

SETTLEMENT AGREEMENT AMONG
THE UNITED STATES DEPARTMENT OF THE INTERIOR, THE DISTRICT OF COLUMBIA,
THE COMMONWEALTH OF VIRGINIA
AND
VIRGINIA ELECTRIC AND POWER COMPANY D/B/A DOMINION ENERGY VIRGINIA
FOR THE
DOMINION ENERGY VIRGINIA CRYSTAL CITY SUBSTATION OIL SPILL

I. Introduction

A. The United States of America, on behalf of the Department of the Interior (“DOI”) acting through the Fish and Wildlife Service (“FWS”) and the National Park Service (“NPS”), the District of Columbia, on behalf of the Department of Energy and Environment (“DOEE”), and the Commonwealth of Virginia, on behalf of the Secretary of Natural Resources and the Department of Environmental Quality (“Commonwealth”) (collectively referred to as the “Trustees”), and Virginia Electric and Power Company d/b/a Dominion Energy Virginia (“Settling Defendant”) (the Trustees and Settling Defendant are referred to collectively as the “Parties,”) with the approval of the United States Department of Justice (“DOJ”), enter into this Settlement Agreement (“Agreement” or “Settlement Agreement”) to resolve, without litigation, the Trustees’ civil claims under the Oil Pollution Act of 1990 (“OPA”), 33 U.S.C. § 2701 *et seq.*; the natural resource damages provisions of the Clean Water Act (“CWA”), 33 U.S.C. § 1321(f)(4) and (5); the District of Columbia Water Pollution Control Act (“WPCA”), D.C. Official Code § 8-103.01 *et seq.*; the Virginia State Water Control Law, Va. Code § 62.1-44.2 *et seq.* (“SWCL”) and any other applicable federal or state law for injury to, impairment of, destruction of, loss of, diminution of value of, and/or loss of use of natural resources, including the reasonable costs of assessing the injuries, resulting from the release of transformer mineral oil at or from the January 24, 2016 spill at the Dominion Energy Virginia Crystal City Substation (the “Site”) located in Arlington, Virginia.

B. In addition, DOI, on behalf of NPS, enters into this Settlement Agreement to resolve, without litigation, the NPS’ civil claims under the System Unit Resource Protection Act (“SURPA”), 54 U.S.C. § 100723, for the destruction of, loss of, or injuries to resources located within the boundaries of the national park, George Washington Memorial Parkway, including the cost of the damage assessment.

C. The Trustees have shared jurisdiction for the natural resources and their services injured at or by the discharge at and from the Site, and this Settlement Agreement is executed by the governmental agencies in their capacity as Natural Resource Trustees under OPA and the National Contingency Plan, 40 C.F.R. §§ 300.600-300.605, D.C. Code § 8-151.08(8), and the District of Columbia Mayor's Order 2011-96.

D. Under OPA, each responsible party for a facility from which oil is discharged into or upon navigable waters is liable for damages for injury to, destruction of, loss of, or loss of use of, natural resources, including the reasonable costs of assessing the injuries. 33 U.S.C. § 2702.

E. Under the CWA, the owner or operator of a facility from which oil or a hazardous substance is discharged to a water of the United States is liable for any costs incurred by the Federal or state government in the restoration or replacement of natural resources damaged or destroyed as a result of the discharge. 33 U.S.C. § 1321(f)(4).

F. Under SURPA, any person that destroys, causes the loss of, or injures any living or non-living resource located within the boundaries of a System Unit of a National Park is liable for damages for the cost of replacing, restoring, or acquiring the equivalent of the injured resources, including the costs of assessing the injuries. 54 U.S.C. §§ 100721-100722.

G. Under the WPCA, the owner or operator of a facility from which a hazardous substance or pollutant is discharged is liable for the full costs of removal, or for the cost of any assistance provided by the District, and such amount as represents the damage to water quality and aquatic life. D.C. Official Code § 8-103.17(e).

H. Under the SWCL, it is unlawful for any person to alter the physical, chemical or biological properties of state waters and make them detrimental to the public health, or to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other use. Va. Code § 62.1-44.5.

I. The execution of this Agreement shall not constitute, nor is it in any way an admission by Settling Defendant of any liability, and shall not be used in any other action against Settling Defendant as proof of liability.

II. Parties Bound

The provisions of this Settlement Agreement shall apply to and be binding upon Settling Defendant and all of its successors and assigns, and upon the Trustees.

