

FILED
Sep 27, 2024
11:51 am
U.S. EPA REGION 3
HEARING CLERK

[illegible]

FEDERAL FACILITY COMPLIANCE AGREEMENT

Docket No. CWA-03-2024-0147FF

to the requirements of NPDES Permit No. WV0105112 governing discharges of wastewater to the Potomac River.

SECTION II. JURISDICTION

2. The EPA and Respondent enter into this Agreement pursuant to the Clean Water Act, 33 U.S.C. §§ 1251-1387, and Executive Order No. 12088, to achieve and maintain compliance with the CWA.

SECTION III. PARTIES

3. The Parties to this FFCA are the EPA and Respondent.
4. Respondent operates the National Conservation Training Center, the “home” of the U.S. Fish and Wildlife Service and training center for Respondent’s employees and partners. Respondent is a bureau of the Department of the Interior funded through Congressional legislation.
5. In accordance with Section 313(a) of the CWA, 33 U.S.C. § 1323, Respondent is a Bureau in the Department of Interior which is a department of the Executive Branch and is engaged in an activity that results, or may result, in the discharge of pollutants and is subject to the requirements of the CWA, any permit issued pursuant to the CWA and to the exercise of administrative authority pursuant to the CWA.
6. Respondent’s officers, agents, contractors, employees, and all persons, departments, agencies, firms, and corporations in active concert or participation with them will take all necessary steps to ensure compliance with the provisions of this Agreement. Respondent shall give written notice of this FFCA to any prospective successor in interest. At least ninety (90) calendar days prior to transfer of ownership or operation of the Facility, Respondent shall give written notice of such transfer or change in

ownership or operation to the EPA Project Manager identified in Section XIV (Designated Project Managers), below.

7. The undersigned representative of each Party to this Agreement certifies that s/he is fully authorized by the Party whom s/he represents to enter into the terms and conditions of this Agreement and to execute and legally bind that Party to it. On Respondent's behalf, Steven Chase, National Conservation Training Center Director, is the responsible authority to enter into the Agreement on behalf of Respondent.

SECTION IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

8. For the purposes of this Agreement, the following constitutes a summary of the findings upon which this Agreement is based. The facts related herein shall not be considered admissions by any Party. This section contains findings of fact determined solely by the Parties and shall not be used by any person related or unrelated to this Agreement for purposes other than determining the basis of this Agreement.
9. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant into the waters of the United States by any person, except in compliance with, among other specified sections of the CWA, a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.
10. Section 402(a) of the CWA, 33 U.S.C. § 1342(a), provides that the Administrator of the EPA may issue permits under the NPDES program for the discharge of any pollutant into the waters of the United States upon such specific terms and conditions as the Administrator may prescribe. Each violation of an NPDES permit, and each discharge of pollutant that is not authorized by an NPDES permit, constitutes a violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).
11. The West Virginia Department of Environmental Protection (WVDEP) is authorized to

issue NPDES Permits for discharges to waters of the United States within its borders under Section 402(b) of the CWA, 33 U.S.C. § 1342(b). The EPA authorized West Virginia's NPDES program on March 31, 1975.

12. WVDEP issued NPDES Permit No. WV0105112 to the Facility on December 1, 2017, with an expiration date of October 17, 2022 (NPDES Permit #1). NPDES Permit #1 was administratively extended until November 1, 2022, when a renewed NPDES Permit No. WV0105112 (NPDES Permit #2), was issued by WVDEP and became effective, with an expiration date of September 15, 2027. For purposes of this Agreement, unless noted otherwise, NPDES Permit #1 and NPDES Permit #2 are jointly referred to as "the Permit."
13. The Permit regulates discharges of treated industrial wastes such as cooling tower blowdown, cafeteria wastewater, laundry service wastewater, and sanitary wastewater from the Facility into the Potomac River from Outfall 001; direct discharges of untreated storm water into the Potomac River from Outfall 002; and direct discharges of untreated storm water into an unnamed tributary connected to the Potomac River from Outfalls 004 – 009 (there is no Outfall 003).
14. The Potomac River is a traditional navigable water, and therefore the discharges are to waters of the United States within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7).
15. Relevant Permit Requirements:
 - a. Part I (Effluent Limitations and Monitoring Requirements) of the Permit defines limitations and monitoring requirements for effluent discharged from Outfalls 001, 002, and 004 – 009 (Effluent). Such limitations include limitations on total recoverable copper (Copper Limitations), total recoverable zinc (Zinc Limitations), total suspended solids (TSS Limitations), Biochemical Oxygen Demand (BOD

Limitations), fecal coliform (Fecal Coliform Limitations), and chlorine (Chlorine Limitations).

