



COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD



NOTICE OF APPEAL

By filing this Notice of Appeal with the Environmental Hearing Board, you are choosing to initiate a legal proceeding that asks the Board to review an action of the Department of Environmental Protection. Please read the instructions appended to this form in their entirety and follow closely the rules governing filing a Notice of Appeal, located at 25 Pa. Code § 1021.51. Failure to follow Board rules and orders may result in the dismissal of your appeal.

Pages 1 through 3 of the following form and any required attachments must be received by the Environmental Hearing Board within 30 days after your receipt of notice of the action of the Department that you are appealing. You may mail, fax, or hand-deliver your Notice of Appeal to:

**ENVIRONMENTAL HEARING BOARD
Rachel Carson State Office Building – 2nd Floor
400 Market Street, P.O. Box 8457
Harrisburg, PA 17105-8457
Fax: (717) 783-4738**

You may wish to send your appeal to the Environmental Hearing Board by certified mail, return receipt, so that you know your appeal was received within the required time.

Attorneys may electronically file a Notice of Appeal at <http://ehb.courtapps.com/>



COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD



NOTICE OF APPEAL FORM
APPEAL INFORMATION

1. Name, address, telephone number, and email address (if available) of Appellant:

Sierra Club
225 Market St. Suite 500
Harrisburg, PA 17101
(713) 232-0101

PennEnvironment
1420 Walnut Street, Suite 650
Philadelphia, PA 19102
(215) 732-5897

2. Describe the subject of your appeal:

(a) What action of the Department do you seek review?

(NOTE: If you received written notification of the action, you must attach a copy of the action to this form.)

Approval of the financial assurance proposal submitted by PPG Industries, Inc. for the remedy at PPG's Ford City waste site. Attached as Appellants' Exhibit 4.

(b) Which Department official took the action?

Kevin Halloran, Assistant Regional Director, Southwest Regional Office, Pennsylvania Department of Environmental Protection.

(c) What is the location of the operation or activity which is the subject of the Department's action (municipality, county)?

Cadogan and North Buffalo Townships, Armstrong County.

(d) How, and on what date, did you receive notice of the Department's action?

Appellants received notice of the Department's action via an email sent by a representative of PPG Industries on April 11, 2022.

3. Describe your objections to the Department's action in separate, numbered paragraphs.

(NOTE: The objections may be factual or legal and must be specific. If you fail to state an objection here, you may be barred from raising it later in your appeal. Attach additional sheets, if necessary.)

Please see the attachment for objections.



COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD



4. Specify any related appeal(s) now pending before the Board. If you are aware of any such appeal(s) provide that information.

Appellants are not aware of any related appeals now pending before the board

**NOTICE OF APPEAL FORM
PROOF OF SERVICE**

In addition to filing this form with the Environmental Hearing Board, the Appellant *must* certify, by indicating below, how the Notice of Appeal was served on the Department under numbers (2) and (3) below, and where applicable, upon other interested parties indicated by numbers (4) and (5). Failure to do so may result in dismissal of your appeal. Please check the box indicating the method by which you served the following:

- | | | |
|--|------------|---|
| (1) Environmental Hearing Board
2 nd Floor Rachel Carson State Office Bldg.
400 Market St., P.O. Box 8457
Harrisburg, PA 17105-8457 | <i>via</i> | <input type="checkbox"/> first class mail, postage paid
<input type="checkbox"/> overnight delivery
<input type="checkbox"/> personal delivery
<input checked="" type="checkbox"/> electronic filing |
| (2) Department of Environmental Protection
Office of Chief Counsel
Attn: Administrative Officer
16 th Floor Rachel Carson State Office Bldg
400 Market Street, P.O. Box 8464
Harrisburg, PA 17105-8464 | <i>via</i> | <input type="checkbox"/> first class mail, postage paid
<input type="checkbox"/> overnight delivery
<input type="checkbox"/> personal delivery
<input checked="" type="checkbox"/> electronic filing |
| (3) The officer of the Department
who took the action being appealed | <i>via</i> | <input type="checkbox"/> first class mail, postage paid
<input type="checkbox"/> overnight delivery
<input type="checkbox"/> personal delivery
<input checked="" type="checkbox"/> electronic filing |

Note to Attorneys who electronically file a Notice of Appeal: A copy is automatically served on the Department's Office of Chief Counsel. There is no need for you to independently serve the Department.

- (4) If your appeal is from the Department of Environmental Protection's issuance of a permit, license, approval, or certification to another person, you *must* serve the following:

The entity to whom the permit, license approval, or certification was issued.	<i>via</i>	<input checked="" type="checkbox"/> first class mail, postage paid <input type="checkbox"/> overnight delivery <input type="checkbox"/> personal delivery
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PPG Industries, Inc.
440 College Park Drive
Monroeville, PA 15146

- (5) Where applicable, you should also serve a copy of your appeal on any of the following:
- Any affected municipality, its municipal authority, and the proponent of the decision, where applicable, in appeals involving a decision under Sections 5 or 7 of the Sewage Facilities Act, 35 P.S. §§ 750.5, 750.7;
 - The mining company in appeals involving a claim of subsidence damage or water loss under the Bituminous Mine Subsidence and Land Conservation Act, 52 P.S. § 1406.1 et seq.;
 - The well operator in appeals involving a claim of pollution or diminution of a water supply under Section 3218 of the Oil and Gas Act, 58 Pa.C.S. § 3218;



- The owner or operator of a storage tank in appeals involving a claim of an affected water supply under Section 1303 of the Storage Tank and Spill Prevention Act, 35 P.S. § 6021.1303.



**NOTICE OF APPEAL FORM
SIGNATURE PAGE**

By filing this Notice of Appeal with the Environmental Hearing Board, I hereby certify that the information submitted is true and correct to the best of my information and belief. Additionally, I certify that a copy of this Notice of Appeal was served upon each of the individuals indicated on Page 2 of this form on the following date: 5/10/2022.

Signature of Appellant or Appellant's Counsel

Date: 5/10/2022

If you have authorized counsel to represent you, please supply the following information (*Corporations must be represented by counsel*):

Tim Fitchett

Attorney Name (Type or Print)

Fair Shake Environmental Legal Services

6425 Living Place, Suite 200

Pittsburgh, PA 15206

Address

Telephone No.: 412-851-3647

Email: tfitchett@fairshake-els.org

TDD users please contact the Pennsylvania Relay Service at 1-800-654-5984. If you require an accommodation or this information in an alternative form, please contact the Secretary to the Board at 717-787-3483.

Please see the attached Filing Instructions for additional information and requirements regarding the filing of this form.

FILING INSTRUCTIONS

Please read and follow these instructions in their entirety. If you fail to follow the requirements outlined below (including submitting a copy of the action you are appealing and serving process to other parties), the Board may dismiss your appeal.

By filing this Notice of Appeal with the Environmental Hearing Board, you are choosing to initiate *legal proceedings*, which ask the Board to review an action of the Department of Environmental Protection. The proceedings will require you to file documents, participate in discovery, and may ultimately require you to participate in a hearing before the Board. In addition to the Board, the proceedings will also involve interaction with, including you being required to send copies of your filings to, the Department of Environmental Protection and possibly other parties, such as those who have received a permit from the Department.

How to File a Notice of Appeal

Your Notice of Appeal, along with any required documents and information, shall be filed either by facsimile or by mail, hand or other delivery service at the following address:

Secretary to the Board
Environmental Hearing Board
Rachel Carson State Office Building – 2nd Floor
400 Market Street – P.O. Box 8457
Harrisburg, PA 17105-8457
Fax: (717) 783-4738

Attorneys also have the option to file a Notice of Appeal electronically at <http://ehb.courtapps.com/> A Notice of Appeal filed by *mail, hand, or other delivery service* that is received after the close of the business day at 4:30 PM Eastern Time shall be deemed to be filed on the following business day. A Notice of Appeal filed by *facsimile* shall be deemed filed on the day it is received by the Board. A notice of appeal filed by facsimile should be followed up with a hard copy. A Notice of Appeal filed *electronically* before midnight EST will be considered to be filed on that date.

Filling out the Notice of Appeal Form—Appeal Information

1. When filing a new appeal, provide your name (and that of the business which you represent, if applicable), address, telephone number, and an email address.
2. (a) You must specify on the Notice of Appeal form the action of the Department that you seek to have the Board review, for example, the permit, determination, or other act.
(b) If you have received written notification of an action of the Department, you must attach a copy of the action to the Notice of Appeal (for example, the letter, order, or permit that you are appealing).
(c) You should also identify the Department official that took the action and the location (the municipality and county) of the operation or activity that is the subject of the action.
(d) Additionally, you must describe when and how you were notified of the Department's action.

3. When describing your objections to the Department’s action, you must do so in separate, numbered paragraphs for each objection. The objections must be specific, and may be factual or legal.

Rather than use the space on the Notice of Appeal form, you may type your objections on separate paper if you require more space. Note that if you fail to state an objection to the action in your Notice of Appeal, you may be barred from raising that objection later.

4. Finally, you must specify on the Notice of Appeal form any related appeal already pending before the Board of which you are aware.

Filling out the Notice of Appeal Form—Proof of Service

You must provide proof of service of the Notice of Appeal to the agency taking the action (typically the Department of Environmental Protection), as well as certain other individuals that may be affected by the appeal.

This means that, in addition to filing the Notice of Appeal with the Board, a copy of the Notice of Appeal must be delivered to each the following:

- (1) The Department of Environmental Protection Office of Chief Counsel at:

Department of Environmental Protection
Office of Chief Counsel
Attention: Administrative Officer
16th Floor, Rachel Carson State Office Building
400 Market Street, P.O. Box 8464
Harrisburg, PA 17105-8464

- (2) The officer of the Department of Environmental Protection (or other agency) that took the action being challenged. If you do not know the correct address for the agency office involved in the appeal, you should contact that agency directly, or you may contact the Secretary to the Environmental Hearing Board to obtain the appropriate address.
- (3) If you are appealing an action by the Department that involves someone else (for example, if you want to appeal a permit issued to another person or business), you must also send that person or business a copy of your Notice of Appeal. This is required by the Environmental Hearing Board’s rules at 25 Pa. Code § 1021.51(g)-(h). Please see the Proof of Service page of the Notice of Appeal form for more details.

Note: For Attorneys who file an appeal electronically, only the party listed in (3) above must be served (if applicable). Electronically filed Notices of Appeal are automatically served on the Department’s Office of Chief Counsel. There is no need to independently serve the Department.

Additional Information on Appeals Involving a Penalty Assessment

In the case of a penalty assessment, many environmental statutes require the amount of the penalty or a bond in that amount to be submitted within the 30-day period required for the filing of the appeal.

Where the statute requires that prepayment be made to the Board, the appellant shall submit to the Board with the Notice of Appeal a check in the amount of the penalty, or an appropriate bond securing payment of the penalty as required by statute. A check shall be made payable to the *Commonwealth of Pennsylvania*; a bond shall be in favor of the Board, and these shall be sent to the following address:

Environmental Hearing Board
Rachel Carson State Office Building – 2nd Floor
400 Market Street – P.O. Box 8457
Harrisburg, PA 17105-8457

Where the statute requires that prepayment be made to the Department of Environmental Protection, the appellant shall submit the prepayment to the Department at the following address in accordance with the Department’s instructions:

Department of Environmental Protection
Office of Chief Counsel
Attention: Administrative Officer
16th Floor, Rachel Carson State Office Building
400 Market Street, P.O. Box 8464
Harrisburg, PA 17105-8464

If the appellant claims an inability to prepay, that claim must be submitted within the 30-day period by a verified statement either with the Notice of Appeal or in a supplementary document.

Pro Bono Information

Individuals filing an appeal on their own behalf before the Environmental Hearing Board do not need a lawyer. However, important legal rights may be at stake, and proceedings before the Environmental Hearing Board are legal and technical in nature. Therefore, it is strongly recommended that you seek legal counsel. If you cannot afford a lawyer, you may qualify for free legal representation. If your household income is less than 200% of the federal poverty level, then, within fifteen calendar days of filing the Notice of Appeal, you may submit a written request for pro bono representation to the Pro Bono Committee of the Pennsylvania Bar Association’s Environmental & Energy Law Section at the following address:

Thomas M. Duncan, Esq.
PBA Environmental & Energy Law Section
Chair, Pro Bono Committee
c/o Manko, Gold, Katcher & Fox, LLP
401 City Avenue, Suite 901
Bala Cynwyd, PA 19004
Phone: 484-430-2358
Fax: 484-430-5711
tduncan@mankogold.com

Please also mail a copy of your request to the Environmental Hearing Board. Even if you are deemed financially eligible, a pro bono referral is not guaranteed and is instead based on the current availability of volunteers. In addition, you may contact your local or county bar association for more information.

Effective October 6, 2016, small corporations owned by no more than three (3) individuals are also eligible for a pro bono referral if each of the owners’ household income is less than 300% of the federal poverty level.



**COMMONWEALTH OF PENNSYLVANIA
ENVIRONMENTAL HEARING BOARD**

PENNENVIRONMENT and SIERRA CLUB,)	
)	
Appellants,)	
)	
vs.)	
)	EHB Docket No. Not Assigned
COMMONWEALTH OF PENNSYLVANIA,)	
DEPARTMENT OF ENVIRONMENTAL)	Objections to the Department’s Action
PROTECTION and PPG INDUSTRIES, INC.,)	
)	
Respondents.)	
)	
)	

OBJECTIONS TO THE DEPARTMENT’S ACTION

Pursuant to 25 Pa. Code § 1021.51, appellants PennEnvironment and Sierra Club (Appellants) hereby make the following objections to the Pennsylvania Department of Environmental Protection’s (DEP or “the Department”) action:

1. Appellants object to the Department’s action in approving the amount and form of financial assurances proposed by PPG Industries, Inc. (PPG) to secure the remedy at PPG’s Armstrong County Waste Site (Site), as required by a November 4, 2020 amendment (“First Amendment”) to an April 2, 2019 Consent Order and Agreement (“2019 COA”) between DEP and PPG. Appellants object to this action because the financial assurances—as proposed by PPG and approved by the Department—do not conform to the requirements of the First Amendment and, most importantly, are inadequate to ensure that the approved remedy for the Site will be maintained in perpetuity even after PPG ceases to exist. The Department’s decision to approve the proposed financial assurances was thus arbitrary, capricious, and not in accord with the Department’s legal obligations, including its obligation to protect the waters of the Commonwealth and its constitutional duty to act as a trustee in preserving and protecting the Commonwealth’s environment.

I PARTIES

A. Appellants

2. Appellant PennEnvironment is a non-profit corporation organized under the laws of the Commonwealth of Pennsylvania, with offices in both Philadelphia and Pittsburgh. PennEnvironment is a statewide environmental advocacy group that is actively engaged in education, research, lobbying, litigation, and citizen organizing to encourage conservation and environmental protections. PennEnvironment has approximately 15,000 members who contribute financially to the organization, plus many more who participate in the organization without financial involvement.

