UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

IN THE MATTER OF:	**CONSENT AGREEMENT**
Public Service Company of Colorado (Cherokee Station), Respondent.	Docket No. RCRA-08-2024-0014 Proceeding under Sections 3008(a) of the Resource Conservation and Recovery Act as amended, 42 U.S.C. § 6928(a).

I. INTRODUCTION

1. This consent agreement (Consent Agreement, or 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, 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 of RCRA, 42 U.S.C. § 6928 (Section 3008) has been delegated to the undersigned Manager of the 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. PSCo owns and operates the Cherokee Generating Station, 6198 Franklin St., Denver, CO 80216 (Facility).

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 herein is the most appropriate means of resolving this matter, consent to the entry of this Consent Agreement, and the final order that may be issued by the Regional Judicial Officer for Region 8 ratifying this Agreement (Final Order, or Order), and Respondent agrees to comply with the terms of this Consent Agreement upon issuance of a Final Order.

II. JURISDICTION

5. Section 4005(d)(4)(A) of RCRA, 42 U.S.C. § 6925(d)(4)(A) (section 4005(d)(4)(A)), specifies that the EPA Administrator may use the authority set forth in section 3008 of RCRA to enforce the prohibition on open dumping under section 4005(a) of RCRA, 42 U.S.C. § 6945(a) (section 4005(a)), with respect to coal combustion residuals units.
6. Pursuant to section 4005(a) of RCRA, 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 criteria 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, and are expected to be amended from time to time during implementation of this Agreement.
8. Section 3008(a) of RCRA 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. Respondent 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 (Final Order) pursuant to 40 C.F.R. §§ 22.4(b) and 22.18(b).
11. The issuance of this Consent Agreement and the 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 regulation of the handling of solid wastes and hazardous 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 regulation of the handling 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 with respect to CCR. *See*, 42 U.S.C. § 6945(d)(4).

17. Section 4005(d)(4)(A)(i) of RCRA 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. 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.

20. Respondent is a wholly owned subsidiary of Xcel Energy, Inc., a publicly traded corporation organized under the laws of Minnesota.

21. Respondent is a "person" as defined in section 1004(15) of the Act, 42 U.S.C. § 6903(15).

22. The Facility was initially built as a coal-fired plant in 1968. It ceased burning coal in August 2017. Today it is a gas-fired plant comprised of two combustion turbines, two heat recovery steam generators and a steam turbine, and is capable of producing nearly 580 megawatts of energy. The facility is immediately adjacent to the South Platte River and within a Region 8-identified place-based environmental justice area.

23. Cherokee Station has four CCR units subject to the CCR Rule: the former West, Center, and East ash impoundments (CCR Impoundments), and the former Cooling Tower Retention Pond (CTRP).

24. The CTRP was closed in 2017 and the CCR Impoundments were closed in 2018. Each was closed by removal of CCR pursuant to 40 C.F.R. § 257.102(c). Groundwater monitoring is ongoing for the CCR Impoundments and the CTRP.

25. Each CCR Impoundment and the CTRP is a "CCR unit" as defined at 40 C.F.R. § 257.53 (CCR Units).

26. Respondent was, at all relevant times, and is the owner and operator of the CCR Units.

V. VIOLATIONS

COUNT I

Failure to Properly Prepare Annual Groundwater Monitoring Reports

27. 40 C.F.R. § 257.90(e) requires owners and operators of CCR units to prepare annual groundwater monitoring and corrective action reports starting on January 31, 2018.

> "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 (5) Other information required to be included in the annual report as specified in §§ 257.90 through 257.98." (emphasis added)

28. 40 C.F.R. § 257.93(a) requires that "the groundwater monitoring program must include consistent sampling and analysis procedures that are designed to ensure monitoring results that provide an accurate representation of groundwater quality at the background and downgradient wells required by § 257.91."

29. Until updated by Respondent on January 15, 2024, and posted on Respondent's CCR website on February 22, 2024, the 2018 through 2022 Annual Reports did not include field groundwater sampling logs for wells sampled during the prior year.

30. 40 C.F.R. § 257.93(f) requires that the owner or operator of a CCR unit "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."

31. Until updated by Respondent on January 15, 2024, and posted on Respondent's CCR website on February 22, 2024, the 2018 through 2021 annual reports did not include copies of statistical reports. The 2022 annual report did include a statistical report but did not include a full description of all the statistical parameters used in calculation of lower confidence limits for Appendix IV constituents.