- i. Under NPDES Permit #1, the Copper Limitations required that the monthly average concentration of copper in effluent not exceed 0.012 mg/L. Under NPDES Permit #2, the Copper Limitations require that the monthly average copper concentration in effluent not exceed 0.023 mg/L. Under NPDES Permit #1, the Copper Limitations required that the daily maximum concentration of copper in effluent not exceed 0.023 mg/L.
- ii. Under NPDES Permit #1, the Zinc Limitations required that the monthly average concentration of zinc in effluent not exceed 0.075 mg/L. Under NPDES Permit #2, the Zinc Limitations require that the monthly average concentration of zinc in effluent not exceed 0.203 mg/L. Under NPDES Permit #1, the Zinc Limitations require that the daily maximum concentration of zinc in effluent not exceed 0.194 mg/L.
- iii. Under both Permit #1 and Permit #2, the TSS Limitations require that at least 85% of total suspended solids are removed from effluent; that the concentration of total suspended solids in effluent not exceed a daily maximum limit of 60 mg/L or a monthly average limit of 30 mg/L; and that the quantity of total suspended solids in effluent not exceed a daily maximum limit of 41.1 lbs/day or a monthly average maximum limit of 20.5 lbs/day.
- iv. Under both Permit #1 and Permit #2, the BOD Limitations require that the monthly average minimum percentage of BOD removed from effluent is at least 85%; that the amount of oxygen required by bacteria to break down organic material in effluent not exceed 41.1 lbs/day or a monthly average of

20.5 lbs/day, based on an 8-hour composite sample; and that the concentration of BOD constituents not exceed a daily maximum limit of 60 mg/L or a monthly average maximum limit of 30 mg/L.

- v. Under both Permit #1 and Permit #2, the Fecal Coliform Limitations require that the amount of fecal coliform in effluent not exceed a daily maximum limit of 400 fcu/L or a monthly geometric mean limit of 200 fcu/L.
- vi. Under both Permit #1 and Permit #2, the Chlorine Limitations require that the total residual concentration of chlorine in effluent not exceed a daily maximum limit of 0.057 mg/L or an average monthly limit of 0.028 mg/L.

- 16. On September 21 and 22, 2021, representatives of EPA contractors PG Environmental and Eastern Research Group (Inspectors) and representatives of the WVDEP conducted a Compliance Evaluation Inspection (Inspection) at the Facility.
- 17. From July 2019 through June 2024, Respondent electronically submitted to WVDEP, who then electronically submitted to the EPA, discharge monitoring report data (NetDMR Data) of the Effluent from Outlet Number 001 collected on a monthly basis from July 2019 through June 2024 (the Monitoring Periods).
- 18. The NetDMR Data for the Monitoring Periods documents that, for the specific Monitoring Periods ending on the dates listed below, Respondent was in violation of the Copper Limitations for Outfall 001 and thereby failed to comply with Part I of the Permit.

Table 1: Outfall 001 Copper Limitations Violations				
Monitoring Period End Date	Parameter	Limit	NetDMR Data Value	Limit Type
12/31/2019	Copper, total recoverable	0.012 mg/L	0.021 mg/L	MO AVG

1/31/2020	Copper, total recoverable	0.023 mg/L	0.03 mg/L	DAILY MX
1/31/2020	Copper, total recoverable	0.012 mg/L	0.03 mg/L	MO AVG
2/29/2020	Copper, total recoverable	0.023 mg/L	0.038 mg/L	DAILY MX
2/29/2020	Copper, total recoverable	0.012 mg/L	0.038 mg/L	MO AVG
3/31/2020	Copper, total recoverable	0.012 mg/L	0.017 mg/L	MO AVG
4/30/2020	Copper, total recoverable	0.012 mg/L	0.017 mg/L	MO AVG
5/31/2020	Copper, total recoverable	0.023 mg/L	0.033 mg/L	DAILY MX
5/31/2020	Copper, total recoverable	0.012 mg/L	0.033 mg/L	MO AVG
6/30/2020	Copper, total recoverable	0.023 mg/L	0.095 mg/L	DAILY MX
6/30/2020	Copper, total recoverable	0.012 mg/L	0.095 mg/L	MO AVG
7/31/2020	Copper, total recoverable	0.023 mg/L	0.049 mg/L	DAILY MX
7/31/2020	Copper, total recoverable	0.012 mg/L	0.049 mg/L	MO AVG
9/30/2020	Copper, total recoverable	0.012 mg/L	0.016 mg/L	MO AVG
1/31/2021	Copper, total recoverable	0.023 mg/L	0.079 mg/L	DAILY MX
1/31/2021	Copper, total recoverable	0.012 mg/L	0.079 mg/L	MO AVG
2/28/2021	Copper, total recoverable	0.023 mg/L	0.028 mg/L	DAILY MX
2/28/2021	Copper, total recoverable	0.012 mg/L	0.028 mg/L	MO AVG
3/31/2021	Copper, total recoverable	0.023 mg/L	0.0468 mg/L	DAILY MX
3/31/2021	Copper, total recoverable	0.012 mg/L	0.0468 mg/L	MO AVG

