Part 257 has been detected at a statistically significant level exceeding the groundwater protection standard defined under 40 C.F.R. § 257.95(h), Respondent shall ensure that all steps required in Paragraph 99 below are taken such that an assessment of corrective measures is completed within 180 Days of such determination.

97. For the landfill, if Respondent determines, or EPA determines on review of information submitted by Respondent, that a release has been detected, Respondent shall ensure that all steps required in Paragraph 99 below are taken such that an assessment of corrective measures is completed within 90 Days of such determination.

98. For the Impoundment, and based on the monitoring that has occurred to date, Respondent has determined that one or more constituents listed in Appendix IV to 40 C.F.R. Part 257 has been detected at a statistically significant level exceeding the groundwater protection standard defined under 40 C.F.R. § 257.95(h). Respondent, therefore, shall complete the Assessment of Corrective Measures for the Impoundment within 180 days of the Effective Date, notwithstanding otherwise potentially applicable timeframes in section 257.96.

99. Steps to Completion of Corrective Measures Assessment

a. Assessment of Corrective Measures (ACM) Plan. As expeditiously as possible after a determination is made pursuant to either of the three paragraphs immediately above, Respondent shall submit a proposed ACM plan to EPA for approval pursuant to Section VII. The proposed ACM plan shall detail how each requirement in 40 C.F.R. § 257.96 for assessment of corrective measures shall be met for releases of Constituents on and from the Facility, and include any supporting information required by this Agreement. For the Impoundment, the ACM Plan shall be submitted within 60 days of the Effective Date, notwithstanding otherwise potentially applicable timeframes in section 257.96.

b. Until EPA approval of Respondent's proposed ACM plan, Respondent's assessment of corrective measures will be conducted in compliance with 40 C.F.R. § 257.96, as such requirements may be modified by this Agreement, including EPA-approved plans.

c. Pursuant to 40 C.F.R. § 257.96(a), Respondent may submit a request to EPA for additional time to complete the assessment. The request must include all documents and information that demonstrate, pursuant to 40 C.F.R. § 257.96(a), that an extension is necessary. Any extensions approved by EPA will be limited to a maximum of 60 Days, as set forth in 40 C.F.R. § 257.96(a).

d. Respondent shall provide the completed assessment to EPA no later than one business Day after the due date. If EPA provides comment on the completeness or other adequacy of the assessment, Respondent shall fully address those comments within 14 Days of receipt.

100. No later than 60 Days after EPA informs Respondent it has no comments on the completed assessment, or Respondent fully addresses EPA's comments in the completed assessment, Respondent shall hold the public meeting required pursuant to 40 C.F.R. § 257.96(e). At least 21

Days prior to the date of the public meeting, Respondent shall notify EPA of the date, time, and location of the public meeting so that EPA can attend, at its discretion.

F. SELECTION AND IMPLEMENTATION OF REMEDY

101. No later than 60 Days after the public hearing on the corrective measures assessment, Respondent shall submit a proposed Remedy Selection Plan to EPA for approval pursuant to Section VII. The proposed Remedy Selection Plan shall set forth a schedule for decisions and describe how Respondent will assess all factors and consider all objectives set forth in 40 C.F.R. § 257.97 in selecting a remedy, and for interim measures, all factors and all objectives set forth in 40 C.F.R. § 257.98(a)(3). EPA recommends that Respondent consult with EPA during the remedy selection process.

102. No later than 12 months after EPA approval of the proposed Remedy Selection Plan, Respondent shall submit a proposed Remedy Implementation Plan which shall include schedules for designing, constructing, initiating and completing the remedy, and specify how it meets the requirements for a "final report" as set forth in 40 C.F.R. §§ 257.97(a) and (b), include a description of Respondent's assessment of each factor in 40 C.F.R. §§ 257.97(c) and (d), and a description of how the work will comply with the requirements set forth in 40 C.F.R. §§ 257.98(a)(1) through (3) and (d).

103. No later than 90 days after EPA approval of the proposed Remedy Implementation Plan, Respondent shall begin implementing the Remedy Implementation Plan.