3. Appellant Sierra Club is a nationwide non-profit environmental membership organization, incorporated in California, with its headquarters and principal place of business in San Francisco. Sierra Club is America's oldest and largest grassroots environmental organization, with over 600,000 members nationally and chapters in all 50 states, the District of Columbia, and Puerto Rico. Sierra Club has more than 23,000 members living in Pennsylvania. For decades, Sierra Club—on both a national level and through its Commonwealth chapters—has worked to protect the environmental and ecological health of Pennsylvania's air and water.

4. Members of the appellant organizations reside in the vicinity of, or own property, or recreate in, on, or near the Site and the waters of the Commonwealth affected by the discharge of pollutants from the waste site owned and/or operated by PPG Industries, Inc. that is the subject of this appeal.

5. Appellants are the plaintiffs in a citizen suit filed against PPG in the United States District Court for the Western District of Pennsylvania under the Pennsylvania Clean Streams Law (CSL), the federal Clean Water Act (CWA), and the federal Resource, Conservation, and Recovery

Act (RCRA). The purpose of the citizen suit is to remedy PPG's long-unpermitted discharges from the PPG Waste Site and to remediate the conditions at that Site that may present an imminent and substantial endangerment to human health and the environment, including those conditions that result in the contamination of waters of the Commonwealth. *PennEnvironment v. PPG Industries, Inc.*, W.D. Pa., Civ. Nos. 2:12-00342, 2:12-00527, 2:13-01396, 2:14-00229 (consolidated). PPG was found liable under the CSL, the CWA, and RCRA. *PennEnvironment v. PPG Industries, Inc.*, No. 12-342, 2022 WL 541524 (W.D. Pa. Feb. 23, 2022) (partial summary judgment on CWA liability); *PennEnvironment v. PPG Industries, Inc.*, No. 12-342, 2018 WL 1784555 (W.D. Pa. Apr. 13, 2018) (partial summary judgment on RCRA liability); *PennEnvironment v. PPG Industries, Inc.*, 127 F. Supp. 3d 336, 385-386 (W.D. Pa. 2015) (partial summary judgment on CSL, CWA, and RCRA liability); *see also PennEnvironment v. PPG Industries, Inc.*, No. 12-342, 2019 WL 2210692 (W.D. Pa. May 22, 2019), *recons. denied* 2019 WL 4860940 (W.D. Pa. Oct. 2, 2019) (denying PPG's motion to dismiss plaintiffs' RCRA claims as futile based on PPG's agreement with the Department).

6. As addressed below, the majority of Appellants' federal lawsuit was settled in a Federal Consent Order. *See* para. 18. The Federal Consent Order requires that PPG establish financial assurances as required by the First Amendment. *See* paras. 19-20.

B. Respondents

7. The Commonwealth of Pennsylvania Department of Environmental Protection is an agency of the Commonwealth. The Department is charged with enforcing the Clean Streams Law, 35 P.S. § 691.1 *et seq.*, and the rules and regulations promulgated thereunder.

8. PPG Industries, Inc. is a corporation organized under the laws of Pennsylvania, headquartered in Pittsburgh.

II FACTUAL BACKGROUND

9. From 1949 until 1970, PPG Industries, Inc. deposited slurry waste from its glass manufacturing operation in Ford City into its former sandstone quarry on the Site, creating three slurry lagoons. These lagoons and the surrounding area comprise a portion of the Site called the “Slurry Lagoon Area” (SLA). The SLA is approximately 77 acres and is bordered by Route 128 to the north, the Allegheny River to the south, Glade Run to the west, and an area that PPG refers to as the “Solid Waste Disposal Area” (SWDA)—in which PPG disposed of solid waste from its manufacturing operations from the 1920s until 1967—to the east.

10. Uncontaminated water—from infiltrating precipitation and upgradient lateral groundwater flow—encounters PPG’s slurry waste upon entering the Site. This previously uncontaminated groundwater becomes contaminated with the contaminants from PPG’s waste. Fractures within the weakly cemented SLA waste provide pathways for the now-contaminated groundwater to travel. Eventually, much of the contaminated groundwater emerges from the waste onto the land surface via seeps.

11. The seep water is contaminated with metals, including aluminum, antimony, arsenic, chromium, iron, and lead. It also regularly has a high pH. The United States District Court for the Western District of Pennsylvania has held that the high-pH seepage at the Site may present an imminent and substantial endangerment to human health and the environment. *PennEnvironment v. PPG Industries, Inc.*, 127 F. Supp. 3d at 385-386. The seepage from the SLA eventually flows into the Allegheny River and Glade Run.

12. Both PPG and the Department have been aware of this seepage—and of its damaging environmental effects—since at least the 1970s. For example, in a 1971 Agreement and Stipulation, DEP and PPG stipulated that “industrial wastes were being discharged from various

points [on the Site] to the waters of the Commonwealth, to-wit, the Allegheny River,” and that this discharge was “continuing,” and required PPG to submit a plan to deal with the discharge. 1971 Agreement and Stipulation, pp. 1-2. Similarly, on March 9, 2009—in response to a citizen complaint—the Department issued an Administrative Order to PPG regarding PPG’s discharges from the Site. In the letter accompanying that 2009 Administrative Order, DEP stated that:

The Department believes that the discharges coming from the site and entering into the Allegheny River and Glade Run pose a significant threat to public health and the environment.

13. However, although PPG conducted various studies of the Site over the years, PPG did not eliminate or treat its discharges from the Site, nor even apply for an NPDES permit for its discharges. Despite its knowledge of PPG’s noncompliance, the Department failed to take any effective action to protect the environment or ensure PPG’s compliance with state and federal environmental law.¹

14. Although in 2001 PPG filed a Notice of Intent to Remediate the Site under the Land Recycling and Environmental Remediation Standards Act of May 19, 1995, 35 P.S. §§ 6026.101 *et seq.* (“Act 2”), it did not complete a remediation. After the federal district court determined in August 2015 that PPG is liable for violations of the federal Clean Water Act, the federal Resource Conservation and Recovery Act, and the Clean Streams Law (*PennEnvironment v. PPG Industries, Inc.*, 127 F. Supp. 3d at 385-386), PPG informed DEP in April 2016 that it wished to resume the Act 2 process.

¹ The Department failed even to take any effective action to compel PPG to obtain the NPDES permit that it should have obtained in the 1970s. Indeed, PPG did not apply for an NPDES permit until after Appellants—the plaintiffs in the federal citizen suit—obtained a preliminary injunction from the federal district court compelling it to do so, a motion that PPG vigorously contested. *See PennEnvironment v. PPG Industries, Inc.*, No. 12-342, 2014 WL 6982461 (granting motion for preliminary injunction requiring PPG to apply for an NPDES permit).

15. On April 2, 2019, PPG filed with the federal district court notice that PPG and DEP had executed a Consent Order and Agreement purporting to resolve, pursuant to Act 2, all of DEP's interests at the Site. Notice to the Court of Fully Executed Consent Order and Agreement, *PennEnvironment v. PPG Industries, Inc.*, No. 12-342 (W.D. Pa. April 2, 2019) (ECF 409). The Consent Order and Agreement was attached to that notice. *Id.*, ECF 409-1 ("2019 COA") (attached as Appellants' Exhibit 1).

16. The 2019 COA set forth a remedial proposal for the Site which PPG proposed, and the Department approved, as part of the Act 2 process ("PPG Remedy"). Under the PPG Remedy, infiltrating precipitation and upgradient groundwater will continue to become contaminated through contact with PPG's waste. After contamination, PPG plans to collect the contaminated groundwater, adjust its pH, and discharge it to the Allegheny River. Both PPG and the Department have acknowledged that the SLA will produce contaminated groundwater in perpetuity and thus this Remedy must operate and be actively maintained in perpetuity.

17. PPG subsequently attempted to use the 2019 COA as a basis to dismiss Appellant's federal lawsuit. After a hearing—at which Kevin Halloran of the Department testified on PPG's behalf—the federal district court denied PPG's motion. *PennEnvironment v. PPG Industries, Inc.*, No. 12-342, 2019 WL 2210692 (W.D. Pa. May 22, 2019), *recons. denied* 2019 WL 4860940 (W.D. Pa. Oct. 2, 2019).

18. Following this, Appellants and PPG engaged in settlement negotiations regarding most of the claims in the federal litigation, culminating in a consent order which was entered by the federal court on March 26, 2021. See Consent Order Settling Injunctive Relief Claims and Reserving Other Claims for Future Adjudication, *PennEnvironment v. PPG Industries, Inc.*, No.

12-342 (W.D. Pa. March 26, 2019) (ECF 468) (“Federal Consent Order”) (attached as Appellants’ Exhibit 2).

19. The Federal Consent Order includes a number of additions and enhancements to the remedy for the Site that PPG and DEP had agreed to in the 2019 COA. The parties therefore negotiated an amendment to the 2019 COA to reflect those additions and enhancements. This amendment to the 2019 COA between the Department and PPG was executed on November 4, 2020. *See generally* First Amendment (attached as Appellants’ Exhibit 3).

20. In general, the remedy requires PPG to treat, in perpetuity, the water that becomes contaminated by PPG’s waste. It is undisputed that contamination will happen in perpetuity and therefore that treatment will be required in perpetuity. Due to need for perpetual treatment, the Federal Consent Order and the First Amendment detail the establishment of financial assurances whereby PPG is responsible for the perpetual funding of treatment.

21. Most relevant to this appeal, the Federal Consent Order and First Amendment require that (First Amendment, para. 13):

Within thirty (30) days of the execution of this First Amendment, PPG shall submit documentation for the provision of financial assurances to the Department in an amount sufficient to secure the implementation and post-closure care, including without limitation long- term monitoring, operation and maintenance and replacement costs necessary to effectuate and maintain the remedy required by the 2019 Consent Order and Agreement and this First Amendment, or a revision of the remedy should the original fail, in perpetuity. Said financial assurances shall consist of an irrevocable letter(s) of credit and a standby trust in favor of the Department that conforms to the requirements of 25 PA Code Section 287, Subchapter E and/or letter of credit and standby trust provisions established by 40 CFR 264.143(d) and 264.145(d). The wording of the letter(s) of credit shall explicitly state that neither the letter(s) of credit nor the proceeds of the letter(s) of credit shall be considered the property of PPG or property of the estate in the event of PPG’s bankruptcy. PPG shall deliver to the Department the letter(s) of credit meeting the requirements of this paragraph within thirty (30) days of the Department’s approval of PPG’s documentation.

See also Federal Consent Order, para. 22 (requiring, *inter alia*, that “PPG shall provide the financial assurances as required by Paragraph 13 of the First Amendment”).

22. On December 2, 2020, PPG submitted financial assurance documentation to the Department (“PPG Initial Submission”). PPG proposed the provision of three letters of credit:

- (a) For the SLA Capital Construction costs in the amount of \$11,265,231.
- (b) For the SWDA and Annex Capital Construction costs in the amount of \$1,946,616.
- (c) For Site-wide Operations, Maintenance and Monitoring (“O&M”) in the amount of \$12,363,864.

23. On February 11, 2021, Appellants submitted comments on the PPG Initial Submission to the Department noting several deficiencies, including that the proposal could not reasonably be said to secure the Site remedy in perpetuity and that it failed to provide for the creation of the required standby trust.

24. On September 30, 2021, PPG submitted to the Department an update to its Initial Submission (“PPG Supplemental Submission”). In this Supplemental Submission, PPG proposed increasing the amount of the letter of credit for the SLA Capital Construction costs to \$18,785,150 but otherwise did not modify its Initial Submission.

25. By letter dated April 7, 2022 (“Department Approval”) (attached as Appellants’ Exhibit 4), the Department approved PPG’s financial assurance submission but increased the amount for initial SLA capital costs from \$18.7 million to \$22.2 million. Thus, the Department required three letters of credit in the following amounts without the required standby trust:

- (a) For the SLA in the amount of \$22,206,800.
- (b) For the SWDA and Annex in the amount of \$1,946,616.

(c) For Site-wide operation and maintenance in the amount of \$12,363,864.

III LEGAL BACKGROUND

A. Standard of Review

26. The Board has subject matter jurisdiction “over final Department actions adversely affecting personal or property rights, privileges, immunities, duties, liabilities or obligations of a person.” *Jake v. DEP*, No. 2011-126-M, 2014 EHB 38, 59, 2014 WL 1045640, at *12 (February 18, 2014).

27. An action is “[a]n order, decree, decision, determination or ruling by the Department affecting personal or property rights, privileges, immunities, duties, liabilities or obligations of a person including, but not limited to, a permit, license, approval or certification.” 25 Pa. Code § 1021.2(a).

28. When an appealable action by the Department is before the Board, the Board is to conduct a *de novo* hearing. *E.g., Warren Sand & Gravel Co., Inc. v. DER*, 341 A.2d 556, 565 (Pa. Cmwlth. 1975); *Smedley v. DEP*, No. 97-253-K, 2001 EHB 131, 156, 2001 WL 178234, at *14 (Feb. 8, 2001). Under this standard, the Board decides the case, substituting its own judgment for that of the Department. *Smedley*, 2001 EHB at 156. The Board makes its own factual findings based on the evidence presented. *Ibid.*

29. In addition to the minimum requirements of the statutes and regulations, the Board should consider “what the Department could or should have considered in the exercise of its discretion considering all of the relevant facts.” *See Goheen v. DEP*, No. 2002-077-L, 2002 EHB 730, 733, 2002 WL 1979653, at *2 (Aug. 22, 2002).

30. If the Board determines that the Department’s action is unreasonable, inappropriate, or not in conformance with the law, the Board has the power to “modify the Department’s action

and to direct the Department in what is the proper action to be taken.” *Pennsylvania Trout v. DEP*, No. 2002-251-R, 2044 EHB 310, 362, 2004 WL 1045408, at *31 (April 23, 2004) (quoting *Pequea Township v. Herr*, 716 A.3d 678, 687 (Pa. Cmwlth. 1998)).

31. Appellants before the EHB bear the initial burden of proving that the Department’s action was unreasonable, inappropriate, or not in conformance with law. *See* 25 Pa. Code § 1021.122(c); *Pennsylvania Trout v. DEP*, 2004 EHB at 362.

B. Relevant Law Governing the Department’s Obligations

1. Clean Streams Law

32. The Clean Streams Law, 35 P.S. § 691.1., *et seq.* (CSL), is the primary Pennsylvania statute that governs discharges of pollutants into the waters of the Commonwealth. “It is the objective of the Clean Streams Law not only to prevent further pollution of the waters of the Commonwealth, but also to reclaim and restore to a clean, unpolluted condition every stream in Pennsylvania that is presently polluted.” 35 P.S. § 691.4(3).

33. The CSL declares that the “discharge of sewage or industrial waste or any substance into the waters of this Commonwealth, which causes or contributes to pollution as herein defined or creates a danger of such pollution is hereby declared not to be a reasonable or natural use of such waters, to be against public policy and to be a public nuisance.” 35 P.S. § 691.3.

34. The CSL protects all waters of the Commonwealth, including, but not limited to, groundwater, rivers, streams, ponds, lakes, dammed water, springs, and all other bodies or channels, whether natural or artificial, within the boundaries of the Commonwealth. 35 P.S. § 691.1.