4/30/2021	Copper, total recoverable	0.023 mg/L	0.0292 mg/L	DAILY MX
4/30/2021	Copper, total recoverable	0.012 mg/L	0.0292 mg/L	MO AVG
5/31/2021	Copper, total recoverable	0.023 mg/L	0.057 mg/L	DAILY MX
5/31/2021	Copper, total recoverable	0.012 mg/L	0.057 mg/L	MO AVG
6/30/2021	Copper, total recoverable	0.023 mg/L	0.053 mg/L	DAILY MX
6/30/2021	Copper, total recoverable	0.012 mg/L	0.053 mg/L	MO AVG
7/31/2021	Copper, total recoverable	0.023 mg/L	0.068 mg/L	DAILY MX
7/31/2021	Copper, total recoverable	0.012 mg/L	0.068 mg/L	MO AVG
8/31/2021	Copper, total recoverable	0.023 mg/L	0.12 mg/L	DAILY MX
8/31/2021	Copper, total recoverable	0.012 mg/L	0.12 mg/L	MO AVG
9/30/2021	Copper, total recoverable	0.023 mg/L	0.14 mg/L	DAILY MX
9/30/2021	Copper, total recoverable	0.012 mg/L	0.14 mg/L	MO AVG
10/31/2021	Copper, total recoverable	0.023 mg/L	0.11 mg/L	DAILY MX
10/31/2021	Copper, total recoverable	0.012 mg/L	0.11 mg/L	MO AVG
11/30/2021	Copper, total recoverable	0.023 mg/L	0.16 mg/L	DAILY MX
11/30/2021	Copper, total recoverable	0.012 mg/L	0.16 mg/L	MO AVG
12/31/2021	Copper, total recoverable	0.023 mg/L	0.11 mg/L	DAILY MX
12/31/2021	Copper, total recoverable	0.012 mg/L	0.11 mg/L	MO AVG
1/31/2022	Copper, total recoverable	0.023 mg/L	0.11 mg/L	DAILY MX

1/31/2022	Copper, total recoverable	0.012 mg/L	0.11 mg/L	MO AVG
2/28/2022	Copper, total recoverable	0.023 mg/L	0.1 mg/L	DAILY MX
2/28/2022	Copper, total recoverable	0.012 mg/L	0.1 mg/L	MO AVG
3/31/2022	Copper, total recoverable	0.023 mg/L	0.056 mg/L	DAILY MX
3/31/2022	Copper, total recoverable	0.012 mg/L	0.056 mg/L	MO AVG
4/30/2022	Copper, total recoverable	0.023 mg/L	0.053 mg/L	DAILY MX
4/30/2022	Copper, total recoverable	0.012 mg/L	0.053 mg/L	MO AVG
5/31/2022	Copper, total recoverable	0.023 mg/L	0.042 mg/L	DAILY MX
5/31/2022	Copper, total recoverable	0.012 mg/L	0.042 mg/L	MO AVG
6/30/2022	Copper, total recoverable	0.023 mg/L	0.026 mg/L	DAILY MX
6/30/2022	Copper, total recoverable	0.012 mg/L	0.026 mg/L	MO AVG
7/31/2022	Copper, total recoverable	0.012 mg/L	0.021 mg/L	MO AVG
8/31/2022	Copper, total recoverable	0.023 mg/L	0.036 mg/L	DAILY MX
8/31/2022	Copper, total recoverable	0.012 mg/L	0.036 mg/L	MO AVG
9/30/2022	Copper, total recoverable	0.012 mg/L	0.018 mg/L	MO AVG
10/31/2022	Copper, total recoverable	0.012 mg/L	0.017 mg/L	MO AVG
1/31/2023	Copper, total recoverable	0.023 mg/L	0.0276 mg/L	MO AVG
6/30/2023	Copper, total recoverable	0.023 mg/L	0.0262 mg/L	MO AVG
7/31/2023	Copper, total recoverable	0.023 mg/L	0.0547 mg/L	MO AVG

10/31/2023	Copper, total recoverable	0.023 mg/L	0.0251 mg/L	MO AVG
------------	---------------------------	------------	-------------	--------

19. The NetDMR Data for the Monitoring Periods documents that, for the specific monitoring periods ending on the dates listed below, Respondent was in violation of the Zinc Limitations and thereby failed to comply with Part I of the Permit.

