

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

UNITED STATES OF AMERICA; THE
STATE OF NORTH CAROLINA; AND
THE COMMONWEALTH OF
VIRGINIA, SECRETARY OF
NATURAL RESOURCES,

Plaintiffs,

v.

DUKE ENERGY CAROLINAS, LLC,

Defendant.

CIVIL ACTION NO. 1:19-cv-00707

CONSENT DECREE

TABLE OF CONTENTS

I.	BACKGROUND.....	1
II.	JURISDICTION AND VENUE	3
III.	PARTIES BOUND	4
IV.	DEFINITIONS	4
V.	STATEMENT OF PURPOSE.....	7
VI.	PAYMENT BY THE SETTLING DEFENDANT	8
VII.	NATURAL RESOURCE RESTORATION PROJECTS	9
VIII.	REPORTING REQUIREMENTS.....	13
IX.	STIPULATED PENALTIES.....	14
X.	FORCE MAJEURE	17
XI.	DISPUTE RESOLUTION	19
XII.	INFORMATION COLLECTION AND RETENTION; ACCESS TO RESTORATION PROJECT PROPERTIES.....	22
XIII.	COVENANTS NOT TO SUE BY PLAINTIFFS	24
XIV.	RESERVATION OF RIGHTS BY PLAINTIFFS.....	25
XV.	COVENANTS BY THE SETTLING DEFENDANT	27
XVI.	EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION.....	29
XVII.	NOTICES	31
XVIII.	APPENDICES	33
XIX.	EFFECTIVE DATE AND RETENTION OF JURISDICTION	33
XX.	CONSENT DECREE MODIFICATIONS	34

XXI. CONSENT DECREE TERMINATION34
XXII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT35
XXIII. SIGNATORIES/SERVICE35
XXIV. FINAL JUDGMENT.....36

I. BACKGROUND

A. Plaintiffs—the United States of America (“United States”), on behalf of the Secretary of the United States Department of the Interior (“DOI”), through the United States Fish and Wildlife Service; the State of North Carolina, through the North Carolina Department of Environmental Quality (“North Carolina”); and the Commonwealth of Virginia, through its Secretary of Natural Resources and the Virginia Department of Environmental Quality (“Virginia”) (collectively, “Plaintiffs”)—filed a Complaint in this action pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, (“CERCLA”), 42 U.S.C. § 9607.

B. Plaintiffs’ Complaint alleges that Defendant Duke Energy Carolinas, LLC (“Settling Defendant”), which has entered into this Consent Decree, is liable under CERCLA for damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss, resulting from the releases of hazardous constituents of coal ash when liquefied coal ash was released into the Dan River on February 2, 2014, at and from the Dan River Steam Station (the “Facility”) near Eden, Rockingham County, North Carolina.

C. Pursuant to Executive Order 12580 and the National Contingency Plan, 40 C.F.R. Part 300, DOI, through the United States Fish and Wildlife Service (“FWS”), has been delegated authority to act as Federal Trustee for natural resources impacted by the Release, as that term is defined in Subparagraph 4(1).

D. The North Carolina Department of Environmental Quality has been delegated authority to act as a State Trustee for natural resources in North Carolina impacted by the Release.

E. The Virginia Department of Environmental Quality, acting on behalf of the Secretary of Natural Resources of the Commonwealth of Virginia, has been delegated

authority to act on behalf of the State Trustee for natural resources in Virginia impacted by the Release.

F. The Federal Trustee and the State Trustees (collectively, the “Trustees”) have formed a Trustee Council to coordinate natural resource damage assessment and restoration activities relating to the Release.

G. The Trustees’ natural resource damage assessment activities included reviewing data from the Release response efforts to assess injuries to natural resources located at the Facility and downstream of the Facility where the coal ash came to be located, preparing a natural resource damage assessment plan, soliciting input from the public and interested stakeholders on the scoping document for restoration planning, and considering restoration project proposals submitted by the public.

H. Based upon information developed and analyzed by the Trustees, the damage assessment activities, regulatory standards, and scientific literature, the Trustees used an estimate of the amount of injury to natural resources and their services alleged to have occurred as a result of the Release. The Trustees also used an assessment of lost services of natural resources (e.g., benthic invertebrates, fish, etc.) that could occur as a consequence of the Release, including exposure to high concentrations of hazardous substances arsenic and selenium in surface water and/or sediment.

I. The Trustees relied on two decision support models (an ecological service model and a human-use services model) to determine the type and magnitude of restoration required to restore the injured natural resources and their services identified by the Trustees’ assessment.

J. The Trustees have prepared a draft Restoration Plan in accordance with 42 U.S.C. § 9611 and 43 C.F.R. § 11.93 to evaluate and select proposed restoration alternatives that will restore, rehabilitate, replace, and/or acquire natural resources and services equivalent to those allegedly injured, lost, or destroyed as a result of the Release.

A copy of the draft Restoration Plan is attached as Appendix B to this Consent Decree. The Trustees' final Restoration Plan shall accompany any motion filed with the Court to enter this Consent Decree.

K. To date, the Settling Defendant has paid at least \$557,023.31 to DOI, \$77,884.81 to North Carolina, and \$726,145.49 to Virginia as reimbursement for costs incurred in connection with the Release since the Release and prior to the date of lodging of this Consent Decree.

L. By entry into this Consent Decree, the Settling Defendant does not admit any liability to the Plaintiffs arising out of the transactions or occurrences alleged in the Complaint.

M. The Parties to this Consent Decree recognize, and the Court by entering this Consent Decree finds, that this Consent Decree: (i) has been negotiated by the Parties in good faith; (ii) will avoid prolonged and complicated litigation among the Parties; (iii) will expedite the restoration of natural resources allegedly injured at and near the Dan River, including restoration activities performed, and to be performed, by the Settling Defendant; and (iv) is fair, reasonable, and in the public interest.

N. The Settling Defendant agrees that this Consent Decree is outside the scope of the settlement agreement entered into by the Settling Defendant and the North Carolina Department of Environmental Quality on September 23, 2016 ("2016 NC Settlement Agreement") and the Settling Defendant will not attempt to use the 2016 NC Settlement Agreement as a basis for challenging any provision of this Consent Decree.

NOW, THEREFORE, it is hereby ORDERED, ADJUDGED, AND DECREED:

II. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action pursuant to Sections 107 and 113(b) of CERCLA, 42 U.S.C. §§ 9607 and 9613(b); and 28 U.S.C. §§ 1331 and 1345. The Court also has personal jurisdiction over the Settling Defendant.

Venue lies in the Middle District of North Carolina pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. §§ 1391(b) and (c), because the Release alleged in the Complaint occurred in, and the Settling Defendant resides in, this judicial district. Solely for the purposes of this Consent Decree and the underlying Complaint, the Settling Defendant waives all objections and defenses that it may have to jurisdiction of the Court or to venue in this District. The Settling Defendant shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree applies to and is binding upon the Plaintiffs and upon the Settling Defendant and its successors and assigns. Any change in ownership or corporate status of the Settling Defendant including, but not limited to, any transfer of assets or real or personal property, shall in no way alter the Settling Defendant's responsibilities under this Consent Decree.

