UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 3
Philadelphia, Pennsylvania 19103

Keystone-Conemaugh Projects, LLC ("KEY-CON")	:	**U.S. EPA Docket No. RCRA-03-2024-0120**
175 Cornell Road	:	
Blairsville, Pennsylvania 15717	:	**Proceeding under Sections 3008(a), 3008(g), and 4005(d)(4)(A)(i) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §§ 6928(a), 6928(g), and 6945(d)(4)(A)(i)**
Respondent,	:	
Conemaugh Generating Station ("Conemaugh")	:	
1442 Power Plant Road	:	
New Florence, Pennsylvania 15944-9154	:	
Facility.	:	

CONSENT AGREEMENT

PRELIMINARY STATEMENT

1. This Consent Agreement is entered into by the Director of the Enforcement and Compliance Assurance Division, of the U.S. Environmental Protection Agency, Region 3 ("Complainant") and Keystone-Conemaugh Projects, LLC ("Respondent" or "KEY-CON"), collectively the "Parties," pursuant to Sections 3008(a), 3008(g), and 4005(d)(4)(A)(i) of the Resource Conservation and Recovery Act, as amended ("RCRA" or "the Act"), 42 U.S.C. §§ 6928(a), 6928(g), and 6945(d)(4)(A)(i), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22. Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), authorizes the Administrator of the U.S. Environmental Protection Agency to assess penalties and undertake other actions required by this Consent Agreement. The Administrator has delegated this authority to the Regional Administrator who, in turn, has delegated the authority to enter into agreements concerning administrative penalties to the Complainant. This Consent Agreement and the attached Final Order (hereinafter jointly referred to as the "Consent Agreement and Final Order" (or "CAFO") resolve Complainant's civil penalty claims

against Respondent under Subtitle D of RCRA, 42 U.S.C. §§ 6941- 6949a, for the violations alleged herein.

2. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant hereby simultaneously commences and resolves this administrative proceeding.

JURISDICTION

3. The U.S. Environmental Protection Agency ("EPA") has jurisdiction over the above-captioned matter, as described in Paragraph 1, above.

4. The Consolidated Rules of Practice govern this administrative adjudicatory proceeding pursuant to 40 C.F.R. § 22.1(a)(4).

5. In accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), and by letter dated December 13, 2023, the EPA notified the Pennsylvania Department of Environmental Protection ("PADEP") of the EPA's intent to commence this administrative action against Respondent in response to violations of RCRA Subtitle D that are alleged herein.

GENERAL PROVISIONS

6. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this Consent Agreement and Final Order.

7. Except as provided in Paragraph 6, above, Respondent neither admits nor denies the specific factual allegations set forth in this Consent Agreement.

8. Respondent agrees not to contest the jurisdiction of the EPA with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of this Consent Agreement and Final Order.

9. For purposes of this proceeding only, Respondent hereby expressly waives its right to contest the allegations set forth in **this Consent Agreement and Final Order** and waives its right to appeal the accompanying Final Order.

10. Respondent consents to the assessment of the civil penalty stated herein and to any conditions related to the civil penalty specified herein.

11. The Parties shall bear their own costs and attorney's fees in connection with this proceeding.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

12. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant alleges and adopts the Findings of Fact and Conclusions of Law set forth immediately below.

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

14. Section 4005(d)(2) of RCRA, 42 U.S.C. § 6945(d)(2), establishes a framework for the regulation and enforcement of CCR Rule by the EPA in nonparticipating states. A nonparticipating State means a State for which the Administrator has not approved a State permit program or other system of prior approval and conditions under RCRA Section 4005(d)(1)(B). The Commonwealth of Pennsylvania is a nonparticipating State within the meaning of 42 U.S.C. § 6945(d)(2)(A).

15. Section 4005(d)(4)(A)(i) of RCRA, 42 U.S.C. § 6945(d)(4)(A)(i), provides that the Administrator of the EPA may use RCRA Sections 3007 and 3008, 42 U.S.C. §§ 6927 and 6928, to enforce the prohibition on open dumping under Section 4005(a), 42 U.S.C. § 6945(a), with respect to CCR units in nonparticipating states.

16. Respondent is a limited liability company organized under the laws of the State of Delaware.

17. Respondent is a "person" as that term is defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

18. Respondent is, and at all times relevant to this Consent Agreement, was the "owner" and "operator" of a "facility", described in Paragraph 19, below, as those terms are defined in 40 C.F.R. § 257.53.

19. The facility referred to in Paragraph 18, above, including all of its associated equipment and structures and known as the Conemaugh Generating Station (hereinafter "Conemaugh" or the "Facility"), is a coal-powered electric generation facility, located at 1442 Power Plant Road, New Florence, Pennsylvania 15944-9154.