35. The CSL prohibits discharges of industrial waste into waters of the Commonwealth unless the discharger has an appropriate permit. 35 P.S. §§ 691.3, 691.301, 691.401. The appropriate permit is ordinarily an NPDES permit.

36. The CSL also mandates that (35 P.S. § 691.301):

No person or municipality shall place or permit to be placed, or discharged or permit to flow, or continue to discharge or permit to flow, into any of the waters of the Commonwealth any industrial wastes, except as hereinafter provided in this act.

37. The Department has the obligation to implement and enforce the CSL. *See* 35 P.S. § 691.5. This obligation includes consideration of the “immediate and long-range economic impact [of any Departmental action taken pursuant to the CSL] upon the Commonwealth and its citizens.” 35 P.S. § 691.5(a)(5).

2. Environmental Rights Amendment

38. Article I, Section 27 of the Pennsylvania Constitution, known as the Environmental Rights Amendment, provides that:

The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic, and esthetic values of the environment. Pennsylvania’s public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all people.

39. The right of the people of the Commonwealth to “clean air, pure water, and [] the preservation of the natural, scenic, historic, and esthetic values of the environment” is “inherent and infeasible” and “shall forever remain inviolate.” *See Pennsylvania Environmental Defense Foundation v. Commonwealth*, 161 A.3d 911, 931 (Pa. 2017) (quoting Pa. Const. art I, §§ 1, 25).

40. Section 27 reflects the duty of the Pennsylvania government to act as a trustee to “prohibit the degradation, diminution, and depletion of [Pennsylvania’s] public natural resources.” *Center for Coalfield Justice v. DEP*, No. 2014-072-B, 2017 EHB 799, 855-856, 2017 WL 3842580, at *31 (August 15, 2017) (citing *Pennsylvania Environmental Defense Foundation v. Commonwealth*, 161 A.3d 911, 933 (Pa. 2017)).

41. As trustee (*Pennsylvania Environmental Defense Foundation*, 161 A.3d at 932 (quoting *Robinson Township*, 83 A.3d at 956-957)):

the Commonwealth is a fiduciary obligated to comply with the terms of the trust and with standards governing a fiduciary's conduct. The explicit terms of the trust require the government to "conserve and maintain" the corpus of the trust. *See* Pa. Const. art. I, § 27. The plain meaning of the terms conserve and maintain implicates a duty to prevent and remedy the degradation, diminution, or depletion of our public natural resources. As a fiduciary, the Commonwealth has a duty to act toward the corpus of the trust—the public natural resources—with prudence, loyalty, and impartiality.

42. Thus, "the Environmental Rights Amendment mandates that the Commonwealth, as a trustee, 'conserve and maintain' our public natural resources in furtherance of the people's specifically enumerated rights." *Id.* at 934.

43. As an agency of the Commonwealth, the Department is bound by this fiduciary responsibility. *See, e.g., New Hanover Township v. DEP*, No. 2018-072-L, 2020 EHB 124, 190, 2020 WL 2120289, at *39 (April 24, 2020) ("Article I, Section 27 requires the Department to fully consider the environmental effects of its action.") (citations omitted).

44. In reviewing Department decision-making pursuant to Section 27, the Board "first must determine whether the Department has considered the environmental effects of its action and whether the Department correctly determined that its action will not result in the unreasonable degradation, diminution, depletion or deterioration of the environment. Next, we must determine whether the Department has satisfied its trustee duties by acting with prudence, loyalty and impartiality with respect to the beneficiaries of the natural resources impacted by the Department decision." *Delaware Riverkeeper v. DEP*, No. 2014-142-B, 2018 EHB 447, 492, 2018 WL 2294492, at *26 (May 11, 2018) (citations omitted).

45. To comply with its Article I, Section 27 obligation, the Department "must fully consider the environmental effects of its action. 'The Department cannot make an informed decision regarding the environmental effects of its action if it does not have an adequate

understanding of what those effects are or will be.” *New Hanover Township*, 2020 EHB at 190 (citations and quotation omitted).

46. Further, the Department’s duty of prudence requires it to “exercise such care and skill as a man of ordinary prudence would exercise in dealing with his own property.” *Pennsylvania Environmental Defense Foundation*, 161 A.3d at 932 (quoting *In re Mendenhall*, 398 A.2d 951, 953 (Pa. 1979)).

47. Departmental actions that are inconsistent with the laws it is obligated to enforce—such as the CSL—do not satisfy the Department’s trustee obligations. *Cf. Center for Coalfield Justice v. DEP*, No. 2014-072-B, 2017 EHB 799, 2017 WL 3842580, at *32 (August 15, 2017) (“At a minimum, a Department permitting action that is not lawful under the statutes and regulations in place to protect the waters of the Commonwealth, cannot be said to meet the Department’s trustee responsibilities under Article I, Section 27 and is clearly a state action taken contrary to the rights of citizens to pure water.”)

C. Financial Assurances

48. Financial assurances are financial instruments established in the present for potential future use when the party responsible for the environmental contamination is unavailable or unwilling to fulfill its responsibilities to either remedy the contamination or maintain the remedy.

49. Properly designed and funded financial assurances are critical to “ensur[ing] that the parties responsible for environmental contamination assume the costs of cleanup rather than forcing the general public to pay for or otherwise bear the consequences of businesses’ environmental liabilities.” U.S. Government Accountability Office, GAO-05-658, *Environmental Liabilities: EPA Should Do More to Ensure that Liable Parties Meet their Cleanup Obligations*, p. 12 (2005), available at <https://www.gao.gov/products/gao-05-658> (archived on Jan. 20, 2022).

Financial assurances are necessary to “ensure that resources are available to fulfill the businesses’ cleanup obligations as they arise” (*ibid.*), regardless of the polluter’s contemporaneous willingness or ability to do so.

50. The principle that the polluter must pay for remediation—rather than the public—is reflected in the laws of the Commonwealth. For example, “the objective of the Clean Streams Law [is] not only to prevent further pollution of the waters of the Commonwealth, but also to reclaim and restore to a clean, unpolluted condition every stream in Pennsylvania that is presently polluted.” 35 P.S. § 691.4(3). Commenting on this statement in the context of drainage from a mine, the Pennsylvania Supreme Court has made clear that it is the responsibility of the polluter, not the public, to pay for any required remediation (*DER v. Harmar Coal Company*, 306 A.2d 308, 321 (Pa. 1973)):

If the operator of a mine need not treat these discharges, pollution will not end and the general public will be subjected to either the continued degradation of its surface waters or be forced to subsidize the coal industry by paying for treatment of this polluted water through its taxes . . . The public interest is not served if the public, rather than the mine operator, has to bear the expense of abating pollution caused as a direct result of the profitmaking, resource-depleting business of mining coal. [emphasis added]

See also *Kaites v. DER*, No. 84-104-G, 1985 EHB 625, 634, 1985 WL 21743, at *5-6 (quoting same).

IV OBJECTIONS

A. **Objection No. 1: The Department Failed to Ensure Adequate Assurance for Initial Capital Costs**

51. Paragraph 13 of the First Amendment requires in part that the financial assurances be “in an amount sufficient to secure the implementation” of the remedy. The proposal approved and adjusted by the Department, however, understates the capital costs associated with the remedy.

52. DEP's approved financial assurances decision likely understates the capital construction costs for the SLA. For example, PPG's submissions failed to apply the 5% Construction Quality Assurance factor recommended by DEP when costing construction projects. Correcting for this omission would result in increases to the adjustments for contingency, administrative fees, and project management. Because the amount approved by DEP for the SLA capital costs is not the amount in either of PPG's submissions and because the Department's Approval Letter provides no reasoning or support for its approval, it is unclear whether this error was corrected. However, given that the Department has accepted without change the SWDA and long-term O&M proposals by PPG, the record does not suggest that the Department corrected PPG's omission.

53. Similarly, DEP's approved financial assurances decision understates the capital construction costs for the SWDA and SWDA Annex. For example, the PPG proposal, which was adopted by the Department, failed to include adequate contingency allowances based on the preliminary stage of the designs.

54. Moreover, the Department approved in April 2022 an amount identical to that set forth in PPG's initial submission from December 2020. It is implausible that the projected costs would remain the same given the passage of time and rising costs. The approval is thus indicative of a lack of reasoned and independent decision-making by the Department.

55. The Department's decision to approve the financial assurance proposal concerning initial capital construction costs for the remedy was unreasonable, inappropriate, arbitrary and capricious, and not in conformance with the Department's obligations under the law.

B. Objection No. 2: The Department Failed to Ensure Adequate Assurance for Operations and Maintenance

56. Paragraph 13 of the First Amendment requires that the financial assurance for the Site be “in an amount sufficient to secure the implementation and post-closure care, including without limitation long- term monitoring, operation and maintenance and replacement costs necessary to effectuate and maintain the remedy required by the 2019 Consent Order and Agreement and this First Amendment, or a revision of the remedy should the original fail, in perpetuity.” The proposal submitted by PPG and approved by the Department fails to satisfy this requirement.

57. First, PPG’s proposal underestimated several of the annual costs. For example, PPG failed to include replacement costs for many of the most significant components of the remedy, including the deep collection trench, the wastewater treatment plant equipment, generator, and building, and the outfall in the Allegheny River.

58. Notably, although the estimate for the initial capital costs of the SLA portion of the remedy appears to have almost doubled from PPG’s initial submission to the amount approved by DEP (*compare* paras. 22(a) and 25(a) above), DEP approved the long-term monitoring and maintenance assurances in the same amount as in PPG’s initial submission. If the costs of constructing and installing a remedy have doubled, it is implausible that the costs of long-term O&M for that remedy—which includes replacement of the capital components—would stay the same.

59. Second, PPG’s estimate assumed, without evidence, that many of the monitoring costs will be eliminated within the first few years of operation. For example, PPG’s estimate assumed that many outfalls will be eliminated within two years of startup of the new collection and treatment system. Because the elimination of these seeps is speculative, it was inappropriate

for the Department to use their elimination as a basis to reduce the amount of financial assurances required. If the seeps are indeed eliminated, the amount of the financial assurances can be appropriately adjusted in future valuations.

60. The Department’s decision to approve the long-term operations and maintenance component of PPG’s financial assurance proposal was unreasonable, inappropriate, arbitrary and capricious, and not in conformance with the Department’s obligations under the law.

C. Objection No. 3: The Department Failed to Ensure Adequate Funds to Assure the Remedy in Perpetuity

61. Paragraph 13 of the First Amendment requires that the financial assurance for the Site be “in an amount sufficient to secure the implementation and post-closure care, including without limitation long-term monitoring, operation and maintenance and replacement costs necessary to effectuate and maintain the remedy required by the 2019 Consent Order and Agreement and this First Amendment, or a revision of the remedy should the original fail, in perpetuity” (emphasis added).

62. However, rather than present a proposal to financially secure the remedy in perpetuity, PPG presented, and the Department accepted, a proposal to secure the remedy for at most 30 years.²

63. Although PPG, the Department, and Appellants all agree that the remedy at the Site will need to be maintained and operated in perpetuity, PPG calculated—and the Department approved—financial assurances based on a 30-year timeframe. Thirty years is self-evidently not perpetuity. The use of a 30-year timeframe results in a significant understatement of the amount

² As noted in Objection 2, the amount approved is insufficient even for this limited purpose. This Objection is directed specifically at DEP’s failure to ensure—as required by the First Amendment—that the financial assurances are sufficient to secure the remedy in perpetuity.

of financial assurances necessary to secure the remedy in perpetuity as required by the First Amendment.

64. Among numerous other deficiencies, the PPG proposal approved by DEP underestimates the impact of inflation. The proposal used an inflation adjustment factor of approximately 2% annually. This factor was derived from the Gross Domestic Product Implicit Price Deflator for the previous three years as of the time of PPG's submission in December 2020, which represented an anomalously low-inflation time period.³ By accepting an inflation factor based on an unusually low level of inflation, the Department accepted an amount of financial assurance that could not be expected to cover the costs of operating and maintaining the remedy in perpetuity.

65. Even assuming for the sake of argument that the Department's acceptance of the inflation figure from the PPG submission would have been acceptable when the submission was made in 2020, the Department issued its decision in April of 2022. By this time, the rate of inflation was, and had for some time been, much higher. *See, e.g.,* <https://fred.stlouisfed.org/series/USAGDPDEFSAISMEI>. That the Department accepted a proposal based on an out-of-date inflation factor highlights the arbitrary and capricious nature of the Department's decision and suggests that the Department did not adequately analyze or take the time to understand the issues at play, but rather simply deferred to the proposal made by PPG, the entity the Department is supposed to regulate.

66. The Department's decision to approve the financial assurance proposal that will not ensure that the remedy protects human health and the environment in perpetuity was unreasonable,

³ By way of comparison, the 50-year average for the Implicit Price Deflator for Gross National Product, recommended by the Department to represent inflation, was at the time 3.5%.

inappropriate, arbitrary and capricious, and not in conformance with the Department’s obligations under the law.

D. Objection No. 4: The Department Approved PPG’s Proposal Without Ensuring that the Financial Assurance Instruments are in Compliance with the Relevant State and Federal Regulations

67. Paragraph 13 of the First Amendment requires that the financial assurances “consist of an irrevocable letter(s) of credit and a standby trust in favor of the Department that conforms to the requirements of 25 PA Code Section 287, Subchapter E and/or letter of credit and standby trust provisions established by 40 CFR 264.143(d) and 264.145(d).”

68. The proposal submitted by PPG and approved by the Department fails to provide any of the details necessary to determine whether the proposed financial assurance instruments are in compliance with the applicable regulations and, thus, the First Amendment.

69. The Department’s decision to approve PPG’s proposal without obtaining, much less evaluating, these details was unreasonable, inappropriate, arbitrary and capricious, and not in conformance with the Department’s obligations under the law.

E. Objection No. 5: The Department Approved Without the Required Standby Trust

70. Paragraph 13 of the First Amendment requires that the financial assurances “consist of an irrevocable letter(s) of credit and a standby trust.”

71. PPG’s submissions do not address or even mention the required standby trust. The Approval Letter likewise does not mention the required standby trust. Without the trust, in the event of default, the monies from the letters of credit would likely be commingled with the other funds available to the Commonwealth and would not be guaranteed to be reserved for the maintenance and preservation of the Site remedy, thus further endangering the long-term viability of that remedy.

72. The Department’s decision to approve PPG’s proposal—which is, on its face, inconsistent with the requirements of the First Amendment concerning the establishment of a standby trust—was unreasonable, inappropriate, arbitrary and capricious, and not in conformance with the Department’s obligations under the law.

F. Objection No. 6: The Department’s Approval Is Contrary to Its Obligations Under the Clean Streams Law

73. As discussed above (paras. 32-37), the Department is charged with implementing and enforcing the CSL, which seeks to preserve, restore, and protect the waters of the Commonwealth.

74. By approving PPG’s financial assurance proposal in an amount insufficient to guarantee the viability of the remedy in perpetuity, and without the required standby trust, the Department has unreasonably failed to take readily available action to prevent further pollution of the waters of the Commonwealth. *See also* Objections 1-5. The Department’s action is thus contrary to its obligations under the CSL.