3. The Settling Defendant shall be responsible for ensuring that its contractors and subcontractors perform any work required hereunder in accordance with the terms of this Consent Decree. In any action to enforce this Consent Decree, the Settling Defendant shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

IV. DEFINITIONS

4. Unless otherwise expressly provided herein, terms used in this Consent Decree that are defined in CERCLA, the Clean Water Act ("CWA"), 33 U.S.C. § 1251 et seq., or in regulations promulgated under CERCLA or the CWA, shall have the meaning assigned to them in such law or regulations. Whenever terms listed below are used in

this Consent Decree or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

a. “Consent Decree” or “Decree” means this Consent Decree and all appendices attached hereto (listed in Section XVIII (Appendices)). In the event of conflict between this Consent Decree and any appendix, this Consent Decree shall control.

b. “Day” means a calendar day unless expressly stated to be a working day. “Working day” shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.

c. “DOI” means the United States Department of the Interior and any successor departments or agencies of the United States.

d. “Effective Date” means the effective date of this Consent Decree as provided by Section XIX of this Consent Decree (Effective Date and Retention of Jurisdiction).

e. “Interest” means interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

f. “Natural Resource” or “Natural Resources” means 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 and/or the States.

g. “Natural Resource Damages” means any damages recoverable by

the United States or the States on behalf of the public for injury to, destruction of, loss of, loss of use of, or impairment of Natural Resources as a result of the Release, including, but not limited to: (i) the reasonable costs of assessing injury to, destruction of, loss of, or impairment of Natural Resources; (ii) the costs of restoration, rehabilitation, or replacement of injured or lost Natural Resources or of acquisition of equivalent resources and/or their services; (iii) compensation for injury, destruction, loss, loss of use, diminution in value, or impairment of Natural Resources; (iv) the costs of planning, implementing, and monitoring restoration activities; and (v) each of the categories of recoverable damages described in 43 C.F.R. § 11.15 and applicable state law.

h. “NRDAR Fund” means DOI’s Natural Resource Damage Assessment and Restoration Fund.

i. “Paragraph” means a portion of this Consent Decree identified by an arabic numeral or an upper case letter.

j. “Parties” means the United States, the States, and the Settling Defendant.

k. “Plaintiffs” means the United States and the States.

l. “Release” means the release of liquefied coal ash into the Dan River on February 2, 2014, at and from the Duke Energy Dan River Steam Station (owned and operated by the Settling Defendant) near Eden, Rockingham County, North Carolina downstream to the John H. Kerr reservoir in Mecklenburg County, Virginia. *See* Appendix A.

m. “Restoration Projects” means those aquatic, terrestrial, and human-use restoration projects performed and to be performed by the Settling Defendant as described in Section VII of this Consent Decree (Natural Resource Restoration Projects).

n. “RIM Costs” means the natural resource restoration planning,

implementation and monitoring costs to be incurred by the Trustees in connection with the Release, including costs to oversee compliance with, and to implement, this Consent Decree and costs to implement, and to amend if necessary, the Restoration Plan for the Dan River Coal Ash Spill prepared by the Trustee Council.

o. “Section” means a portion of this Consent Decree identified by a roman numeral.

p. “Settling Defendant” means Duke Energy Carolinas, LLC.

q. “State” or “States” means the State of North Carolina and the Commonwealth of Virginia, individually or collectively, together with agencies and instrumentalities thereof.

r. “Subparagraph” means a portion of this Consent Decree identified by a lower case letter.

s. “Trustees” means DOI, acting through the United States Fish and Wildlife Service; the State of North Carolina, acting through the North Carolina Department of Environmental Quality; and the Commonwealth of Virginia, acting through its Secretary of Natural Resources.

t. “United States” means the United States of America, including all of its departments, agencies, and instrumentalities.

V. STATEMENT OF PURPOSE

5. The mutual objectives of the Parties in entering into this Consent Decree are: (i) to contribute to the restoration, replacement, or acquisition of the equivalent of the Natural Resources allegedly injured, destroyed, or lost as a result of hazardous substances released during the Release; (ii) to fund the Trustees’ future natural resource restoration planning, implementation, and monitoring costs; (iii) to resolve the Settling Defendant’s liability for Natural Resource Damages as provided herein; and (iv) to avoid potentially costly and time-consuming litigation.

VI. PAYMENT BY THE SETTLING DEFENDANT

6. Payment for DOI'S RIM Costs. Within 30 days after the Effective Date, the Settling Defendant shall pay a total of \$39,215 for DOI's RIM Costs to be incurred after the Effective Date of this Consent Decree. The Settling Defendant shall pay the amount due by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account, in accordance with written instructions provided to the Settling Defendant by the Financial Litigation Unit ("FLU") of the United States Attorney's Office for the Middle District of North Carolina after the Effective Date. The payment instructions provided by the FLU will include a Consolidated Debt Collection System ("CDCS") number, which the Settling Defendant shall use to identify all payments required to be made in accordance with this Consent Decree. The FLU will provide payment instructions to:

Patti Ross
DEC45A 550 South Tryon Street
Charlotte, North Carolina 28202
(704) 382-8147
patti.ross@duke-energy.com

on behalf of the Settling Defendant. The Settling Defendant may change the individual to receive payment instructions on its behalf by providing written notice of such change to the United States in accordance with Section XVII (Notices). At the time of payment, the Settling Defendant shall send notice to the United States in accordance with Section XVII that payment has been made. Such notice shall reference the civil action number, CDCS number, and DOJ case number 90-5-1-1-11057/2. The total amount paid shall be deposited in a segregated sub-account within the NRDAR Fund, to be managed by DOI and applied toward RIM Costs incurred by DOI.

7. Payment for North Carolina's RIM Costs. Within 30 days after the

Effective Date, the Settling Defendant shall pay a total of \$18,095 for North Carolina's RIM Costs to be incurred after the Effective Date of this Consent Decree. The Settling Defendant shall pay the amount due by check payable to the North Carolina Department of Environmental Quality, Financial Services Division, mailed to:

North Carolina Department of Environmental Quality
Financial Services Division
1606 Mail Service Center
Raleigh, North Carolina 27699-1606

At the time of payment, the Settling Defendant shall send notice to North Carolina in accordance with Section XVII that payment has been made. Such notice shall reference the civil action number.

VII. NATURAL RESOURCE RESTORATION PROJECTS

8. The Settling Defendant has completed the following Restoration Projects:
 - a. Pigg River Power Dam Partial Removal: The Settling Defendant funded removal of the defunct Power Dam on the Pigg River located in Franklin County, Virginia. Constructed in 1915 for power generation, Power Dam measured 25 feet by 204 feet long and impounded 60 acre-feet of water over 25 acres. Power Dam was the last impediment to fish passage within a 72-mile reach of the Pigg River from the headwaters downstream to Leesville Reservoir. Removal of the dam increased aquatic ecological services for fish and benthic invertebrates. It also restored 2.2 miles of aquatic instream habitat impounded upstream of the dam for smallmouth bass and the federally and state-listed endangered Roanoke logperch. The project improved instream habitat, vegetation, and competency to transport sediment another mile upstream and five miles downstream of the dam. It also enhanced the channel habitat, stability, and complexity of the remaining 45-mile Pigg River segment to the Leesville Reservoir.
 - b. Abreu-Grogan Park Improvements: The Settling Defendant made

improvements to the three-acre Abreu-Grogan Park in Danville, Virginia, which was closed for several months while coal ash was dredged from the Dan River as a result of the Release. The improvements include a boat dock for launching and retrieving boats, a handicap-accessible restroom, fishing platform, sidewalks, and an information kiosk.

c. Mayo River Land Conservation: The Settling Defendant funded the acquisition of 340 acres of real property along the Mayo River in North Carolina, including 3 miles of river corridor, and title was transferred to North Carolina for long-term stewardship and conservation in perpetuity as part of North Carolina's Mayo River State Park. The Settling Defendant also funded the acquisition of 214 acres of real property along the Mayo River in Henry County, Virginia, and title was transferred to Virginia for long-term stewardship and conservation in perpetuity as part of Virginia's Mayo River State Park. Acquisition of these lands and transfer to the respective state park systems of North Carolina and Virginia allow long-term recreational improvements to be implemented. Conservation of these portions of river corridor also protects significant aquatic habitat with at least 10 rare and listed aquatic species and adjacent terrestrial natural heritage features. These additions to the state park systems allow greater access and safety for the public to experience river-based recreation and fishing, as well as camping, hiking, and environmental education.