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

21. A "CCR unit" is defined at 40 C.F.R. § 257.53 as "any CCR landfill, CCR surface impoundment, or lateral expansion of a CCR unit, or a combination of more than one of these units, based on the context of the paragraph(s) in which it is used."

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

23. The Facility generates CCR and non-CCR waste streams that, prior to the ongoing retrofit project described in Paragraphs 27-29, it placed into four CCR surface impoundments, identified as Ash Filter Ponds A, B, C, and D. The CCR surface impoundments were and are monitored through a Groundwater Monitoring System, which is a system of monitoring wells placed upgradient and downgradient of the Ash Filter Ponds. The purpose of the monitoring wells is to detect any releases of potentially harmful contaminants into the groundwater from the Ash Filter Ponds.

24. The Ash Filter Ponds are located together in a common area and share an overall perimeter dike. Each pond is approximately 405 feet long by 90 feet wide as measured at the top of the impoundment and has an average depth of approximately 11 feet. The top of the impoundment elevation is approximately 1,092.0 feet above mean sea level (amsl).

25. Each Ash Filter Pond at the Facility has a storage capacity of 6.2 acre-feet. Prior to the voluntary actions taken by Respondent, as described in Paragraph 27, two Ash Filter Ponds were in service at all times, with the third being drained and cleaned (as needed) and the fourth used to store decant water for later use.

26. The EPA published the CCR Part B final rule, which amended 40 C.F.R. Part 257, Subpart D, on November 12, 2020, with an effective date of December 14, 2020, to allow facilities to request approval from the EPA or a Participating State Director, through what is termed as a "Part B Application," to operate an existing CCR surface impoundment with an alternate liner based on the construction of the unit and surrounding site condition. There is no reasonable probability that releases throughout the active life of the CCR surface impoundment will result in adverse effects to human health or the environment.

27. From the October 19, 2015 effective date of the CCR Rule to March 1, 2023, Conemaugh operated Ash Filter Ponds A, B, C and D as CCR units as that term is defined at 40 C.F.R. §

257.53. Beginning in March 2023, Respondent has voluntarily undertaken a project to retrofit Ash Filter Ponds A, B, and C with composite liners and to decommission Ash Filter Pond D. As of the date of this Consent Agreement, Ash Filter Ponds B and C have been retrofitted with a liner system in accordance with the requirements of 40 C.F.R. Part 257, Subpart D. Ash Filter Pond A has been removed from service, cleaned of all CCR material, and is in the process of being retrofitted with a compliant liner system. Ash Filter Pond D has been isolated from the bottom ash system at the Facility and cleaned of all CCR.

28. Pursuant to 40 C.F.R. § 257.107(a), the Respondent has established and maintains a publicly accessible internet site ("CCR website") containing information required by the CCR Rule on the status of the Facility and the associated Groundwater Monitoring System data generated for CCR units at the Facility. In March 2023, Respondent published on its CCR website its CCR Impoundment Liner Design Certification and Retrofit Plan for Ash Filter Ponds B and C ("Certification and Plan"). In January 2024, Respondent published on its CCR website the same Certification and Plan for Ash Filter Pond A.

29. On December 7, 2020, Respondent submitted a Part B application for the Facility to the EPA. On January 11, 2022, the EPA determined that Respondent's Part B application was complete. On January 25, 2023, the EPA proposed to deny Respondent's Part B application. Respondent submitted timely comments on EPA's proposed denial of its Part B application on April 10, 2023. On or about May 20, 2024, Respondent submitted a letter to EPA withdrawing its Part B application based on progress it made to retrofit Ash Filter Ponds A, B, and C with a compliant liner and the initiation of closure activities at Ash Filter Pond D.

30. Based upon the information submitted with its Part B Application and other information that Respondent has provided to the EPA, along with information from Respondent's CCR website, the EPA alleges that Respondent has violated certain requirements of 40 C.F.R. Part 257, Subpart D.

Count 1

Failure to install a groundwater monitoring system that accurately represents the quality of groundwater passing the waste boundary of the CCR unit and failure to monitor all potential contaminant pathways.

31. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.

32. Pursuant to 40 C.F.R. § 257.91(a) the owner or operator of a CCR unit must install a groundwater monitoring system that consists of a sufficient number of wells, installed at

appropriate locations and depths, to yield groundwater samples from the uppermost aquifer that:

(1) Accurately represent the quality of background groundwater that has not been affected by leakage from a CCR unit. A determination of background quality may include sampling of wells that are not hydraulically upgradient of the CCR management area where:
   (i) Hydrogeologic conditions do not allow the owner or operator of the CCR unit to determine what wells are hydraulically upgradient; or
   (ii) Sampling at other wells will provide an indication of background groundwater quality that is as representative or more representative than that provided by the upgradient wells; and

(2) Accurately represent the quality of groundwater passing the waste boundary of the CCR unit. The downgradient monitoring system must be installed at the waste boundary that ensures detection of groundwater contamination in the uppermost aquifer. All potential contaminant pathways must be monitored.