104. If, at any time, Respondent concludes that compliance with the requirements of 40 C.F.R. § 257.97(b) is not being achieved through the remedy selected, Respondent must notify EPA as expeditiously as possible, and, within 30 Days, submit a proposed Amended Remedy Implementation Plan, including schedules, setting forth other corrective measures that could feasibly achieve compliance with the requirements of 40 C.F.R. § 257.97(b). Respondent shall not stop work

on the Remedy Implementation Plan without EPA approval and may not begin implementation of the Amended Remedy Implementation Plan until approved by EPA.

105. Respondent's implementation of the Remedy Implementation Plan shall not be complete until Respondent:

a. submits a remedy completion report to EPA that demonstrates compliance with the criteria set forth in 40 C.F.R. § 257.98(c)(1) through (3);

b. receives a certification from EPA pursuant to 40 C.F.R. § 257.98(e) that the remedy has been completed consistent with the criteria set forth in 40 C.F.R. § 257.98(c)(1) through (3) and the Remedy Implementation Plan; and

c. has placed the remedy completion report in the operating record and on its CCR website and notified the State Director.

G. CLOSURE OF EXISTING CCR UNITS AND POST-CLOSURE CARE

106. Respondent must close the Impoundment and the Landfill in accordance with the requirements of 40 C.F.R. § 257.102.

107. Within 30 days of the Effective Date, Respondent shall amend its written closure and post-closure plans for the Impoundment and the Landfill and submit such plans to EPA for approval pursuant to Section VII. Subsequent amendments to such plans also shall be submitted to EPA for approval pursuant to Section VII. Each closure plan shall contain all information required in 40 C.F.R. § 257.102, including the schedules required by 40 C.F.R. § 257.102. Each post-closure plan shall contain all information required in 40 C.F.R. § 257.104, including the schedules required by 40 C.F.R. § 257.104.

108. Notification for the Impoundment required under subsections 40 C.F.R. § 257.102 (h) shall not be complete until receipt of approval from EPA and Respondent has placed the notification in the operating record and on its CCR website.

H. RECORDKEEPING

109. Respondent shall:

a. maintain files of all information required by 40 C.F.R. § 257.105 at the Comanche Station for at least five years following the date of each occurrence, measurement, maintenance, corrective action, report, record, or study, or at least five years after Respondent has completed all work under the Compliance Order portion of this Consent Agreement, whichever occurs later;

b. retain all other data, records, documents, and other information 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, that relate in any way to compliance with this Consent Agreement, for at least five years after Respondent has completed all work under the Compliance Order portion of this Consent Agreement;

c. notify EPA, in writing, at least 90 Days in advance of the destruction of any information identified in this Paragraph, and either provide EPA with the opportunity to take possession of any such data, records, documents, and other information, or make copies of such data, records, documents, and other information for EPA, with such written notification referencing the caption, docket number and date of issuance of the Final Order and being addressed to:

Branch Chief, RCRA/OPA Program
U.S. Environmental Protection Agency Region 8
1595 Wynkoop Street (8ENF-RO)
Denver, CO 80202-1129

and

d. promptly make any information identified in this Paragraph, as well as any other information related to Respondent's compliance with the requirements of 40 C.F.R. Part 257, Subpart D, available to EPA in the format requested by EPA upon the written request of EPA.

I. PUBLICLY ACCESSIBLE INTERNET SITE REQUIREMENTS

110. Respondent shall maintain its website in compliance with 40 C.F.R. § 257.107 and post the following to its CCR Web site within 14 Days of EPA approval, or for documents not requiring EPA approval, within 14 Days of submittal to EPA:

a. A copy of the fully executed Consent Agreement and Final Order, and any amendments to the Consent Agreement and Final Order; and

b. Copies of all documents and plans approved by EPA, or otherwise required by this Agreement.

J. COMPLETION OF WORK

111. Within 60 Days following completion of all requirements in this Consent Agreement (EPA approval of the remedy completion report or notice of completion of closure of the Impoundment, whichever occurs last) except for long-term monitoring, Respondent shall submit to EPA for approval, a Compliance Order Completion Report summarizing all work performed, including any ongoing activities such as long-term groundwater monitoring.