III. Definitions

Except as otherwise expressly provided herein, the terms used in this Settlement Agreement which are used in OPA or in its Natural Resource Damage Assessment regulations promulgated by the National Oceanic and Atmospheric Administration pursuant to OPA (15 C.F.R. Part 990) shall have the meanings assigned to them by OPA or by its regulations. Terms which are not used in OPA but are used in the CWA shall have the meanings assigned to them by the CWA and its regulations. Terms which are not used in OPA or the CWA shall have the meanings assigned to them by SURPA. Terms which are not used in OPA, the CWA, or SURPA shall have the meanings assigned to them by the WPCA or SWCL, as applicable.

“Dominion Energy CCS Oil Spill” shall mean the January 24, 2016 release of transformer mineral oil at or from the Dominion Energy Virginia Crystal City Substation located in Arlington, Virginia.

“Effective Date” shall mean the date upon which the DOI issues written notice to Settling Defendant that the public comment period pursuant to Section XI has closed and that comments received, if any, do not require modification of, or United States, District of Columbia or Commonwealth withdrawal from, this Settlement Agreement.

“Natural resources” shall mean land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the fishery conservation zone established by the Magnuson-Stevens Fishery Conservation and Management Act [16 U.S.C. § 1801, *et seq.*]), or any State government.

“Roaches Run Vegetative Planting and Educational Signage project” shall mean enhancing wetland resources by planting cattails and other vegetation in the Roaches Run Waterfowl Sanctuary, within the George Washington Memorial Parkway. This includes construction of enclosures to protect the initial plantings from overharvesting from wildlife and oversight and monitoring. Educational signs providing information about the wetland habitat, the types of natural resources including migratory birds that utilize the habitat, and discouraging human visitors from feeding wildlife will be posted around the Roaches Run Waterfowl Sanctuary and the Gravelly Point Parking Area.

“Settlement Agreement” or “Agreement” shall mean this Settlement Agreement among DOI, the District of Columbia, the Commonwealth, and Dominion Energy Virginia.

“Site” shall mean the Dominion Energy Virginia Crystal City Substation located at 18th Street South and South Fern Street in Arlington, Virginia, and the geographic area where the discharged oil came to be located, including but not limited to the Roaches Run Waterfowl Sanctuary within George Washington Memorial Parkway and the Potomac River.

IV. Payment of Certain Costs and Damages

- A. Within 30 days after the Effective Date, Settling Defendant shall pay \$390,385 jointly to the Trustees. The total amount paid shall be deposited into a segregated, case-specific sub-account within the DOI Natural Resource Damage Assessment and Restoration Fund (“NRDAR Fund”) to be managed jointly by the Trustees for the following:
- (1) \$63,207 will fund the preparation of a restoration plan to be published for public review and comment and to oversee restoration implementation;
 - (2) \$314,675 will fund the Roaches Run Vegetative Planting and Educational Signage project; and
 - (3) \$12,503 will fund the signage portion of the Roaches Run Vegetative Planting and Education Signage project related to lost recreational use of the Mount Vernon Trail and Potomac River.
- B. As part of the cooperative assessment process for the Dominion Energy CCS Oil Spill, Dominion Energy Virginia has previously reimbursed incurred assessment costs of DOI in the amount of \$76,090.64 and the Commonwealth in the amount of \$12,271.11. The Trustees are not seeking, and this Agreement does not require, any additional payment of past assessment costs.
- C. Payment of the amount set forth in Section IV.A. shall be by EFT or in the form of a check made payable to the U.S. Department of the Interior, in accordance with instructions to be provided by DOI. At the time of payment, Settling Defendant shall send a written notice of payment and a copy of any transmittal documentation to:

Amy Horner Hanley, Senior Attorney
Division of Parks and Wildlife (MS 6316)
Office of the Solicitor
U.S. Department of the Interior
1849 C Street NW
Washington, DC 20240

With a copy to:

Chief
Environmental Enforcement Section
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, DC 20044
DJ # 90-5-1-1-11456

D. If Settling Defendant fails to make any of the payments specified at Section IV.A when due, Settling Defendant shall pay interest on those payments at the rate specified in 33 U.S.C. § 2705(b)(4). Interest shall be calculated from the Effective Date to the date of payment.