33. Respondent's Part B Application indicated that on October 19, 2015, the effective date of the CCR Rule, the Facility did not have any wells placed along the western boundary of the four CCR surface impoundments. The Facility utilized two upgradient and three downgradient groundwater monitoring wells. However, the Facility did not have any wells placed along the western boundary of the four CCR surface impoundments. Without a western boundary well installed, any possible ground water flow to the west was not able to be measured.

34. Respondent installed four new monitoring wells: MW-41, MW-42, MW-43 and MW-44, including one, MW-41, along the western boundary of the four CCR surface impoundments, from December 11, 2023, to December 13, 2023.

35. Based on the lack of wells along the western boundary of the four CCR surface impoundments from October 19, 2015, to December 12, 2023, the original groundwater monitoring system for the CCR surface impoundments did not meet the requirements of 40 C.F.R. § 257.91(a)(2), as it did not accurately represent the quality of groundwater that had passed the waste boundary of the CCR unit.

36. In failing to comply with 40 C.F.R.§ 257.91(a)(2) based on the original groundwater monitoring system, the Respondent is subject to the assessment of penalties under Sections 3008(a) and (g) of RCRA, 42 U.S.C. §§ 6928(a) and (g), in accordance with Section 4005(d)(4)(A) of RCRA, 42 U.S.C. § 6945(d)(4)(A).

Count 2

Failure to install a sufficient number of wells to achieve the general performance standard of accurately representing the quality of both background groundwater and groundwater passing the waste boundary of Ash Filter Ponds A, B, C and D.

37. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.

38. Pursuant to 40 C.F.R. § 257.91(b), the number, spacing, and depths of monitoring systems shall be determined based upon site-specific technical information that must include thorough characterization of:

    (1) Aquifer thickness, groundwater flow rate, groundwater flow direction including seasonal and temporal fluctuations in groundwater flow; and
    (2) Saturated and unsaturated geologic units and fill materials overlying the uppermost aquifer, materials comprising the uppermost aquifer, and materials comprising the confining unit defining the lower boundary of the uppermost aquifer, including, but not limited to, thicknesses, stratigraphy, lithology, hydraulic conductivities, porosities and effective porosities.

39. Pursuant to 40 C.F.R. § 257.91(c), the groundwater monitoring system must include the minimum number of monitoring wells necessary to meet the performance standards specified in 40 C.F.R. § 257.91(a), based on the site-specific information specified in paragraph 40 C.F.R. § 257.91(b). The groundwater monitoring system must contain:

    (1) A minimum of one upgradient and three downgradient monitoring wells; and

    (2) Additional monitoring wells as necessary to accurately represent the quality of background groundwater that has not been affected by leakage from the CCR unit and the quality of groundwater passing the waste boundary of the CCR unit.

40. Well construction diagrams provided in the Part B Application indicate that on October 19, 2015, the effective date of the CCR Rule, Respondent had a groundwater system for the four CCR surface impoundments that included two upgradient and three downgradient groundwater monitoring wells. The well screens were placed over too long of an interval at the Facility.

41. Based on the placement of the well screens over too long of an interval at the Facility, the Respondent did not provide a thorough characterization of aquifer thickness, groundwater flow rate, groundwater flow direction including seasonal and temporal fluctuations in groundwater flow; and saturated and unsaturated geologic units and fill materials overlying the uppermost aquifer, materials comprising the uppermost aquifer, and materials comprising the confining unit defining the lower boundary of the

uppermost aquifer, including, but not limited to, thicknesses, stratigraphy, lithology, hydraulic conductivities, porosities and effective porosities.

42. Respondent installed four new monitoring wells from December 11, 2023, to December 13, 2023: MW-41, MW-42, MW43 and MW-44, including one monitoring well, MW-41, along the western boundary of the four CCR surface impoundments.

43. Based on the placement of the well screens for the wells in the original groundwater monitoring system, from October 19, 2015, to December 12, 2023, the Respondent did not provide sufficient monitoring wells as necessary to accurately represent the quality of background groundwater that has not been affected by leakage from the CCR surface impoundment and the quality of groundwater passing the waste boundary of the CCR surface impoundments, and therefore violated the requirements of 40 C.F.R. § 257.91(b) and (c).