Table 1: Outfall 001 Zinc Limitations Violations				
Monitoring Period End Date	Parameter	Limit	NetDMR Data Value	Limit Type
1/31/2020	Zinc, total recoverable	0.194 mg/L	0.25 mg/L	DAILY MX
1/31/2020	Zinc, total recoverable	0.075 mg/L	0.25 mg/L	MO AVG
2/29/2020	Zinc, total recoverable	0.075 mg/L	0.094 mg/L	MO AVG
9/30/2020	Zinc, total recoverable	0.075 mg/L	0.091 mg/L	MO AVG
1/31/2021	Zinc, total recoverable	0.075 mg/L	0.141 mg/L	MO AVG
2/28/2021	Zinc, total recoverable	0.075 mg/L	0.11 mg/L	MO AVG
3/31/2021	Zinc, total recoverable	0.075 mg/L	0.116 mg/L	MO AVG
4/30/2021	Zinc, total recoverable	0.075 mg/L	0.136 mg/L	MO AVG
5/31/2021	Zinc, total recoverable	0.075 mg/L	0.084 mg/L	MO AVG
8/31/2021	Zinc, total recoverable	0.075 mg/L	0.19 mg/L	MO AVG
9/30/2021	Zinc, total recoverable	0.075 mg/L	0.13 mg/L	MO AVG
10/31/2021	Zinc, total recoverable	0.075 mg/L	0.11 mg/L	MO AVG
11/30/2021	Zinc, total recoverable	0.075 mg/L	0.18 mg/L	MO AVG

12/31/2021	Zinc, total recoverable	0.075 mg/L	0.16 mg/L	MO AVG
1/31/2022	Zinc, total recoverable	0.075 mg/L	0.11 mg/L	MO AVG
2/28/2022	Zinc, total recoverable	0.075 mg/L	0.09 mg/L	MO AVG
5/31/2022	Zinc, total recoverable	0.075 mg/L	0.088 mg/L	MO AVG
6/30/2022	Zinc, total recoverable	0.075 mg/L	0.076 mg/L	MO AVG
10/31/2022	Zinc, total recoverable	0.075 mg/L	0.26 mg/L	MO AVG
10/31/2022	Zinc, total recoverable	0.194 mg/L	0.26 mg/L	DAILY MX
4/30/2024	Zinc, total recoverable	0.203 mg/L	0.23 mg/L	MO AVG

20. The NetDMR Data for the Monitoring Periods documents that, for the specific monitoring periods ending on the dates listed below, Respondent was in violation of the TSS Limitations and thereby failed to comply with Part I of the Permit.

Table 1: Outfall 001 TSS Limitations Violations				
Monitoring Period End Date	Parameter	Limit	NetDMR Data Value	Limit Type
11/30/2019	Solids, suspended percent removal	85% Removal	49.50%	MO AV MN
6/30/2020	Solids, total suspended	30 mg/L	35 mg/L	MO AVG
8/31/2020	Solids, suspended percent removal	85% Removal	53%	MO AV MN
10/31/2020	Solids, suspended percent removal	85% Removal	50%	MO AV MN
11/30/2020	Solids, suspended percent removal	85% Removal	36%	MO AV MN
12/31/2020	Solids, suspended percent removal	85% Removal	0%	MO AV MN