32. Respondent's failure to include field groundwater sampling logs and statistical reports that contained all required information are violations of 40 C.F.R. § 257.90(e).

COUNT II

Failure to Accurately Represent Background Groundwater Quality and Failure to Use Statistical Methods as Effective as Any Other Approach

33. 40 C.F.R. § 257.93(a) requires that the "groundwater monitoring program must include consistent sampling and analysis procedures that are designed to ensure monitoring results that provide an accurate representation of groundwater quality at the background and downgradient wells required by § 257.91."

34. Respondent included analytical results from monitoring well 14 (MW-14) that were impacted by CCR Unit activities at the Facility in its assessment of the quality of background groundwater. These results should have been sequestered from the statistical background dataset.

35. Respondent updated the background values for the CTRP, established by MW-14, as reflected in the 2023 Cherokee Station CCR Annual Groundwater Report.

36. 40 C.F.R. § 257.93(g)(4) requires that "[i]f a tolerance interval or a prediction interval is used to evaluate groundwater monitoring data, the levels of confidence and, for tolerance intervals, the percentage of the population that the interval must contain, shall be such that this approach is at least as effective as any other approach in this section for evaluating groundwater data."

37. Respondent utilized a combination of (i) an automated hierarchy for selecting a gamma distributional model over an untransformed, normal model when the data set fits both a gamma and an untransformed, normal model and exhibits symmetry to mild skewness; and (ii) a practice of averaging results over the multiple gamma methods to create a pooled estimate of the background parameter.

38. This allowed Respondent to select higher, gamma-based tolerance or prediction limits over the normal, untransformed tolerance or prediction limit even when the normal, untransformed model was also identified as "best fit." The statistical methods utilized by Respondent, therefore, were not "as effective as any other approach".

39. Respondent revised the statistical calculation methodology to address EPA's comments, as reflected in the 2023 Cherokee Station CCR Annual Groundwater Report.

40. Respondent's failure to ensure monitoring results that provide an accurate representation of groundwater quality at background well MW-14 and failure to use statistical methods that were as effective as any other approach are violations of 40 C.F.R. §§ 257.93(a) and (g)(4).

COUNT III

Failure to Meet Groundwater Monitoring System Performance Standards

41. 40 C.F.R. § 257.91, subsections (a), (b), (c) and (f) require:

"(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. The groundwater monitoring system must contain: (1) A minimum of one upgradient and three downgradient monitoring wells; and (2) Additional monitoring wells as necessary to accurately represent the quality of background groundwater that has not been affected by leakage from the CCR unit and the quality of groundwater passing the waste boundary of the CCR unit.

"(f) The owner or operator must obtain a certification from a qualified professional engineer … stating that the groundwater monitoring system has been designed and constructed to meet the requirements of this section. If the groundwater monitoring system includes the minimum number of monitoring wells specified in paragraph (c)(1) of this section, the certification must document the basis supporting this determination."

42. 40 C.F.R. § 257.93(d) requires that:

"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)."

43. Respondent did not investigate the geologic formations beneath the dry alluvium at the CCR Units from 2017 until 2023.

44. Since December 2018, after closure of the CCR Impoundments, two of the of the three downgradient wells at the CCR Impoundments (MW-8 and MW-9) did not contain enough water to sample and analyze during any semi-annual sampling event, with the exception of MW-8 in May 2023. Respondent, therefore, was not using a minimum of three wells to monitor all contaminant pathways at the CCR Impoundments.

45. Respondent used MW-14 to establish background groundwater quality for the CTRP even though MW-14 was impacted by leakage from one or more CCR Units at the Facility, and the data, therefore, did not accurately represent background groundwater quality.

46. Respondent did not update the professional engineer's certification at any time after two of the three downgradient wells at the CCR Impoundments went dry.

47. In June 2023, Respondent completed three additional downgradient monitoring wells at the CCR Impoundments. The CCR Impoundments monitoring network currently consists of six downgradient monitoring wells, four of which consistently have sufficient amounts of water to sample and analyze, and two upgradient monitoring wells.

48. Respondent's failure to investigate geologic formations beneath the dry alluvium, to use a minimum of three wells to monitor all contaminant pathways at the CCR Impoundments, to establish background groundwater quality for the CTRP not

impacted by leakage from one or more CCR Units, and to update the professional engineer's certification after two of the three downgradient wells went dry, are violations of 40 C.F.R. § 257.91.