9. Additional Restoration Projects. The Settling Defendant shall finance and complete the Restoration Projects described in Appendix C (Restoration Project Scopes of Work): (i) Additional Mayo River Land Conservation and (ii) Public Boat Access. All restoration work performed by the Settling Defendant shall be in accordance with the Trustees' final Restoration Plan and any amendments thereto. To the extent required to implement a Restoration Project, the Settling Defendant's acquisition of real property and conveyance of such property to a State is subject to Paragraphs 10 through 12.

10. Acquisition of Properties. Within 18 months after the Effective Date, or

within such other time period if agreed to in writing by the Trustees, the Settling Defendant shall acquire, or cause to be acquired on its behalf, fee simple title to real property meeting the Performance Criteria in the applicable Scope of Work (Appendix C). Prior to acquiring title, the Settling Defendant shall satisfy any requirements of the State receiving title and shall document how such requirements are satisfied for each parcel to be acquired. All costs of acquisition (including due diligence and closing costs) shall be borne by the Settling Defendant.

11. Conveyance of Properties. In conveying ownership of any real property to a State, the Settling Defendant shall cooperate with any closing requirements provided in writing by a State or required under State law. Within 14 days of a State's written request to the Settling Defendant, or within such other time period if agreed to in writing by the Trustees, the Settling Defendant shall execute and deliver to the satisfaction of the receiving State a deed conveying fee simple title to the property free and clear of all liens and encumbrances except as otherwise agreed to by the State that, in the State's sole discretion, will not interfere with the compensatory purpose and intended use of the property. All costs of conveyance (including transfer costs and closing costs) shall be borne by the Settling Defendant. Within seven days of any conveyance to a State, the Settling Defendant shall notify the Trustees that the conveyance has occurred.

12. Contingency for Property Acquisition. In the event that the Settling Defendant, or its agent, fails to obtain the requisite title from a third party, as provided in Paragraph 10, necessary to implement a Restoration Project due to a force majeure event or an inability to acquire title at a commercially reasonable price, the Trustees may direct the Settling Defendant to instead acquire an alternate property (or combination of properties) that achieves comparable ecological function, recreation opportunity, and/or location as the original Restoration Project, taking into account any ecological or recreational benefits that have been or will be achieved from any portion(s) of the

original Restoration Project that may have been completed. The Settling Defendant shall implement the project at the alternate property within a mutually agreed upon timeframe. If the Settling Defendant seeks to assert either a force majeure event or an inability to acquire title at a commercially reasonable price with respect to any property addressed by this Paragraph, then the Settling Defendant shall comply in the first instance with the notice requirement and all other requirements set forth in the provisions of Section X (Force Majeure).

13. Conservation of Properties and Maintenance of Boat Access Locations.

With regard to any Restoration Project, the State shall conserve and manage such Restoration Project consistently with the Restoration Project's function and purpose to compensate the public for alleged injuries and losses of Natural Resources and/or their services pursuant to this Consent Decree and as set forth in the Scopes of Work (Appendix C).

14. Construction of Public Boat Access Facility in North Carolina, If Applicable. If, under the Public Boat Access Restoration Project described in Appendix C (Restoration Project Scopes of Work), the identified boat access location(s) is in North Carolina, the Settling Defendant shall construct a boat access facility at such location(s), using designs approved by the North Carolina Wildlife Resources Commission, and (if applicable) convey the property to North Carolina after construction is complete. The Settling Defendant shall complete construction of the boat access facility within one year of receiving design plan approvals from the North Carolina Wildlife Resources Commission, and the Settling Defendant shall notify the Trustees in writing within 7 days of completing construction of a facility.

15. Construction of Public Boat Access Facility in Virginia, If Applicable. If, under the Public Boat Access Restoration Project described in Appendix C (Restoration Project Scopes of Work), the identified boat access location(s) is in Virginia, the Settling

Defendant shall construct a boat access facility at such location(s), using designs approved by the Virginia Department of Game and Inland Fisheries, and (if applicable) convey the property to Virginia after construction is complete. The Settling Defendant shall complete construction of the boat access facility within one year of receiving design plan approvals from the Virginia Department of Game and Inland Fisheries, and the Settling Defendant shall notify the Trustees in writing within 7 days of completing construction of a facility.

VIII. REPORTING REQUIREMENTS

16. Beginning no sooner than six months after the lodging of this Consent Decree, and until termination of this Decree pursuant to Section XXI, the Settling Defendant shall submit by email to the Plaintiffs a semi-annual report on January 31st and July 31st of each year for the preceding half-calendar-year (i.e., July 1st through December 31st and January 1st through June 30th, respectively). For the first semi-annual report only, the reporting period shall commence with the lodging of this Consent Decree and extend through June 30, 2019. Each semi-annual report shall summarize the status of the Settling Defendant's progress in satisfying its obligations under Paragraph 9 (Additional Restoration Projects), including, at a minimum, (i) a narrative description of relevant activities undertaken and any problems encountered and solutions implemented during the reporting period, (ii) a narrative description of any anticipated problems and proposed solutions to such problems, (iii) appropriate maps and photographs demonstrating the Settling Defendant's progress, and (iv) a narrative description, including a schedule if applicable, of anticipated activities to be undertaken in the next reporting period in furtherance of its obligations under Paragraph 9.

17. Each report submitted by the Settling Defendant under this Section shall be signed by an official of the submitting party and include the following certification:

I certify under penalty of law that this document and all attachments were

prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I have no personal knowledge that the information submitted is other than 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.

18. Any information provided pursuant to this Consent Decree may be used by the Plaintiffs in any proceeding to enforce the provisions of this Consent Decree and as otherwise permitted by law.

19. The reporting requirements of this Consent Decree do not relieve the Settling Defendant of any reporting obligations required by CERCLA, the CWA, the SWCL, or their respective implementing regulations, or by any other federal, state, or local law, regulation, permit, or other requirement.

IX. STIPULATED PENALTIES

20. The Settling Defendant shall be liable for stipulated penalties to the United States and the States for violations of this Consent Decree as specified below, unless excused under Section X (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Decree, including any Restoration Project or schedule approved under this Decree, according to all applicable requirements of this Decree and within the specified time schedules established by or approved under this Decree.

21. The Settling Defendant shall not deduct any penalties paid under this Decree pursuant to this Section in calculating its federal, State, or local income tax.

