UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219

In the Matter of:	)	
	)	
Evergy Kansas Central, Inc.,	)	
	)	
Respondent	)	**Docket No.** RCRA-07-2023-0001
	)	
	)	

CONSENT AGREEMENT AND FINAL ORDER

PRELIMINARY STATEMENT

The U.S. Environmental Protection Agency (EPA), Region 7 ("EPA" or "Complainant") and Evergy Kansas Central, Inc. ("Evergy" or "Respondent") have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) 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 Code of Federal Regulations ("C.F.R.") §§ 22.13(b) and 22.18(b)(2). Evergy neither admits nor denies the allegations stated herein. EPA's allegations shall not be binding on Evergy for any purpose other than establishing jurisdiction for issuance and enforcement of this Consent Agreement and Final Order ("Order"). Except for the specific waivers in this Order, Evergy reserves all its rights, remedies and defenses regarding liability under the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6901 *et seq.* and the implementing regulations at 40 C.F.R. Part 257 ("the CCR Rule"). Evergy asserts that it acted in good faith to comply with the CCR Rule.

ALLEGATIONS

Jurisdiction

1. This administrative action is being conducted pursuant to Sections 3008(a) and 4005(d)(4)(A)(i) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 ("RCRA") and the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. §§ 6928(a), 6945(d)(4)(A)(i), and in accordance with the Consolidated Rules of Practice.

2. This Consent Agreement and Final Order serves as notice that the EPA has reason to believe that Respondent violated Section 4005(d)(4)(A)(i) of RCRA, 42 U.S.C § 6945(d)(4)(A)(i), as it refers to Section 4005(a) of RCRA, 42 U.S.C. § 6945(a), and the implementing regulations at 40 C.F.R. Part 257.

Parties

3. Complainant is the Director of the Enforcement and Compliance Assurance Division, Region 7, as duly delegated by the Administrator of EPA.

4. Respondent is Evergy Kansas Central, Inc., a corporation authorized to operate under the laws of Kansas.

Statutory and Regulatory Framework

5. RCRA, enacted on October 21, 1976, and subsequently amended, establishes a framework for the regulation of the handling and management of non-hazardous and hazardous solid wastes. 42 U.S.C. § 6901 *et seq*.

6. RCRA Subtitle D, as amended in 2016 by the Water Infrastructure Improvements for the Nation ("WIIN") Act, establishes a framework for the regulation of the handling and management of coal combustion residuals ("CCR") and grants the Administrator the authority to use RCRA Sections 3007 and 3008 to enforce the prohibition on open dumping under Section 4005(a), 42 U.S.C. § 6945(a), with respect to CCR units. 42 U.S.C. § 6945(d)(4)(A)(i).

7. Section 4005(d)(2) of RCRA, 42 U.S.C. § 6945(d)(2), establishes a framework for the regulation and enforcement of CCR requirements by EPA in nonparticipating states. A nonparticipating State means a State for which the Administrator has not approved a State permit program or other system of prior approval and conditions under RCRA section 4005(d)(1)(B). 40 C.F.R. § 257.53.

8. In April 2015, EPA promulgated regulatory requirements for the management of CCR in landfills and surface impoundments. The CCR regulations are set forth at 40 C.F.R. Part 257, Subpart D (Standards for the Disposal of Coal Combustion Residuals in Landfills and Surface Impoundments, hereinafter "CCR Rule"). The CCR Rule establishes requirements related to location standards, groundwater monitoring and corrective action, closure, post closure care, technical operating standards, inspections, monitoring, and recordkeeping and reporting. The regulatory requirements established in the CCR Rule took effect on October 19, 2015.

9. The term "Coal Combustion Residuals" is defined as "fly ash, bottom ash, boiler slag, and flue gas desulfurization materials generated from burning coal for the purpose of generating electricity by electric utilities and independent power producers." 40 C.F.R. § 257.53.

10. The term "active facility" or "active electric utilities" or "independent power producers" means "any facility subject to the requirements of this subpart that is in operation on October 19, 2015. An electric utility or independent power producer is in operation if it is generating electricity that is provided to electric power transmission systems or to electric power distribution systems on or after October 19, 2015." 40 C.F.R. § 257.53.

11. "CCR landfill" or "landfill" means "an area of land or an excavation that receives CCR and which is not a surface impoundment, an underground injection well, a salt dome formation, a salt bed formation, an underground or surface coal mine, or a cave…" 40 C.F.R. § 257.53.

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

13. "CCR unit" means "any CCR landfill, CCR surface impoundment, or lateral expansion of a CCR unit, or a combination of more than one of these units, based on the context of the paragraph(s) in which it is used. This term includes both new and existing units, unless otherwise specified." 40 C.F.R. § 257.53.

14. "Facility" means "all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, disposing, or otherwise conducting solid waste management of CCR. A facility may consist of several treatment, storage, or disposal operational units (e.g., one or more landfills, surface impoundments, or combinations of them)." 40 C.F.R. § 257.53.

15. "Operator" means "the person(s) responsible for the overall operation of a CCR unit." "Owner" means "the person(s) who owns a CCR unit or part of a CCR unit." 40 C.F.R. § 257.53.

16. "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 Consent Agreement and Final Order. EPA must notify Respondent in writing whether each submission or completed work is deemed Acceptable or not Acceptable. A determination by EPA that a submission or work is acceptable does not necessarily mean the submission or work meets the requirements of this Consent Agreement and Final Order. 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 and in compliance with the CCR Rule.

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

18. Pursuant to 40 C.F.R. § 257.91(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 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…"

19. Pursuant to 40 C.F.R. § 257.93(a), "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…."

20. Pursuant to 40 C.F.R. § 257.94(a), "The owner or operator of a CCR unit must conduct detection monitoring at all groundwater monitoring wells consistent with this section. At a minimum, a detection monitoring program must include groundwater monitoring for all constituents listed in appendix III to this part."

21. Pursuant to 40 C.F.R. § 257.94(e)(1), "If the owner or operator of the CCR unit determines, pursuant to § 257.93(h) that there is a statistically significant increase over background levels for one or more of the constituents listed in appendix III to this part at any monitoring well at the waste boundary specified under § 257.91(a)(2), the owner or operator must, except as provided for in paragraph (e)(2) of this section, within 90 days of detecting a statistically significant increase over background levels for any constituent, establish an assessment monitoring program meeting the requirements of § 257.95."

22. Pursuant to 40 C.F.R. § 257.94(e)(2), "The owner or operator may demonstrate that a source other than the CCR unit caused the statistically significant increase over background levels for a constituent or that the statistically significant increase resulted from error in sampling, analysis, statistical evaluation, or natural variation in groundwater quality… If a successful demonstration is completed within the 90-day period, the owner or operator of the CCR unit may continue with a detection monitoring program under this section. If a successful demonstration is not completed within the 90-day period, the owner or operator of the CCR unit must initiate an assessment monitoring program as required under § 257.95…."

23. Pursuant to 40 C.F.R. § 257.95(a), "Assessment monitoring is required whenever a statistically significant increase over background levels has been detected for one or more of the constituents listed in appendix III to this part."

24. Pursuant to 40 C.F.R. § 257.95(b), "Within 90 days of triggering an assessment monitoring program, and annually thereafter, the owner or operator of the CCR unit must sample and analyze the groundwater for all constituents listed in appendix IV to this part. The number of samples collected and analyzed for each well during each sampling event must be consistent with § 257.93(e), and must account for any unique characteristics of the site, but must be at least one sample from each well."