44. In failing to comply with 40 C.F.R.§ 257.91(b) and (c) based on the original groundwater monitoring system, Respondent is subject to the assessment of penalties under Sections 3008(a) and (g) of RCRA, 42 U.S.C. §§ 6928(a) and (g), in accordance with Section 4005(d)(4(A) of RCRA.

Count 3

Failure to adequately document the basis for including the minimum number of wells, as specified in 40 C.F.R. § 257.91(c)(1), in the Facility's groundwater monitoring system.

45. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.

46. Pursuant to 40 C.F.R. § 257.91(f), "the owner or operator [of a CCR unit] must obtain a certification from a qualified professional engineer or approval from the Participating State Director or approval from EPA where EPA is the permitting authority stating that the groundwater monitoring system has been designed and constructed to meet the requirements of [40 C.F.R. § 257.91]. If the groundwater monitoring system includes the minimum number of monitoring wells specified in [40 C.F.R. § 257.91(c)(1)], the certification must document the basis supporting this determination." In addition, 40 C.F.R. 257.91(c) (1) states that:

"…the groundwater monitoring system must contain a minimum of one upgradient and three downgradient monitoring wells." *(underline added for emphasis)*

Furthermore, the Preamble of the Final CCR Rule (Federal Register /Vol. 80, No. 74 / Friday, April 17, 2015 /Rules and Regulations, on page 21399, specifically mentions the minimum number of wells required:

> "The final rule establishes a general performance standard that all groundwater monitoring systems must meet: All groundwater monitoring systems must consist of a sufficient number of appropriately located wells (at least one upgradient and three downgradient wells) in order to yield groundwater samples from the uppermost aquifer that represent the quality of background groundwater and the quality of groundwater passing the waste boundary. This is the same performance standard included in the proposed rule."

While the Respondent did have two upgradient and three downgradient monitoring wells, KEY-CON did not document the basis for why they used only the minimum number of three downgradient wells, as required by 257.91(f)'s certification. Since KEY-CON did not provide such justification in the PE certification, it did not meet the requirement of 257.91(f).

47. In its Part B Application, Respondent provided information indicating that the monitoring system for the CCR surface impoundments was certified by a professional engineer on October 9, 2017, to include the minimum of three downgradient wells.

48. The Professional Engineer's October 9, 2017 certification does not document the basis for reliance on the minimum number of downgradient wells. From October 19, 2015, to December 2023, the EPA asserts that there was no basis provided for reliance on the minimum number of downgradient wells.

49. Based on the lack of justification by a Professional Engineer to support the minimum of three downgradient wells, from October 19, 2015, to December 2023, the Respondent violated the requirements of 40 C.F.R. § 257.91(f).

50. In failing to comply with 40 C.F.R.§ 257.91(f), Respondent is subject to the assessment of penalties under Sections 3008(a) and (g) of RCRA, 42 U.S.C. §§ 6928(a) and (g), in accordance with Section 4005(d)(4(A) of RCRA.

Count 4
Failure to perform assessment monitoring after a statistically significant increase (SSI) over background levels was detected for one or more constituents listed in Appendix III to 40 C.F.R. Part 257.

51. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.

52. Pursuant to 40 C.F.R. § 257.94(e) if the owner or operator of a CCR unit determines, pursuant to [40 C.F.R. § 257.93(h)] that there is a statistically significant increase over background levels for one or more of the constituents listed in [Appendix III to 40 C.F.R. Part

257] at any monitoring well at the waste boundary specified under 40 C.F.R. § 257.91(a)(2), the owner or operator must:

(1) Except as provided for in [40 C.F.R. § 257.94(e)(2)], within 90 days of detecting a statistically significant increase over background levels for any constituent, establish an assessment monitoring program meeting the requirements of [40 C.F.R. § 257.95].

(2) The owner or operator may demonstrate that a source other than the CCR unit caused the statistically significant increase over background levels for a constituent or that the statistically significant increase resulted from error in sampling, analysis, statistical evaluation, or natural variation in groundwater quality. The owner or operator must complete the written demonstration within 90 days of detecting a statistically significant increase over background levels to include obtaining a certification from a qualified professional engineer or approval from the Participating State Director or approval from EPA where EPA is the permitting authority verifying the accuracy of the information in the report. If a successful demonstration is completed within the 90-day period, the owner or operator of the CCR unit may continue with a detection monitoring program under this section. If a successful demonstration is not completed within the 90-day period, the owner or operator of the CCR unit must initiate an assessment monitoring program as required under [40 C.F.R. § 257.95]. The owner or operator must also include the demonstration in the annual groundwater monitoring and corrective action report required by [40 C.F.R. § 257.90(e)], in addition to the certification by a qualified professional engineer.

53. Respondent collected groundwater samples on April 14, 2022, and October 20, 2022. Sulfate, a constituent listed in Appendix III to 40 C.F.R. Part 257, was detected above background in Monitoring Well-4 during the 2022 sampling events.