112. Upon written notification from EPA that the Compliance Order Completion Report is accepted, Respondent may cease work under this Consent Agreement, except for any ongoing required long-term monitoring.

113. To the extent that any required long-term monitoring is ongoing at the time EPA provides Respondent with written notification that the Compliance Order Completion Report has been accepted, Respondent shall continue submitting required Progress Reports until this Agreement is terminated pursuant to Section X of this Agreement.

K. STIPULATED PENALTIES

114. A stipulated penalty of $10,000, or a stipulated penalty equal to 1.5 times the economic benefit of the violation, whichever is greater, shall accrue for each Day after the Effective Date that Respondent places any portion of a CCR or non-CCR wastestream into the Impoundment.

115. The following stipulated penalties shall accrue daily for each other violation of this Agreement, including failure to submit timely or acceptable deliverables pursuant to this Consent Agreement and for failure to comply with any other requirement of this Agreement, including any requirement of EPA-approved plans, in the manner, or within the time frame, specified pursuant to this Agreement and EPA-approved plans.

Period of Noncompliance	Penalty Per Violation Per Day
1st through 14th Day	$1,000
15th through 30th Day	$2,000
31st Day and beyond	$3,000

116. Stipulated penalties under this Consent Agreement shall begin to accrue on the calendar day after performance is due or on the calendar day that a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated penalties shall accrue simultaneously for separate violations of this Agreement.

117. Respondent shall pay stipulated penalties to EPA within 30 Days of the date of a written demand by EPA. Stipulated penalties shall be paid as set forth in Paragraph 141.

118. If Respondent fails to pay stipulated penalties according to the terms of this Consent Agreement, Respondent shall be liable for interest, at the same rate as specified in Paragraph142, on such penalties accruing as of the date payment became due. Nothing in this Paragraph shall be construed to limit EPA from seeking any remedy otherwise provided by law for Respondent's failure to pay any stipulated penalties.

119. The payment of penalties and interest, if any, shall not alter in any way Respondent's obligation to complete the performance of the requirements of this Consent Agreement.

120. Non-Exclusivity of Remedy. Stipulated penalties are not EPA's exclusive remedy for violations of this Consent Agreement. EPA expressly reserves the right to seek any other relief it deems appropriate for Respondent's violation of this Agreement or applicable law, including but not limited to an action against Respondent for penalties, additional compliance, and mitigation or offset

measures. However, the amount of any penalty assessed for a violation of this Agreement shall be reduced by an amount equal to the amount of any stipulated penalty assessed and paid pursuant to this Agreement.

VII. SUBMITTAL, CERTIFICATION AND APPROVAL PROCEDURES

121. All notifications, plans, reports, and other documents that are required pursuant to this Agreement to be submitted or provided to EPA or to Respondent may be signed electronically, so long as Respondent uses a "particular electronic signature device" that complies with the requirements of 40 C.F.R. § 3.4(d). All such documents shall be submitted as requested by the EPA Project Manager and addressed as follows (sending a notification, plan, report, or other document via email alone is only acceptable if the party to whom such plan, report, or other document is being sent agrees in writing to delivery via email only):

EPA:

Linda Jacobson
U.S. Environmental Protection Agency
1595 Wynkoop St, 8ENF-RO-R
Denver, Colorado 80202-1129
jacobson.linda@epa.gov

Respondent:

Jennifer McCarter
Xcel Energy Services, Inc.
1800 Larimer Street, Suite 1300
Denver, CO 80202
Jennifer.McCarter@XcelEnergy.com

122. Any notification, report, certification, data presentation, or other document submitted by Respondent pursuant to this Agreement which makes any representation concerning Respondent's compliance or noncompliance with any requirement of this Agreement 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; and (b) the authorization specifies either an individual or

position having responsibility for overall operation of the Facility or relevant Facility activity. The certification required by this Paragraph 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:

123. Following the receipt of any document that requires EPA approval pursuant to this Consent Agreement, EPA will, in writing, via email, U.S. Mail, or overnight mail service: a) inform Respondent if the document is not Acceptable, which is the equivalent of disapproval for purposes of Paragraph 129 below; b) approve the document; c) approve document with specified conditions; d) approve part of the document and disapprove the remainder; or e) disapprove document. In the event of disapproval of any portion of the plan or other document, EPA will include a statement of the reasons for such disapproval in its response.