25. Pursuant to 40 C.F.R. § 257.95(g)(1), "If one or more constituents in appendix IV to this part are detected at statistically significant levels above the groundwater protection standard established under paragraph (h) of this section in any sampling event, the owner or operator must prepare a notification identifying the constituents in appendix IV to this part that have exceeded the groundwater protection standard…. The owner or operator also must: (1)

characterize the nature and extent of the release and any relevant site conditions that may affect the remedy ultimately selected…"

26. Pursuant to 40 C.F.R. § 257.95(g)(2), the owner or operator also must, "[n]otify all persons who own the land or reside on the land that directly overlies any part of the plume of contamination if contaminants have migrated off-site if indicated by sampling of wells in accordance with paragraph (g)(1) of this section…"

27. Pursuant to 40 C.F.R. § 257.95(g)(3), "Within 90 days of finding that any of the constituents listed in appendix IV to this part have been detected at a statistically significant level exceeding groundwater protection standards the owner or operator must either: (i) initiate an assessment of corrective measures as required by 40 C.F.R. § 257.96; or (ii) demonstrate that a source other than the CCR unit caused the contamination, or that the statistically significant increase resulted from error in sampling, analysis, statistical evaluation or natural variation in groundwater quality…"

28. Pursuant to 40 C.F.R. § 257.95(g)(4), "If a successful demonstration has not been made at the end of the 90-day period provided by 40 § 257.95(g)(3)(ii) of this section, the owner or operator of the CCR unit must initiate the assessment of corrective measures requirements under § 257.96."

29. Pursuant to 40 C.F.R. § 257.96(a), "Within 90 days of finding that any of the constituents listed in Appendix IV to this part has been detected at a statistically significant level exceeding the groundwater protection standard defined under § 257.95(h), or immediately upon detection of a release from a CCR unit, the owner or operator must initiate an assessment of corrective measures to prevent further releases, to remediate any releases and to restore affected area to original conditions. The assessment of corrective measures must be completed within 90 days, unless the owner or operator demonstrates the need for additional time to complete the assessment of corrective measures due to site-specific conditions or circumstances…"

30. Pursuant to 40 C.F.R. § 257.96(b), "The owner or operator of the CCR unit must continue to monitor groundwater in accordance with the assessment monitoring program as specified in § 257.95."

31. Pursuant to 40 C.F.R. § 257.97(a), "Based on the results of the corrective measures assessment conducted under § 257.96, the owner or operator must, as soon as feasible, select a remedy that, at a minimum, meets the standards listed in paragraph (b) of this section…."

32. Pursuant to 40 C.F.R. § 257.98(a), "Within 90 days of selecting a remedy under § 257.97, the owner or operator must initiate remedial activities.…"

33. Pursuant to 40 C.F.R. § 257.107(a), "Each owner or operator of a CCR unit subject to the requirements of this subpart must maintain a publicly accessible internet site (CCR website) containing the information specified in this section…."

34. Pursuant to Section 3008(a)(1) of RCRA, 42 U.S.C. § 6928(a)(1), whenever on the basis of any information the EPA determines that any person has violated or is in violation of any requirement of RCRA, the EPA may issue an order assessing a civil penalty for any past or current violation and/or require immediate compliance or compliance within a specified time period.

35. Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), authorizes a civil penalty of not more than $25,000 per day for each violation. The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461, and implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties to $37,500 for violations that occurred before November 2, 2015, and to $109,024 for violations that occur after November 2, 2015, and for which penalties are assessed on or after January 12, 2022. In assessing any such penalty, EPA must take into account the seriousness of the violation and any good faith efforts to comply with applicable requirements. Based upon the facts alleged in this Consent Agreement and Final Order, and upon those factors which Complainant must consider pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), Complainant and Respondent agree to the payment of a civil penalty pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), and to take the actions required by the Final Order, for the violations of RCRA alleged in this Consent Agreement and Final Order.

EPA's Factual Allegations

36. The state of Kansas 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. § 257.53.

37. Respondent is a corporation that produces electricity from coal and is a "person" within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

38. Respondent is, and was, at all times relevant, an "owner" and "operator" as defined at 40 C.F.R. § 257.53.

39. Respondent owns an electric power generator facility known as Tecumseh Energy Center located at 5530 SE 2nd Street in Tecumseh, Kansas ("TEC facility"). The TEC facility was a coal-fired generating station with two coal-fired electric generating units. The TEC facility began operations in 1925 and retired from operations in October 2018.

40. Before 2020, the TEC facility included a CCR surface impoundment, the Bottom Ash Settling Area ("BASA surface impoundment"), located adjacent to Tecumseh Creek, which feeds into the Kansas River. The Kansas River is less than half a mile north of where the BASA surface impoundment was located. The BASA surface impoundment was constructed in 1968 and covered approximately 4 acres. For purposes of this CAFO, the BASA surface impoundment is defined as an "existing CCR surface impoundment" as that term is defined at 40 C.F.R. § 257.53.

41. The TEC facility includes a CCR regulated landfill ("322 Landfill") located east and south of the former coal-fired generating station. The 322 Landfill property is approximately

56 acres, of which approximately 32 acres are used for CCR disposal.

BASA Surface Impoundment General Factual Background

42. According to multiple reports on Respondent's CCR publicly accessible webpage, bottom ash slurry was historically deposited within TEC's BASA surface impoundment.

43. According to multiple reports on Respondent's CCR publicly accessible webpage, the BASA surface impoundment was separated into a North Pond and a South Pond by a stabilized berm. Process water, bottom ash slurry, and stormwater were pumped to the ponds from the Cinder Pit and the process facility. A diversion structure was utilized so that one pond could be filled while the other was dewatered and dredged of CCR material. A weir structure was positioned between the two ponds, allowing water to access the discharge pipe. As the ponds would fill with contact water, a 12-inch pipe would convey water from both ponds to the clear pond across Tecumseh Creek.

44. On September 13, 2016, an engineer certified that the BASA surface impoundment did not meet the requirements to be classified as a lined surface impoundment in a document titled 'Surface Impoundment Liner Documentation for Tecumseh Energy Center Bottom Ash Settling Area' located on Respondent's CCR publicly accessible webpage.

45. Respondent established a groundwater monitoring system at the BASA surface impoundment by October 17, 2017.

46. Respondent's groundwater monitoring system at the BASA surface impoundment had one upgradient monitoring well and three downgradient monitoring wells.

47. Detection monitoring sampling was initiated on March 9, 2018. The statistical analysis on the initial sampling data was completed in June 2018.

48. Based on the statistical analysis conducted on the October 17, 2017, sampling data from the BASA surface impoundment, Respondent determined a statistically significant increase for Appendix III constituents: Monitoring Well (MW)-8 (boron, calcium, sulfate and total dissolved solids), MW-9 (calcium, fluoride and total dissolved solids) and MW-10 (calcium, chloride and fluoride). Respondent pursued an alternative source demonstration, which was not successful.

49. On July 16, 2018, Respondent initiated an Assessment Monitoring Program for the BASA surface impoundment due to a statistically significant increase over background levels for one or more constituents listed in Appendix III.

50. On September 6, 2018, Respondent conducted an assessment monitoring sampling event to determine whether any Appendix IV constituents were present at concentrations that exceeded groundwater protection standards set for the BASA surface impoundment. Statistical analysis completed on January 14, 2019 indicated statistically significant levels above groundwater protection standards for arsenic at MW-9 and MW-10 and

cobalt at MW-9.

51. Arsenic and cobalt are listed constituents in Appendix IV.

52. According to documents available on Respondent's publicly available webpage, Respondent initiated closure of the BASA surface impoundment on October 9, 2018, and CCR waste was removed by September 5, 2019.

53. According to Respondent's Closure Plan for the BASA surface impoundment, closure activities at the BASA surface impoundment include the dewatering and removal of CCR, which was either beneficially used or disposed in the 322 Landfill.

54. Respondent did not initiate an assessment of corrective measures for the BASA surface impoundment within 90 days of completing the statistical analysis on January 14, 2019.