VI. COMPLIANCE ORDER

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

A. GENERAL REQUIREMENTS

50. "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.
51. "Day" is defined to mean calendar day unless otherwise specifically stated.
52. Respondent presently is conducting detection and assessment monitoring at the CCR Impoundments and the CTRP.
53. As of the Effective Date of this Agreement, Respondent has not identified concentrations of any Appendix IV constituents at levels above groundwater protection standards at the CTRP. If Respondent identifies concentrations of any Appendix IV constituent above groundwater protection standards at the CTRP at any time after the Effective Date and prior to EPA acceptance of the Compliance Order Completion Report for the CCR Impoundments (see Paragraph 79), Respondent shall comply with

Paragraph 65.c of this Agreement regarding any alternate source demonstration. If an alternate source is not demonstrated, Respondent shall:

a. assess corrective measures pursuant to 40 C.F.R. § 257.96(a);

b. submit an assessment of corrective measures report for the CTRP that meets the requirements of 40 C.F.R. § 257.96(c) and includes a description of all remaining remedy evaluation activities;

c. summarize remedy evaluation activities undertaken during the quarter in the quarterly reports required under Paragraph 55;

d. notify EPA no later than 7 days after the earlier of the completion of all remedy evaluation activities, or Respondent's determination that enough information has been obtained through the evaluation activities to support remedy selection;

e. hold the public meeting required pursuant to 40 C.F.R. § 257.96(e) no later than 90 days after notification to EPA pursuant to subparagraph d above, and at least 21 Days prior to the date of the public meeting notify EPA of the date, time, and location of the public meeting so that EPA can attend, at its discretion, and

f. No later than 90 Days after the public meeting held pursuant to Subparagraph e above, Respondent shall submit a proposed "final report" for the CTRP as set forth in 40 C.F.R. § 257.97(a). (CTRP Remedy Implementation Plan) for EPA comment. The CTRP Remedy Implementation Plan must include a description of Respondent's assessment of each factor in 40 C.F.R. §§ 257.97(b), (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). If EPA provides comments and Respondent does not incorporate one or more of EPA's comments into the CTRP Remedy Implementation Plan, Respondent shall include a list of the unincorporated comment(s) as an attachment to the final CTRP Remedy Implementation Plan.

54. Upon EPA acceptance of the Compliance Order Completion Report under Paragraph 79, Respondent is no longer required to comply with the requirements of Paragraph 53 above with regard to the CTRP. Subject to Paragraph 80 below, Respondent must continue to comply with the quarterly reporting requirements until this Agreement is terminated and with the CCR Regulations.

55. Quarterly Reports. Beginning the second full calendar month after the Effective Date (*see* Section XII) Respondent shall submit quarterly progress reports to EPA. (The first quarterly report will cover less than a full calendar quarter.)

    a. Each quarterly report shall be submitted no later than the 10th Day of the first month of the next quarter.

    b. Each quarterly report shall include detailed updates on the status and performance of all activities required to be undertaken pursuant to Sections VI.A-E of this Agreement, including all groundwater sampling results finalized during the quarter.

    c. Each quarterly report also shall contain: a summary of the developments during the prior quarter for which notification is required pursuant to Paragraph 58 of this Agreement, and remedy evaluation activity updates pursuant to Paragraph 53 (as applicable) and Paragraph 68 of this Agreement.

56. Health and Safety Plans. All work performed under this Agreement shall be conducted pursuant to one or more Health and Safety Plans (HASP) that specify personal protective equipment and other requirements that meet all applicable OSHA requirements for each task. 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.

57. Retention of Professional Consultants**.** Respondent shall retain one or more professional consultants to design all plans required pursuant to this Agreement. Within 14 Days of the Effective Date Respondent shall notify EPA of the names, titles, addresses, telephone numbers, email addresses, and qualifications of such consultants, and shall renotify EPA within 7 calendar days of any proposed changes. If EPA notifies Respondent that it disapproves of a selected consultant, Respondent shall propose a different consultant and shall notify EPA of the names, titles, addresses, telephone numbers, email addresses, and qualifications of such consultant(s) within 14 Days of EPA's disapproval. The qualifications of the consultant(s) undertaking the work for Respondent shall be subject to EPA's review 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 shall not excuse noncompliance with the schedules or other requirements of this Agreement.