G. Objection No. 7: The Department Failed to Discharge its Duty to Act as a Trustee for Pennsylvania’s Natural Resources

75. After failing for decades to take any effective action to compel PPG’s compliance with environmental laws at the Site (*see* paras. 12-14), the Department has approved a financial assurance submission that—in addition to failing to comply with the explicit terms of the First Amendment—fails to provide sufficient monies to ensure that the Site remedy can operate and be maintained in perpetuity. In doing so, the Department has placed at risk both the environment and the public fisc.

76. As described above (paras. 48-50), adequate financial assurances are necessary to ensure both that a remedy can be operated and maintained for as long as necessary and to ensure that it is the polluter—not the public—who pays.

77. Here, there is no dispute that the Site remedy must operate in perpetuity. Given this, it is inevitable that PPG will at some point be unwilling or unable to operate and maintain the remedy as required for the protection of the environment. Once this occurs, either the remedy will cease to operate—and environmental degradation resume—or the funds necessary to operate the remedy will have to come from the citizens of the Commonwealth.

78. The Department’s extended and unexplained delay in issuing its decision was also contrary to its role as a trustee under the Environmental Rights Amendment. A trustee acting with prudence, loyalty, and impartiality would not delay issuing a decision for so long when doing so places the interests underlying the trust at risk.

79. Because “a man of ordinary prudence” acting with loyalty and impartiality would not place his own property at risk in this manner—particularly where the only countervailing benefit is to the financial interest of PPG—the Department’s action violates the Department’s duties as a trustee under Article I, Section 27 of the Pennsylvania Constitution and must be set aside.

Respectfully submitted,

/s/ Tim Fitchett

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May 11, 2022

⁴ A motion for counsel from Terris, Pravlik & Millian, LLP to appear *pro hac vice* is forthcoming.

EXHIBIT A



Objections to the Department's Action
Appellants' Exhibit
1
EHB No. Not Yet Assigned

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

In the Matter of:

PPG Industries, Inc.	:	
Ford City Disposal Site	:	The Clean Streams Law
Slurry Lagoon Area	:	Solid Waste Management Act
Solid Waste Disposal Area and Annex	:	Land Recycling Act
Cadogan and North Buffalo Townships	:	
Armstrong County, PA	:	

CONSENT ORDER AND AGREEMENT

This Consent Order and Agreement is entered into this 2nd day of April 2019, by and between the Commonwealth of Pennsylvania, Department of Environmental Protection ("Department") and PPG Industries, Inc. ("PPG").

FINDINGS

The Department has found and determined the following:

Authority

A. The Department is the agency with the duty and authority to administer and enforce The Clean Streams Law, Act of June 22, 1937, P.L. 1987, *as amended*, 35 P.S. §§ 691.1 – 691.1001 ("The Clean Streams Law"); the Solid Waste Management Act, Act of July 7, 1980, P.L. 380, *as amended*, 35 P.S. §§ 6018.101 – 6018.1003; the Land Recycling and Environmental Remediation Standards Act, Act of May 19, 1995, P.L. 4, No. 1995-2, 35 P.S. §§ 6026.101 – 6026.909 ("Act 2"); Section 1917-A of the Administrative Code of 1929, Act of April 9, 1929, P.L. 177, *as amended*, 71 P.S. § 510-17; and the rules and regulations promulgated thereunder. Pursuant to a delegation from the United States Environmental Protection Agency ("EPA"), the Department also administers and is the primary enforcement



authority for the National Pollutant Discharge Elimination System (“NPDES”) Program of the Federal Water Pollution Control Act, 33 U.S.C. § 1342 (also known as the Clean Water Act “CWA”). Pursuant to formal authorization by EPA and a Memorandum of Understanding, the Department also administers and is the primary enforcement authority for the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6901 *et seq.*, and has agreed to ensure that all response activities conducted under Act 2 protect human health and the environment and comply with all applicable Federal law, including RCRA

Background

B. PPG is a Pennsylvania corporation with a mailing address of One PPG Place, Pittsburgh, PA 15272.

C. The subject site (“Site”) is located in North Buffalo and Cadogan Townships, Armstrong County, Pennsylvania and includes two historic former nonhazardous waste material disposal areas referred to as the Slurry Lagoon Area (“SLA”) and the Solid Waste Disposal Area (“SWDA”). The Site is bordered by Route 128 to the north; the railroad tracks of the Buffalo & Pittsburgh Railroad, Inc. to the south; Glade Run, a tributary of the Allegheny River, to the west; and, partially to the east, by a rural residential property.

D. The SLA, which is approximately 77 acres in size, is bordered on the north by Route 128, on the south by the property of the Buffalo & Pittsburgh Railroad, Inc., on the west by Glade Run, and on the east by a north-to-south feature that PPG terms the “Drainage Ditch.” From approximately 1900 to 1927, PPG operated a sand and sandstone quarry in the SLA area for its glass manufacturing plant located in Ford City, PA. From approximately 1953 to 1970, PPG disposed of grinding and polishing slurry generated by its plate glass manufacturing process in the SLA pursuant to waste disposal permits granted by the Department’s predecessor. The



SLA was closed in 1970 and soon thereafter was covered by a layer of topsoil, and vegetation was established by planting grass seed.

E. The Site also consists of the SWDA, which is approximately 15 acres, and an area known as the SWDA Annex, which is approximately 3 acres, that are bordered on the north by the Eljer Landfill and ballfields, on the south by the railroad tracks of the Buffalo & Pittsburgh Railroad, Inc., on the west by a north-to-south drainage ditch, and on the east by rural residential property. From approximately the 1920s to 1967, PPG disposed of solid waste materials, including but not limited to off-spec glass materials, batch materials, cullet, paper, bricks, municipal trash, empty containers, and construction debris at the SWDA. PPG received a waste disposal permit for this area from the predecessor to the Department. The SWDA Annex contains cullet, some of which may have been intentionally placed as fill material. Portions of the SWDA are currently fenced and heavily vegetated.

Site Regulatory and Enforcement History

F. On January 4, 1950, the Commonwealth of Pennsylvania's Department of Health issued an Industrial Waste Permit #1302 to PPG for treatment of wastes at PPG's glass factory in Ford City, which included the disposal of the grinding and polishing slurry in the SLA.

G. On June 1, 1967, the Commonwealth of Pennsylvania's Department of Mines and Mineral Industries issued to PPG Waste Disposal Permit No. WD-698, for PPG's disposal of slurry material at the Site. This permit was renewed on May 27, 1968 and expired on May 31, 1970.

H. On June 1, 1967, the Commonwealth of Pennsylvania's Department of Mines and Mineral Industries issued to PPG Waste Disposal Permit No. WD-697, for disposal of wood,



paper, ashes, and broken glass at the Site. This permit was renewed on May 22, 1969 and on July 16, 1970 and thereafter expired on May 31, 1971.

I. On March 8, 1971, PPG and the Commonwealth of Pennsylvania, Department of Environmental Resources (“DER”), predecessor agency to the Department, entered into an Agreement and Stipulation (“Agreement and Stipulation”) regarding the discharge of leachate/impacted seeps from the Site into the Allegheny River. In the Agreement and Stipulation, DER determined that PPG was discharging industrial wastes from the Site to the Allegheny River, in violation of The Clean Streams Law and its regulations.

J. Pursuant to the Agreement and Stipulation, PPG was required to undertake and perform the following obligations:

- i. Immediately undertake a study of the problems created by the continuing discharge of industrial wastes from various points at the Site;
- ii. Complete the study on or before July 31, 1971; and
- iii. Submit a written plan to the Department on or before August 31, 1971, either to eliminate the continuing discharges from the Site or to treat those discharges in perpetuity.

In addition to these corrective actions, PPG paid a civil penalty of \$250.00, with a stipulated penalty of \$750.00 to be imposed should PPG fail to carry out the study and written plan.

K. On August 30, 1971, PPG submitted the results of its study and written plan for the leachate/impacted seep discharges from the Site in response to the Agreement and Stipulation. The study and written plan presented and discussed the feasibility of various remedial alternatives with respect to potential elimination or collection and treatment of leachate/impacted seep discharges from the Site.



L. On July 14, 1972, PPG submitted an Industrial Waste Application to DER for the leachate/impacted seep discharges from the Site.

M. In October 1972, the Site was quit-claimed from PPG to the Borough of Ford City ("Ford City"). Ford City is a Pennsylvania municipality with a mailing address of 1000 4th Avenue, Ford City, PA 16226.

N. On or about March 29, 1973, DER recommended that PPG withdraw its Industrial Waste Application for the leachate/impacted seeps from the Site. On April 9, 1973, PPG requested that its Industrial Waste Application be withdrawn because the Site was sold.

O. On or about May 16, 1973, DER returned, with conditions, PPG's Industrial Waste Application to address untreated discharges of leachate/impacted seeps from inactive waste disposal lagoons. Among the conditions imposed by the Department was a requirement that PPG submit an updated composite analysis of the leachate/impacted seeps discharged from the Site, and provide notice to Ford City, and an allowance that DER may, at some future date, require PPG to submit an application for the collection and treatment of the leachate/impacted seeps. PPG provided the composite analysis to DER on June 15, 1973 and also provided notice to Ford City.

P. In 1984, DER conducted inspections and sampling of the Site in response to a citizen's complaint related to leachate/impacted seep discharges from the Site. On or about October 7, 1984, DER submitted a Preliminary Assessment Report regarding the Site to EPA. Thereafter, in October 1984, EPA identified the Site as a potential hazardous waste site and placed it in the Federal Superfund Program for assessment.



Q. After EPA performed a Preliminary Assessment in December 1984, it determined that a Site Investigation was necessary, yet that the prioritization at the Site was low, given the conditions at the time.

R. In 1991, EPA conducted a Site Inspection of the Site. EPA's report indicated that a potential risk for direct human contact existed at the Site. However, EPA did not place the Site on the National Priorities List (NPL) under the Federal Superfund Program.

S. On or about February 21, 1992, the Department issued a Notice of Violation ("1992 NOV") under The Clean Streams Law and Pennsylvania's Solid Waste Management Act to PPG regarding the Site. The 1992 NOV stated that "PPG has, through past disposal practices, disposed of waste materials onto the ground and into waters of the Commonwealth, contrary to the Rules and Regulations of the Department." The 1992 NOV was based on EPA's 1991 Site Inspection of the Site.

T. PPG responded to the 1992 NOV by a letter dated April 27, 1992, wherein PPG volunteered to conduct a comprehensive field sampling/assessment program for the Site. By letter dated May 13, 1992, the Department stated that it would like to become involved in PPG's field sampling and assessment program and recommended that the program be performed in accordance with EPA's "Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA", to which PPG agreed.

U. In June 1992, PPG submitted a Data Report on the Site to the Department. This report indicated that detectable levels of arsenic, lead, aluminum, chromium, copper, zinc, antimony, barium, beryllium, vanadium, manganese, and magnesium were found in the SLA soil. Detectable levels of lead, arsenic, and aluminum were also found in surface water associated with the SLA slurry lagoons. Detectable levels of arsenic, lead, cadmium, chromium,



manganese, copper, zinc, mercury, antimony, barium, beryllium, iron, vanadium, aluminum, and semi-volatile organic compounds were noted in the SWDA soils, and a SWDA surface water sample detected arsenic.

V. In October 1993, PPG submitted a report to the Department titled "Remedial Investigation for the PPG Ford City Site" ("RI Report"). The RI Report presented the sampling results for soils, surface water, sediments, and groundwater at the Site. According to the Department, the RI Report indicated elevated levels of aluminum, arsenic, copper, iron, and lead in surface water and sediment at the SLA.

W. In June 1994, the Department and PPG split surface water and sediment samples, while the Department conducted benthic macroinvertebrate stream surveys of streams and seeps related to the SLA. According to the Department, the data indicated that there are elevated pH, arsenic, and lead levels in surface water and sediment. The benthic macroinvertebrate data indicated to the Department that leachate/impacted seeps from the SLA was having an adverse impact on stream water quality and aquatic life.

X. In October 1994, PPG submitted a report titled "Addendum to the Remedial Investigation for the PPG Ford City Site" that incorporated the June 1994 sampling data.

Y. In June 1995, PPG submitted a report titled "Feasibility Study for the PPG Ford City Site" that evaluated the feasibility of various remedial actions and based on the evaluation recommended remedial actions to address potential human and ecological risk at the Site. As follow-up to this report, the Department proposed alternative remedial actions related to the leachate/impacted seep discharges from the Site and PPG conducted additional studies and investigations of the Site at the Department's request.



Z. With concurrence from the Department, PPG voluntarily implemented control measures at the Site to address access restrictions, site restoration, and stabilization as summarized in a letter to the Department, dated December 15, 1998. These measures included installing a locked fence to prevent access to the SWDA and the leachate/impacted seeps from the SLA, placement of additional soil and vegetative cover across the SLA, and stabilization of localized erosion at the western slope of the SLA.

AA. On or about May 16, 2001, PPG submitted a Notice of Intent to Remediate (“NIR”) the Site under the Department’s Act 2 program. PPG provided a copy of the NIR to Ford City, North Buffalo Township, and Cadogan Township by certified mail on May 16, 2001 and informed these municipalities of a 30-day period to file comments with the Department, including an opportunity to request that PPG develop a formal public involvement program. None of the municipalities filed any comments with the Department or requested a formal public involvement plan. PPG additionally published legal notice of the NIR in the Kittanning Leader Times and the Valley News Dispatch on May 21, 2001. PPG subsequently submitted a Remedial Investigation Report and Remedial Investigation Report Addendum 1.0, which determined that there were no unacceptable risks associated with the SLA soils. The Department approved the Remedial Investigation Report and Remedial Investigation Report Addendum 1.0 for the SLA soils on or about October 19, 2001.

BB. PPG also submitted a Cleanup Plan under Act 2 that proposed a phytocover and seepage/storm water management remediation approach to address the discharges of leachate/impacted seeps from the SLA in September 2001. The September 2001 Cleanup Plan was never formally approved by the Department.



CC. In order to implement the proposed remediation approach in the September 2001 Cleanup Plan, PPG also submitted an NPDES Permit Application for Discharges Associated with Construction Activities to the Department in 2001. The Department issued a Temporary Discharge Approval to PPG on November 19, 2002 for short term point source discharges of storm water, groundwater or seeps that may occur during construction activities which contained effluent limits. In response, after discussions with the Department, PPG submitted an initial treatability study to the Department in January 2003 for review and comment for the purpose of re-establishing the effluent limits in Temporary Discharge Approval as consistent with practice at other remediation sites and, subsequently, requested additional information from the Department to conduct further treatability studies. PPG did not receive concurrence or comments from the Department on the submitted treatability study nor the requested additional information. The Temporary Discharge Approval expired on November 19, 2004.

DD. On October 1, 2002, Ford City executed a Declaration of Restrictive Covenants and Grant of Access Rights ("Declaration") that, among other things, granted to PPG and the Department access to the Site "to undertake such monitoring, investigation or remediation activities as may be required pursuant to applicable Environmental Laws." On October 28, 2002, Ford City recorded the Declaration with the Recorder of Deeds for Armstrong County.