54. Pursuant to 40 C.F.R. §§ 257.94(e) and 257.95(a), within 90 days of detecting the SSI over background levels for sulfate, the Respondent should have established an assessment monitoring program meeting the requirements of 40 C.F.R. § 257.95. Respondent relied on a demonstration it made in 2018 that the source of sulfate detected in Monitoring Well 4 was something other than the Ash Filter Ponds, which the EPA could not accept as a successful demonstration of the source of the sulfate SSI.

55. The Respondent did not establish an assessment monitoring program for its CCR units after a SSI was identified, which was required by July 13, 2022 (for the April 14, 2022 detection) or by January 18, 2023 (for the October 20, 2022 detection).

56. On July 14, 2022, and January 19, 2023, the Respondent violated the requirements of 40 C.F.R. § 257.94(e) by failing to establish an assessment monitoring program for its CCR units following SSIs, and, failing to provide a valid demonstration of an alternate source, or that the statistically significant increase resulted from error in sampling, analysis, statistical evaluation, or natural variation in groundwater quality.

57. In failing to comply with 40 C.F.R.§ 257.94(e), Respondent is subject to the assessment of penalties under Sections 3008(a) and (g) of RCRA, 42 U.S.C. §§ 6928(a) and (g), in accordance with Section 4005(d)(4(A) of RCRA.

CIVIL PENALTY

58. In settlement of the EPA's claims for civil penalties for the violations alleged in this Consent Agreement, Respondent consents to the assessment of a civil penalty in the amount of **ONE-HUNDRED EIGHTY-FIVE THOUSAND NINE-HUNDRED TWENTY-SEVEN** dollars **($185,927.00)**, which Respondent shall be liable to pay in accordance with the terms set forth below.

59. The civil penalty is based upon the EPA's consideration of a number of factors, including the penalty criteria ("statutory factors") set forth in Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), including the following: the seriousness of the violation and any good faith efforts to comply with the applicable requirements. These factors were applied to the particular facts and circumstances of this case with specific reference to the EPA's October, 1990 RCRA Civil Penalty Policy, as revised in June 2003 and May 2020 ("RCRA Penalty Policy"), which reflect the statutory penalty criteria and factors set forth at Section 3008(a)(3) and (g) of RCRA, 42 U.S.C. §§ 6928(a)(3) and (g), the EPA memorandum "Application of the RCRA Civil Penalty Policy to RCRA Coal Combustion Residuals Program Enforcement Actions" (January 2023), the appropriate Adjustment of Civil Monetary Penalties for Inflation, pursuant to 40 C.F.R. Part 19, and the applicable EPA memoranda addressing the EPA's civil penalty policies to account for inflation.

60. Respondent agrees to pay a civil penalty in the amount of **($185,927.00)** ("Assessed Penalty") within thirty (30) days of the Effective Date of this Consent Agreement and Final Order.

61. Respondent shall pay the Assessed Penalty and any interest, fees, and other charges due using any method, or combination of appropriate methods, as provided on the EPA website: https://www.epa.gov/financial/makepayment. For additional instructions see: https://www.epa.gov/financial/additional-instructions-making-payments-epa.

62. When making a payment, Respondent shall:

(1) Identify every payment with Respondent's name and the docket number of this Consent Agreement, **EPA Docket No. RCRA-03-2024-0120**,
(2) Concurrently with any payment or within 24 hours of any payment, Respondent shall serve Proof of Payment simultaneously **by email** to the following person(s):

Daniel T. Gallo
Sr. Assistant Regional Counsel
gallo.dan@epa.gov,

U.S. Environmental Protection Agency
Cincinnati Finance Center
CINWD_AcctsReceivable@epa.gov,

and

U.S. EPA Region 3 Regional Hearing Clerk
R3_Hearing_Clerk@epa.gov.

"Proof of Payment" means, as applicable, a copy of the check, confirmation of credit card or debit card payment, or confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with the appropriate docket number and Respondent's name.