1/31/2021	Solids, suspended percent removal	85% Removal	64%	MO AV MN
2/28/2021	Solids, suspended percent removal	85% Removal	50%	MO AV MN
3/31/2021	Solids, suspended percent removal	85% Removal	42%	MO AV MN
4/30/2021	Solids, suspended percent removal	85% Removal	65%	MO AV MN
5/31/2021	Solids, suspended percent removal	85% Removal	80%	MO AV MN
6/30/2021	Solids, suspended percent removal	85% Removal	25%	MO AV MN
8/31/2021	Solids, suspended percent removal	85% Removal	14%	MO AV MN
8/31/2021	Solids, total suspended	41.1 lb/d	98.7 lb/d	DAILY MX
8/31/2021	Solids, total suspended	20.5 lb/d	56 lb/d	MO AVG
9/30/2021	Solids, suspended percent removal	85% Removal	22%	MO AV MN
10/31/2021	Solids, suspended percent removal	85% Removal	53.70%	MO AV MN
11/30/2021	Solids, suspended percent removal	85% Removal	76%	MO AV MN
12/31/2021	Solids, total suspended	41.1 lb/d	238.5 lb/d	DAILY MX
12/31/2021	Solids, total suspended	20.5 lb/d	46.15 lb/d	MO AVG
12/31/2021	Solids, total suspended	30 mg/L	55 mg/L	MO AVG
1/31/2022	Solids, suspended percent removal	85% Removal	74%	MO AV MN
1/31/2022	Solids, total suspended	41.1 lb/d	60 lb/d	DAILY MX
2/28/2022	Solids, suspended percent removal	85% Removal	63%	MO AV MN
11/30/2022	Solids, total suspended	41.1 lb/d	148 lb/d	DAILY MX
11/30/2022	Solids, total suspended	60 mg/L	148	DAILY MX
11/30/2022	Solids, total suspended	30 mg/L	148	MO AVG
11/30/2022	Solids, total suspended	20.5 lb/d	148 lb/d	MO AVG

21. The NetDMR Data for the Monitoring Periods documents that, for the specific monitoring periods ending on the dates listed below, Respondent was in violation of the BOD Limitations and thereby failed to comply with Part I of the Permit.

Table 1: Outfall 001 BOD Limitations Violations				
Monitoring Period End Date	Parameter	Limit	NetDMR Data Value	Limit Type
8/31/2020	BOD, 5-day, percent removal	85% Removal	52%	MO AV MN
9/30/2020	BOD, 5-day, percent removal	85% Removal	27%	MO AV MN
10/31/2020	BOD, 5-day, percent removal	85% Removal	37%	MO AV MN
11/30/2020	BOD, 5-day, percent removal	85% Removal	79%	MO AV MN
1/31/2021	BOD, 5-day, percent removal	85% Removal	65%	MO AV MN
2/28/2021	BOD, 5-day, percent removal	85% Removal	78%	MO AV MN
3/31/2021	BOD, 5-day, percent removal	85% Removal	19%	MO AV MN
4/30/2021	BOD, 5-day, percent removal	85% Removal	69%	MO AV MN
5/31/2021	BOD, 5-day, percent removal	85% Removal	0%	MO AV MN
6/30/2021	BOD, 5-day, percent removal	85% Removal	52%	MO AV MN
8/31/2021	BOD, 5-day, percent removal	85% Removal	71%	MO AV MN
1/31/2022	BOD, 5-day, 20 deg. C	41.1	60 lb/d	DAILY MX
1/31/2022	BOD, 5-day, percent removal	85% Removal	69%	MO AV MN

22. The NetDMR Data for the Monitoring Periods documents that, for the specific monitoring periods ending on the dates listed below, Respondent was in violation of the Fecal Coliform Limitations and thereby failed to comply with Part I of the Permit.

Table 1: Outfall 001 Fecal Coliform Limitations Violations				
Monitoring Period End Date	Parameter	Limit	NetDMR Data Value	Limit Type
12/31/2019	Coliform, fecal general	400 #/100mL	5000 #/100mL	DAILY MX
12/31/2019	Coliform, fecal general	200 #/100mL	5000#/100mL	MO GEOMN

23. The NetDMR Data for the Monitoring Periods documents that, for the specific monitoring periods ending on the dates listed below, Respondent was in violation of the Total Residual Chlorine Limitations and thereby failed to comply with Part I of the Permit.

Table 1: Outfall 001 Chlorine Limitations Violations				
Monitoring Period End Date	Parameter	Limit	NetDMR Data Value	Limit Type
7/31/2021	Chlorine, total residual	0.057 mg/L	50 mg/L	DAILY MX
7/31/2021	Chlorine, total residual	0.028 mg/L	50 mg/L	MO AVG
9/30/2021	Chlorine, total residual	0.057 mg/L	0.43 mg/L	DAILY MX
11/30/2021	Chlorine, total residual	0.057 mg/L	50 mg/L	DAILY MX
11/30/2021	Chlorine, total residual	0.028 mg/L	50 mg/L	MO AVG
12/31/2021	Chlorine, total residual	0.057 mg/L	50 mg/L	DAILY MX
12/31/2021	Chlorine, total residual	0.028 mg/L	50 mg/L	MO AVG

SECTION V. COMPLIANCE PROGRAM

24. Respondent agrees to take any and all necessary steps to comply fully with the Permit as soon as practicable. Such steps will include, but not be limited to, the activities outlined in this section. To the extent Respondent is able to achieve compliance more expeditiously than the timeframes set forth in this Agreement, Respondent shall do so.
25. Respondent agrees to construct and install a Reverse Osmosis System at the Facility within 18 months of the effective date of this Agreement.
 - a. Respondent shall provide the EPA with the specifications of the Reverse Osmosis System and the construction, installation and operation timeline of the system by October 31, 2024.
 - b. The Respondent will provide the EPA with the installation initiation and expected completion dates 30-days prior to the construction completion.
 - c. The Respondent will provide the EPA with notification of the installation and operation of the Reverse Osmosis System as soon as the installation is completed and when the Reverse Osmosis System begins operation.