EE. On or about March 9, 2009, the Department issued an Administrative Order ("2009 Order") to PPG, containing certain findings by the Department and imposing performance obligations. In the 2009 Order, *inter alia*, the Department determined that:

- i. The industrial waste discharges from the Site have a very high pH, contain metals and other toxic chemicals; constitute pollution; and continue unabated;



ii. The SLA is contaminated with hazardous substances, including antimony, arsenic, and lead;

iii. Precipitation, which infiltrates the SLA and SWDA at the Site, becomes contaminated with hazardous substances and then is discharged as “leachate” into the waters of the Commonwealth;

iv. The leachate discharges seep out of the SLA slurry lagoons and the SWDA at various locations at the Site and then flow or are conveyed into waters of the Commonwealth, including the Allegheny River and its tributary, Glade Run; and

v. These leachate discharges constitute industrial waste pursuant to Section 1 of The Clean Streams Law, 35 P.S. § 691.1, and pollutants as defined in 25 Pa. Code § 91.1. The discharges result in or may result in pollution of waters of the Commonwealth, in violation of Sections 401 and 402 of The Clean Streams Law, 35 P.S. §§ 691.401 and 691.402. Further, in violation of Sections 301 and 307 of The Clean Streams Law, 35 P.S. §§ 691.301 and 691.307, these leachate discharges into waters of the Commonwealth are not authorized by the rules and regulations of the Department, and PPG does not have a permit for the discharges from the Department.

FF. The 2009 Order required Performance Obligations of PPG, including, but not limited to the following:

i. Weekly monitoring and reporting of eighteen (18) identified seeps for flow, total suspended solids, oil and grease, iron, aluminum, lead, chromium, antimony, arsenic, and pH;

ii. Implementation of measures to secure the Site and interim abatement measures, until such time as the industrial waste discharges, leachate, and seeps are collected and



conveyed to an industrial waste treatment facility and the discharge from that facility is authorized by an NPDES permit; and

iii. Submission of a treatment plan and schedule within 90 days of the date of the 2009 Order, to collect and treat all industrial waste discharges, leachate, and seeps from the Site into the waters of the Commonwealth. The treatment plan shall identify the necessary NPDES permit(s) for the authorization of the discharges associated with the collection and treatment system, including a schedule for applying for the permits, which, after Department review and approval, would be incorporated as an obligation of the 2009 Order.

GG. In addition to submitting monitoring data and reporting requirements to the Department and implementing site security measures as required by the 2009 Order, PPG submitted an interim abatement plan (“Interim Abatement Plan”) to the Department on or about April 9, 2009. The Interim Abatement Plan proposed, *inter alia*, to directly neutralize high pH seep waters in the Drainage Ditch with a pH adjustment system; to both passively and actively treat the high pH seeps in the South Bench area through a pH adjustment system; and to provide pH mitigation through a series of passive and semi-passive approaches in the Western Slope Area of the Site. In addition, the Interim Abatement Plan provided for infrastructure improvements, the installation of various equipment, monitoring, and an implementation schedule.

HH. On or about April 9, 2009, the Department rejected PPG’s proposal, stating that it did not fulfill the requirements of the Administrative Order because the Interim Abatement Plan would utilize waters of the Commonwealth as a treatment option.

II. On or about May 26, 2009, PPG submitted an addendum to its Interim Abatement Plan (“Revised Interim Abatement Plan”) proposing to remove the base flow from the Drainage



Ditch and treat it on-site, along with the high pH seeps along the South Bench that were proposed to be collected and treated. The collected combined water from the base flow from the Drainage Ditch and the high pH seeps along the South Bench was proposed to be neutralized to a pH between 6 and 9 standard units (“S.U.”), and the treated water would then be discharged from a constructed outfall, Outfall 001.

JJ. On or about July 2, 2009, the Department approved the Revised Interim Abatement Plan. The Department’s approval of the Revised Interim Abatement Plan required PPG to monitor the discharge from the outfall (Outfall 001) of the interim abatement system for flow, suspended solids (TSS), oil and grease, aluminum, arsenic, iron, lead, chromium, antimony, pH and imposed effluent limits on the discharge for suspended solids, oil and grease, and pH.

KK. On or about September 11, 2009, PPG submitted the final construction design drawings of the interim abatement system under the approved Revised Interim Abatement Plan to the Department. PPG’s interim abatement system was operational on February 1, 2010. The interim abatement system consists of a collection system that collects and combines seep discharges and storm water runoff, directing the combined flow to the treatment system where, in a process called “neutralization,” sulfuric acid is added to reduce the flow’s pH to between 6.0 and 9.0 S.U. Additionally, PPG implemented all of the other aspects of the approved Revised Interim Abatement System, including the implementation of the passive treatment system to address and provide pH mitigation of the three seeps in the Western Slope area of the Site.

LL. On or about June 5, 2009, PPG submitted a Treatment Plan and Schedule to the Department under Performance Obligation D of the 2009 Order which proposed potential mitigation options for the collection and treatment of high pH seeps at the Site and a detailed



plan and schedule to evaluate the mitigation options. In anticipation of the Department's approval, PPG implemented the Treatment Plan and Schedule as proposed to the Department.

MM. The Department approved the Treatment Plan and Schedule on November 9, 2011 and directed PPG to implement the investigative items as identified in the plan as submitted. In this approval, the Department reiterated its position that under The Clean Streams Law and the federal Clean Water Act, PPG is responsible for collecting and treating all contaminated (*i.e.*, high pH) water that enters the surface waters of the Commonwealth from the Site.

NN. On or about December 17, 2012, PPG submitted a Treatment Plan Report for the Site ("Treatment Plan Report") which evaluated various remedial options for the collection and treatment of the high pH seeps at the Site and proposed an enhanced collection, conveyance, and treatment system as the permanent remedy for the high pH seeps at the Site.

OO. On or about March 27, 2013 and June 18, 2014, PennEnvironment and Sierra Club submitted comments on the Treatment Plan Report.

PP. On or about May 13, 2014, the Department provided PPG comments on the Treatment Plan Report.

QQ. On or about January 30, 2015, PPG submitted a revised Treatment Plan Report addressing the Department's comments ("Revised Treatment Plan Report"). The Revised Treatment Plan Report continued to propose an enhanced collection, conveyance, and treatment system (the "Enhanced Collection and Treatment System") as the permanent remedy for the high pH seeps at the Site.

RR. On or about March 5, 2015, the Department approved the Revised Treatment Plan Report and, thus, approved the Enhanced Collection and Treatment System as the permanent remedy for the high pH seeps. The Department's approval included four comments, all of which



PPG accepted on or about March 16, 2015. The approved permanent remedy for the high pH seeps and the transition from the Interim Abatement System to the Enhanced Collection and Treatment System is summarized as follows:

- i. Continued operation of the interim abatement system during the design, permitting, construction and start-up of the Enhanced Collection and Treatment System.
- ii. Update the technical evaluation of slope stability under loadings associated with the Enhanced Collection and Treatment System.
- iii. Installation of a leachate collection trench system along the interior of the SLA which will be designed to intercept leachate associated impacted high pH seepage and to convey the collected water to a new treatment facility.
- iv. Installation of a dedicated system to collect remote high pH seeps along the western perimeter of the SLA.
- v. Installation of a new treatment facility designed to treat influent from the new collection systems. The treatment processes will, at a minimum, include mixing and neutralization. The possible need for any other process steps will be identified based on the NPDES permit.
- vi. Installation of a new discharge line from the new treatment facility to the Allegheny River (Outfall 002).
- vii. Installation of surface and drainage improvements to reduce leachate generation.
- viii. Upon demonstration of operational efficacy for the Enhanced Collection and Treatment System, to the Department's satisfaction, the Interim Abatement System will be decommissioned.



SS. PPG has begun to implement aspects of the permanent remedy for the high pH seeps in the approved Revised Treatment Plan Report, namely:

i. In September 2015, PPG submitted a Revised Infiltration Reduction Plan that included surface and drainage improvements and improvements to vegetative cover, as requested by the Department, in order to reduce precipitation infiltration of water and leachate generation from surface areas of the SLA. On October 9, 2015, the Department approved PPG's Revised Infiltration Reduction Plan. PPG has implemented those aspects of the approved Revised Infiltration Reduction Plan that do not require separate permit approval, namely the improvements to the vegetative cover.

ii. On or about December 21, 2015, PPG submitted a Collection and Conveyance System – Interim Design report that included preliminary design for the Enhanced Collection and Treatment System selected as the permanent remedy for the high pH seeps in the Department-approved Revised Treatment Plan Report.

iii. On or about January 15, 2016, PPG submitted an updated Slope Stability Analysis Report to the Department.

iv. PPG prepared and submitted an Erosion and Sedimentation Control Plan and an application for an NPDES permit coverage for storm water discharges associated with the construction of the remedy as approved in the Revised Treatment Plan Report to the Department and the Armstrong County Conservation District on October 19, 2017. The Armstrong County Conservation District approved the Erosion and Sedimentation Control Plan on January 26, 2018. The NPDES Permit that the Department intends to issue for the Site as discussed in Paragraph EEE is intended to cover all storm water discharges associated with these construction activities.



v. On or about November 14, 2017, PPG submitted a Joint Permit Application (“JPA”) to the Department and the U.S. Army Corps of Engineers seeking permit coverage for its earth disturbance activities and encroachments to wetlands and waterways associated with the construction and installation of the leachate collection system along the interior of the SLA, the dedicated system to collect remote high pH seeps along the western perimeter of the SLA, the new treatment facility, the new discharge line and Outfall 002 in the Allegheny River, and certain surface and drainage improvements in the approved Revised Infiltration Reduction Plan. PPG cannot begin construction of the remedy as approved in the Revised Treatment Plan Report until both the Department and the U.S. Army Corps of Engineers grant the permit coverage requested under the JPA. PPG has been diligently responding to comments and providing additional information that has been requested by the Department to evaluate the JPA.

TT. As part of the implementation of the Department-approved permanent remedy for the high pH seeps, on or about March 31, 2015, PPG also submitted an NPDES permit application for the industrial waste discharges at the Site.

UU. At the request of the Department, on or about February 22, 2016, PPG submitted data for seepage areas and monitoring wells associated with the SWDA. On or about April 15, 2016, at the request of the Department, PPG submitted additional data for seepage areas associated with the SWDA and a revision to the NPDES permit application to incorporate the SWDA seepage area data and include the SWDA seepage areas as outfall locations.

VV. On or about June 4, 2016, the Department published the draft NPDES permit for the Site in the *Pennsylvania Bulletin*, 46 Pa.B. 2861, 2875-77, (“Draft NPDES Permit”). By separate correspondence of July 19, 2016, PPG, PennEnvironment, and Sierra Club submitted



comments on the Draft NPDES Permit. On August 19, 2016, PennEnvironment and Sierra Club submitted a follow-up to their comments that withdrew their request for a public a hearing.

WW. On or about March 9, 2017, the Department approved a request from PPG to modify certain monitoring and reporting provisions of the 2009 Order.

XX. On or about January 23, 2018, pursuant to Act 2, PPG submitted to the Department, a Remedial Investigation Report, Human Health Risk Assessment, Ecological Risk Assessment, and Cleanup Plan for the Site. The Cleanup Plan incorporated the approved permanent remedy as approved in the Revised Treatment Plan Report, including the remedy for the high pH seeps, and the approved 2001 Remedial Investigation for the SLA, and proposed a remedy to address any remaining risks to human health or the environment at the Site from groundwater at the Site and soils at the SWDA and SWDA annex. PPG provided notice of these submissions to Ford City, North Buffalo Township, and Cadogan Township by certified mail on January 18, 2018 and published legal notice in *The Kittanning Paper* on January 22, 2018.

YY. On or about May 4, 2018, the Department issued a Technical Deficiency Letter to PPG for the Remedial Investigation Report, Human Health Risk Assessment, Ecological Risk Assessment, and Cleanup Plan.

ZZ. On or about June 8, 2018, PPG submitted a revised Remedial Investigation Report, Human Health Risk Assessment, Ecological Risk Assessment, and Cleanup Plan, addressing the Department's comments contained in the Technical Deficiency Letter.

AAA. On or about September 29, 2018, in response to comments received on the Draft NPDES Permit, the Department published a revised draft NPDES permit for the Site in the *Pennsylvania Bulletin*, 48 Pa.B. 6281, 6287-90. By separate correspondence of October 29,



2018, PPG, PennEnvironment, and Sierra Club submitted comments on the revised draft NPDES Permit.

BBB. From 2013 through 2018, PennEnvironment and Sierra Club have submitted numerous comments and objections to the Department regarding the Site. These comments and objections are included in, but are not limited to, written letters that PennEnvironment and Sierra Club sent to the Department on or about March 27, 2013, June 18, 2014, October 20, 2014, and March 20, 2015 regarding PPG's Treatment Plan Report/Revised Treatment Plan Report; written letters sent to the Department on or about February 18, 2016, April 8, 2016, and December 28, 2017 regarding PPG's NPDES permit application; written letters sent to the Department on or about July 27, 2018 and October 11, 2018 regarding PPG's Act 2 Cleanup Plan; and various e-mails sent to the Department between 2013 and 2018. The Department has fully considered all comments and objections submitted by PennEnvironment and Sierra Club.

CCC. On or about October 10, 2018, pursuant to Act 2, the Department approved the revised Remedial Investigation Report, Human Health Risk Assessment, Ecological Risk Assessment, and Cleanup Plan (the "2018 Act 2 Cleanup Plan").

DDD. In approving the 2018 Act 2 Cleanup Plan, which includes the approved permanent remedy in the Revised Treatment Plan Report, the Department determined that the implementation of this plan will achieve a remediation of the Site to a level so that any substantial present or probable future risk to human health and the environment at or from the Site is eliminated or reduced to protective levels based upon the present or currently planned future use of the property comprising the Site that has been approved by the Department.

EEE. The Department intends to issue a final NPDES permit for the Site in the near term, following execution of this Consent Order and Agreement. This final NPDES permit for



the Site will authorize, in accordance with the terms and conditions of the final NPDES permit, discharges of leachate/seeps and storm water containing pollutants from the Site into waters of the United States and waters of the Commonwealth under The Clean Streams Law and the federal Clean Water Act.

Site Contamination and PPG's Liability

FFF. PPG's historical disposal of waste at the Site has caused or contributed to contamination of soils, sediments, seeps, groundwater, wetlands, surface waters, and other environmental media which may present a threat to human health or the environment and may present an imminent and substantial endangerment to human health or the environment.

GGG. The location and horizontal and vertical extent of environmental contamination resulting from PPG's historical disposal of waste at the Site described in Paragraph FFF has been assessed as documented in the following reports:

- "Remedial Investigation Report, Former PPG Slurry Lagoon Area/Solid Waste Disposal Area," Revised June 8, 2018, prepared by Woodard & Curran.
- Letter dated March 16, 2018 from Arcadis to Patrice Ashfield, U.S. Fish and Wildlife Service.
- "Revised Treatment Plan Report," dated January 30, 2015, prepared by CB&I Environmental & Infrastructure Inc.
- "Remedial Investigation Report, Former Slurry Lagoon Area," Addendum 1.0, dated September 2001, prepared by Key Environmental, Inc.
- "Remedial Investigation Report, Former Slurry Lagoon Area," dated July 31, 2001 prepared by Key Environmental, Inc.