124. Any document or schedule approved by EPA, including those drafted by EPA, shall be automatically incorporated into this Agreement upon written approval by EPA.

125. Prior to written approval, no document or schedule shall be construed as approved and final, except as otherwise expressly provided in the Imminent Threat Subsection of this Agreement. Oral advice, suggestions, or comments given by EPA will not constitute an official approval, nor shall any oral approval or oral assurance of approval be binding on either party, except as otherwise expressly provided for in the Imminent Threat Subsection of this Agreement.

126. Upon receipt of EPA's approval, Respondent shall take all actions required by the document in accordance with the schedules and requirements of the document as approved.

127. Upon receipt of EPA's conditional approval or partial approval Respondent shall take all actions required by the conditionally approved document, or, with respect to a partially approved document, take all actions that EPA determines are technically severable from the disapproved portions of such document.

128. Upon receipt of EPA's disapproval, in whole or in part of any document, Respondent shall, within 14 Days or such other time as EPA agrees to in writing, incorporate or otherwise address each of EPA's comments and resubmit the document, or disapproved portion thereof, to EPA for approval.

129. Any stipulated penalties that begin to accrue due to the submission of a plan or other document that is disapproved by EPA in whole or in part, shall accrue during the period set forth in the Paragraph immediately above, but shall not be payable unless the re-submission is untimely or is again disapproved by EPA in whole or in part; provided that, if the original submitted document was not Acceptable, stipulated penalties applicable to the original document shall be due and payable notwithstanding the timeliness of any subsequent re-submission.

VIII. FORCE MAJEURE

130. Respondent shall perform the actions required under this Agreement within the time limits set forth or approved herein, unless the performance is prevented or delayed solely by a Force Majeure event. A Force Majeure event is defined as any event arising from a cause or causes beyond the control of Respondent, including their employees, agents, consultants, and contractors, which could not be overcome by due diligence, and which delays or prevents the performance of an action required by this Agreement within the specified time. A Force Majeure event does not include, inter alia, increased costs of performance, changed economic circumstances, changed labor relations, normal precipitation or climate events, changed circumstances arising out of the sale, lease or other

transfer or conveyance of title or ownership or possession of the Facility, or failure to obtain federal, state, or local permits.

131. If Respondent believes that a Force Majeure event has affected Respondent's ability to perform any action required under this Agreement, Respondent shall notify the EPA Project Manager in writing within 7 calendar days after the event. Such notice shall include a detailed description of the following:

a. the action or actions that have been affected;

b. the specific cause(s) of the delay;

c. the length or estimated duration of the delay; and

d. any measures Respondent has taken to prevent the delay, and any measures that are under way or planned by Respondent to minimize the delay, and a schedule for the implementation of such measures.

132. Respondent may provide any additional information Respondent believes supports its position that a Force Majeure event has affected its ability to perform an action required under this Agreement. Failure to provide timely and complete notification shall constitute a waiver of any claim of Force Majeure as to the event(s) in question.

133. If the EPA determines that a Force Majeure event has occurred, the deadline for the affected action(s) shall be extended by the amount of time of the delay caused by the Force Majeure event. Respondent shall coordinate with EPA to determine when to begin or resume the operations that have been affected by any Force Majeure event.

134. If the parties are unable to agree whether a Force Majeure event has occurred, or whether the length of time for any extension, Respondent may seek a resolution pursuant to the dispute resolution provisions of this Agreement.

135. In any dispute resolution proceeding, Respondent shall bear the burden of proving: that the noncompliance at issue was caused by circumstances entirely beyond the control of Respondent and any entity controlled by Respondent, including their contractors and consultants; that Respondent or any entity controlled by Respondent could not have foreseen and prevented such noncompliance; and the number of days of noncompliance that were caused by such circumstances.