55. EPA reviewed all the documentation provided in support of Respondent's alternative source demonstration. Based on the information provided by Respondent in the 2019 Annual Groundwater Monitoring and Corrective Action Report, EPA deemed the alternative source demonstration was unsuccessful and that Respondent did not successfully demonstrate within 90 days of January 14, 2019, that a source other than the BASA surface impoundment caused the contamination, or that the statistically significant level resulted from error in sampling, analysis, statistical evaluation or natural variation in groundwater quality.

56. On March 20-21, 2019, Respondent conducted a semi-annual assessment monitoring event at the BASA surface impoundment for detected Appendix IV constituents identified from the June 2018 annual assessment monitoring sampling event. The statistical analysis on the initial sampling data was completed in July 2019.

57. On June 25, 2019, Respondent conducted an annual assessment monitoring event at the BASA surface impoundment to identify detected Appendix IV constituents. Respondent established groundwater protection standards for detected Appendix IV constituents.

58. On September 5, 2019, Respondent confirmed by Technical Memorandum that CCR waste material was removed from the BASA surface impoundment and placed in the 322 Landfill.

59. On October 10, 2019, Respondent conducted a semi-annual assessment monitoring event at the BASA surface impoundment for detected Appendix IV constituents identified during the June 25, 2019 annual monitoring event.

60. In a report dated October 10, 2019, Respondent prepared an alternative source demonstration for the September 2018 assessment monitoring event at the BASA surface impoundment, in an effort to identify that a source other than the CCR unit caused the contamination or that the statistically significant levels resulted from error in sampling, analysis, statistical evaluation or natural variation in groundwater quality.

61. During the December 2019 sampling event, downgradient MW-9 was identified as 'dry' and unable to be sampled. MW-9 was re-confirmed to be dry in March 2020. Accordingly, no statistical evaluation was completed for MW-9 for the December 2019 or March 2020 sampling events.

62. In a letter dated December 10, 2019, Respondent provided notification asserting that Appendix IV groundwater monitoring constituents were detected in downgradient wells of the BASA surface impoundment at a statistically significant level above groundwater protection standards for arsenic at MW-9 and MW-10 and for cobalt at MW-9. This analysis was completed utilizing the analytical results from the March 2019 sampling event and the statistical analysis was completed in July 2019. As a result of that analysis, Respondent concluded it would continue to monitor the BASA surface impoundment in accordance with the assessment monitoring program.

63. According to Respondent's closure report, the results for the two consecutive sampling events, October 10, 2019 and December 5, 2019, were used to document that detected Appendix IV constituents did not exceed groundwater protection standards.

64. In a footnote in Respondent's 2019 Annual Groundwater Monitoring and Corrective Action Report for the BASA surface impoundment, Respondent asserts that it utilized an interwell evaluation to establish constituent background levels at the BASA surface impoundment based on data collected through June 2018.

65. In a separate footnote to Respondent's 2019 Annual Groundwater Monitoring and Corrective Action Report for the BASA surface impoundment, Respondent asserts that it transitioned to an intrawell evaluation to establish background levels and groundwater protection standards based on data collected through June 2019.

66. The transition from interwell evaluation to intrawell evaluation in the middle of a groundwater investigation resulted in modified groundwater protection standards for arsenic from MW-9 and MW-10 and cobalt from MW-9.

67. In an August 11, 2020, Technical Memorandum posted on Respondent's publicly accessible webpage, addressing the groundwater requirements for closure of a CCR surface impoundment, a licensed professional engineer certified that the groundwater monitoring concentrations at the BASA surface impoundment did not exceed the groundwater protection standards recently modified for that unit and accordingly certified the BASA surface impoundment closed in accordance with the Closure Plan and the requirements at 40 C.F.R. § 257.102.

68. According to Respondent's 2020 Groundwater Monitoring and Corrective Action Annual Report for BASA surface impoundment, no sampling was completed in 2020.

322 Landfill General Background Information

69. According to multiple reports posted on Respondent's CCR publicly accessible

webpage, the 322 Landfill was filled with CCR waste from the generation station, fly ash silos, economizer hopper and the bottom ash pond in three phases: Phase 1 (the northern phase comprising 7.4 acres), Phase 2 (the southern phase comprising 15.4 acres) and Phase 3 (the center phase comprising 9.2 acres).

70. On October 17, 2017, Respondent established a groundwater monitoring system at the 322 Landfill.

71. Respondent's 2017 groundwater monitoring system at the 322 Landfill had one upgradient monitoring well and three downgradient monitoring wells.

72. Respondent collected baseline samples under the detection monitoring program from August 2016 - June 2017, with lab results from the final baseline sampling event received and accepted on October 17, 2017. The statistical analysis was completed on January 15, 2018. The first detection monitoring sampling event was completed on March 9, 2018, with statistical analyses completed in June 2018.

73. Based on the statistical analysis conducted on the October 17, 2017, sampling data from the 322 Landfill, Respondent determined the following statistically significant increase for Appendix III constituents: MW-1 (boron, fluoride and sulfate); MW-5 (boron, calcium, fluoride, sulfate, and total dissolved solids); MW-6 (boron, calcium, fluoride, sulfate, and total dissolved solids).

74. Respondent pursued an alternative source demonstration, which was not successful.

75. On March 8, 2018, Respondent conducted a semi-annual detection monitoring event, but did not conduct statistical analysis on this data because of the determination of SSIs.

76. On July 16, 2018, Respondent initiated an Assessment Monitoring Program for the 322 Landfill due to a statistically significant increase over background levels for one or more constituents listed in Appendix III.

77. On September 5, 2018, Respondent conducted an assessment monitoring sampling event. The statistical analysis for this sampling event was completed on January 14, 2019.

78. On March 20, 2019, Respondent conducted a semi-annual assessment monitoring event at the 322 Landfill for detected Appendix IV constituents identified from the June 2018 annual assessment monitoring sampling event. The statistical analysis for this sampling event was completed in July 2019.

79. On June 26, 2019, Respondent conducted an annual assessment monitoring event at the 322 Landfill to identify detected Appendix IV constituents. Groundwater protection standards for detected Appendix IV constitutes were established.

80. On September 6-7, 2019, Respondent conducted a semi-annual assessment monitoring event at the 322 Landfill for detected Appendix IV constituents identified from the June 2019 annual assessment monitoring sampling event. The statistical analysis for this sampling event was completed in January 2020.

EPA's Allegations of Violations

81. Complainant hereby states and alleges that Respondent has violated RCRA and the federal regulations promulgated thereunder, as follows:

Count 1

Failure to Adequately Prepare Annual Groundwater Monitoring and Corrective Action Report

82. Complainant hereby incorporates the allegations contained in Paragraphs 36 through 80 above, as if fully set forth herein.

83. Pursuant to 40 C.F.R. § 257.90(e), for existing CCR landfills and existing CCR surface impoundments, no later than January 31, 2018, and annually thereafter, the owner or operator must prepare an annual groundwater monitoring and corrective action report. At a minimum, the annual groundwater monitoring and corrective action report must contain certain information, to the extent available.

84. The information required to be included in the groundwater monitoring and corrective action reports is set forth in 40 C.F.R. § 257.90(e).

85. Respondent's 2017 Annual Groundwater Monitoring and Corrective Action Report for the BASA surface impoundment fails to provide the rate and direction of groundwater flow.

86. Respondent's 2017 Annual Groundwater Monitoring and Corrective Action Report for the 322 Landfill fails to provide the rate and direction of groundwater flow.

87. Respondent's 2018 Annual Groundwater Monitoring and Corrective Action Report for the BASA surface impoundment:

a. concludes that an SSI concentration of Appendix III constituents was identified in downgradient monitoring wells relative to concentrations observed in upgradient monitoring wells. The results of the statistical analysis completed in January 2018 were not provided in the report; and
b. fails to identify the groundwater elevation and fails to provide the rate and direction of groundwater flow.