SECTION VI. REPORTING AND SAMPLING

26. Respondent shall submit to EPA bi-annual written status reports on July 31st and January 31st of each year this Agreement is in effect. The bi-annual report shall be submitted in addition to any other reporting or certification required under this Agreement or pursuant to law, regulation, or the Permit. The bi-annual report shall state the progress Respondent has made toward installation of the Reverse Osmosis System as well as Respondent's compliance with the Permit effluent limits during the previous six-month period. The bi-annual report shall also identify and describe the cause of any potential

or actual delays in the schedule for the Reverse Osmosis System construction, installation and operation, and any other failure to comply with this Agreement. The bi-annual report at a minimum shall include: (1) the deadlines and other milestones which Respondent was required to meet during the reporting period; (2) the progress it made toward meeting them; (3) the reasons for any noncompliance with this Agreement; and (4) a description of any matters relevant to the status of its compliance with this Agreement.

27. Notification to the EPA of any noncompliance with any provision of this Agreement or anticipated delay in performing any obligation under this Agreement shall not excuse Respondent's noncompliance or anticipated delay.
28. All reports, notifications, documentation, submissions, and other correspondence required to be submitted by this Agreement must be submitted to the EPA electronically to the extent possible. All electronic submissions must be sent to the EPA Project Manager identified in para. 60. The subject line of all email correspondence must include the following: "USFWS NCTC FFCA Compliance Submission" and the subject or title of the deliverable. All electronically submitted materials must be in final and searchable format, such as Portable Document Format (PDF) with Optical Character Recognition (OCR) applied.
29. If electronic submittal is not possible, the materials must be submitted by certified mail, return receipt requested. All certified mail submissions must be sent to the EPA Project Manager. Each notification or communication to the EPA sent by certified mail shall be deemed submitted on the date it is postmarked.
30. Respondent shall maintain records of each notification or communication, regardless of whether sent electronically or by mail, together with proof of mailing by certified mail, if applicable, for the duration of this Agreement.

31. All submissions provided pursuant to this Agreement shall be signed by a duly authorized representative of Respondent who has personal knowledge of the submission's contents. Each submission shall be admissible as evidence in any proceeding to enforce this Agreement. Each submission shall include the following certification:

"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."

SECTION VII. COMPLIANCE WITH OTHER LAWS AND REGULATIONS

32. Compliance with the terms of this Agreement in no way affects or relieves Respondent of its obligation to comply with all applicable requirements of the Act and regulations promulgated thereunder, or other applicable requirements of Federal, state, or local law.

SECTION VIII. PERMIT OBLIGATIONS

33. This Agreement does not constitute a permit or permit modification and does not relieve Respondent of any obligation to apply for or obtain new NPDES permits or comply with its existing NPDES Permit.

SECTION IX. RIGHT OF ENTRY

34. The EPA, its contractors, and other authorized representatives shall have the right to enter the Facility to conduct any inspection, including but not limited to records inspection, sample testing, or monitoring they believe is necessary to determine Respondent's compliance with this Agreement.

SECTION X. DISPUTE RESOLUTION

35. In the event of any conflict involving violations of this Agreement, the EPA and Respondent shall meet promptly and work in good faith in an effort to reach a mutually agreeable resolution of the dispute.
36. If a dispute arises under this Agreement, the procedures of this Section shall apply. In addition, during the pendency of any dispute, Respondent agrees that it shall continue to implement those portions of this Agreement which are not in dispute.
37. The pendency of any dispute under this Section shall not affect Respondent's responsibility to perform the work required by this Agreement in a timely manner, except that the time period for completion of work affected by such dispute may, at the EPA's sole discretion, be extended for a period of time not to exceed the actual time taken to resolve any good faith dispute in accordance with the procedures specified herein. All elements of the work required by this Agreement which are not affected by the dispute shall continue and be completed in accordance with applicable schedule.
38. The Parties to this Agreement shall make reasonable efforts to informally resolve disputes at the Project Manager or immediate supervisor level. With respect to the EPA, "Project Manager" means the person identified in para. 60 or any duly identified successor. With respect to Respondent, "Project Manager" means the person identified in para. 61 or any duly identified successor.