IX. DISPUTE RESOLUTION

136. The dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes regarding this Agreement. The parties shall attempt to resolve any disagreements concerning this Agreement expeditiously and informally.

137. Informal Dispute Resolution. If Respondent objects to any EPA action taken pursuant to this Agreement, Respondent shall notify EPA in writing of its objection(s) within five business days after such action. EPA and Respondent shall have 21 days from EPA's receipt of Respondent's written objection(s) to resolve the dispute through informal negotiations (Negotiation Period). Upon request of Respondent, the Negotiation Period may be extended at the sole discretion of EPA. Any agreement reached shall be in writing and shall, upon signature by both parties, be incorporated into and become an enforceable part of this Agreement.

138. Formal Dispute Resolution. If the parties are unable to reach an agreement within the Negotiation Period, Respondent shall, within 14 days after the end of the Negotiation Period, submit a statement of position to EPA's Project Manager. EPA may, within 21 days thereafter, develop a statement of position and transmit the statements of position to the Director of the Enforcement, Compliance Assurance Division of EPA Region 8 (Division Director). The Division Director, on behalf of EPA, will issue a written decision on the dispute. The EPA's decision shall be incorporated into and become an enforceable part of this Agreement. Following resolution of the dispute

Respondent shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision.

139. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone, or affect in any way any obligation of Respondent under this Agreement not directly in dispute, unless EPA provides otherwise in writing. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of the Order. In the event that Respondent does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in section VI.K above.

X. PAYMENT OF CIVIL PENALTY

140. Pursuant to section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and after consideration of the facts known to EPA, EPA has determined that a civil penalty of $925,000.00 is appropriate to settle this matter.

141. Respondent consents and agrees to:

a. within thirty days of the Effective Date pay the civil penalty using any method provided on the following website https://www.epa.gov/financial/makepayment;

b. identify each payment with the docket number that appears on the Final Order in this matter; and

c. within 24 hours of payment email proof of payment to Ms. Jacobson at Jacobson.Linda@epa.gov and the Region 8 Regional Hearing Clerk at R8_Hearing_Clerk@epa.gov. Proof of payment means, as applicable, a copy of the check, confirmation of credit card or debit card payment, 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 docket number that appears on the Final Order.

142. In the event payment is not received by the specified due date, interest accrues from the Effective Date, not the due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until payment in full is received (on the 1st late day, 30 days of interest accrues).

143. In addition, a handling charge of $15 shall be assessed on the 31st Day from the Effective Date, and each subsequent 30-Day period that the debt, or any portion thereof, remains unpaid. In addition, a 6% per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 90 Days of the due date (the 121st Day from the Effective Date). Partial payments are first applied to handling charges, 6% penalty interest, late interest, and any balance is then applied to the outstanding principal amount.

144. Respondent agrees that penalties paid pursuant to this Consent Agreement shall never be claimed as a federal or other tax deduction or credit.

XI. OTHER TERMS AND CONDITIONS

145. Failure by Respondent to comply with any of the terms of this Agreement after the issuance of the Final Order shall constitute a breach of the Agreement and may result in referral of the matter to the United States Department of Justice for enforcement of this Agreement and for such other relief as may be appropriate, including the assessment of civil penalties of up to the statutory maximum for each day of continued noncompliance with the Agreement, as provided in section 3008(c) of the Act, 42 U.S.C. § 6928(c), as amended from time to time pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, Public Law 101–410, 28 U.S.C. 2461, and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Section 701 of Pub. L. 114–74).

146. Nothing in this Consent Agreement shall be construed as a waiver by EPA of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondent's failure to perform pursuant to the terms of this Agreement.

147. Respondent waives any rights it may possess at law or in equity to challenge the authority of EPA to bring a civil action in a United States District Court to compel compliance with this Agreement and Final Order and to seek an additional penalty for such noncompliance and agrees that federal law shall govern in any such civil action.

148. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this Consent Agreement resolves Respondent's liability for federal civil penalties and compliance under Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), for only the violations and facts specifically alleged in this Agreement.

149. 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 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.