88. Respondent's 2018 Annual Groundwater Monitoring and Corrective Action Report for the 322 Landfill fails to identify the groundwater elevation and fails to provide the

rate and direction of groundwater flow.

89. Respondent's 2019 Annual Groundwater Monitoring and Corrective Action Report for the BASA surface impoundment:

a. concludes that there is no statistically significant level of Appendix IV constituents above groundwater protection standards but fails to include supporting information regarding the statistical analysis and the conclusion;
b. concludes downgradient monitoring well (MW-9) was identified as dry during the December 2019 semi-annual assessment monitoring sampling event. The report states that because the well could not be sampled, a statistical evaluation was not completed for that sampling event; and
c. fails to identify the groundwater elevation and fails to provide the rate and direction of groundwater flow.

90. Respondent's 2019 Annual Groundwater Monitoring and Corrective Action Report for the 322 Landfill fails to identify the groundwater elevation and fails to provide the rate and direction of groundwater flow.

91. Respondent's 2020 Annual Groundwater Monitoring and Corrective Action Report for the BASA surface impoundment fails to identify the groundwater elevation, rate and direction of groundwater flow.

92. Respondent's 2020 Annual Groundwater Monitoring and Corrective Action Report for the 322 Landfill fails to identify the groundwater elevation and fails to provide the rate and direction of groundwater flow.

93. Respondent's failure to include documentation supporting the statistical analysis and conclusions regarding SSIs and SSLs and failure to include groundwater elevation, rate, and direction of groundwater flow in the 2018-2019 BASA surface impoundment Annual Groundwater Monitoring and Corrective Action Reports are violations of 40 C.F.R. § 257.90(e)(3) as it references 40 C.F.R. §§ 257.90 through 257.98.

94. Respondent's failure to include groundwater rate, and direction of groundwater flow in the 2018-2019 322 Landfill Annual Groundwater Monitoring and Corrective Action Reports are violations of 40 C.F.R. § 257.90(e)(3) as it references 40 C.F.R. §§ 257.90 through 257.98.

Count 2

Failure to Comply with Groundwater Monitoring System Requirements

95. Complainant hereby incorporates the allegations contained in Paragraphs 36 through 80 above, as if fully set forth herein.

Failure to Comply with Groundwater Monitoring System Performance Standards

96. Pursuant to 40 C.F.R. § 257.91(a), the owner or operator of a CCR unit must install a groundwater monitoring system that meets the performance standards consisting of a sufficient number of wells, installed at appropriate locations and depths, to accurately characterize the quality of groundwater upgradient and passing the downgradient boundary of the unit.

97. Pursuant to 40 C.F.R. § 257.91(c)(1) and (2),the groundwater monitoring system must include the minimum number of monitoring wells necessary to meet the performance standards specified in 40 C.F.R. § 257.91(a), based on site-specific information. The groundwater monitoring system must contain: 1) a minimum of one upgradient and three downgradient 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.

98. Respondent's 2017-2018 Annual Groundwater Monitoring and Corrective Action Reports for the BASA surface impoundment indicate the BASA surface impoundment had one upgradient monitoring well and three downgradient monitoring wells.

99. Respondent's 2019 Annual Groundwater Monitoring and Corrective Action Report for the BASA surface impoundment indicates that during a sampling event in December 2019, downgradient monitoring well MW-9 was identified as being dry and unable to be sampled.

100. Respondent's 2020 Annual Groundwater Monitoring and Corrective Action Report for the BASA surface impoundment confirmed MW-9 was dry again in March 2020.

101. Respondent did not install additional monitoring well(s).

102. Respondent failed to meet the minimum performance standards of one upgradient well and three downgradient wells for its groundwater monitoring program at the BASA surface impoundment after MW-9 went dry and was not replaced, in violation of 40 C.F.R. § 257.91(c)(1).

Failure to develop an adequate groundwater monitoring system for the 322 Landfill

103. Pursuant to 40 C.F.R. §§ 257.91(a)(1) and (2), 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 accurately represent the quality of background groundwater and that detect all potential downgradient contaminant pathways.

104. Pursuant to 40 C.F.R. § 257.91(b), the number, spacing, and depths of monitoring systems must be determined based upon site-specific technical information.

105. Pursuant to 40 C.F.R. § 257.91(c)(2), the groundwater monitoring system must include the minimum number of wells necessary to meet the performance standards in 257.91(a) and must contain 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.

106. Respondent installed a groundwater monitoring system for the 56-acre 322 Landfill that included the minimum number of wells. The size of the 322 Landfill necessitates additional monitoring wells to accurately represent the quality of groundwater passing the waste boundary of the CCR unit.

107. Respondent's failure to install a groundwater monitoring system at the 322 Landfill that included an adequate number of monitoring wells to accurately represent the quality of groundwater passing the waste boundary of the CCR unit is a violation of 40 C.F.R. § 257.91(c)(2).

Failure to adequately document the basis supporting the determination of the minimum number of monitoring wells

108. Pursuant to 40 C.F.R. § 257.91(f), if the groundwater monitoring system includes the minimum number of monitoring wells of one upgradient and three downgradient wells, the owner or operator must obtain a certification, from a qualified engineer or approval from the participating state Director or approval from EPA if EPA is the permitting authority, to document the basis supporting the determination the minimum number of monitoring wells meets the performance standards established at 40 C.F.R. § 257.91(c).

109. Respondent's Groundwater Monitoring System Certification for the BASA surface impoundment, dated October 17, 2017, failed to:

a. include site-specific basis for the design and geospatial arrangements of the CCR well monitoring network; and
b. include certification that adequately justifies and supports the basis that the minimum number of monitoring wells meets the performance standards.

110. Respondent's Groundwater Monitoring System Certification for the 322 Landfill, dated October 17, 2017, failed to:

a. include site-specific basis for the design and geospatial arrangements of the CCR well monitoring network; and
b. include certification that adequately justifies and supports the basis that the minimum number of monitoring wells meets the performance standards.

111. Kansas is a non-participating state and not authorized to approve Respondent's proposal to install the minimum number of wells.

112. Respondent's Groundwater Monitoring System Certification for the BASA surface impoundment was signed by a certified engineer. The Certification for the BASA surface impoundment failed to justify and adequately support the determination that the minimum number of wells meets the performance standards in violation of 40 C.F.R. § 257.91(f).

113. Respondent's Groundwater Monitoring System Certification for the 322 Landfill was signed by a certified engineer. The Certification for the 322 Landfill failed to justify and adequately support the determination that the minimum number of wells meets the performance standards in violation of 40 C.F.R. § 257.91(f).

Count 3
Failure to Comply with Groundwater Sampling and Analysis Requirements

114. Complainant hereby incorporates the allegations contained in Paragraphs 36 through 80 above, as if fully set forth herein.

Failure to determine groundwater rate and flow direction

115. Pursuant to 40 C.F.R. § 257.93(c), the owner or operator of the CCR unit must determine the rate and direction of groundwater flow each time groundwater is sampled.

116. Respondent failed to determine the rate and direction of groundwater flow for the BASA surface impoundment during sampling events in at least 2018 and 2019.

117. Respondent failed to determine the rate and direction of groundwater flow for the 322 Landfill during sampling events in at least 2018 and 2019.

118. Respondent's failure to determine the rate and direction of groundwater flow during sampling events at the BASA surface impoundment in 2018 and 2019 are violations of 40 C.F.R. § 257.93(c).

119. Respondent's failure to determine the rate and direction of groundwater flow during sampling events at the 322 Landfill in 2018 and 2019 are violations of 40 C.F.R. § 257.93(c).