58. Submittals and Notifications.

a. Respondent shall submit a copy of the following documents and information by email to the EPA contact within 7 Days after the deadline for the generation or finalization if no deadline for submittal is specified in the CCR Regulations.

1. Annual groundwater monitoring and corrective action report (40 C.F.R. § 257.90(e)).
2. Suspension of groundwater monitoring documentation (40 C.F.R. § 257.90(g)).
3. Groundwater sampling and analysis program plan (40 C.F.R. § 257.93(a)).
4. Alternative monitoring frequency demonstration (40 C.F.R. §§ 257.94(d) or 257.95(c)).
5. Alternative source demonstration (40 C.F.R. § 257.94(e)(2)).
6. Notification of establishment of assessment monitoring program (40 C.F.R. § 257.94(e)(3)).
7. Notification of constituents in appendix IV that have exceeded the groundwater protection standard (40 C.F.R. § 257.95(g)).
8. Alternative source demonstration (40 C.F.R. § 257.95(g)(3)(ii)).
9. Notification of initiation of assessment of corrective measures (40 C.F.R. § 257.95(g)(5)).
10. Assessment of corrective measures report (40 C.F.R. § 257.96(a)).

b. All notifications required pursuant to 40 C.F.R. § 257.106 to be provided to the State Director shall be submitted simultaneously to EPA.

c. When a document or information that is not required to be submitted to EPA pursuant to Paragraph 58.a above is placed into the facility operating record

pursuant to 40 C.F.R. § 257.105 or is placed on Respondent's CCR web site pursuant to 40 C.F.R. § 257.107, Respondent will notify EPA within three Days (not counting weekends and federal holidays) of such placement. Respondent also will include this notification in its next quarterly report.

B. ADDITIONAL WORK

59. 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.

60. 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.

61. 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.

62. 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 45 Days of receipt of EPA's determination that additional work is to be performed or 45 Days after the opportunity to meet and confer with EPA pursuant to Paragraph 61, whichever is later, unless an extension has been requested by Respondent and approved by EPA in writing.

63. Upon receipt of EPA's written 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.

C. GROUNDWATER MONITORING SYSTEM, GROUNDWATER ANALYSIS, AND REPORTING

64. Groundwater Statistical 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 below. The proposed GSA plan shall contain all information regarding how Respondent proposes to complete the statistical analysis required under 40 C.F.R. § 257.93(f) - (i).

65. Assessment Monitoring.

a. Respondent has initiated assessment monitoring at the CCR Impoundments and the CTRP.

b. During assessment monitoring, Respondent may propose to return to detection monitoring pursuant to 40 C.F.R. § 257.95(e) by submitting a detection monitoring notification to EPA. Respondent may not return to detection monitoring until EPA approves the detection monitoring notification and the notification is placed in the operating record. If the EPA has not responded within 30 Days of Respondent submitting the notification, Respondent may return to detection monitoring.

c. Respondent shall provide EPA email notification of sampling at least 7 Days prior to the collection date, and Respondent shall (i) allow oversight of each sampling event by EPA or a representative of EPA, including contractors; and (ii) upon request from EPA, provide split samples to the Agency. If EPA notifies Respondent that a person representing EPA is expected to attend the sampling event, Respondent must notify EPA immediately upon any change to the sampling event schedule.

d. After the Effective Date, and within 14 Days of first detecting an Appendix IV constituent at a statistically significant level above groundwater protection standards at the CTRP, Respondent shall inform EPA by email whether it intends to prepare an alternate source 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, 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 the constituent at a statistically significant level over background, Respondent shall initiate assessment of corrective measures immediately after the 90 Day period is complete.

D. ASSESSMENT OF CORRECTIVE MEASURES

66. Respondent has identified concentrations of lithium at statistically significant levels over the groundwater protection standard for lithium at the CCR Impoundments and has initiated an assessment of corrective measures for the CCR Impoundments.

67. Respondent's assessment of corrective measures report for the CCR Impoundments was posted to the public website for CCR activities at the Facility on July 1, 2024 (ACM Report). The ACM Report contemplates additional remedy evaluation activities and semi-annual reporting on these activities (*see, e.g.,* ACM Report section 5.6).

68. Until EPA has approved a Remedy Implementation Plan for the CCR Impoundments pursuant to Paragraph 72, Respondent shall include a summary of the additional remedy evaluation activities outlined in section 5.6 of the ACM Report in the quarterly reports prepared pursuant to Paragraph 55 of this Agreement.