63. Interest, Charges, and Penalties on Late Payments. Pursuant to 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to timely pay the full amount of the Assessed Penalty per this Consent Agreement, the EPA is authorized to recover, in addition to the amount of the unpaid Assessed Penalty, the following amounts.

a. Interest. Interest begins to accrue from the Effective Date of this Consent Agreement. If the Assessed Penalty is paid in full within thirty (30) days, interest accrued is waived. If the Assessed Penalty is not paid in full within thirty (30) days, interest will continue to accrue until any unpaid portion of the Assessed Penalty as well as any interest, penalties, and other charges are paid in full. To protect the interests of the United States, the rate of interest is set at the IRS standard underpayment rate. Any lower rate would fail to provide Respondent adequate incentive for timely payment.

b. Handling Charges. Respondent will be assessed monthly a charge to cover the EPA's costs of processing and handling overdue debts. If Respondent fails to pay the Assessed Penalty in accordance with this Consent Agreement, the EPA will assess a charge to cover the costs of handling any unpaid amounts for the first thirty (30) day period after the Effective Date. Additional handling charges will be

assessed every thirty (30) days, or any portion thereof, until the unpaid portion of the Assessed Penalty as well as any accrued interest, penalties, and other charges are paid in full.

c. Late Payment Penalty. A late payment penalty of six percent (6%) per annum, will be assessed monthly on all debts, including any unpaid portion of the Assessed Penalty, interest, penalties, and other charges, that remain delinquent more than ninety (90) days. Any such amounts will accrue from the Effective Date.

64. Late Penalty Actions. In addition to the amounts described in the prior Paragraph, if Respondent fails to timely pay any portion of the Assessed Penalty, interest, or other charges and penalties per this Consent Agreement, the EPA may take additional actions. Such actions the EPA may take include, but are not limited to, the following.

(1) Refer the debt to a credit reporting agency or a collection agency, per 40 C.F.R. §§ 13.13 and 13.14.

b. Collect the debt by administrative offset (i.e., the withholding of money payable by the United States government to, or held by the United States government for, a person to satisfy the debt the person owes the United States government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, per 40 C.F.R. Part 13, Subparts C and H.

c. Suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with the EPA or engaging in programs the EPA sponsors or funds, per 40 C.F.R. § 13.17.

d. Refer this matter to the United States Department of Justice for litigation and collection, per 40 C.F.R. § 13.33.

65. Allocation of Payments. Pursuant to 31 C.F.R. § 901.9(f) and 40 C.F.R. § 13.11(d), a partial payment of debt will be applied first to outstanding handling charges, second to late penalty charges, third to accrued interest, and last to the principal that is the outstanding Assessed Penalty amount.

66. Tax Treatment of Penalties. Penalties, interest, and other charges paid pursuant to this Consent Agreement shall not be deductible for purposes of federal taxes.

67. Payment of the civil penalty is due and payable immediately upon receipt by Respondent of a true and correct copy of the fully executed and filed Consent Agreement and Final Order. Receipt by Respondent or Respondent's legal counsel of such copy of the fully executed Consent Agreement and Final Order, with a date stamp indicating the date on which the Consent Agreement and Final Order was filed with the Regional Hearing Clerk,

shall constitute receipt of written initial notice that a debt is owed the EPA by Respondent in accordance with 40 C.F.R. § 13.9(a).

68. The Parties consent to service of the Final Order by e-mail at the following valid email addresses: gallo.dan@epa.gov (for Complainant), and gsteinbauer@babstcalland.com (for Respondent).

69. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, the EPA is required to send to the Internal Revenue Service ("IRS") annually, a completed IRS Form 1098-F ("Fines, Penalties, and Other Amounts") with respect to any court order or settlement agreement (including administrative settlements), that require a payor to pay an aggregate amount that the EPA reasonably believes will be equal to, or in excess of, $50,000 for the payor's violation of any law or the investigation or inquiry into the payor's potential violation of any law, **including** amounts paid for "restitution or remediation of property" or to come "into compliance with a law." The EPA is further required to furnish a written statement, which provides the same information provided to the IRS, to each payor (i.e., a copy of IRS Form 1098-F). Failure to comply with providing IRS Form W-9 or Tax Identification Number ("TIN"), as described below, may subject Respondent to a penalty, per 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and 26 C.F.R. § 301.6723-1. In order to provide the EPA with sufficient information to enable it to fulfill these obligations, the EPA herein requires, and Keystone-Conemaugh Projects, LLC, Respondent, herein agrees, that:

(1) Respondent shall complete an IRS Form W-9 ("Request for Taxpayer Identification Number and Certification"), which is available at https://www.irs.gov/pub/irs-pdf/fw9.pdf;

(2) Respondent shall therein certify that its completed IRS Form W-9 includes Respondent's correct TIN or that Respondent has applied and is waiting for issuance of a TIN;

(3) Respondent shall email its completed Form W-9 to the EPA's Cincinnati Finance Center at henderson.jessica@epa.gov, within 30 days after the Final Order ratifying this Consent Agreement is filed, and the EPA recommends encrypting IRS Form W-9 email correspondence; and

(4) In the event that Respondent has certified in its completed IRS Form W-9 that it has applied for a TIN and that TIN has not been issued to Respondent within 30 days after the effective date, then Respondent, using the same email address identified in the preceding sub-paragraph, shall further:

i. notify the EPA's Cincinnati Finance Center of this fact, via email, within 30 days after the 30 days after the effective date of the Final Order per Paragraph **76**; and
ii. provide the EPA's Cincinnati Finance Center with Respondent's TIN, via email, within five (5) days of Respondent's issuance and receipt of the TIN.