E. In addition, if Settling Defendant fails to make the payment specified in Section IV.A when due, it shall pay \$500 as a stipulated penalty for each day or portion thereof that the payment is overdue until all overdue payments (including stipulated penalties) are paid in full. A stipulated penalty for failure to make the payment specified at Section IV.A shall be paid to the NRDAR Fund in accordance with the payment instructions in Section IV.C. The stipulated penalty is due and payable within 30 days of the date of the demand for payment of the stipulated penalty by the relevant Trustee.

F. Payments made under Subparagraph IV.E shall be in addition to any other remedies or sanctions available to the Trustees by virtue of Settling Defendant's failure to comply with the requirements of this Settlement Agreement. Notwithstanding any other provisions of this Section IV, the Trustees may, in their unreviewable discretion, waive payment of any portion of the stipulated penalty that has accrued pursuant to this Settlement Agreement.

G. Settling Defendant shall be liable for reasonable attorneys' fees and costs incurred by the Trustees to collect any amount due under this Settlement Agreement that is not timely paid.

V. Covenant Not to Sue and Reservation of Rights by the Trustees

A. In consideration of the payments made and to be made by Settling Defendant, the Trustees covenant not to sue or maintain any lawsuit, action, administrative proceeding, or other proceeding pursuant to OPA, 33 U.S.C. § 2701 *et seq.*, the natural resource damages provisions of the Clean Water Act, 33 U.S.C. § 1321(f)(4) and (5), the WPCA, D.C. Official Code § 8-103.17(e), the SWCL,

Va. Code § 62.1-44.32 or any other applicable federal or state law, for injury to, impairment of, destruction of, loss of, diminution of value of, and/or loss of use of natural resources, against Settling Defendant for: (i) damages for injury to, impairment of, destruction of, loss of, diminution in value of, or loss of use of natural resources caused by the Dominion Energy CCS Oil Spill, and (ii) except as set forth in Section IV above, costs (including NRDA costs), attorneys' fees, other fees, or expenses incurred by the Trustees to recover such natural resource damages relating to injuries at or from the Site, including damage assessment costs.

B. In consideration of the payments made and to be made by Settling Defendant, the DOI, on behalf of NPS, covenants not to sue or maintain any lawsuit, action, administrative proceeding, or other proceeding pursuant to SURPA, 54 U.S.C. § 100721 *et seq.*, for destruction of, loss of, loss of use of, or injury to resources within the boundaries of the George Washington Memorial Parkway caused by the Dominion Energy CCS Oil Spill.

C. These covenants not to sue are not effective until, and are conditioned upon, complete and satisfactory performance by Settling Defendant of its obligations under Section IV of this Settlement Agreement.

D. Notwithstanding any other provision of this Settlement Agreement, the Trustees reserve, and this Settlement Agreement is without prejudice to any claims not included in Section V.A and V.B., including, but not limited to:

- (1) Claims based upon a failure of Settling Defendant to meet a requirement of this Settlement Agreement;
- (2) Criminal claims;
- (3) Claims for response costs or damages that the United States, other than DOI, may have under applicable law;
- (4) Claims for response costs or damages that the District of Columbia, other than DOEE, may have under applicable law;
- (5) Claims for response costs or damages that the Commonwealth of Virginia, other than the Secretary of Natural Resources or the Department of Environmental Quality, may have under applicable law.

VI. Covenant Not to Sue by Settling Defendant

A. Settling Defendant hereby covenants not to sue and agrees not to assert any claims or causes of action against the Trustees, including their departments, agencies or instrumentalities, or their employees, agents, experts or contractors, for:

- (1) Claims related to natural resource damages at the Site;
- (2) Any direct or indirect claim for reimbursement from the Oil Spill Liability Trust Fund or any District of Columbia Fund;
- (3) Any claim for costs, attorneys' fees, other fees, or expenses incurred in connection with this Settlement Agreement or claims resolved herein.

B. In any subsequent administrative or judicial proceeding initiated by DOI, the District of Columbia, or the Commonwealth related to the Site, Settling Defendant shall not assert, and may not maintain, any defense or claim based upon principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defense based upon any contention that the claims raised by the DOI, the District of Columbia, or the Commonwealth in the subsequent proceeding were or should have been settled in this Settlement Agreement; provided, however, that nothing in this Section VI affects the enforceability of the covenants set forth in Section V herein.

VII. Signatories

Each of the undersigned representatives of the Parties certifies that he or she is fully authorized to enter into the terms and conditions of this Agreement and to execute and bind legally such Party to this document.