Failure to establish background groundwater quality

120. Pursuant to 40 C.F.R. §§ 257.93(d), 257.91(a)(1)(i), and 257.91(a)(1)(ii), 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. Background groundwater quality may be established at wells that are not located hydraulically upgradient from the CCR unit if hydrogeologic conditions do not allow the owner or operator of the CCR unit to determine what wells are hydraulically upgradient, or sampling at other wells will provide an indication of background groundwater quality that is as representative or more representative

than that provided by the upgradient wells. Background groundwater quality must be unaffected by leakage from a CCR unit.

121. Pursuant to 40 C.F.R. § 257.93(a), 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.

122. Pursuant to 40 C.F.R. § 257.93(e), samples collected when conducting detection monitoring and assessment monitoring (for both downgradient and background wells) must be consistent with the statistical procedures chosen under § 257.93(f) and the performance standards under § 257.93(g).

123. In 2018, at the BASA surface impoundment, Respondent did not characterize and evaluate intermittent groundwater flow direction changes and possible impacts on groundwater constituent levels.

124. In 2019, Respondent did not address that the samples at downgradient wells MW-9 and MW-10 at the BASA surface impoundment were previously impacted from the CCR unit, thus rendering the sampling results invalid as representative background groundwater samples.

125. In 2019, at the BASA surface impoundment, Respondent changed from interwell sampling data comparison to intrawell sampling data comparison for arsenic and cobalt at downgradient wells MW-9 and arsenic at MW-10.

126. Respondent's failure to evaluate groundwater flow direction changes for possible impacts on groundwater quality, its transition to an intrawell sampling data comparison during mid-groundwater investigation, and its reliance on monitoring wells that were previously impacted from the CCR unit resulted in the failure to establish background groundwater quality at the BASA surface impoundment and are violations of 40 C.F.R. §§ 257.93(a), (d) and (e).

Count 4
Failure to Adequately Complete the Assessment Monitoring Program

127. Complainant hereby incorporates the allegations contained in Paragraphs 36 through 80 above, as if fully set forth herein.

Failure to perform annual assessment monitoring at the BASA surface impoundment

128. Pursuant to 40 C.F.R. § 257.95(a), assessment monitoring is required whenever a statistically significant increase over background levels has been detected for one or more of the constituents listed in Appendix III to the CCR Rule.

129. Pursuant to 40 C.F.R. § 257.95(b), within 90 days of triggering an assessment monitoring program, and annually thereafter, the owner or operator of the CCR unit must sample and analyze the groundwater for all constituents listed in Appendix IV of the CCR Rule.

130. On March 9, 2018, Respondent conducted detection monitoring for Appendix III constituents at the BASA surface impoundment.

131. On June 11, 2018, Respondent triggered assessment monitoring as a result of detecting a statistically significant increase over background levels of Appendix III constituents at the BASA surface impoundment.

132. On September 6, 2018, or within 90 days of triggering assessment monitoring, Respondent sampled and analyzed the groundwater for all constituents listed in Appendix IV.

133. On June 25, 2019, or approximately one year after September 6, 2018, Respondent conducted the annual sampling and analysis of the groundwater for all constituents listed in Appendix IV.

134. In Respondent's 2019 Annual Groundwater Monitoring and Corrective Action Report, Respondent asserted that it completed two successful alternative source demonstrations for the BASA surface impoundment.

135. EPA reviewed all the documentation provided in support of Respondent's alternative source demonstrations. Based on the information provided by Respondent in the 2019 Annual Groundwater Monitoring and Corrective Action Report, EPA deemed the alternative source demonstrations were unsuccessful.

136. Respondent did not conduct assessment monitoring in 2020 for the BASA surface impoundment.

137. Respondent's failure to conduct annual sampling at the BASA surface impoundment in 2020 is a violation of 40 C.F.R. § 257.95(b).

Failure to perform semiannual sampling

138. Pursuant to 40 C.F.R. § 257.95(d)(1), after obtaining the results from the initial and subsequent sampling events required at 40 C.F.R. § 257.95(b), the owner or operator must, within 90 days of obtaining the results, and on at least a semiannual basis thereafter, resample all wells that were installed pursuant to the requirements of 40 C.F.R. § 257.91, conduct analyses for all parameters in Appendix III to this part and for those constituents in Appendix IV to this part that are detected in response to paragraph (b) of this section, and record their concentrations in the facility operating record.

139. On March 20-21, 2019, Respondent conducted semiannual sampling at the BASA surface impoundment.

140. On October 10, 2019, Respondent conducted the semiannual sampling at the BASA surface impoundment.

141. Respondent did not perform any subsequent semiannual sampling at the BASA surface impoundment after October 10, 2019.

142. In Respondent's 2019 Annual Groundwater Monitoring and Corrective Action Report, Respondent asserted that it completed two successful alternative source demonstrations for the BASA surface impoundment.

143. EPA reviewed all the documentation provided in support of Respondent's alternative source demonstrations. Based on the information provided by Respondent in the 2019 Annual Groundwater Monitoring and Corrective Action Report, EPA deemed the alternative source demonstrations were unsuccessful.

144. Respondent's failure to perform any semiannual sampling in 2020 is a violation of 40 C.F.R. § 257.95(d)(1).

Failure to characterize the nature and extent of release

145. Pursuant to 40 C.F.R. 257.95(g)(1), if one or more constituents in Appendix IV to the CCR Rule are detected at statistically significant levels above the groundwater protection standard established for the unit in any sampling event, the owner or operator must, among other things, characterize the nature and extent of the release and any relevant site conditions that may affect the remedy ultimately selected.

146. Characterization of the releases would include, but not be limited to, installing additional monitoring wells necessary to define the contaminant plume(s), collecting data on the nature and estimated quantity of material released, installation and sampling of at least one additional monitoring well at the facility boundary in the direction of contaminant migration, and sampling wells in accordance with 40 C.F.R. § 257.95(d)(1) to characterize the nature and extent of the release. 40 C.F.R. §§ 257.95(g)(1)(i)-(iii).

147. On February 14, 2019, Respondent posted on its publicly available webpage that statistically significant levels above groundwater protection standards were found at the BASA surface impoundment at MW-9 (arsenic and cobalt) and MW-10 (arsenic).

148. In Respondent's 2019 Annual Groundwater Monitoring and Corrective Action Report, Respondent asserted that it completed two successful alternative source demonstrations for the BASA surface impoundment.

149. EPA reviewed all the documentation provided in support of Respondent's alternative source demonstrations. Based on the information provided by Respondent in the 2019 Annual Groundwater Monitoring and Corrective Action Report, EPA deemed the alternative source demonstrations were unsuccessful.

150. Respondent failed to characterize the nature and extent of release and any relevant site conditions that may affect the remedy ultimately selected for the BASA surface impoundment after finding statistically significant levels above groundwater protection standards

at the BASA surface impoundment.

151. Respondent's failure to characterize the nature and extent of release and any relevant site conditions is a violation of 40 C.F.R. § 257.95(g)(1).

Failure to initiate an assessment of corrective measures

152. Pursuant to 40 C.F.R. §§ 257.95(g)(3)(i)-(ii), within 90 days of finding that any of the constituents listed in Appendix IV the CCR Rule have been detected at a statistically significant level exceeding the groundwater protection standards, the owner or operation must either: i) initiate an assessment of corrective measures as required by 40 C.F.R. § 257.96, or ii) demonstrate that a source other than the CCR unit caused the contamination, or that the statistically significant increase resulted from error in sampling, analysis, statistical evaluation, or natural variation in groundwater quality.

153. On February 14, 2019, Respondent posted on its publicly available webpage that statistically significant levels above groundwater protection standards were found at the BASA surface impoundment at MW-9 (arsenic and cobalt) and MW-10 (arsenic).