69. Respondent shall notify EPA no later than 7 Days after the earlier of: the completion of all remedy evaluation activities, or Respondent's determination that enough information has been obtained through the evaluation activities to support remedy selection.

70. Respondent shall hold the public meeting required pursuant to 40 C.F.R. § 257.96(e) no later than 90 Days after notification to EPA pursuant to Paragraph 69 above. 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.

E. SELECTION AND IMPLEMENTATION OF REMEDY

71. EPA recommends, but does not require, that Respondent consult with EPA during the remedy selection process.

72. No later than 90 Days after the public meeting held pursuant to Paragraph 70 above, Respondent shall submit a proposed "final report" as set forth in 40 C.F.R. § 257.97(a) (Remedy Implementation Plan) for EPA approval, which approval shall not be unreasonably withheld. The Remedy Implementation Plan must include a description of Respondent's assessment of each factor in 40 C.F.R. §§ 257.97(b), (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). If a long-term remedy (which may be a set of remedies), is selected for the CCR Impoundments, Respondent may also propose to define "remedy success indicators" in the Remedy Implementation Plan, which are data and other information that can indicate that remedy success is highly likely to be achieved for the CCR Impoundments solely by continued implementation of the remedy prior to completion of the selected remedy.

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

74. If, at any time prior to placement of the Compliance Order Completion Report on the CCR website pursuant to Paragraph 79, 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 of Respondent's notification to EPA, 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.

75. Respondent's implementation of the Remedy Implementation Plan(s) shall be complete when the conditions in either subparagraph a or b are met.

    a. Respondent 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) and the Remedy Implementation Plan for the CCR Impoundments; Respondent 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 for the CCR Impoundments; and Respondent has placed the remedy completion report for the CCR Impoundments in the operating record and on its CCR website, and notified the State Director; or

b. Respondent submits a Remedy Appraisal Report for the CCR Impoundments to EPA that demonstrates that remedy success indicators defined in the Remedy Implementation Plan are met; EPA approves the Remedy Appraisal Report; and Respondent has placed the Remedy Appraisal Report for the CCR Impoundments in the operating record and on its CCR website.

F. RECORDKEEPING

76. Respondent shall:

a. maintain files of all information required by 40 C.F.R. § 257.105 at the Facility 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 (access to information by Respondent's personnel at the Facility to information maintained by Respondent in electronic form meets these requirements);

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 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 Sections VI.A-E of this 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:

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

and by email to the EPA contact named in Paragraph 87; 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 written or email request from EPA.

G. PUBLICLY ACCESSIBLE INTERNET SITE REQUIREMENTS

77. Respondent shall 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 under this Agreement.

H. COMPLETION OF WORK

78. Within 60 Days of placement of the Remedy Completion Report or Remedy Appraisal Report on Respondent's CCR website, Respondent shall submit to EPA for approval, which approval shall not be unreasonably withheld, a Compliance Order Completion Report summarizing the work performed pursuant to Sections VI.A-E, including any ongoing activities such as long-term groundwater monitoring.

79. Upon written notification from EPA that the Compliance Order Completion Report is accepted and placement of the Compliance Order Completion Report on the CCR Website, Respondent may cease work under this Consent Agreement and seek termination of this Agreement pursuant to Section XII.

80. 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 quarterly reports until Respondent requests, and EPA agrees, that quarterly reporting can be suspended, or until this Agreement is terminated pursuant to Section XII of this Agreement.

I. STIPULATED PENALTIES

81. The following stipulated penalties shall accrue daily for each 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

82. Stipulated penalties under this Consent Agreement shall begin to accrue on the 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.

83. Respondent shall pay stipulated penalties to EPA within 30 Days of the date of a written demand by EPA, and shall be paid as set forth in Paragraph 108.

84. 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 Paragraph 109, 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.

85. 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.

86. 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

87. All notifications, plans, reports, and other documents that are required pursuant to this Agreement to be submitted or provided to EPA or 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 via email to the maximum extent practicable. Respondent shall provide courtesy hard copy by regular mail of any document requested by the EPA project manager at the address below.