GENERAL SETTLEMENT CONDITIONS

70. By signing this Consent Agreement, Respondent acknowledges that this Consent Agreement and Final Order will be available to the public and represents that, to the best of Respondent's knowledge and belief, this Consent Agreement and Final Order does not contain any confidential business information or personally identifiable information from Respondent.

71. Respondent certifies that any information or representation it has supplied or made to the EPA concerning this matter was, at the time of submission true, accurate, and complete and that there has been no material change regarding the truthfulness, accuracy or completeness of such information or representation. The EPA shall have the right to institute further actions to recover appropriate relief if the EPA obtains evidence that any information provided and/or representations made by Respondent to the EPA regarding matters relevant to this Consent Agreement and Final Order, **including information about respondent's ability to pay a penalty**, are false or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action that the EPA may have, civil or criminal, under law or equity in such event. Respondent and its officers, directors and agents are aware that the submission of false or misleading information to the United States government may subject a person to separate civil and/or criminal liability.

CERTIFICATION OF COMPLIANCE

72. Respondent certifies to the EPA, upon personal investigation and to the best of its knowledge and belief, that it currently is in compliance with regard to the violations alleged in this Consent Agreement.

OTHER APPLICABLE LAWS

73. Nothing in this Consent Agreement and Final Order shall relieve Respondent of its obligation to comply with all applicable federal, state, and local laws and regulations, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on the validity of any federal, state or local permit. This Consent Agreement and Final Order does not constitute a waiver,

suspension or modification of the requirements of the RCRA, or any regulations promulgated thereunder.

RESERVATION OF RIGHTS

74. This Consent Agreement and Final Order resolves only the EPA's claims for civil penalties for the specific violation[s] alleged against Respondent in this Consent Agreement and Final Order. The EPA reserves the right to commence action against any person, including Respondent, in response to any condition which the EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. This settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice, 40 C.F.R. § 22.18(c). The EPA reserves any rights and remedies available to it under the RCRA, the regulations promulgated thereunder and any other federal law or regulation to enforce the terms of this Consent Agreement and Final Order after its effective date.

EXECUTION /PARTIES BOUND

75. This Consent Agreement and Final Order shall apply to and be binding upon the EPA, the Respondent and the officers, directors, employees, contractors, successors, agents and assigns of Respondent. By his or her signature below, the person who signs this Consent Agreement on behalf of Respondent is acknowledging that he or she is fully authorized by the Respondent to execute this Consent Agreement and to legally bind Respondent to the terms and conditions of this Consent Agreement and Final Order.

EFFECTIVE DATE

76. The effective date of this Consent Agreement and Final Order ("Effective Date") is the date on which the Final Order, signed by the Regional Administrator of the EPA, Region 3, or his/her designee, the Regional Judicial Officer, is filed along with the Consent Agreement with the Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.

ENTIRE AGREEMENT

77. This Consent Agreement and Final Order constitutes the entire agreement and understanding between the Parties regarding settlement of all claims for civil penalties pertaining to the specific violations alleged herein and there are no representations, warranties, covenants, terms, or conditions agreed upon between the Parties other than those expressed in this Consent Agreement and Final Order.

For Respondent: Keystone-Conemaugh Projects, LLC

Date: Sept. 20, 2024

By:

Georgianna R. Stenger
Assistant Manager
Keystone-Conemaugh Projects, LLC

For the Complainant:

After reviewing the Consent Agreement and other pertinent matters, I, the undersigned Director of the Enforcement & Compliance Assurance Division of the United States Environmental Protection Agency, Region 3, agree to the terms and conditions of this Consent Agreement and recommend that the Regional Administrator, or his/her designee, the Regional Judicial Officer, issue the attached Final Order.

By: KAREN MELVIN Digitally signed by KAREN MELVIN Date: 2024.09.25 07:58:37 -04'00'

[*Digital Signature and Date*]
Karen Melvin, Director
Enforcement and Compliance Assurance Division
U.S. EPA – Region 3
Complainant

Attorney for Complainant:

By: DANIEL GALLO Digitally signed by DANIEL GALLO Date: 2024.09.23 15:03:45 -04'00'

[*Digital Signature and Date*]
Daniel T. Gallo
Sr. Assistant Regional Counsel
U.S. EPA – Region 3

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 3
Philadelphia, Pennsylvania 19103

In the Matter of:	:	
	:	
Keystone-Conemaugh Projects, LLC ("KEY-CON")	:	**U.S. EPA Docket No. RCRA-03-2024-0120**
175 Cornell Road	:	**Proceeding under Sections 3008 (a) and (g) of the**
Blairsville, Pennsylvania 15717	:	**Resource Conservation and Recovery Act (RCRA),**
	:	**as amended, 42 U.S.C. §§ 6928(a) and (g)**
Respondent,	:	
	:	
Conemaugh Generating Station ("Conemaugh")	:	
1442 Power Plant Road	:	
New Florence, Pennsylvania 15944-9154	:	
	:	
Facility.		