22. Payment Obligation.

a. Interest. In the event any payment required by Paragraph 6 is not made when due, the Settling Defendant shall pay Interest on the unpaid balance

commencing on the payment due date and accruing through the date of full payment.

b. Stipulated Penalties. In addition to the Interest required to be paid under the preceding Subparagraph, if any payment required by Section VI (Payment by Settling Defendant) is not made when due, the Settling Defendant shall also pay the following stipulated penalties per day for each day that the payment is late through the date of full payment.

Period of Noncompliance	Penalty Per Violation Per Day
1st through 14th day	\$500
15th through 30th day	\$1,000
31st day and beyond	\$3,000

23. Restoration Project Requirements. The following stipulated penalties shall accrue per violation per day for each failure to satisfy any requirement or deadline (excluding notice requirements) set forth in Section VII (Natural Resource Restoration Projects).

Period of Noncompliance	Penalty Per Violation Per Day
1st through 30th day	\$1,250
31st day and beyond	\$3,000

24. Reporting and Notice Requirements. The following stipulated penalties shall accrue per violation per day for each violation of the requirements of Section VIII (Reporting Requirements) and the notice requirements set forth in Paragraphs 11, 12, 14, and 15 of Section VII (Natural Resource Restoration Projects).

Period of Noncompliance	Penalty Per Violation Per Day
1st through 30th day	\$750
31st day and beyond	\$2,000

25. Stipulated penalties under this Section shall begin to accrue on the day after performance is due or on the day 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 Decree.

26. The Settling Defendant shall pay any stipulated penalties to the United States and the States within 30 days of a written demand by any Plaintiff. Of the total stipulated penalty amount due, the Settling Defendant shall pay 33.4% percent to the United States, 33.3% to North Carolina, and 33.3% to Virginia. The Plaintiff making a demand for payment of a stipulated penalty shall simultaneously send a copy of the demand to the other Plaintiffs.

27. Any Interest payments under Subparagraph 22(a) shall be paid in the same manner as the overdue principal amount, and shall be directed to the same account as the overdue principal amount. Any stipulated penalties payments to the United States under this Section IX shall be paid in accordance with Paragraph 6 above, and shall be deposited in the United States Treasury.

28. Any Plaintiff may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due it under this Consent Decree.

29. Stipulated penalties shall continue to accrue as provided in Paragraph 25, during any Dispute Resolution, but need not be paid until the following:

a. If the dispute is resolved by agreement of the Parties or by a decision of the Plaintiffs that is not appealed to the Court, the Settling Defendant shall pay accrued penalties determined to be owing, together with Interest, to the Plaintiffs within 30 days of the effective date of the agreement or the receipt of the Plaintiffs' decision.

b. If the dispute is appealed to the Court and the Plaintiffs prevail in whole or in part, the Settling Defendant shall pay all accrued penalties determined by the Court to be owing, together with Interest, within 60 days of receiving the Court's decision or order, except as provided in Subparagraph c, below.

c. If any Party appeals the District Court's decision, the Settling Defendant shall pay all accrued penalties determined to be owing, together with Interest, within 15 Days of receiving the final appellate court decision.

30. If the Settling Defendant fails to pay stipulated penalties according to the terms of this Consent Decree, the Settling Defendant shall be liable for Interest on such penalties, accruing as of the date payment became due. Nothing in this Paragraph shall be construed to limit the United States or the States from seeking any remedy otherwise provided by law for the Settling Defendant's failure to pay any stipulated penalties.

31. The payment of penalties and interest, if any, shall not alter in any way the Settling Defendant's obligation to complete the performance of the requirements of this Consent Decree.

32. Non-Exclusivity of Remedy. Stipulated penalties are not the United States' or the States' exclusive remedy for violations of this Consent Decree. Subject to the provisions of Sections XIV and XVI (Reservation of Rights by Plaintiffs and Effect of Settlement/Contribution Protection), the Plaintiffs expressly reserve the right to seek any other relief that a Plaintiff deems appropriate for the Settling Defendant's violation of this Decree or applicable law, including but not limited to an action against the Settling Defendant for statutory penalties, additional injunctive relief or restoration work, and/or contempt. However, the amount of any statutory penalty assessed for a violation of this Consent Decree shall be reduced by an amount equal to the amount of any stipulated penalty assessed and paid pursuant to this Consent Decree.

X. FORCE MAJEURE

33. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of the Settling Defendant, of any entity controlled by the Settling Defendant, or of the Settling Defendant's contractors, that delays or prevents the performance of any obligation under this Consent Decree despite

the Settling Defendant's best efforts to fulfill the obligation. The requirement that Defendant exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (a) as it is occurring and (b) following the potential force majeure, such that the delay and any adverse effects of the delay are minimized. "Force majeure" does not include the Settling Defendant's financial inability to perform any obligation under this Consent Decree.

34. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, the Settling Defendant shall provide notice by email to the Trustees, within seven days of when the Settling Defendant first knew that the event may cause a delay. Within seven days thereafter, the Settling Defendant shall provide in writing to the Trustees an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; the Settling Defendant's rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of the Settling Defendant, such event may cause or contribute to an endangerment to public health, welfare or the environment. The Settling Defendant shall include with any notice all available documentation supporting the claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude the Settling Defendant from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. The Settling Defendant shall be deemed to know of any circumstance of which the Settling Defendant, any entity controlled by the Settling Defendant, or the Settling Defendant's contractors knew or should have known.

35. If the Trustees agree that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by the Trustees for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. The Trustees will notify the Settling Defendant in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

36. If the Trustees do not agree that the delay or anticipated delay has been or will be caused by a force majeure event, the Trustees will notify the Settling Defendant in writing of their decision.

37. If the Settling Defendant elects to invoke the dispute resolution procedures set forth in Section XI (Dispute Resolution), it shall do so no later than 15 days after receipt of the Trustees' notice. In any such proceeding, the Settling Defendant shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that the Settling Defendant complied with the requirements of Paragraphs 33 and 34. If the Settling Defendant carries this burden, the delay at issue shall be deemed not to be a violation by the Settling Defendant of the affected obligation of this Consent Decree identified to the Trustees and the Court.

XI. DISPUTE RESOLUTION

38. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree.

39. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when the Settling Defendant sends the Plaintiffs a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 30 days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the Plaintiffs shall be considered binding unless, within 15 days after the conclusion of the informal negotiation period, the Settling Defendant invokes formal dispute resolution procedures as set forth below.

40. Formal Dispute Resolution. The Settling Defendant shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by sending the Plaintiffs a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting the Settling Defendant's position and any supporting documentation relied upon by the Settling Defendant.

41. The Plaintiffs shall send their Statement of Position to the Settling Defendant within 60 days of receipt of the Settling Defendant's Statement of Position. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the Plaintiffs. The Statement of Position shall be binding on the Settling Defendant, unless the Settling Defendant files a motion for judicial review of the dispute in accordance with the following Paragraph.

42. The Settling Defendant may seek judicial review of the dispute by filing with the Court and serving on the Plaintiffs, in accordance with Section XVII (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within 10

days of receipt of the Plaintiffs' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of the Settling Defendant's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

43. The Plaintiffs shall respond to the Settling Defendant's motion within the time period allowed by the Local Rules of this Court. The Settling Defendant may file a reply memorandum, to the extent permitted by the Local Rules.