150. Nothing herein shall be construed to limit the power of 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.

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

152. The terms, conditions, and compliance requirements of this Agreement may not be modified or amended except upon the written agreement of the parties to this Agreement.

153. EPA reserves the right to revoke this Consent Agreement and the right to assess and collect additional civil penalties for any violation described herein, if EPA finds, after signing this Agreement, that any information provided by Respondent was materially false or inaccurate at the time such information was provided to EPA. EPA shall give Respondent written notice of its intent to revoke, which shall not be effective until received by Respondent.

154. This Consent Agreement may be signed in any number of counterparts, each of which will be deemed an original and, when taken together, constitute one Agreement. The counterparts are binding on each of the parties individually as fully and completely as if the parties had signed one single instrument, so that the rights and liabilities of the parties will be unaffected by the failure of any of the undersigned to execute any or all of the counterparts; any signature page and any copy of a signed signature page may be detached from any counterpart and attached to any other counterpart of this Agreement.

155. Each party shall bear its own costs and attorneys' fees in connection with all issues associated with this Consent Agreement.

156. For purposes of the identification requirement in section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), and 26 C.F.R. § 1.162-21(b)(2), performance of the requirements in the Compliance Order Section of this Agreement, is restitution, remediation, or required to come into compliance with the law.

157. The signatories to this Agreement certify that they are authorized to execute and legally bind the party they represent to this Consent Agreement.

158. The undersigned representatives of the parties to this administrative action consent to service of the Final Order in this matter by e-mail at the following valid e-mail addresses:

For Complainant: figur.charles@epa.gov

For Respondent: jon.h.bloomberg@xcelenergy.com

XII. EFFECTIVE DATE AND TERMINATION

159. Respondent and Complainant agree to the issuance of a Final Order in this matter. Upon filing of this Agreement with the Region 8 Regional Hearing Clerk, EPA will transmit a copy of the as-filed Consent Agreement to the Respondent. The Regional Hearing Clerk will transmit this Agreement to the Regional Judicial Officer with the request of the parties that a final order be issued. The Consent

Agreement and Final Order shall become effective on the date the Regional Judicial Officer issues the Final Order and files the Consent Agreement and Final Order with the Regional Hearing Clerk.

160. Respondent may request in writing that EPA terminate this Agreement at any time beginning one year after the date of EPA's approval of the Compliance Order Completion Report. EPA may terminate this Agreement at its sole discretion depending on the totality of the circumstances at that time. EPA's agreement to terminate this Consent Agreement shall not be unreasonably withheld and EPA will determine whether to agree to termination and communicate its decision to Respondent in writing and as expeditiously as possible.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY REGION 8,
Complainant.

JANICE PEARSON Digitally signed by JANICE PEARSON
Date: 2022.05.09 08:08:06 -06'00'

Signature and date
Janice Pearson, Chief
RCRA/OPA Enforcement Branch
Enforcement and Compliance Assurance Division

PUBLIC SERVICE COMPANY OF COLORADO,
Respondent.

Jeff West Digitally signed by Jeff West
Date: 2022.05.04 08:10:55 -06'00'

Signature and date
Jeffrey L. West
Senior Director, Environmental Services
Respondent's Federal Tax Id. No.: 84-0296600

CERTIFICATE OF SERVICE

The undersigned certifies that the attached **CONSENT AGREEMENT** and the **FINAL ORDER** in the matter of **PUBLIC SERVICE COMPANY OF COLORADO, COMANCHE STATION; DOCKET NO.: RCRA-08-2022-0008** were sent via certified receipt email on May 20, 2022, to:

Respondent

Jon Bloomberg
Assistant General Counsel
Xcel Energy
jon.h.bloomberg@xcelenergy.com

EPA Region 8

Chuck Figur
Senior Assistant Regional Counsel
Office of Regional Counsel
Figur.charles@epa.gov

EPA Financial Center

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

May 20, 2022

KATHERINE TRIBBETT
Digitally signed by KATHERINE TRIBBETT
Date: 2022.05.20 13:40:24 -06'00'

Kate Tribbett
Acting Regional Hearing Clerk