39. If the parties are unable to informally resolve a dispute within thirty (30) calendar days after any action which leads to or generates an issue or requirement disputed by the Respondent, (EPAs Original Position Subject to Dispute), Respondent shall within fourteen (14) days of an informal dispute for resolution submit to the EPA a written statement of dispute setting forth the nature of the dispute, Respondent's position with respect to the dispute, and the information Respondent is relying upon to support its position. If Respondent does not provide such written statement to the EPA within this fourteen (14) day period, Respondent shall be deemed to have agreed with the EPA's position with respect to the dispute.
40. Upon the EPA's receipt of the written statement of dispute from Respondent, the Parties shall engage in formal dispute resolution discussions among the Project Managers and/or their immediate supervisors. The Parties shall have fourteen (14) days from the receipt by the EPA of the written statement of dispute to resolve the dispute. During this period, the Project Managers shall meet or confer as many times as necessary to discuss and attempt resolution of the dispute. If agreement cannot be reached on any issue within this fourteen (14) day period, Respondent may, within ten (10) days after the conclusion of the fourteen (14) day dispute resolution period, submit a written notice to the EPA elevating the dispute to the Dispute Resolution Committee ("DRC") for resolution. If Respondent does not elevate the dispute to the DRC within this ten (10) day period, Respondent shall be deemed to have agreed with the EPA's position with respect to the dispute.
41. The DRC will serve as a forum for resolution of disputes for which agreement has not been reached pursuant to the foregoing paragraphs in this Section. Following elevation of a dispute to the DRC, the DRC shall have thirty (30) days to unanimously resolve the dispute. The EPA's designated representative on the DRC is the Branch Chief, Region 3

Water Enforcement Branch/Enforcement and Compliance Assurance Division.

Respondent's designated representative on the DRC is USFWS Deputy Director -

Operations. Delegation of the authority from a Party's representative on the DRC to an alternate shall be provided to the other Party within seven (7) days of delegation.

42. If unanimous resolution by the DRC is not achieved within this thirty (30) day period, a member of the DRC may, within twenty-one (21) days after the conclusion of the thirty (30) day dispute resolution period, submit a written Notice of Dispute to the Division Director of the Enforcement and Compliance Assurance Division of EPA Region 3 for final resolution of the dispute. In the event that the dispute is not elevated to the Deputy Division Director of the Enforcement and Compliance Assurance Division of EPA Region 3 within the designated twenty-one (21) day period, Respondent shall be deemed to have agreed with the EPA DRC representative's position with respect to the dispute.
43. Within twenty-one (21) days of resolution of a dispute pursuant to the procedures specified in this Section, Respondent shall incorporate the resolution and final determination into the appropriate statement of work, plan, schedule, or procedures and proceed to implement this Agreement according to the amended statement of work, plan, schedule, or procedures.
44. Resolution of a dispute pursuant to this Section of the Agreement constitutes a final resolution of any dispute arising under this Agreement. The Parties shall abide by all terms and conditions of any final resolution of dispute obtained pursuant to this Section of the Agreement.

SECTION XI. FORCE MAJEURE

45. Respondent's obligations under the Compliance Program Section of this Agreement shall be performed as set forth in this Agreement unless performance is prevented or delayed by a force majeure event. For purposes of this Agreement, "force majeure" is defined as any event arising from causes beyond the control of Respondent or of entities controlled by Respondent, including but not limited to contractors and subcontractors, which could not be overcome by the due diligence of Respondent or the entities controlled by Respondent, which delays or prevents the performance of any obligation under this Agreement, including acts of God or war, labor unrest, and any judicial orders which prevent compliance with the provisions of this Agreement. Force majeure shall not include increased costs of performance of any activity required by this Agreement or the failure to apply for any required permits or approvals or to provide all information required in a timely manner, nor shall it include the failure of contractors or employees to perform or the avoidable malfunction of equipment.
46. If Respondent is having difficulty meeting its obligations as set forth in this Agreement due to a force majeure event, it shall notify the EPA promptly by telephone of any change in circumstances giving rise to the suspension of performance or the nonperformance of any obligation under this Agreement. In addition, within fourteen (14) days of the occurrence of circumstances causing such difficulty, it shall provide a written statement to the EPA of the reason(s), the anticipated duration of the event and delay, the measures taken and to be taken to prevent or minimize the time and effects of failing to perform or delaying any obligation, and the timetable for the implementation of such measures. Failure to comply with the notice provisions shall constitute a waiver of any claims of force majeure. Respondent shall take all reasonable measures to avoid and/or minimize any such delay.