44. Standard of Review

a. Disputes Concerning Matters Accorded Record Review. Except as otherwise provided in this Consent Decree, in any dispute brought under Paragraph 40 pertaining to the adequacy or appropriateness of proposed changes to the Restoration Projects described in Paragraph 9, procedures to implement a Restoration Project, schedules, or any other items requiring approval by the Trustees under this Consent Decree; the adequacy of the performance of work undertaken pursuant to this Consent Decree; and all other disputes that are accorded review on the administrative record under applicable principles of administrative law, the Settling Defendant shall have the burden of demonstrating, based on the administrative record, that the position of the Plaintiffs is arbitrary and capricious or otherwise not in accordance with law.

b. Other Disputes. Except as otherwise provided in this Consent Decree, in any other dispute brought under Paragraph 40, the Settling Defendant shall bear the burden of demonstrating that its position complies with this Consent Decree and better furthers the Consent Decree's objective to contribute to the restoration, replacement, or acquisition of the equivalent of the natural resources allegedly injured, destroyed, or lost as a result of the Release.

45. The invocation of dispute resolution procedures under this Section shall

not, by itself, extend, postpone, or affect in any way any obligation of the Settling Defendant under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 29. If the Settling Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section IX (Stipulated Penalties).

XII. INFORMATION COLLECTION AND RETENTION; ACCESS TO RESTORATION PROJECT PROPERTIES

46. To the extent that the Settling Defendant has such right of entry, the United States, the States, and their representatives, including attorneys, contractors, and consultants, shall have the right of entry onto any real property that is subject to an uncompleted Restoration Project, or any other real property where access is needed for purposes of this Consent Decree, at all reasonable times, upon presentation of credentials, to:

- a. monitor the progress of activities required under this Consent Decree;
- b. verify any data or information submitted to the United States or a State in accordance with the terms of this Consent Decree;
- c. obtain documentary evidence, including photographs and similar data; and
- d. assess the Settling Defendant's compliance with this Consent Decree.

47. Until five years after the termination of this Consent Decree, the Settling Defendant shall retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) (hereinafter referred to as

“Records”) in its or its contractors’ or agents’ possession or control, or that come into its or its contractors’ or agents’ possession or control, and that relate in any manner to the Settling Defendant’s performance of its obligations under this Consent Decree. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, upon request by the United States or a State, the Settling Defendant shall provide copies of any Records required to be maintained under this Paragraph.

48. At the conclusion of the information-retention period provided in the preceding Paragraph, the Settling Defendant shall notify the Plaintiffs at least 90 days prior to the destruction of any Records subject to the requirements of the preceding Paragraph and, upon request by any Plaintiff, the Settling Defendant shall deliver any such Records to DOI or the State.

49. Privilege Claims and Business Confidential Claims.

a. The Settling Defendant may assert that a certain Record is privileged under the attorney-client privilege or any other privilege recognized by federal law. If a claim of privilege applies only to a portion of a Record, the Settling Defendant shall provide the Record in redacted form to mask the privileged or protected portion only. If the Settling Defendant asserts such a privilege, it shall provide the following: (a) the title of the document, record, or information; (b) the date of the document, record, or information; (c) the name and title of each author of the document, record, or information; (d) the name and title of each addressee and recipient; (e) a description of the subject of the document, record, or information; and (f) the privilege asserted by the Settling Defendant. The Settling Defendant shall retain all Records claimed to be privileged until the Trustees have had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Defendant’s favor.

b. The Settling Defendant may also assert that a certain Record is

protected as business confidential to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). If the Settling Defendant asserts such protection, the Settling Defendant shall segregate and clearly identify all Records or parts thereof for which the Settling Defendant asserts business confidentiality claims. Records determined to be confidential by the Trustees will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to the Trustees, or if the Trustees have notified the Settling Defendant that the Records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such Records without further notice to Settling Defendant.

50. However, no Records created or generated pursuant to the requirements of this Consent Decree, and no data (including but not limited to sampling, analytical, monitoring, hydrogeologic, scientific, chemical, and engineering data) or any other documents or information evidencing conditions caused by the Release, shall be withheld from the Plaintiffs on grounds of privilege or confidentiality.

51. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States or a State pursuant to applicable federal or state laws, regulations, or permits, nor does it limit or affect any duty or obligation of the Settling Defendant to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

XIII. COVENANTS NOT TO SUE BY PLAINTIFFS

52. Covenant by the United States. Except as specifically provided by Paragraph 54 (General Reservations) and Paragraph 55 (Special Reservations Regarding Natural Resource Damages), the United States covenants not to sue or take administrative action against the Settling Defendant for Natural Resource Damages known as of the date of lodging this Consent Decree with the Court pursuant to CERCLA Section 107,

42 U.S.C. § 9607, and the Clean Water Act Section 311, 33 U.S.C. § 1321. This covenant not to sue shall take effect upon receipt of the Settling Defendant's payment pursuant to Section VI (Payment by the Settling Defendant). This covenant not to sue is conditioned upon the satisfactory performance by the Settling Defendant of its obligations under this Consent Decree. This covenant not to sue extends only to the Settling Defendant and does not extend to any other person.

53. Covenant by the States. Except as specifically provided by Paragraph 54 (General Reservations) and Paragraph 55 (Special Reservations Regarding Natural Resource Damages), the States covenant not to sue the Settling Defendant for Natural Resource Damages known as of the date of lodging this Consent Decree with the Court pursuant to CERCLA Section 107, 42 U.S.C. § 9607, the Clean Water Act Section 311, 33 U.S.C. § 1321, and, as to Virginia, the SWCL. This covenant not to sue shall take effect upon receipt of the Settling Defendant's payment pursuant to Section VI (Payment by the Settling Defendant). This covenant not to sue is conditioned upon the satisfactory performance by the Settling Defendant of its obligations under this Consent Decree. This covenant not to sue extends only to the Settling Defendant and does not extend to any other person.

XIV. RESERVATION OF RIGHTS BY PLAINTIFFS

54. General Reservations. The United States and the States reserve, and this Consent Decree is without prejudice to, all rights against the Settling Defendant and with respect to all matters not expressly included within Paragraph 52 (Covenant by the United States) and Paragraph 53 (Covenant by the States). Notwithstanding any other provisions of this Consent Decree, the United States and the States reserve all rights against the Settling Defendant with respect to:

a. claims based on a failure by the Settling Defendant to meet a requirement of this Consent Decree;

b. liability for injunctive relief or administrative order enforcement under CERCLA Section 106, 42 U.S.C. § 9606;

c. liability under CERCLA Section 107(a)(4)(A), 42 U.S.C. § 9607(a)(4)(A), for costs of removal or remedial action incurred by the United States Government or a State or an Indian tribe;

d. liability under CERCLA Section 107(a)(4)(D), 42 U.S.C. § 9607(a)(4)(D), for costs of any health assessment or health effects study carried out under 42 U.S.C. § 9604(i);

e. liability for any other costs incurred or to be incurred by the United States or by a State that are not within the definition of Natural Resource Damages;

f. liability for damages for injury to, destruction of, or loss of natural resources resulting from releases or threatened releases of hazardous substances other than during the Release;

g. liability arising from any disposal of hazardous substances at the Facility by the Settling Defendant after the lodging of this Consent Decree; and

h. criminal liability.