- Key Environmental Inc. SWDA Surface Soil Sampling, dated June 2001, Key Environmental, Inc.
- Site-Wide Groundwater Investigation, dated 2001.
- "Report, Water Balance and Soil Sampling," dated August 11, 2000, prepared by Cummings/Riter Consultants, Inc.
- "Surface Water Monitoring Report, Ford City, Pennsylvania," prepared by Baker, dated October 9, 1997.
- "Feasibility Study for the PPG Ford City Site, Final Report," dated 1995, prepared by Baker.
- "Addendum to the Remedial Investigation for the PPG Ford City Site," dated October 1994, prepared by Baker.
- "Remedial Investigation Report for the PPG Ford City Site," Final Report, dated October 1993, prepared by Baker.
- Subsurface Soil Quality Reports, dated February and March 1993 by Dames & Moore.
- "Data Report, PPG Industries, Inc., Former Disposal Area," Ford City Pennsylvania, dated 1992, prepared by Dames & Moore.
- "Screening Site Inspection Report for PPG Glass Dump," Armstrong County, Pennsylvania, dated 1991, prepared by Ecology & Environment, Inc.
- Subsurface Investigation and study of Solid Waste Disposal Lagoon Leakage, dated 1971, prepared by D'Appolonia Consulting Engineers, Inc.
- Data submitted and referenced in the Progress Reports submitted by PPG to the Department under the 2009 Order.



- The NPDES permit application and revisions thereto.
- Inspections and sampling conducted by the Department at the Site.

The above reports describe all environmental contamination currently known by the Parties potentially resulting from PPG's historical disposal of waste at the Site ("Identified Contamination").

HHH. Leachate and/or seeps discharge at various locations at the Site and then runoff and migrate into waters of the Commonwealth and waters of the United States. These discharges can have a high pH of greater than 9.0 S.U. and contain pollutants as defined in Section 502 of the Clean Water Act, 33 U.S.C. § 1362 and 25 Pa. Code § 95.1 as a result of PPG's historical disposal of waste at the Site. PPG does not have a permit under The Clean Streams Law authority for these discharges.

III. The discharges described in Paragraph HHH constitute industrial waste and result in or may result in pollution of waters of the Commonwealth, which constitutes multiple violations of The Clean Streams Law and the Solid Waste Management Act, including a statutory nuisance and unlawful conduct under Sections 301, 307, 401, 402 and 611 of The Clean Streams Law, 35 P.S. §§ 691.301, 691.307, 691.401, 691.402 and 691.611, and Sections 601 and 610 of the Solid Waste Management Act, 35 P.S. §§ 6018.601 and 6018.610, and subject PPG to civil penalty liability under Section 605 of The Clean Streams Law, 35 P.S. § 691.605, and Section 605 of the Solid Waste Management Act, 35 P.S. § 6018.605.

JJJ. On or about January 13, 2012 and June 3, 2013, PennEnvironment and Sierra Club sent a copy of a Notice of Intent to Sue for the Site for PPG's alleged liability under RCRA, the federal Clean Water Act ("CWA"), and The Clean Streams Law ("CSL"). PennEnvironment and Sierra Club filed various citizen suit claims against PPG in the Federal District Court for the



Western District of Pennsylvania in Plaintiffs' First CWA/CSL Complaint (Civ. No. 2:12-cv-00342, as amended ECF No. 90); Plaintiffs' First RCRA Complaint (Civ. No. 2:12-cv-00342, as amended ECF No. 91); Plaintiffs' Second CWA/CSL Complaint (Civ. No. 2:13-cv-01395); and Plaintiffs' Second RCRA Complaint (Civ. No. 2:13-cv-01396; ECF No. 1). In addition to alleging liability under Section 7002(a)(1)(B) of RCRA, 42 U.S.C. § 6972(a)(1)(B), for conditions described in Paragraph FFF and liability under Sections 301(a) and 402 of the federal Clean Water Act, 33 U.S.C. § 1311(a) and 1342, and Sections 301 and 307 of the Clean Streams Law, 35 P.S. §§ 691.301, 691.307, for the conditions described in Paragraph HHH, PennEnvironment and Sierra Club also generally alleged the following violations and resulting liability of PPG in the Notices of Intent to Sue and filed Complaints:

i. The discharge from Outfall 001 of the Interim Abatement System and the leachate and/or seeps that discharge at various locations at the Site violate Sections 301(a) and 402 of the Clean Water Act, 33 U.S.C. §§ 1311(a) and 1342, by discharging pollutants into waters of the United States without an NPDES permit issued pursuant to the Clean Water Act authorizing such discharges.

ii. The storm water discharges from the Site violate Sections 301(a) and 402(p) of the Clean Water Act, 33 U.S.C. §§ 1311(a) and 1342(p), because they are discharges of storm water associated with industrial activity into waters of the United States without an NPDES permit issued pursuant to the Clean Water Act authorizing such discharges.

iii. Violations of the 2009 Order including: failure of the June 2009 Treatment Plant to provide a schedule for application of an NPDES permit for the Site; failure to treat all leachate and/or seeps that discharge at various locations at the Site for pH as part of the interim abatement system; exceedances of effluent limitations for total dissolved solids (TSS) at



Outfall 001 contained in the Department's July 2, 2009 approval of the Revised Interim Abatement Plan; and various violations of the 2009 Order and the Department's July 2, 2009 approval of the Revised Interim Abatement Plan resulting from the failure of the interim abatement system to avoid collection and treatment of uncontaminated storm water runoff; all of which result in violations of an Order issued by the Department with respect to an effluent standard or limitation under the Clean Water Act and Section 601(c) of the Clean Streams Law, 35 P.S. § 691.601.

KKK. The acts and violations described in Paragraphs in FFF – JJJ also subject PPG to civil penalty liability under Section 605 of The Clean Streams Law, 35 P.S. § 691.605, Section 605 of the Solid Waste Management Act, 35 P.S. § 6018.605, and the federal Clean Water Act.

LLL. Pursuant to the Department's authority under the Solid Waste Management Act and the Clean Streams Law, the Department has determined that, based on the acts and violations described in Paragraphs in FFF – JJJ, PPG is required to obtain an NPDES permit from the Department for the leachate, seeps, storm water, and Outfall 001 discharges at various locations at the Site and that PPG is required to remedy the Identified Contamination at or from the Site in accordance with Act 2 cleanup standards, which is achieved through PPG's implementation of the Department-approved Act 2 Cleanup Plan, including the Department-approved Revised Treatment Plan Report.

Settlement

MMM. The Department and PPG have engaged in extensive negotiation over settlement of various enforcement issues concerning the contamination resulting from PPG's historic disposal of waste at the Site. By entering into this Consent Order and Agreement, PPG and the Department desire to fully and finally resolve the items identified in Paragraph NNN, below.



NNN. To avoid litigation, to resolve the items set forth above in Paragraphs FFF through LLL, and as complete and final settlement of any known claims, demands, penalties, and/or sanctions of any type that the Department has made or could have made against PPG relating to the items set forth in Paragraphs FFF through LLL relating to the Site, including, but not limited to, any known claims, demands, penalties, and/or sanctions under The Clean Streams Law, the Solid Waste Management Act, the federal Clean Water Act, Section 7002(a)(1)(B) of RCRA, 42 U.S.C. § 6972(a)(1)(B), and other environmental laws relating to the Site, PPG, in accordance with the requirements below, shall: (a) implement the Department-approved Act 2 Cleanup Plan, including implement the Department-approved Revised Treatment Plan Report; (b) fully comply with a Department-issued NPDES permit; and (c) pay a civil penalty commensurate with its longstanding violations of The Clean Streams Law, the federal Clean Water Act, the Solid Waste Management Act and other applicable law.

ORDER

NOW THEREFORE, after full and complete negotiation of all matters set forth in this Consent Order and Agreement, and upon mutual exchange of the covenants contained herein, the Parties intending to be legally bound, it is hereby ORDERED by the Department, and AGREED to by PPG and the Department, as follows:

1. This Consent Order and Agreement is an Order of the Department authorized and issued pursuant to Sections 5, 316, 402, and 610 of The Clean Streams Law, 35 P.S. §§ 691.5, 691.316, 691.402, and 619.610; Sections 104 and 602 of the Solid Waste Management Act, 35 P.S. §§ 6018.104 and 6018.602; Section 104(b) of the Land Recycling Act, 35 P.S. § 6026.104(b); and Section 1917-A of the Administrative Code, 71 P.S. § 510-17. The failure of



PPG to comply with any term or condition of this Consent Order and Agreement shall subject PPG to all penalties and remedies provided under applicable law.

2. The Performance Obligations of the 2009 Order are superseded by this Consent Order and Agreement, except that PPG shall continue implementation of interim abatement measures until such time as the Site's industrial waste discharges, leachate, and high pH seeps are fully collected and conveyed to an industrial waste treatment facility, so that there is no longer industrial waste being conveyed to the interim abatement system, and the discharge from that facility has been authorized by an NPDES Permit.

COMPLIANCE OBLIGATIONS:

I. PPG IMPLEMENTATION OF THE SWDA/SWDA ANNEX PORTION OF THE ACT 2 CLEANUP PLAN

3. PPG shall implement the SWDA/SWDA Annex portion of the Department-approved Act 2 Cleanup Plan submitted by PPG pursuant to Act 2, according to the following schedule:

a. Within ninety (90) days of the execution of this Consent Order and Agreement, PPG shall complete any remaining investigation activities at the SWDA/SWDA Annex included in the Cleanup Plan, including complete reconnaissance of the SWDA/SWDA Annex for slope stability assessment and complete delineation sampling for arsenic;

b. Within ten (10) days completion of the remaining investigation activities required by Paragraph 3.a, PPG shall request a pre-application permit meeting with the Department. Within ninety (90) days of having the pre-application meeting with the Department, PPG shall submit full and complete applications for all permits necessary to complete the remedial tasks included in the Cleanup Plan at the SWDA/SWDA Annex, and shall correct all



deficiencies, except those deficiencies requesting information and approvals from other agencies, noted by the Department within the time frame set forth in the Department's notice of deficiency;

c. Within two-hundred seventy (270) days of receiving all permits and approvals needed to complete a remedial task included in the Cleanup Plan at the SWDA/SWDA Annex, PPG shall initiate the remedial task for which the permits and approvals have been issued.

II. PPG IMPLEMENTATION OF THE REVISED TREATMENT PLAN REPORT PORTION OF THE ACT 2 CLEANUP PLAN

4. PPG shall implement the approved Revised Treatment Plan Report portion of the Department-approved Act 2 Cleanup Plan, according to the following schedule:

a. Within ninety (90) days of the Department's issuance of the NPDES permit for the Site, PPG shall submit full and complete applications for all permits necessary to install all components of the Leachate Collection and Conveyance system as described in the Collection and Conveyance System – Interim Design report;

b. Within ninety (90) days of the issuance of the NPDES permit for the Site, PPG shall submit full and complete applications for all permits necessary to install and operate the treatment system and outfall necessary to comply with the NPDES permit, and shall correct all deficiencies, except those deficiencies requesting information and approvals from other agencies, within the time frame set forth in the Department's notice of deficiency. For the deficiencies that require information and/or approvals from other agencies, PPG shall work diligently with those agencies to obtain their approvals.



c. Within one year of receiving all necessary permits, approvals, and authorizations to install the leachate collection and conveyance system and install and operate the treatment system, including the installation of Outfall 002 in the Allegheny River, PPG shall complete installation and begin, and thereafter continue, operation of the leachate collection and conveyance and treatment systems.

d. PPG shall provide written notification of the startup of the leachate collection and conveyance and treatment systems to the Department within five (5) days of the startup of the leachate collection and conveyance and treatment systems.

III. PPG COMPLIANCE WITH NPDES PERMIT

5. The Department and PPG have attached hereto as Exhibit A the proposed NPDES Permit ("Draft Permit"). The Draft Permit, when finalized, is expected to contain either the identical proposed effluent limitations for all the outfalls at the Site, or effluent limitations which are less stringent than those proposed in Exhibit A. Having already submitted the Draft Permit for publication in the *Pennsylvania Bulletin* on September 29, 2018 and having considered all the public comments received, the Department plans to issue a final Permit ("Final NPDES Permit"), the effluent limitations, terms, and conditions of which may differ from Exhibit A.

a. PPG waives its right to appeal the effluent limitations, terms, and conditions of the Final NPDES Permit, so long as the effluent limitations, terms, and conditions of the Final NPDES Permit are the same or less stringent than those in Exhibit A.

b. If the Final NPDES Permit contains substantive changes to the effluent limitations or terms or conditions set forth in Exhibit A, PPG may only appeal those changes. Even if there are substantive changes, PPG waives its rights to appeal those effluent limitations, terms, and conditions that are the same or less stringent than those in Exhibit A.



c. It is understood by the Parties that the Final NPDES Permit may differ in certain administrative, non-substantive ways from Exhibit A. These differences may include, but are not limited to, changes in pagination and condition numbers. Such changes are not intended to affect the meaning or effect of the Final NPDES Permit or this Consent Order and Agreement.

6. Except as provided herein, PPG shall comply fully with all requirements of the Final NPDES Permit for the Site, once issued by the Department, including, but not limited to:

a. PPG shall sample all permitted Outfalls according to the frequency required by the permit and report the results to the Department as specified.

b. PPG shall conduct monthly reconnaissance of the Site to identify and sample any unpermitted discharges. PPG shall provide written notice to the Department within five (5) days of documenting an unpermitted discharge. PPG shall submit a full and complete application to amend the Final NPDES Permit to include the unpermitted discharge within ninety (90) days of documenting an unpermitted discharge.

c. Beginning nine (9) months after startup of the leachate collection and conveyance and treatment systems and continuing until the termination of this Consent Order and Agreement, PPG shall submit a plan and schedule to collect and treat the discharge from any Outfall that exceeds any final effluent limitation in the Final NPDES Permit ("Outfall Compliance Plan"). PPG shall submit all required Outfall Compliance Plans for Department review and approval within forty-five (45) days of submitting a Discharge Monitoring Report ("DMR") with an exceedance.

d. Upon Department approval of an Outfall Compliance Plan, PPG shall implement the approved plan as modified by the Department.



e. PPG shall comply with the approved Erosion and Sedimentation Control Plan, as and when applicable, and shall implement best management practices to minimize storm water contamination and the migration of waste material off site.

f. PPG shall submit a permit renewal application 180 days prior to the expiration of all future NPDES industrial discharge permits.