47. The burden of proving that any delay is caused by circumstances entirely beyond the control of Respondent shall rest with Respondent.

SECTION XII. MODIFICATIONS

48. The requirements, timetable, and deadlines under this Agreement may be modified upon receipt of a timely written request for modification and when good cause exists for the requested modification. Any request for modification by Respondent shall be submitted in writing and shall specify: the requirement, timetable, or deadline for which a modification is sought; the length of the extension sought; the good cause for the extension; and any related requirement, timetable, deadline, or schedule that would be affected if the extension were granted.
49. Good cause exists for a modification when sought in regard to: a force majeure; a delay caused, or which is likely to be caused, by the grant of an extension in regard to another timetable and deadline or schedule; a delay caused by failure of a regulatory agency to perform its duties in a timely manner where regulatory action is necessary to proceed with construction and where Respondent has made a timely and complete request for action from the regulatory agency; and any other event or series of events that the Parties mutually agree, in writing, constitutes good cause.
50. EPA shall make best efforts to reply to any written request for a modification. Within twenty-one (21) calendar days of receipt of a request for a modification, the EPA shall advise Respondent of its position on the request. If the EPA does not concur in the extension, it shall include in its statement of nonconcurrence an explanation of the basis for its position.

SECTION XIII. FUNDING

51. It is the expectation of the Parties to this Agreement that all obligations of Respondent arising under this Agreement, including any environmentally beneficial projects required, will be fully funded. Respondent shall timely seek sufficient funding through the Respondent's budgetary process to fulfill its obligations under the Agreement.
52. Provision herein shall not be interpreted to require obligations or payment of funds in violations of the Anti-Deficiency Act, 31 U.S.C. §1341. In cases where payment or obligation of funds would constitute a violation of the Anti-Deficiency Act, the dates established requiring the payment or obligation of such funds shall be appropriately adjusted within the terms delineated in this Agreement.
53. If funds are not available to fulfill Respondent's obligations under this Agreement, the EPA reserves the right to initiate an action against any other person or to take any action which would be appropriate absent this agreement.

SECTION XIV. GENERAL PROVISIONS

54. This Agreement was negotiated and executed by the parties in good faith to ensure compliance with the law. No part of this Agreement constitutes or should be interpreted or construed as an admission of fact or of liability under Federal, state or local laws, regulations, ordinances, or common law or as an admission of any violations of any laws, regulations, ordinances, or common law. By entering into this Agreement, Respondent does not waive, other than as to the enforcement of this Agreement pursuant to the terms contained herein, any claim, right, or defense that it might raise in any other proceeding or action.

55. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this Agreement and to bind Respondent to this document.
56. Terms and conditions of this Agreement changed by an agreed upon modification shall be enforceable as changed.
57. The Parties agree that the terms and conditions of this Agreement are enforceable as appropriate by any person pursuant to Section 505 of the Act, 33 USC §1365.
58. If any provision of this Agreement or the applications of this Agreement to any party or circumstance is held by any judicial or administrative authority to be invalid, the application of such provisions to other parties or circumstances and the remainder of the Agreement shall remain in force and shall not be affected thereby.
59. In computing any period of time described as “days” herein, all references to “days” refer to “calendar days.” The last day of a time period shall be included, unless it is a Saturday, a Sunday or a legal holiday, in which event the period runs until the end of the next day that is not a Saturday, a Sunday, or a legal holiday.

SECTION XIV. DESIGNATED PROJECT MANAGERS

60. The contact information for the Project Manager for the EPA is:
Peter Gold
Environmental Scientist
Gold.peter@epa.gov
1600 JFK Boulevard
Philadelphia, PA 19103
(215) 814-5236
61. The contact information for the Project Manager for Respondent is:
Steven Chase
Director

steve_chase@fws.gov
U.S. Fish and Wildlife Service
National Conservation Training Center
698 Conservation Way
Shepherdstown, WV 25443
(304) 876-7263

SECTION XV. EFFECTIVE DATE AND TERMINATION

62. The effective date of this FFCA shall be the date on which it is signed by the EPA after having been signed by the Respondent.
63. This FFCA shall be effective if signed in counterparts.
64. The obligations of this FFCA shall be deemed satisfied and terminated when EPA provides written notice to the Respondent that the Respondent has demonstrated that all the requirements of this FFCA have been completed.

DATE

Karen Melvin
Director, Enforcement and Compliance
Assurance Division
U.S. Environmental Protection Agency
Region 3

DATE

Steven Chase
Director
USFWS National Conservation Training Center