55. Special Reservations Regarding Natural Resource Damages.

Notwithstanding any other provision of this Consent Decree, the United States and the States reserve the right to institute proceedings against the Settling Defendant in this action or in a new action seeking recovery of Natural Resource Damages, including costs of natural resource damages assessment, based on: (i) conditions caused by the Release, unknown to the Trustees as of the date of lodging of this Consent Decree, that result in releases of hazardous substances that contribute to injury to, destruction of, or loss of Natural Resources; or (ii) information received by the Trustees after the date of lodging of this Consent Decree which indicates that the Release has resulted in injury to, destruction of, or loss of Natural Resources of a type or future persistence that was

unknown, or of a magnitude greater than was known, to the Trustees as of the date of lodging of this Consent Decree.

XV. COVENANTS BY THE SETTLING DEFENDANT

56. Covenants by the Settling Defendant. The Settling Defendant covenants not to sue and agrees not to assert any claims or causes of action against the United States or the States, or their contractors or employees, with respect to Natural Resource Damages or this Consent Decree, including but not limited to:

a. any direct or indirect claim for reimbursement of any payment for Natural Resource Damages from the Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim against the United States or the States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to Natural Resource Damages; and

c. any claim against the United States or the States pursuant to Section 311 of the CWA, 33 U.S.C. § 1321.

57. Except as provided in Paragraph 64, the covenants in this Section shall not apply if the United States or a State brings a cause of action or issues an order pursuant to any of the reservations in Section XIV (Reservation of Rights by Plaintiffs), other than in Subparagraphs 54(a) (claims for failure to meet a requirement of the Consent Decree) or 54(h) (criminal liability), but only to the extent that the Settling Defendant's claims arise from the same response action, response costs, or damages that the United States or the State is seeking pursuant to the applicable reservation.

58. Only with respect to claims for money damages for injury or loss of property or personal injury or death arising from an exercise of rights of access under Paragraph 46, the Settling Defendant reserves, and this Consent Decree is without

prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, and brought pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States, as that term is defined in 28 U.S.C. § 2671, while acting within the scope of his or her office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, the foregoing shall not include any claim based on EPA's selection of response actions, the Trustees' selection of Restoration Projects, or the oversight or approval of the Settling Defendant's deliverables or activities.

59. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

60. Waiver of Certain Claims Against Other Persons. The Settling Defendant agrees not to assert any claims and to waive all claims or causes of action that it may have against all other persons for all matters relating to Natural Resource Damages, including for contribution; provided, however, that the Settling Defendant reserves the right to assert and pursue all claims, causes of action, and defenses relating to Natural Resource Damages against any person in the event such person first asserts, and for so long as such person pursues, any claim or cause of action against the Settling Defendant relating to Natural Resource Damages. Nothing in this Paragraph shall operate to waive or release any claim or action by the Settling Defendant under any contract of insurance.

XVI. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

61. Except as provided in Paragraph 60 (Waiver of Certain Claims Against Other Persons), nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. Except as provided in Paragraph 60 (Waiver of Certain Claims Against Other Persons), each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Release against any person not a Party hereto.

62. The Parties agree, and by entering this Consent Decree this Court finds, that this Consent Decree constitutes a judicially approved settlement pursuant to which the Settling Defendant has resolved liability alleged in the Plaintiffs' Complaint in this action within the meaning of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and is entitled to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for "matters addressed" in this Consent Decree. The "matters addressed" in this Consent Decree are Natural Resource Damages; provided, however, that if a Plaintiff exercises rights under the reservations set forth in Section XIV (Reservation of Rights by Plaintiffs) other than in Paragraph 54(a) (claims for failure to meet a requirement of the Consent Decree) or Paragraph 54(h) (criminal liability), the "matters addressed" in this Consent Decree will no longer include those Natural Resource Damages that are within the scope of the exercised reservation. The contribution protection afforded by this Consent Decree shall take effect upon receipt of the Settling Defendant's payment pursuant to Section VI (Payment by the Settling Defendant).

63. The Settling Defendant also agrees that, with respect to any suit or claim for contribution brought against it for matters related to this Consent Decree, the Settling

Defendant will notify the persons identified in Section XVII (Notices) in writing within 10 days of service of the complaint or claim upon it. In addition, the Settling Defendant shall notify the persons identified in Section XVII (Notices) within 10 days of service or receipt of any Motion for Summary Judgment, and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

64. In any subsequent administrative or judicial proceeding initiated by the United States or a State for injunctive relief, recovery of response costs or Natural Resource Damages, or other relief relating to the Release, the Settling Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or a State in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenants Not To Sue by the Plaintiffs set forth in Section XIII.

65. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. The Settling Defendant is responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits; and the Settling Defendant's compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States and the States do not, by their consent to the entry of this Consent Decree, warrant or aver in any manner that the Settling Defendant's compliance with any aspect of this Consent Decree will result in compliance with provisions of CERCLA, the CWA, the SWCL, or with any other provisions of federal, State, or local laws, regulations, or permits.

XVII. NOTICES

66. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses or emails specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States and the States, and the Settling Defendant, respectively.

67. Notices and documents submitted pursuant to this Section shall be deemed submitted upon mailing, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

68. Notice or submission to the “Plaintiffs” shall mean notice or submission to the United States (both the U.S. Department of Justice and DOI), North Carolina, and Virginia.

69. Notice or submission to the “Trustees” shall mean notice or submission to DOI, North Carolina, and Virginia.

As to the United States:

As to the U.S. Department of Justice:

EES Case Management Unit
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ # 90-5-1-1-11057/2

or

eescdcopy.enrd@usdoj.gov

As to DOI:

Amy Horner Hanley
Senior Attorney-Advisor

Environmental Restoration Branch
Office of the Solicitor
Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

or

amy.hanley@sol.doi.gov

As to North Carolina:

Guadalupe Carolina Fonseca Jimenez
Public Engagement Liaison
N.C. Department of Environmental Quality
1601 Mail Service Center
Raleigh, North Carolina 27699-1601

or

guadalupe.jimenez@ncdenr.gov

Drew Hargrove
Assistant General Counsel
N.C. Department of Environmental Quality
1601 Mail Service Center
Raleigh, North Carolina 27699-1601

or

drew.hargrove@ncdenr.gov

Francisco Benzoni
Special Deputy Attorney General
N.C. Department of Justice
P.O. Box 629
Raleigh, North Carolina 27602

or

fbenzoni@ncdoj.gov

As to Virginia:

Hon. Matthew J. Strickler
Secretary of Natural Resources
Commonwealth of Virginia
1111 East Broad Street
Richmond, Virginia 23219

or

natural.resources@governor.virginia.gov

Donald D. Anderson
Deputy Attorney General
Virginia Office of the Attorney General
202 North 9th Street
Richmond, Virginia 23219

Justin L. Williams
Land Protection and Revitalization Division Director/Interim Enforcement
Division Director
Virginia Department of Environmental Quality
1111 E. Main Street, Suite 1400
Richmond, Virginia 23219 or justin.williams@deq.virginia.gov

As to the Settling Defendant:

Garry S. Rice
Deputy General Counsel
Duke Energy
DEC45A 550 South Tryon Street
Charlotte, North Carolina 28202 or garry.rice@duke-energy.com

Linda D. Hickok
Manager, Environmental Services
Duke Energy
421 S. Wilmington Street, 15th Floor
Raleigh, North Carolina 27601 or linda.hickok@duke-energy.com

XVIII. APPENDICES

70. The following appendices are attached to and incorporated into this Consent Decree:

“Appendix A” is a map of the assessment area for the Release.