IV. ACT 2 FINAL REPORT

7. Within one hundred eighty (180) days of its completion of the Act 2 Cleanup Plan, and attainment of the performance standards therein, including full implementation of the leachate collection and conveyance and treatment systems, PPG shall submit to the Department a Final Report ("Final Report") pursuant to Act 2. The Final Report shall comply in full with Act 2 and its regulations and include the following:

a. A draft environmental covenant, with PPG, the Railroad, and Ford City as signatories, that demonstrates present or intended compliance with Act 2; the NPDES permit; the content, notice, execution and recording requirements pursuant to the Uniform Environmental Covenants Act ("UECA"), 27 Pa. C.S. §§ 6501 – 6517, and Department regulations and policy promulgated thereunder.

b. A Post-Remediation Care Plan that will address any necessary operation and maintenance duties at the Site, including those related to engineering and institutional controls and a listing of any groundwater monitoring wells that will be maintained at the Site for future groundwater monitoring.

c. Within ninety (90) days of the Department's approval of the Final Report, PPG shall properly abandon all groundwater monitoring wells at the Site that were not designated to remain in the Post-Remediation Care Plan.



d. Within thirty (30) days of the Department's approval of the draft Environmental Covenant, PPG shall submit three (3) fully executed and notarized Environmental Covenants to the Department for execution.

e. Within thirty (30) days of the Department's execution of the Environmental Covenant, PPG shall record the Environmental Covenant with the Recorder of Deeds for Armstrong County and provide the Department with a complete copy and proof of recordation.

V. PROGRESS REPORTS

8. PPG shall submit quarterly progress reports ("Progress Report") to the Department documenting its efforts to comply with its obligations of this Consent Order and Agreement. The Progress Reports shall be submitted to the Department by the last day of April, July, October, and January and sent to the Department consistent with Paragraph 34. The quarterly Progress Reports shall include, but are not limited to:

- a. a description of the actions that have been taken toward achieving compliance with this Consent Order and Agreement;
- b. a description of activities scheduled for the next quarter; and
- c. a description of problems or delays encountered or anticipated regarding performance of the activities required by this Consent Order and Agreement, and a description of all non-compliance or incidents of non-compliance with respect to the requirements of this Consent Order and Agreement.



VI. SITE ACCESS

9. Pursuant to the Declaration described in Paragraph DD, PPG shall take any action necessary to assure that Ford City, or any successor owner, transferee, or assign of the Site, gives PPG and the Department full access at all times to the Site, so that:

a. PPG is able to comply with its obligations under this Consent Order and Agreement, including, specifically, its obligations relative to the Cleanup Plan, the Revised Treatment Plan Report, and the NPDES permit, including, specifically, all operation and maintenance obligations thereunder; and

b. the Department, its employees, contractors, and agents are able to monitor the progress of activities taking place at the Site; verify any data or information submitted to the Department; conduct investigations relating to newly discovered contamination at or near the Site; obtain samples at the Site; inspect and copy records, operating logs, contracts, or other documents required to assess PPG's compliance with this Consent Order and Agreement; and conduct whatever further investigative or remedial actions the Department believes warranted under applicable law.

VII. PPG PAYMENT OF CIVIL PENALTY

10. In light of the violations described in Paragraphs FFF through NNN that the Department has assessed against PPG, and PPG has agreed to pay, a civil penalty of ONE MILLION AND TWO HUNDRED THOUSAND DOLLARS (\$1,200,000). This payment is in settlement of the Department's claim for civil penalties for violations of The Clean Streams Law, including the Department's delegated NPDES program authority under the federal Clean Water Act, and other applicable law, as described in Paragraphs FFF through NNN, occurring prior to



the entry of this Consent Order and Agreement in accordance with the applicable statute of limitations.

11. Within sixty (60) days of the Effective Date of this Consent Order and Agreement, PPG shall pay to the Department, in full, the assessed civil penalty of ONE MILLION AND TWO HUNDRED THOUSAND DOLLARS (\$1,200,000). PPG shall make its payment by corporate check or the like, made payable to the "Commonwealth of Pennsylvania," and sent to the Department consistent with Paragraph 34, or by wire transfer to the account number provided by the Department for deposit by the Department into the appropriate funds, as identified by the Department.

VIII. STIPULATED PENALTIES

12. In the event PPG fails to comply in a timely manner with any term or provision of this Consent Order and Agreement in Paragraphs 3 through 11, PPG shall be in violation of this Consent Order and Agreement and, in addition to other applicable remedies, shall pay to the Department a civil penalty in the amount determined under the following schedule:

- a. TWO HUNDRED DOLLARS (\$200.00) per day for each requirement PPG has failed to fulfill, for the first five (5) days of each violation;
- b. FIVE HUNDRED DOLLARS (\$500.00) per day for each requirement PPG has failed to fulfill, for days six (6) through twenty (20) of each violation; and
- c. ONE THOUSAND DOLLARS (\$1,000.00) per day for each requirement PPG has failed to fulfill, for each day following the twentieth (20th) day of each violation.

13. Beginning upon the issuance of the Final NPDES Permit and continuing until nine (9) months after startup of the leachate collection and conveyance and treatment systems, PPG shall pay a civil penalty for any month where PPG reports a DMR violation of monthly average



effluent limitations, daily maximum or minimum effluent limitations or instantaneous maximum or minimum effluent limitations at any outfall in the Final NPDES Permit. The amount of such stipulated penalty shall be as follows:

a. TWO THOUSAND FIVE HUNDRED (\$2,500.00) per month or partial month from the date of issuance of the Final NPDES Permit until the date PPG has received the last necessary permit, approval, and authorization to install the leachate collection conveyance system and install and operate the treatment system, including the installation of Outfall 002 in the Allegheny River.

b. THREE THOUSAND FIVE HUNDRED (\$3,500.00) per month or partial month from the date PPG has received the last necessary permit, approval, and authorization as described in Paragraph 13.a until the earlier of 12 months or the date of the startup of the leachate collection and conveyance and treatment systems, which will be provided in the notice submitted to the Department per Paragraph 4.d; and

c. FIVE THOUSAND (\$5,000.00) per month or partial month from the startup of the leachate collection and conveyance and treatment systems for nine (9) months.

14. Beginning nine (9) months after startup of the leachate collection and conveyance and treatment systems and continuing until termination of this Consent Order and Agreement, PPG shall pay a stipulated civil penalty of TWO THOUSAND DOLLARS (\$2,000.00) for each separate DMR violation of a monthly average effluent limitation in the Final NPDES Permit, FIVE HUNDRED DOLLARS (\$500.00) for each separate DMR violation of a daily maximum or minimum effluent limitation in the Final NPDES Permit, and TWO HUNDRED DOLLARS (\$200.00) for each separate DMR violation of an instantaneous maximum or minimum effluent limitation in the Final NPDES Permit.



15. Stipulated civil penalties shall be due automatically and without notice from the Department on or before the fifteenth day of each succeeding month for stipulated penalties due under Paragraph 12 and within fifteen (15) days after submitting a DMR that results in stipulated penalties due under Paragraphs 13 and 14. Submitted with penalty payments due under Paragraphs 12 and 14 shall be a report that references the Site and includes a detailed description, in a spreadsheet format, setting forth the type and number of violations and the stipulated penalty amount of each violation. All penalty payments shall reference the Site and shall be made by corporate check or the like, made payable to the “Commonwealth of Pennsylvania,” and sent to the Department in accordance with Paragraph 34, or sent by wire transfer to the account number provided by the Department for deposit by the Department into the appropriate special funds, as identified by the Department.

16. Payment of any penalty under this Consent Order and Agreement shall neither waive PPG’s duty to meet its obligations under this Consent Order and Agreement nor preclude the Department from commencing an action to compel PPG’s compliance with the terms and conditions of this Consent Order and Agreement. The payment resolves only PPG’s liability for civil penalties arising from the violation of this Consent Order and Agreement for which the payment is made.

17. If the Department brings legal action against PPG to collect any stipulated penalty due under this Consent Order and Agreement, PPG shall reimburse the Department for reasonable costs and expenses of such action, including but not limited to Department personnel costs and attorney’s fees.



IX. COVENANT NOT TO SUE BY THE DEPARTMENT

18. Upon the Parties' execution of this Consent Order and Agreement, subject to Paragraphs 19 through 23, and only so long as PPG is in full compliance with this Consent Order and Agreement, the Department covenants not to sue or to take administrative action against PPG pursuant to state or federal statutory or common law, for the conditions and violations specifically addressed in Paragraphs A through NNN, for the dates set forth therein.

X. ADDITIONAL REMEDIES

19. a. In the event PPG fails to comply with any provision of this Consent Order and Agreement, the Department may, in addition to the remedies prescribed herein, pursue any remedy available for a violation of an order of the Department, including an action to enforce this Consent Order and Agreement.

b. The remedies provided by this paragraph and Section VIII (Stipulated Civil Penalties) are cumulative, and the exercise of one does not preclude the exercise of any other. The failure of the Department to pursue any remedy shall not be deemed to be a waiver of that remedy. The payment of a stipulated civil penalty, however, shall preclude any further assessment of civil penalties for the violation for which the stipulated penalty is paid.

XI. RESERVATION OF RIGHTS

20. Notwithstanding any other provision of this Consent Order and Agreement, the covenant not to sue by the Department set forth in Paragraph 18 shall be null and void in the case of application of any of the reopeners listed in Section 505 of Act 2, 35 P.S. § 6026.505 and shall also not apply to the following claims by the Department against PPG for:

a. Additional contamination at or from the Site, not part of the Identified Contamination, or any contamination caused or contributed to by PPG at the Site subsequent to



the entry of this Consent Order and Agreement, in which case, with respect to such contamination, the Department expressly reserves the right to require PPG to remediate, to the extent required by law.

b. Additional measures that are required to achieve compliance with applicable law. PPG reserves the right to challenge any action which the Department may take to require those measures.

XII. LIABILITY OF OPERATOR

21. Notwithstanding any other provision of this Consent Order and Agreement, the covenant not to sue by the Department set forth in Paragraph 18 shall not apply to claims by the Department against PPG based on:

- a. failure to meet the requirements of this Consent Order and Agreement;
- b. past, present, or future disposal of waste outside the boundaries of the Site not otherwise authorized by the NPDES Permit; or
- c. past, present, or future violations of state or federal, civil or criminal, statutory or common law not addressed by this Consent Order and Agreement.

22. With regard to all matters not addressed in this Consent Order and Agreement, the Department specifically reserves all rights to institute equitable, administrative, civil, and criminal actions against PPG for:

- a. any past, present, or future violations of any statute, regulation, permit or order; or
- b. any pollution or potential pollution to the air, land or waters of the Commonwealth of Pennsylvania.



23. PPG shall be liable for any violations of the Consent Order and Agreement, including those caused by, contributed to, or allowed by its officers, agents, employees, or contractors. PPG also shall be liable for any violation of this Consent Order and Agreement caused by, contributed to, or allowed by its successors and assigns.

XIII. TRANSFER OF SITE

24. The duties and obligations under this Consent Order and Agreement shall not be modified, diminished terminated or otherwise altered by the transfer of any legal or equitable interest in the Site or any part thereof.

XIV. EFFECT ON THIRD PARTIES

25. Nothing in this Consent Order and Agreement shall constitute or be construed as a release or covenant not to sue regarding any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or equity, which the Department or PPG may have against any person who is not a party to this Consent Order and Agreement. The Department and PPG expressly reserve the right to sue or continue to sue any person who is not a party to this Consent Order and Agreement.

XV. EXISTING OBLIGATIONS UNAFFECTED

26. Nothing set forth in this Consent Order and Agreement is intended, nor shall it be construed, to relieve or limit PPG's obligation to comply with any existing or subsequent statute, regulation, permit or order. In addition, nothing set forth in this Consent Order and Agreement is intended, nor shall it be construed, to authorize any violations of any statute, regulation, permit or order issued or administered by the Department.



XVI. ACKNOWLEDGMENT OF NO OBLIGATION

27. PPG acknowledges that the Department has no obligation to defend it in any suit, demand or claim for contribution for any matters arising out of PPG's violations of the Clean Streams Law and other applicable law described in Paragraphs A through NNN or for any matters arising out of this Consent Order and Agreement.

XVII. REMEDIES FOR BREACH

28. In the event of any material breach of this Consent Order and Agreement, the Department may, in addition to any remedies prescribed herein, institute against PPG any equitable, administrative, or civil action, including an action to enforce this Consent Order and Agreement. These remedies are cumulative, and the exercise of one does not preclude the exercise of any other. The failure of the Department to pursue any remedy shall not be deemed to be a waiver of that remedy.

XVIII. COVENANT NOT TO SUE BY PPG

29. Except as allowed herein, PPG covenants not to sue and shall not assert any claims, demands, or causes of action, in law or in equity, against the Commonwealth government, as that term is defined in 42 Pa. C.S.A. § 102, or any of its employees, officials, agents, or contractors, for any matters arising out of PPG's violations of The Clean Streams Law and other applicable law described in Paragraphs A through NNN or for any matters arising out of this Consent Order and Agreement. This covenant not to sue extends only to the Commonwealth government with regard to those matters addressed in this Consent Order and Agreement and does not extend to any other person.



XIX. AGREEMENT AS TO FINDINGS

30. PPG agrees that the Findings contained in Paragraphs A through NNN are true and correct, and, in any matter or proceeding involving PPG and the Department, PPG shall not challenge the accuracy or validity of these findings. The Parties do not authorize any other persons to use the Findings in this Consent Order and Agreement in any matter or proceeding.

XX. FORCE MAJEURE

31. In the event that PPG is prevented from complying in a timely manner with any time limit imposed in this Consent Order and Agreement solely because of a strike, fire, flood, act of God, or other circumstance beyond PPG's control and which PPG, by the exercise of all reasonable diligence, is unable to prevent, PPG may petition the Department for an extension of time. An increase in the cost of performing the obligations set forth in this Consent Order and Agreement shall not constitute circumstances beyond PPG's control. PPG's economic inability to comply with any of the obligations of this Consent Order and Agreement shall not be grounds for any extension of time.

32. The Department will not consider an extension of time unless PPG notifies the Department within five (5) business days by telephone and within ten (10) business days in writing of the date it becomes aware or reasonably should have become aware of the event impeding performance. The written submission shall include all necessary documentation, as well as a notarized affidavit from an authorized individual specifying the reasons for the delay, the expected duration of the delay, and the efforts which have been made and are being made by PPG to mitigate the effects of the event and to minimize the length of the delay. The initial written submission may be supplemented within ten (10) business days of its submission. PPG's



failure to comply with the requirements of this paragraph specifically and in a timely fashion shall render a force majeure claim null and of no effect as to the particular incident involved.

33. The Department will decide whether to grant all or part of the extension requested on the basis of all documentation submitted by PPG and other information available to the Department. In any subsequent litigation, PPG shall have the burden of proving that the Department's refusal to grant the requested extension was an abuse of discretion based upon the information then available to it.