154. EPA reviewed all the documentation provided in support of Respondent's alternative source demonstrations. Based on the information provided by Respondent in the 2019 Annual Groundwater Monitoring and Corrective Action Report, EPA deemed the alternative source demonstrations were unsuccessful.

155. Respondent failed to adequately demonstrate that an alternative source caused the statistically significant level of contaminants at MW-9 (arsenic and cobalt) and MW-10 (arsenic) above groundwater protection standards. Accordingly, Respondent should have initiated an assessment of corrective measures.

156. Respondent failed to initiate an assessment of corrective measures within 90 days of January 14, 2019.

157. Respondent's failure to initiate an assessment of corrective measures within 90 days of detecting a statistically significant level of arsenic and cobalt at MW-9 and arsenic at MW-10 above groundwater protection standards is a violation of 40 C.F.R. § 247.95(g)(3)(i).

Count 5
Failure to Comply with Closure and Post-Closure Requirements

158. Complainant hereby incorporates the allegations contained in Paragraphs 36 through 80 above, as if fully set forth herein.

Failure to adequately describe the major slope stability closure performance standard in the TEC Landfill Closure Plan

159. Pursuant to 40 C.F.R. § 257.102(d)(1)(iii), the closure performance standard when

leaving CCR waste in place requires the owner or operator of a CCR unit to ensure, among other things, the CCR unit is closed in a manner that will include measures that provide for major slope stability to prevent the sloughing or movement of the final cover system during the closure and post-closure care period.

160. When first posted, Respondent's TEC Landfill Closure Plan failed to:

a. provide a description of the physical characteristics of the bottom ash, fly ash, or TEC non-CCR waste;
b. provide a discussion of how boiler slag and scrubber residue is presented; and
c. provide a discussion of any stabilization or solidification measures taken during the cover construction to ensure against sloughing and movement of the final cover.

161. Respondent's failure to include measures that provide for major slope stability to prevent the sloughing or movement of the final cover system during the closure and post-closure care period in the TEC Landfill Closure Plan is a violation of the closure performance standard set forth at 40 C.F.R. § 257.102(d)(1)(iii).

Failure to provide adequate criteria to determine inspection frequency for final cover system in TEC Landfill Post-Closure Plan

162. Pursuant to 40 C.F.R. § 257.104(d)(1)(i), the owner or operator of a CCR unit must prepare a written post-closure plan that includes a description of the monitoring and maintenance activities required in paragraph (b) of this section for the CCR unit, and the frequency at which these activities will be performed.

163. Pursuant to 40 C.F.R. § 257.104(b)(1), the owner or operator must conduct post-closure care for the CCR unit which must consist of maintaining the integrity and effectiveness of the final cover system, including making repairs to the final cover as necessary to correct the effects of settlement, subsidence, erosion, or other events, and preventing run-on and run-off from eroding or otherwise damaging the final cover.

164. Respondent's post-closure plan for the 322 Landfill established weekly, then quarterly inspections of the 322 Landfill.

165. The post-closure plan did not provide any criteria for evaluating stability, provide a description for methods for conducting inspections, and did not provide what level of periodic maintenance might warrant more or less frequent inspections.

166. Respondent's failure to provide criteria for evaluating stability, failure to provide a description for methods for conducting inspections, and failure to provide what level of periodic maintenance might warrant more or less frequent inspections in order to ensure the integrity and effectiveness of the final cover system at the 322 Landfill is maintained is a violation of 40 C.F.R. § 257.104(d)(1)(i).

CONSENT AGREEMENT

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

a. admits the jurisdictional allegations set forth herein;

b. neither admits nor denies the allegations stated herein;

c. consents to the assessment of a civil penalty, as stated herein;

d. consents to the issuance of the specified compliance order;

e. consents to any conditions specified herein;

f. waives any right to contest the allegations regarding the TEC facility set forth herein; and

g. waives its rights to appeal the Final Order accompanying this Consent Agreement.

2. Respondent consents to the issuance of this Consent Agreement and Final Order and consents for the purposes of settlement to the payment of the civil penalty specified herein and performance of the compliance actions described below.

3. Respondent and EPA agree to the terms of this Consent Agreement and Final Order and Respondent agrees to comply with the terms specified herein.

4. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

5. The parties consent to service of this Consent Agreement and Final Order electronically at the following e-mail addresses: *catlin.kelley@epa.gov* (for Complainant) and *nlong@HuntonAK.com* and *paul.ling@evergy.com* (for Respondent). Respondent understands that the CAFO will become publicly available upon filing.

Penalty Payment

6. Respondent agrees that, in settlement of the claims alleged herein, Respondent shall pay a civil penalty of One Hundred Twenty Thousand Dollars ($120,000), as set forth below.

7. Respondent shall pay the penalty within thirty (30) days of the effective date of the Final Order. Such payment shall identify Respondent by name and docket number and shall be by certified or cashier's check made payable to the "United States Treasury" and sent to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

or by alternate payment method described at *http://www.epa.gov/financial/makepayment*.

8. A copy of the check or other information confirming payment shall simultaneously be emailed to the following:

Regional Hearing Clerk
R7_Hearing_Clerk_Filings@epa.gov; and

Kelley Catlin, Attorney
catlin.kelley@epa.gov@epa.gov.

9. Respondent understands that its failure to timely pay any portion of the civil penalty may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall begin to accrue on a civil or stipulated penalty from the date of delinquency until such civil or stipulated penalty and any accrued interest are paid in full. 31 C.F.R. § 901.9. Interest will be assessed at a rate of the United States Treasury Tax and loan rates in accordance with 31 U.S.C. § 3717. Additionally, a charge will be assessed to cover the costs of debt collection including processing and handling costs, and a non-payment penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. 31 U.S.C. § 3717(e)(2).

Compliance Actions

10. Respondent shall take the following actions within the time periods specified, according to the terms and conditions specified below.

a. Within thirty (30) days of the effective date of this Consent Agreement and Final Order, Respondent shall amend the TEC BASA Closure Completion Notification, dated August 11, 2020, to indicate the BASA surface impoundment certification has been reopened for further assessment monitoring and nature and extent investigation of previous statistically significant levels of arsenic and cobalt.
b. Within thirty (30) days of the effective date of this Consent Agreement and Final Order, Respondent shall amend the TEC BASA 2019 Annual Groundwater Monitoring and Corrective Action Report to indicate that attachments covering the alternate source demonstrations for elevated levels of Appendix IV constituents (i.e., Attachments 1 and 2 in the TEC BASA 2019 Annual Groundwater Monitoring and Corrective Action Report) are withdrawn.

c. Within forty-five (45) days of the Effective Date of this Consent Agreement and Final Order, Respondent shall re-assess groundwater monitoring data collected after January 1, 2018, at the BASA surface impoundment using interwell comparison methods to establish background levels and identify statistically significant levels and groundwater protection standards in accordance with 40 C.F.R. § 257.95(h) and (i).
d. Within ninety (90) days of the Effective date of this Consent Agreement and Final Order, Respondent shall provide a Nature and Extent Investigation Well Placement/Development Plan for the implementation and schedule for a nature and extent investigation at the BASA surface impoundment for historical statistically significant levels of arsenic and cobalt and any other appendix IV constituents identified as a statistically significant level in actions completed in (c) above. The plan shall include provisions that ensure compliance with all requirements set forth at 40 C.F.R. § 257.95(g), except that any and all associated compliance requirements will be completed pursuant to the plan's schedule. The schedule shall provide for the initiation of nature and extent well drilling within one hundred and eighty (180) days of EPA approval of the Nature and Extent Investigation Well Placement/Development Plan.
e. Within ninety (90) days of the Effective Date of this Consent Agreement and Final Order, Respondent shall provide EPA a BASA Surface Impoundment Well Placement/Development Plan for the installation of additional wells at the BASA surface impoundment. The BASA Surface Impoundment Well Placement/Development Plan shall include, but not be limited to:
    i. a discussion of how the proposed new well(s) will comply with 40 C.F.R. §§ 257.90(b)(1) and 257.91. The discussion should include how the well(s) replace(s) or augment(s) the failed and/or lost capacity of the required unit boundary monitoring network and how the proposed well(s) overcome(s) the factors that led to the non-productivity of MW-9;
    ii. a proposed sampling schedule to meet the requirements of 40 C.F.R. § 257.90(b)(1)(iii);
    iii. a proposed well development/reconditioning plan and sampling schedule to re-initiate assessment monitoring for Appendix III and Appendix IV constituents at MW-7, MW-8 and MW-10. The schedule shall include a plan for incorporating the new well(s) into the assessment monitoring sampling program when viable. The proposed schedule shall include a schedule to initiate the annual assessment monitoring event;
    iv. a proposed sampling schedule for semi-annual assessment monitoring for any Appendix III and Appendix IV constituents identified in the annual assessment monitoring event pursuant to 40 C.F.R. § 257.95(d);