FINAL ORDER

Complainant, the Director of the of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region 3 ("Complainant") and Keystone-Conemaugh Projects, LLC ("Respondent" or "KEY-CON"), collectively the "Parties", have executed a document entitled "Consent Agreement," which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22, with specific reference to Sections 22.13(b) and 22.18(b)(2) and (3). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.

Based upon the representations of the parties in the attached Consent Agreement, the penalty agreed to therein is based upon consideration of, *inter alia*, EPA's October 1990 RCRA Civil Penalty Policy, as revised in June 2003 and May 2020 ("RCRA Penalty Policy"), which reflects the statutory penalty criteria and factors set forth at Sections 3008(a)(3) and (g) of RCRA, 42 U.S.C. §§ 6982(a)(3) and (g), the appropriate *Adjustment of Civil Monetary Penalties for Inflation,* pursuant to 40 C.F.R. Part 19, and the applicable EPA memoranda addressing the EPA's civil penalty policies to account for inflation.

NOW, THEREFORE, PURSUANT TO Section 3008(a) of the Resource Conservation and Recovery Act ("RCRA"), as amended, 42 U.S.C. § 6928(a) and (g), and Section 22.18(b)(3) of the

Consolidated Rules of Practice, **IT IS HEREBY ORDERED** that Respondent pay a civil penalty in the amount of **ONE-HUNDRED EIGHTY-FIVE THOUSAND NINE-HUNDRED TWENTY-SEVEN *DOLLARS ($185,927.00)***, in accordance with the payment provisions set forth in the Consent Agreement and in 40 C.F.R. § 22.31(c), and comply with the terms and conditions of the Consent Agreement.

This Final Order constitutes the final Agency action in this proceeding. This Final Order shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief, or criminal sanctions for any violations of the law. This Final Order resolves only those causes of action alleged in the Consent Agreement and does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of the RCRA and the regulations promulgated thereunder.

The effective date of the attached Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

Date: 9/25/2024

By: JOSEPH LISA Digitally signed by JOSEPH LISA Date: 2024.09.25 09:26:21 -04'00'

Joseph J. Lisa
Regional Judicial and Presiding Officer
U.S. EPA Region 3

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 3
Philadelphia, Pennsylvania 19103

In the Matter of:	**:**
	:
Keystone-Conemaugh Projects, LLC	**: U.S. EPA Docket No. RCRA-03-2024-0120**
("KEY-CON")	**:**
175 Cornell Road	**: Proceeding under Sections 3008 (a) and (g)**
Blairsville, Pennsylvania 15717	**: of the Resource Conservation and Recovery Act**
	: (RCRA), as amended, 42 U.S.C. §§ 6928(a) and (g)
Respondent,	**:**
	:
Conemaugh Generating Station	**:**
("Conemaugh")	**:**
1442 Power Plant Road	**:**
New Florence, Pennsylvania 15944-9154	**:**
	:
Facility.	**:**

CERTIFICATE OF SERVICE

I certify that the foregoing ***Consent Agreement and Final Order*** was filed with the EPA Region 3 Regional Hearing Clerk on the date that has been electronically stamped on the ***Consent Agreement and Final Order***. I further certify that on the date set forth below, I caused to be served a true and correct copy of the foregoing to each of the following persons, in the manner specified below, at the following addresses:

Copies served via email to:

Name and Title of Authorized Person
Keystone-Conemaugh Projects, LLC
KEY-CON
Email Address
175 Cornell Road
Blairsville, Pennsylvania 15717

Gary E. Steinbauer
Attorney at Law
Babst Calland
gsteinbauer@babstcalland.cm
Two Gateway Center
Pittsburgh, PA 15222

Daniel T. Gallo
Senior Assistant Regional Counsel
U.S. EPA, Region 3
gallo.dan@epa.gov

Rebecca Serfass, Martin Matlin
Enforcement Officers
U.S. EPA, Region 3
serfass.rebecca@epa.gov,
matlin.martin@epa.gov

BEVIN ESPOSITO

Digitally signed by BEVIN ESPOSITO
Date: 2024.09.25 11:36:16 -04'00'

[*Digital Signature and Date*]
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 3