“Appendix B” is the draft Restoration Plan.

“Appendix C” contains the scopes of work for the Restoration Projects to be financed and completed by the Settling Defendant pursuant to Paragraph 9.

XIX. EFFECTIVE DATE AND RETENTION OF JURISDICTION

71. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court’s docket.

72. The Court shall retain jurisdiction to modify and enforce the terms and conditions of this Consent Decree and to resolve disputes arising hereunder as may be necessary or appropriate for the construction or execution of this Consent Decree.

XX. CONSENT DECREE MODIFICATIONS

73. Any material modification of this Consent Decree shall be made by agreement of the Parties to this Consent Decree and in writing, and shall not take effect unless approved by the Court. Any non-material modification of this Consent Decree shall be made by agreement of the Parties to this Consent Decree and in writing, and shall not take effect until filed with the Court. Nothing in this Consent Decree shall be deemed to alter the Court's power to enforce, supervise, or approve modifications to this Consent Decree.

74. The provisions of this Consent Decree are not severable. The Parties' consent hereto is conditioned upon the entry of the Consent Decree in its entirety without modification, addition, or deletion except as agreed to by the Parties.

75. Unanticipated or increased costs or expenses associated with the implementation of actions required by this Consent Decree and economic hardship or changed financial circumstances of the Settling Defendant shall not serve as a basis for modifications of this Consent Decree.

XXI. CONSENT DECREE TERMINATION

76. This Consent Decree may be terminated when the Plaintiffs determine that the Settling Defendant has satisfactorily completed performance of its Restoration Project obligations required by this Decree, provided that the Settling Defendant has fulfilled all other obligations of this Decree, including payment of any outstanding stipulated penalties under Section IX. The Parties shall file with the Court an appropriate joint stipulation reciting that the requirements of the Consent Decree have been met and requesting termination of the Decree.

XXII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

77. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment. The Plaintiffs reserve the right to withdraw or withhold their consent if comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. The Settling Defendant consents to the entry of this Consent Decree without further notice and agrees not to withdraw from or oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree, unless the Plaintiffs have notified the Settling Defendant in writing that they no longer support entry of the Decree. If for any reason the Court should decline to approve this Consent Decree in the form presented, or if approval and entry is subsequently vacated on appeal of such approval and entry, the agreement represented by this Consent Decree is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XXIII. SIGNATORIES/SERVICE

78. The undersigned representatives of the Settling Defendant, the United States, and the States each certify that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such Party to this document. This Consent Decree may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same instrument.

79. The Settling Defendant shall identify, on the attached signature page, the name, address and telephone number of an agent who is authorized to accept service of process by mail or email on behalf of the Settling Defendant with respect to all matters arising under or relating to this Consent Decree. The Settling Defendant hereby agrees to accept service by either mail or email from any party to this Consent Decree and with

respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable local rules of this Court including, but not limited to, service of a summons. The Settling Defendant need not file an answer to the Complaint in this action unless or until the Court expressly declines to enter this Consent Decree.

XXIV. FINAL JUDGMENT

80. This Consent Decree and its appendices constitute the final, complete, and exclusive understanding among the Parties with respect to the settlement embodied in the Consent Decree. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Consent Decree.

81. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court between and among the United States, the States, and the Settling Defendant. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS _____ DAY OF _____, _____.

United States District Judge

THE UNDERSIGNED PARTY enters into this Consent Decree in United States of America, the State of North Carolina, and the Commonwealth of Virginia, Secretary of Natural Resources v. Duke Energy Carolinas, LLC:

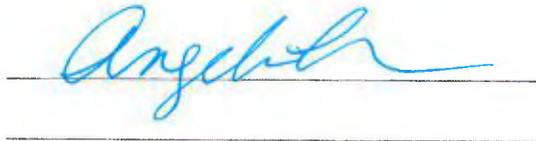
FOR THE UNITED STATES OF AMERICA

Date: 6/26/19



Ellen M. Mahan
Deputy Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice

Date: 6/26/19



Angela Mo
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044-7611
(202) 514-1707
angela.mo@usdoj.gov
California Bar No. 262113

THE UNDERSIGNED PARTY enters into this Consent Decree in United States of America, the State of North Carolina, and the Commonwealth of Virginia, Secretary of Natural Resources v. Duke Energy Carolinas, LLC:

FOR THE STATE OF NORTH CAROLINA

 _____

Date:

 _____

Sheila Holman
Assistant Secretary for the Environment
N.C. Department of Environmental Quality
1601 Mail Service Center
Raleigh, North Carolina 27699-1601
(919) 707-8619
sheila.holman@ncdenr.gov

THE UNDERSIGNED PARTY enters into this Consent Decree in United States of America, the State of North Carolina, and the Commonwealth of Virginia, Secretary of Natural Resources v. Duke Energy Carolinas, LLC:

FOR THE COMMONWEALTH OF VIRGINIA



Date:

7-15-19

Mark R. Herring, Attorney General
Donald D. Anderson, Deputy Attorney General
Paul Kugelman, Jr., Senior Assistant Attorney
General/Chief

Daniel W. Ingersoll, Assistant Attorney General
202 North 9th Street
Richmond, Virginia 23219
(804) 786-3806
dingersoll@oag.state.va.us



Date:

7/15/19

Matthew J. Strickler
Secretary of Natural Resources
Commonwealth of Virginia

THE UNDERSIGNED PARTY enters into this Consent Decree in United States of America, the State of North Carolina, and the Commonwealth of Virginia, Secretary of Natural Resources v. Duke Energy Carolinas, LLC:

FOR DUKE ENERGY CAROLINAS, LLC



5/8/19

Date:

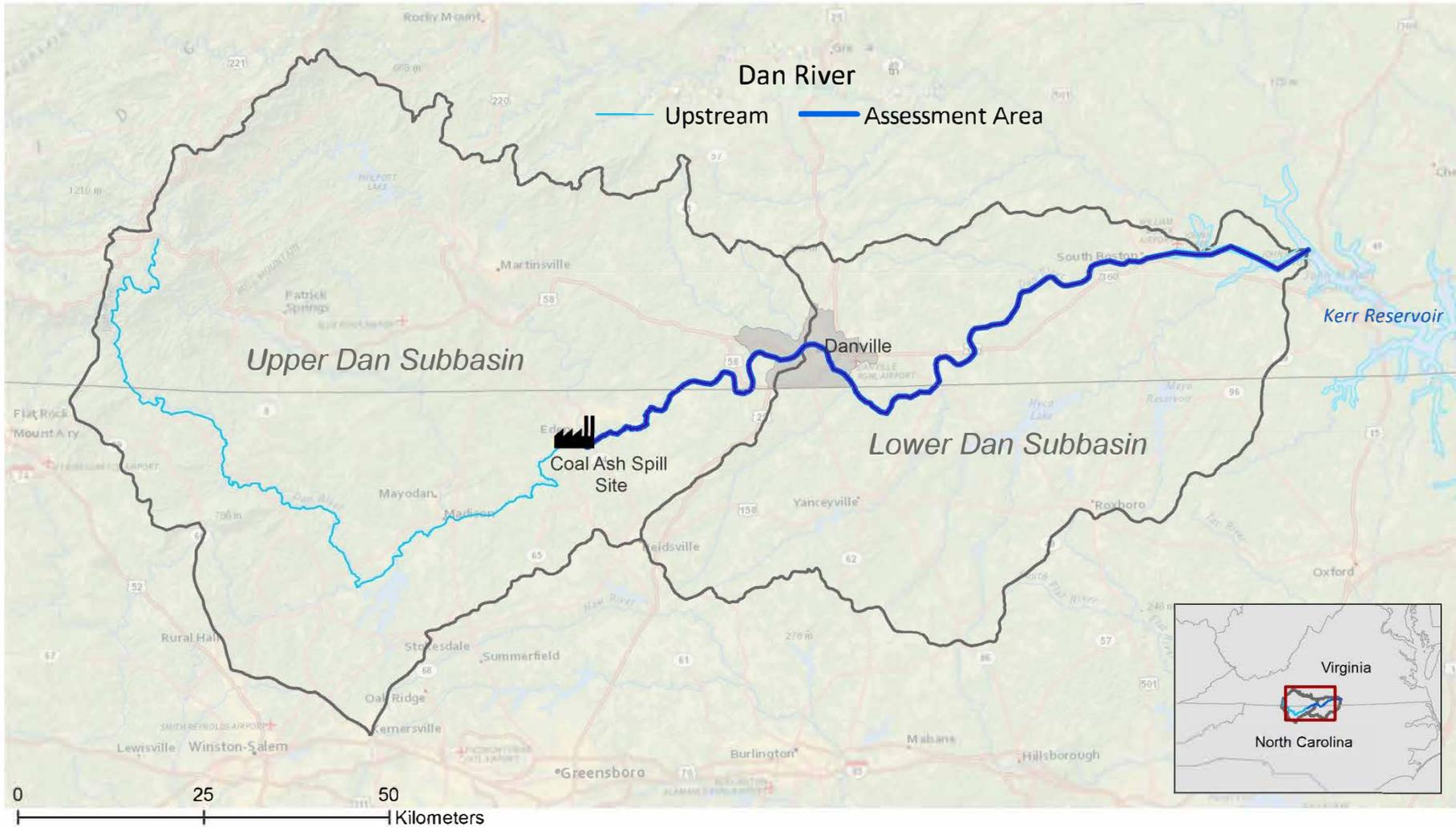
Paul Draovitch
Senior Vice President
Environmental Health & Safety
Duke Energy Carolinas, LLC
526 Church Street
Mail Code EC3XP
Charlotte, North Carolina 28202
(980) 373-0408
Paul.Draovitch@duke-energy.com

Agent Authorized to Accept Service on Behalf of Above-Signed Party:

CT Corporation System
160 Mine Lake Court, Suite 200
Raleigh, North Carolina 27615

Consent Decree

Appendix A



Map of assessment area for Dan River Coal Ash Release February 2, 2014.

Consent Decree
Appendix B

**DRAFT RESTORATION PLAN and ENVIRONMENTAL
ASSESSMENT**

FOR THE

**DAN RIVER COAL ASH SPILL
NATURAL RESOURCE DAMAGE ASSESSMENT AND
RESTORATION**

April 2019 DRAFT

Prepared by

Dan River Natural Resource Trustee Council:

United States Fish and Wildlife Service
North Carolina Department of Environmental Quality
Virginia Department of Environmental Quality



Consent Decree

Appendix C

APPENDIX C
RESTORATION PROJECT SCOPES OF WORK

Restoration Project: Additional Mayo River Land Conservation

Project Description

To replace natural resource services allegedly lost as a result of the Release, the Settling Defendant shall acquire, or cause to be acquired on its behalf, floodplain and riverbank land along the Mayo River and convey, or cause to be conveyed on its behalf, ownership of the land to the State of North Carolina for conservation as part of North Carolina's Mayo River State Park.

Conservation of such property within the state park system of North Carolina provides ecological and recreational benefits: preserving high-quality habitat for threatened or rare terrestrial and aquatic species, and providing public access and recreational opportunities for anglers, hikers, paddlers, and other outdoor recreators.

After receiving ownership of a property, the State shall be responsible for stewardship of the property.

Performance Criteria

- The property (up to 64.403 acres) shall be identified at the sole discretion of, and approved by, the Trustees on the basis of benefits and values for riparian buffer and water quality protection, protection of habitat for rare or listed species, improved recreational access to the Mayo River, protection of property boundaries of the Mayo River State Park from encroachment, and expansion of the land base for future facility development and recreational opportunities at the parks.
- The property acquired shall be near or along the Mayo River from the Virginia-North Carolina state line extending downstream, including locations identified in the North Carolina Mayo River State Park Concept Plan.
- The property shall be conveyed to the State of North Carolina or agency

thereof.

- The Settling Defendant's acquisition of real property and conveyance of ownership to a State is subject to Paragraphs 10 through 12 of the Consent Decree.

Restoration Project: Public Boat Access

Project Description

Public responses to the Trustees' restoration scoping indicate that limited access in the Dan River basin impedes recreational use and enjoyment of the Dan River. To expand public boating opportunities within the Dan River watershed, the Settling Defendant shall construct a boat access facility within the Dan River watershed at one or more suitable locations identified at the sole discretion of, and approved by, the Trustees.

If determined by the Trustees as necessary for this Restoration Project, the Settling Defendant shall acquire, or cause to be acquired on its behalf, land for such facility or facilities. After completing construction of a facility, the Settling Defendant shall convey, or cause to be conveyed on its behalf, ownership of the property to the State of North Carolina or the Commonwealth of Virginia, depending on the location.

Performance Criteria

- The location(s) shall be identified at the sole discretion of, and approved by, the Trustees on the basis of benefits and values for improved recreational access to the Dan River watershed.
- The location(s) shall be located within the Dan River watershed along a river used for recreational boating purposes.
- If determined by the Trustees as necessary for this Restoration Project, the Settling Defendant shall acquire, or cause to be acquired on its behalf, land for the boat access facility. The Settling Defendant's acquisition of real property and conveyance of ownership to a State shall be subject to Paragraphs 10 through 12 of the Consent Decree.

- The boat launch may accommodate either motorized or non-motorized boats.
- The Trustees shall identify either (a) a maximum of one location suitable for motorized boat access or (b) a maximum of two locations, each suitable for non-motorized boat access.
 - At each location, the Settling Defendant shall construct a boat access facility that provides, as determined by the Trustees, either motorized boat access or non-motorized boat access.
 - If the location is in North Carolina on land acquired by the Settling Defendant or on its behalf: The Settling Defendant shall be responsible for constructing the boat access facility before ownership of the property is conveyed to North Carolina and as required under Paragraph 14 of the Consent Decree. After receiving ownership of the property with necessary improvements providing public boating access, North Carolina shall be responsible for maintaining the facility and public boating access thereafter.
 - If the location is in Virginia on land acquired by the Settling Defendant or on its behalf: The Settling Defendant shall be responsible for constructing the boat access facility before ownership of the property is conveyed to Virginia and as required under Paragraph 15 of the Consent Decree. After receiving ownership of the property with necessary improvements providing public boating access, Virginia shall be responsible for maintaining the facility and public boating access thereafter.