v. a proposed schedule for establishing groundwater protection standards pursuant to 40 C.F.R. § 257.95(h) in order to evaluate whether closure has been accomplished pursuant to 40 C.F.R. § 257.102(c);
vi. a proposed schedule for establishing nature and extent investigation for any new statistically significant levels detected during the re-initiated assessment monitoring of additional Appendix IV constituents. An SSL at a newly established well for a constituent previously identified as an SSL under item (c) of this section is assumed to be associated with a previous release and not "new" per this paragraph Requirements under 40 C.F.R. § 257.95(g) for these SSL(s) are satisfied by the plan and actions associated with item (d); and
vii. identification of any potential updates and/or modifications to reports/notifications in Respondent's operating record and on Respondent's publicly available CCR compliance webpage, and a schedule for making the updates and/or modifications.

f. Within one hundred eighty (180) days of the Effective Date of this Consent Agreement and Final Order, Respondent shall provide a 322 Landfill Well Placement/Development Plan for the installation of additional wells at the 322 Landfill. The 322 Landfill Well Placement/Development Plan shall include, but not be limited to:
i. a discussion of how the proposed wells will comply with 40 C.F.R. §§ 257.90(b)(1) and 257.91;
ii. a proposed sampling schedule to meet the requirements of 40 C.F.R. § 257.90(b)(1)(iii);
iii. a proposed schedule for incorporating the new wells into the assessment monitoring sampling program when viable;
iv. a proposed sampling schedule for semi-annual assessment monitoring for any Appendix III and Appendix IV constituents identified in the annual assessment monitoring event pursuant to 40 C.F.R. § 257.95(d); and
v. identification of any potential updates and/or modifications to reports/notifications in Respondent's operating record and on Respondent's publicly available CCR compliance webpage and a schedule for making the updates and/or modifications.

g. Within one hundred and eighty (180) days of EPA approval of any of the well development and placement plans, Respondent shall install the additional wells and initiate sampling according to the schedules included in the approved Plans.

h. Upon completion of the actions described in Paragraphs 10(a)-(g) above, Respondent may request a meeting with EPA to present the overall status of Respondent's CCR program at the TEC facility and indicate how Respondent will comply with the CCR Regulations at that facility moving forward. Respondent may at that time request the CAFO be terminated.

11. Respondent shall, on a quarterly basis, electronically submit all final documents, plans or reports generated to demonstrate compliance with the requirements as set forth in the immediately preceding paragraphs to the following address:

Cynthia Sans, ECAD, or successor
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219
sans.cynthia@epa.gov.

During reporting periods when no final documents, plans or reports are ready to be submitted, Respondent shall email the EPA contact indicating that: 1) there are no final documents, plans or reports ready to be submitted, 2) a summary of work completed during the reporting period, and 3) expected work to be completed during the next reporting period. Respondent may request less frequent report submissions after the first four quarterly reports have been provided.

12. All original documents/plans/reports must remain in Respondent's operating record and on Respondent's publicly available CCR compliance webpage as required by the CCR Rule. This requirement shall not supersede the five-year retention period set forth in 40 C.F.R. § 257.105.

13. All modified documents/plans/reports which may include, but are not limited to, sampling results, statistical analysis, and modifications or amendments to any reports shall be placed in Respondent's operating record and on Respondent's publicly available CCR compliance webpage in compliance with 40 C.F.R. §§ 257.105, 257.106, and 257.107, as applicable.

Submittal, Certification and Approval Procedures

14. All notifications, plans, reports, and other documents that are required pursuant to this Consent Agreement and Final Order to be submitted or provided to EPA or to Respondent may be signed electronically, so long as Respondent uses a "particular electronic signature device" that complies with the requirements of 40 C.F.R. § 3.4(d). All such documents shall be submitted as requested by the EPA contact identified in Paragraph 11 above.

15. Any notification, report, certification, data presentation, or other document submitted by Respondent pursuant to this Consent Agreement and Final Order which makes any representation concerning Respondent's compliance or noncompliance with any requirement of this Consent Agreement and Final Order shall be certified by a duly authorized representative of Respondent. A person is a "duly authorized representative" only if: (a) the authorization is made in writing; 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:

16. EPA will provide Respondent with its written comments or approval, conditional approval, approval with modification, rejection as not Acceptable, which is equivalent of disapproval for purposes of Paragraph 24 below, or disapproval with written comments and/or modifications, for any work plan, report, specification or schedule submitted pursuant to or required to be submitted for EPA approval pursuant to this Consent Agreement and Final Order.

17. Respondent shall revise any work plan, report, specification or schedule in accordance with EPA's written comments. Unless otherwise agreed to by the parties, Respondent shall submit to EPA any revised submittals within thirty (30) calendar days upon receipt of EPA's written comments. Revised submittals are subject to EPA approval, approval with conditions, rejection as not Acceptable, or disapproval with comments and/or modifications.

18. Any document or schedule provided by Respondent and approved by EPA, shall be automatically incorporated into this Consent Agreement and Final Order upon written approval by EPA.

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

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

21. 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.

22. Upon receipt of EPA's written disapproval, in whole or in part of any document, Respondent shall, within 30 Days or such other time as EPA agrees to in writing, incorporate or otherwise address each of EPA's comments and resubmit the document, or disapproved portion thereof, to EPA for approval.

23. Any stipulated penalties that begin to accrue due to the submission of a plan or other document that is disapproved by EPA in whole or in part shall accrue during the period set

forth in the Paragraph immediately above, but shall not be payable unless the re-submission is untimely or is again disapproved by EPA in whole or in part; provided that, if EPA notifies Respondent in writing under Paragraph 16, above, that the original submitted document is not Acceptable, stipulated penalties applicable to the original document shall be due and payable notwithstanding the timeliness of any subsequent re-submission.

Stipulated Penalties

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

Period of Noncompliance	Penalty Per Violation Per Day
1st through 14th Day	$750
15th through 30th Day	$1,500
31st Day and beyond	$2,250

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

26. Respondent shall pay stipulated penalties to EPA within 30 Days of the date of a written demand by EPA, subject to the dispute resolution procedures set forth below. Stipulated penalties shall be paid as set forth in Paragraphs 7-8.

27. If Respondent fails to pay stipulated penalties according to the terms of this Consent Agreement and Final Order, Respondent shall be liable for interest, at the same rate as specified in Paragraph 9, 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.

28. 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 and Final Order.

29. Non-Exclusivity of Remedy. Stipulated penalties are not EPA's exclusive remedy for violations of this Consent Agreement and Final Order. EPA expressly reserves the right to seek any other relief it deems appropriate for Respondent's violation of this Consent Agreement and Final Order 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 Consent Agreement and Final Order shall be reduced by an amount equal to the amount of any stipulated penalty assessed and paid pursuant to this Consent Agreement and Final Order.