VIII. Entire Agreement

This Settlement Agreement constitutes the final, complete, and exclusive agreement and understanding between the Parties with respect to the settlement embodied in the Agreement and supersedes all prior agreements and understanding, whether oral or written. No other document, nor any representation, inducement, agreement, understanding or promise constitutes any part of this Agreement or the settlement it represents, nor shall it be used in construing the terms of this Agreement.

IX. Modification

The terms of this Agreement may be modified only by a subsequent written agreement signed by all of the Parties.

X. Execution

This Agreement may be executed in several counterparts, each of which shall constitute an original, and all of which shall constitute one and the same instrument.

XI. DOJ Approval and Public Comment

The effectiveness of this Settlement Agreement (except with respect to Section XII) is subject to DOI's receipt of final approval from the DOJ. Prior to granting such approval, the federal trustee will cause a notice of the Settlement Agreement to be published in the Federal Register as well as a local newspaper of general circulation ("Notice"). The Notice must invite members of the public to submit comments regarding the Agreement to the federal trustee for review and evaluation for a period of 30 days after publication of the Federal Register notice. Settling Defendant agrees not to withdraw its consent to the Settlement Agreement pending consideration of public comments and approval of DOJ. If public comments disclose facts or considerations which indicate that this Settlement Agreement is inappropriate, improper, or inadequate, DOI, in consultation with DOJ, may withdraw their approval of the Settlement Agreement. Should DOI withdraw their approval, this Agreement shall be null and void.

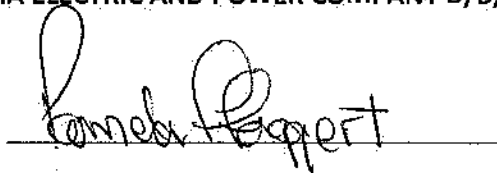
XII. Effective Date

The Effective Date of this Settlement Agreement shall be the date upon which the DOI issues written notice to the Settling Defendant that the public comment period pursuant to Section XI has closed and that comments received, if any, do not require modification or DOI, District of Columbia, or Commonwealth withdrawal from this Settlement Agreement.

**SETTLEMENT AGREEMENT AMONG THE UNITED STATES DEPARTMENT OF THE INTERIOR, THE
DISTRICT OF COLUMBIA, THE COMMONWEALTH OF VIRGINIA, AND DOMINION ENERGY VIRGINIA FOR
THE DOMINION ENERGY VIRGINIA CRYSTAL CITY SUBSTATION OIL SPILL**

VIRGINIA ELECTRIC AND POWER COMPANY D/B/A DOMINION ENERGY VIRGINIA

By:



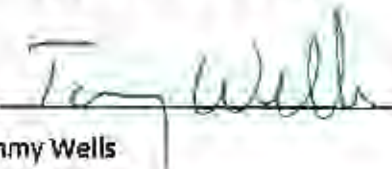
Date: 04/03/2018

Pamela F. Faggert

Chief Environmental Officer and Senior Vice President - Sustainability

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DISTRICT OF COLUMBIA, ON BEHALF OF DEPARTMENT OF ENERGY AND ENVIRONMENT

By: 
Tommy Wells
Director
Department of Energy and Environment

Date: 

Robyn Bender
Deputy Attorney General
Public Advocacy Division

Brian R. Caldwell
Assistant Attorney General
441 4th Street NW, Suite 650-N
Washington, DC 20001

David Dickman (DC Bar # 465010)
General Counsel
Department of Energy and Environment
1200 First Street NE, 5th Floor
Washington, DC 20002
(202) 481-3845
david.dickman@dc.gov

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THE COMMONWEALTH OF VIRGINIA, ON BEHALF OF SECRETARY OF NATURAL RESOURCES AND DEPARTMENT OF ENVIRONMENTAL QUALITY

By:



Matthew J. Strickler
Secretary of Natural Resources
Commonwealth of Virginia

Date:

11/26/18

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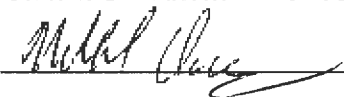
UNITED STATES DEPARTMENT OF THE INTERIOR, ON BEHALF OF U.S. FISH AND WILDLIFE SERVICE AND NATIONAL PARK SERVICE

By: 
Peg Romanik
Associate Solicitor
Division of Parks and Wildlife

Date: 

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APPROVED BY: UNITED STATES DEPARTMENT OF JUSTICE

By: _____

Date: 11/9/18

Nathaniel Douglas
Deputy Section Chief
Environmental Enforcement Section