EPA:

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

Respondent:

Primary Contact:

Jason Bell
Xcel Energy Services, Inc.
1800 Larimer St, Suite 1300
Denver, CO 80202
Jason.c.bell@xcelenergy.com

Secondary Contact:

Matthew Somogyi
Xcel Energy Services, Inc.
1800 Larimer, Suite 1300
Denver, CO 80202
matthew.somogyi@xcelenergy.com

88. 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 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:

89. Following the receipt of any work plan, report (except quarterly reports), specification, or schedule that requires EPA approval pursuant to this Agreement, EPA will provide, in writing: a) approval; b) approval of the document with specified conditions or modifications; c) approval of part of the document and disapproval of the remainder; d) rejection as not Acceptable; or e) disapproval with comments and/or modifications. Other than when providing approval, EPA will include a statement of the reasons for not approving in its response.

90. EPA may reject in writing and not comment on any submittal which EPA determines is not Acceptable. Submittal of a document which is not acceptable is a violation of this Agreement, unless such document is resubmitted prior to or on the due date for each submittal and EPA determines that the resubmitted document is Acceptable.

91. If EPA provides written comments, Respondent shall revise the submittal in accordance with EPA's comments and submit the revised submittals within 15 Days upon receipt of EPA written comments. Following the receipt of the revised submittal, EPA will provide, in writing: a) approval; b) approval of the document with specified conditions or modifications; c) approval of part of the document and disapproval of the remainder; d) rejection as not Acceptable; or e) disapproval with comments and/or

modifications. Other than when providing approval, EPA will include a statement of the reasons for not approving in its response.

92. Any document or schedule approved by EPA, including those drafted by EPA, shall be automatically incorporated into this Agreement upon written approval by EPA. Schedules or deadlines may be extended by written approval from EPA, including via e-mail.

93. Prior to written approval, no submittal shall be construed as approved and final. Oral advice, suggestions, or comments given by EPA will not constitute an official approval, nor shall oral approval or oral assurance of approval be binding on either party.

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

95. 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.

96. Any stipulated penalties that begin to accrue due to the late submission of a plan or other document that is disapproved by EPA in whole or in part, shall accrue, 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

97. 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.

98. 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 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.

99. 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.

100. 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.

101. 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.

102. 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

103. 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. If Respondent timely initiates dispute resolution and EPA determines that Respondent remains in non-compliance after the conclusion of the dispute resolution process, EPA may (but is not required to) initiate an enforcement action, including referral of the non-compliance

to the Department of Justice pursuant to Paragraph 112. If Respondent does not timely initiate dispute resolution EPA may (but is not required to) initiate an enforcement action, including referral of non-compliance to the Department of Justice pursuant to Paragraph 112.

104. Informal Dispute Resolution. If Respondent objects to any EPA action taken or notice given 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.

105. 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.

106. 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.I above.

X. PAYMENT OF CIVIL PENALTY

107. 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 $134,500.00 is appropriate to settle this matter.

108. 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 properly made, in the amount due, and identified with the docket number that appears on the Final Order.

109. 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).

110. 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.

111. 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

112. Failure by Respondent to comply with any of the terms of this Agreement after the issuance of the Final Order, and completion of dispute resolution if timely initiated, 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).

113. 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.

114. 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.

115. 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.

116. 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.

117. 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.

118. 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.

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

120. 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, after signing this Agreement EPA finds 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 the sixth Day after the date the notice is received by Respondent. Upon receipt of notice from EPA, Respondent may initiate dispute resolution pursuant to Section IX of this Consent Agreement. If Respondent timely initiates dispute resolution, revocation will not be complete until the conclusion of the dispute resolution process.

121. 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.

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

123. 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 portion of this Agreement, is restitution, remediation, or required to come into compliance with the law.

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

125. 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: Charles L. Figur, Attorney
Figur.charles@epa.gov

For Respondent: Jill H. Van Noord, Attorney
Jill.H.Van.Noord@xcelenergy.com

XII. EFFECTIVE DATE AND TERMINATION

126. 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 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 ratifying this Agreement. The Consent Agreement and Final Order shall become effective on the date the Regional

Judicial Officer issues a Final Order and files the Consent Agreement and Final Order with the Regional Hearing Clerk.

127. Respondent may request in writing that EPA terminate this Agreement at any time 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.

Susarla, Sridhar Digitally signed by Susarla, Sridhar
Date: 2024.09.23 15:18:07 -06'00'

Sridhar Susarla, Manager
RCRA/OPA Enforcement Branch
Enforcement and Compliance Assurance Division

PUBLIC SERVICE COMPANY OF COLORADO,
Respondent.

Robert S. Kenney September 23, 2024

Robert S. Kenney
President
Public Service Company of Colorado
Respondent's Federal Tax Id. No.: 84-0296600