Force Majeure

30. Respondent shall perform the actions required under this Consent Agreement and Final Order 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" is defined as any event arising from causes beyond the control of Respondent, of any entity controlled by Respondent, or of Respondent's contractors which could not be overcome by Respondent's due diligence, and which delays or prevents the performance of any obligation under this Consent Agreement and Final Order 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. With appropriate documentation and justification as described above, the parties agree that for purposes of this settlement a supply chain disruption may qualify as a Force Majeure event.

31. If Respondent believes that a Force Majeure event has affected Respondent's ability to perform any action required under this Consent Agreement and Final Order, Respondent shall notify the EPA Project Manager in writing within 7 calendar days after first knew that the event might cause a delay in the performance of an obligation under this Consent Agreement and Final Order. 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.

32. 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 Consent Agreement and Final Order. Failure to provide timely and adequate notification shall constitute a waiver of any claim of Force Majeure as to the event(s) in question.

33. 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. No penalties will accrue during a Force Majeure event.

34. 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 Consent Agreement and Final Order.

35. 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.

Dispute Resolution

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

37. Informal Dispute Resolution. If Respondent objects to any EPA action taken, inaction taken by EPA, or to any notice given pursuant to this Consent Agreement and Final Order, Respondent shall notify EPA in writing of its objection(s) within five business days after such action or notice occurred. 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 Consent Agreement and Final Order.

38. 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 identified in Paragraph 11. EPA may, within 21 days thereafter, develop a statement of position and transmit the statements of position to the Region 7, Regional Judicial Officer (RJO). The RJO, 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 Consent Agreement and Final Order. 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.

39. 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 Consent Agreement and Final Order not directly in dispute, unless EPA provides otherwise in writing. Accrual of stipulated penalties with respect to the disputed matter shall be stayed upon both Parties' submission of statements of position to the RJO until resolution of the dispute. Notwithstanding the stay of accrual in the immediately preceding sentence, 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 the Stipulated Penalties section.

40. The parties shall bear their own attorney's fees and costs in resolving any dispute in accordance with the dispute resolution procedures set forth herein.

Effect of Settlement and Reservation of Rights

41. Full payment of the penalty proposed in this Consent Agreement and Final Order shall only resolve Respondent's liability for federal civil penalties for the violations alleged herein. Complainant reserves the right to take any enforcement action with respect to any other violations of RCRA or any other applicable law.

42. The effect of settlement described in the immediately preceding paragraph is conditioned upon the accuracy of Respondent's representations to the EPA, as memorialized in paragraph directly below.

43. Respondent certifies by the signing of this Consent Agreement and Final Order that it will complete the Compliance Actions specified herein for compliance with RCRA, 42 U.S.C. § 6901 *et. seq.*, and its implementing regulations.

44. Full payment of the penalty proposed in this Consent Agreement and Final Order shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Consent Agreement and Final Order does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of RCRA and regulations promulgated thereunder.

45. Notwithstanding any other provision of this Consent Agreement and Final Order, EPA reserves the right to enforce the terms and conditions of this Consent Agreement and Final Order by initiating a judicial or administrative action under Section 3008 of RCRA, 42 U.S.C. § 6928, and to seek penalties against Respondent in an amount not to exceed Sixty-Five Thousand Six Hundred Sixty-Six Dollars ($65,666) per day, per violation, pursuant to Section 3008(c) of RCRA, for each day of non-compliance with the terms of this Consent Agreement and Final Order, or to seek any other remedy allowed by law.

46. Except as expressly provided herein, nothing in this Consent Agreement and Final Order shall constitute or be construed as a release from any claim (civil or criminal), cause of action, or demand in law or equity by or against any person, firm, partnership, entity, or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the TEC facility.

47. Notwithstanding any other provisions of the Consent Agreement and Final Order, an enforcement action may be brought pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, or

other statutory authority, should EPA find that the handling, storage, treatment, transportation, or disposal of solid waste or hazardous waste at Respondent's facility may present an imminent and substantial endangerment to human health and the environment.

48. Nothing contained in this Consent Agreement and Final Order shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

General Provisions

49. By signing this Consent Agreement, the undersigned representative of Respondent certifies that he or she is fully authorized to execute and enter into the terms and conditions of this Consent Agreement and has the legal capacity to bind the party he or she represents to this Consent Agreement.

50. This Consent Agreement shall not dispose of the proceeding without a final order from the Regional Judicial Officer or Regional Administrator ratifying the terms of this Consent Agreement. This Consent Agreement and Final Order shall be effective upon filing by the Regional Hearing Clerk for EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

51. The penalty specified herein shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal, State and local taxes.

52. For purposes of the identification requirement in Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 1.162(f)(2)(A)(ii), and 26 C.F.R. § 1.162-21(b)(2), performance of Compliance Actions set forth in Paragraphs 10 – 13 in the Consent Agreement portion of this Consent Agreement and Final Order are restitution, remediation, or required to come into compliance with the law.

53. This Consent Agreement and Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms, or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.

54. The headings in this Consent Agreement and Final Order are for convenience of reference only and shall not affect interpretation of this Consent Agreement and Final Order.

55. The provisions of this Consent Agreement and Final Order shall be deemed satisfied upon a written determination by Complainant that Respondent has fully implemented the actions required in the Final Order. 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.

56. Except as expressly stated herein, Respondent reserves all defenses and all rights

and remedies, legal and equitable, available to it in any action brought by EPA or the United States under this CAFO, RCRA, the CCR Rule, or any other federal statutes, regulations, or rules. This CAFO shall not be construed as a waiver of any defenses or remedies that Respondent may have to any future alleged violations of RCRA or the CCR Rule at any facility.

57. This CAFO shall not be construed to create rights in, or grant any cause of action to, any third party not party to this CAFO.

COMPLAINANT:

U.S. ENVIRONMENTAL PROTECTION AGENCY

CANDACE BEDNAR

Digitally signed by CANDACE BEDNAR
Date: 2022.11.02 07:23:35 -05'00'

Date

Candace Bednar
Chemical Branch Chief
Enforcement and Compliance Assurance Division

KELLEY CATLIN

Digitally signed by KELLEY CATLIN
Date: 2022.11.01 15:31:38 -05'00'

Date

Kelley Catlin
Office of Regional Counsel

RESPONDENT:

Evergy Kansas Central, Inc.

10/31/2022
Date

Ellen E. Fairchild
Signature

Ellen E. Fairchild
Printed Name

Vice President and Chief Compliance Officer
Title

FINAL ORDER

Pursuant to Section 3008(a) of RCRA, 42 U.S.C. §§ 6928(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.

KARINA BORROMEO
Digitally signed by KARINA BORROMEO
Date: 2022.11.07 10:31:52 -06'00'

Karina Borromeo
Regional Judicial Officer

Date

CERTIFICATE OF SERVICE

I certify that that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy via Email to Complainant:

Kelley Catlin, Office of Regional Counsel
catlin.kelley@epa.gov

Cynthia Sans, Enforcement and Compliance Assurance Division
sans.cynthia@epa.gov

Copy via Email to Respondent:

Nash Long, Esq., Hunton Andrews Kurth LLP
nlong@HuntonAK.com

and

Paul Ling, Esq., Evergy
paul.ling@evergy.com

Copy via Email to the State of Kansas:

Julie Coleman, Director
Bureau of Waste Management
Kansas Department of Health and Environment
julie.coleman@ks.gov

Dated this _____ day of _____, _____.

AMY GONZALES Digitally signed by AMY GONZALES
Date: 2022.11.07 13:50:02 -06'00'

Signed