XXI. CORRESPONDENCE

34. All correspondence with and submittals to the Department related to this Consent Order and Agreement shall reference the Site and shall be addressed to:

Compliance Specialist
Clean Water Program
Pennsylvania Department of Environmental Protection
Southwest Regional Office
400 Waterfront Drive
Pittsburgh, PA 15222-4745
Phone: 412-442-4000

A copy of all correspondence with the Department concerning this Consent Order and Agreement shall reference the Site and shall be addressed to:

Charney Regenstein, Esquire
Assistant Counsel
Department of Environmental Protection
400 Waterfront Drive
Pittsburgh, PA 15222-4745
Phone: 412-442-4262
E-mail: eregenstei@pa.gov



35. All correspondence with and submittals to PPG related to this Consent Order and Agreement shall reference the Site and shall be addressed to:

Mark Terril
Corporate Director Environmental Affairs
PPG Industries, Inc.
1 PPG Place
Pittsburgh, PA 15272
Phone: 412-434-2708
E-mail: terril@ppg.com

A copy of all correspondence with PPG concerning this Consent Order and Agreement shall reference the Site and shall be addressed to:

Richard S. Wiedman, Esq.
Eckert Seamans Cherin & Mellot LLC
600 Grant St., 44th Floor
Pittsburgh, PA 15219
Phone: (412) 566-5967
E-mail: rwiedman@eckertseamans.com

PPG shall notify the Department whenever there is a change in the contact person's name, title, or address. In addition, PPG agrees that the service of any notice or any legal process for any purpose under this Consent Order and Agreement, including its enforcement, may be made by mailing a copy by certified mail, return receipt requested, or by any overnight delivery service with standard tracking, to its attorney, whose name and address are contained in this paragraph.

XXII. SEVERABILITY

36. The paragraphs of this Consent Order and Agreement shall be severable, and should any part hereof be declared invalid or unenforceable, the remainder shall continue in full force and effect between the Parties.

XXIII. ENTIRE AGREEMENT

37. This Consent Order and Agreement shall constitute the entire integrated agreement of the Parties. No prior or contemporaneous communications or prior drafts shall be



relevant or admissible for purposes of determining the meaning or extent of any provisions herein in any litigation or any other proceeding.

XXIV. ATTORNEY FEES

38. The Parties shall bear their respective attorney fees, expenses, and other costs in the prosecution or defense of this matter or any related matters, arising prior to execution of this Consent Order and Agreement.

XXV. MODIFICATION

39. No changes, additions, modifications, or amendments of this Consent Order and Agreement shall be effective unless they are set out in writing and signed by the Parties hereto.

XXVI. TITLES

40. A title used at the beginning of any paragraph of this Consent Order and Agreement may be used to aid in the construction of that paragraph, but it shall not be treated as controlling.

XXVII. DECISIONS UNDER CONSENT ORDER

41. Except as provided in Paragraph 5 and any decision involving a disapproval or requested modification of a Final Report under Paragraph 7 or an Outfall Compliance Plan in Paragraph 6, any decision which the Department makes under the provisions of this Consent Order and Agreement, including a notice that stipulated civil penalties are due, is intended to be neither a final action under 25 Pa. Code § 1021.2, nor an adjudication under 2 Pa. C.S. § 101. Any objection which PPG may have to the decision will be preserved until the Department enforces this Consent Order and Agreement.



XXVIII. TERMINATION

42. The obligations of this Consent Order and Agreement shall terminate: after the Department's approval of PPG's Final Report, pursuant to Paragraph 7; after PPG's payment of the civil penalty and any stipulated penalties due, pursuant to Paragraphs 10 through 17; and after the Department has approved the termination in writing.

XXIX. EXECUTION IN COUNTERPARTS

43. This Consent Order and Agreement may be signed in counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument.



IN WITNESS WHEREOF, the Parties hereto have caused this Consent Order and Agreement to be executed by their duly authorized representatives. The undersigned representatives of PPG certify under penalty of law, as provided by 18 Pa. C.S. § 4904, that they are authorized to execute this Consent Order and Agreement on behalf of PPG; that PPG or Ford City consents to the entry of this Consent Order and Agreement as a final ORDER of the Department; and that PPG hereby knowingly waives its right to appeal this Consent Order and Agreement and to challenge its content or validity, which rights may be available under Section 4 of the Environmental Hearing Board Act, Act of July 13, 1988, P.L. 530, 35 P.S. § 7514; the Administrative Agency Law, 2 Pa. C.S. § 103(a) and Chapters 5A and 7A; or any other provisions of law. Signature by PPG's attorney certifies only that the Consent Order and Agreement has been signed after consulting with counsel.

FOR PPG INDUSTRIES, INC.:

FOR THE COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF ENVIRONMENTAL PROTECTION:

Name: Michael H. McGarry
Title: Chairman and CEO

Ronald Schwartz
Regional Director

Name: Daniel Fayock
Title: Assistant General Counsel and Corporate Secretary

Name: Richard S. Wiedman
Attorney for PPG

Charney Regenstein
Assistant Counsel




IN WITNESS WHEREOF, the Parties hereto have caused this Consent Order and Agreement to be executed by their duly authorized representatives. The undersigned representatives of PPG certify under penalty of law, as provided by 18 Pa. C.S. § 4904, that they are authorized to execute this Consent Order and Agreement on behalf of PPG; that PPG or Ford City consents to the entry of this Consent Order and Agreement as a final ORDER of the Department; and that PPG hereby knowingly waives its right to appeal this Consent Order and Agreement and to challenge its content or validity, which rights may be available under Section 4 of the Environmental Hearing Board Act, Act of July 13, 1988, P.L. 530, 35 P.S. § 7514; the Administrative Agency Law, 2 Pa. C.S. § 103(a) and Chapters 5A and 7A; or any other provisions of law. Signature by PPG’s attorney certifies only that the Consent Order and Agreement has been signed after consulting with counsel.

FOR PPG INDUSTRIES, INC.:

FOR THE COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF ENVIRONMENTAL PROTECTION:

Name:
Title:



Ronald Schwartz
Regional Director

Name:
Title:



Charney Regenstein
Assistant Counsel

Name:
Attorney for PPG



UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

Objections to the Department's Action
Appellants' Exhibit
2
EHB No. Not Yet Assigned

PENNENVIRONMENT AND SIERRA CLUB
Plaintiffs,
v.
PPG INDUSTRIES, INC.,
BOROUGH OF FORD CITY, AND
BUFFALO & PITTSBURGH RAILROAD, INC.
Defendants.

Civil Action Nos. 2:12-cv-00342,
2:12-cv-00527, 2:13-cv-01395,
2:13-cv-01396, 2:14-cv-00229
(consolidated)
Magistrate Judge Dodge

CONSENT ORDER SETTLING INJUNCTIVE RELIEF CLAIMS AND RESERVING OTHER CLAIMS FOR FUTURE ADJUDICATION

WHEREAS, on March 20, 2012 and May 20, 2012, after notice to PPG Industries, Inc. (PPG), the United States Environmental Protection Agency, and the Pennsylvania Department of Environmental Protection (PADEP or the Department), PennEnvironment and Sierra Club (collectively, plaintiffs) filed this citizen suit against PPG alleging, inter alia, violations of the Clean Water Act, 33 U.S.C. 1251, et seq., the Clean Streams Law, 35 P.S. 691.1, et seq., and that conditions at the PPG Waste Site (or the Site) may present an imminent and substantial endangerment to health and/or environment under Section 7002(a)(1)(B) of the Resource Conservation and Recovery Act, 42 U.S.C. 6972(a)(1)(B);

WHEREAS, the Court consolidated plaintiffs' complaints and amended complaints in Civil Action Nos. 2:12-cv-00527, 2:13-cv-01395, 2:13-cv-01396, and 2:14-cv-00229 under Civ. No. 2:12-cv-00342;

WHEREAS, plaintiffs joined the Borough of Ford City (Ford City) and the Buffalo & Pittsburgh Railroad, Inc. (the Railroad). Plaintiffs have not asserted claims against Ford City or the Railroad;

WHEREAS, the Parties to this Consent Settlement each believe that it is in their mutual interest to move forward productively to resolve their differences so that environmental remediation at the Site that ensures the protection of human health and the environment can be expeditiously implemented and protected in perpetuity;

WHEREAS, each of the actions required under this Consent Settlement have been fully considered by the Parties as a means to accomplish the aforesaid purposes;

NOW, THEREFORE, IT IS HEREBY AGREED, ORDERED AND DECREED AS FOLLOWS:

I. DEFINITIONS

For purposes of this Consent Settlement, the following terms shall have the meanings set forth in paragraphs 1-8:

1. **2019 Consent Order and Agreement** shall mean the Consent Order and Agreement entered into by PPG and the Pennsylvania Department of Environmental Protection (PADEP or the Department) on April 2, 2019 and filed with the Court at ECF No. 409-1. The Consent Order and Agreement is appended to this Consent Settlement as Appendix 1.

2. **Consent Settlement** shall mean this Consent Order Settling Injunctive Relief Claims and Reserving Other Claims for Future Adjudication.

3. **Department or PADEP** shall mean the Pennsylvania Department of Environmental Protection or any successor thereto.

4. **First Amendment** shall mean the First Amendment to the 2019 Consent Order and Agreement entered into by PPG, and the Department on November 4, 2020, and appended to this Consent Settlement as Appendix 2. The First Amendment together with the 2019 Consent Order and Agreement are hereinafter referred to collectively as the “2019 Consent Order and Agreement as Amended.”

5. **National Pollutant Discharge Elimination System or NPDES Permit** shall mean any permit issued pursuant to the Clean Water Act, 33 U.S.C. 1251, *et seq.*, or any equivalent thereof addressing discharges from the Site.

6. **Parties** shall collectively mean PPG and the Plaintiffs unless otherwise specified.

7. **Plaintiffs** shall collectively mean PennEnvironment and Sierra Club, the plaintiffs in the above-captioned action.

8. **PPG** shall mean PPG Industries, Inc.

II. SCOPE, JURISDICTION, AND CLAIMS RESOLVED

9. This Court has jurisdiction over the Parties and subject matter of this litigation pursuant to Section 7002 of RCRA, Section 505 of the Clean Water Act, and 28 U.S.C. 1367 with respect to the Pennsylvania Clean Streams Law claims.

10. For purposes of this Consent Settlement, the consolidated complaints, as amended, each state claims upon which relief may be granted against PPG.

11. This Consent Settlement resolves, settles, and satisfies all claims by Plaintiffs against PPG under Plaintiffs' consolidated complaints and amended complaints under Civ. No. 2:12-cv-00342, including those claims regarding the waste and the contamination of the surface water, wetlands, sediments, stormwater, groundwater, soil, vegetation, talus, and mulch on and/or in the vicinity of the PPG Waste Site, with the exception of (i) PPG's liability for and the amount of the civil penalty, if any, to be imposed under the Clean Water Act, and (ii) PPG's liability for and the amount of litigation costs, if any, including attorneys' fees and expert witness' fees under 33 U.S.C. 1365(d) and 42 U.S.C. 6972(e). As set forth in paragraphs 28 and 29 of this Consent Settlement, the Court retains jurisdiction to resolve the issues related to the civil penalty and litigation costs.

III. SITE REMEDIATION AND FINANCIAL ASSURANCES

12. PPG shall be responsible for and shall undertake the remediation set forth in the 2019 Consent Order and Agreement as Amended at its sole cost and expense.

13. PPG shall include in the Revised Cleanup Plan required by paragraph 3(b) of the 2019 Consent Order and Agreement as Amended and secure approval from the Department of the following enhancements as part of the remedy required to be implemented under Section I of the 2019 Consent Order and Agreement entitled “PPG Implementation of the SWDA/SWDA Annex Portion of the Act 2 Cleanup Plan”:

a. the SWDA/SWDA Annex Cleanup area shall be extended to include the areas identified in the figure attached as Appendix 3 to this Consent Settlement; and

b. the soil cover for the entirety of the areas proposed for geotextile/soil cover to be covered as identified in Appendix 3 to this Consent Settlement shall be a minimum of 12 inches.

14. PPG shall complete construction of the SWDA/SWDA Annex Portion of the Department approved Revised Cleanup Plan required by Paragraph 3 of the 2019 Consent Order and Agreement as Amended within two (2) years of receiving all permits and approvals necessary to implement said remedy.

15. PPG shall include in the Revised Cleanup Plan required by paragraph 4(a) of the 2019 Consent Order and Agreement as Amended and secure approval from the Department of the following enhancements as part of the remedy required to be implemented under Section II of the 2019 Consent Order and Agreement entitled “PPG Implementation of the Revised Treatment Plan Report Portion of the Act 2 Cleanup Plan” (ECF Nos. 392-1 through 392-4):

a. a shallow collection trench at the base of the southeastern portion of the SLA as depicted on the figures attached as Appendices 4 and 5 to this Consent Settlement. Such trench shall be designed to prevent the infiltration of non-impacted surface waters. Waters removed from

this trench shall be conveyed to the treatment system required by the 2019 Consent Order and Agreement as Amended;

b. a collection trench in the northwestern portion of the SLA as depicted on the figures attached as Appendix 6 to this Consent Settlement. Such trench shall be designed to prevent the infiltration of non-impacted surface waters. Water removed from this trench shall be conveyed to the treatment system required by the 2019 Consent Order and Agreement as Amended;

c. five vertical extraction wells spaced approximately 45 feet apart in the southeast corner of the SLA as depicted on the figures attached as Appendices 4 and 5 to this Consent Settlement. Water removed from these wells shall be conveyed to the treatment system required by the 2019 Consent Order and Agreement as Amended;

d. six vertical extraction wells spaced approximately 25 feet apart in the south central portion of the SLA as depicted on the figures attached as Appendices 4 and 5 to this Consent Settlement. Said extraction wells shall provide overlapping capture zones for the area at the western terminus of the interceptor trench and waters removed from these wells shall be conveyed to the treatment system required by the 2019 Consent Order and Agreement as Amended;

e. the western slope seep collection system that is conceptually depicted on the figures that are attached as Appendices 4 and 5 to this Consent Settlement shall collect elevated pH impacted seeps, if any, associated with the areas designated as Wetlands 21 and 22 and the seeps associated with Outfalls 005, 006, 007, 018, 019, 020, 021, and 022 as shown on the figure attached as Appendix 5 to this Consent Settlement. Provided further that the waters removed from this collection system shall be conveyed to the treatment system required by the 2019 Consent Order and Agreement as Amended, and the collection points shall include anti-seep collars that extend

sufficiently below the pipe to prevent seepage beyond the collar as conceptually depicted in the figure attached as Appendix 7 to this Consent Settlement;

f. flow meters that independently record the flow from the eastern segment of the interceptor trench, the southern segment of the interceptor trench, the northwestern collection trench, and the western slope collection system; and

g. the treatment system required by the 2019 Consent Order and Agreement as Amended shall include a two-stage pH control or adjustment system as conceptually depicted on the schematic attached as Appendix 8 to this Consent Settlement.

16. Consistent with the schedule applicable to the SWDA/SWDA Annex under Section I, Paragraph 3 of the 2019 Consent Order and Agreement as Amended, PPG shall install a minimum of 12 inches of clean topsoil in all SLA areas lacking robust vegetation located within the areas of disturbance depicted in the site permits. The installed topsoil shall be vegetated and may be augmented to enhance the growth of vegetation.

17. Beginning on the effective date of the First Amendment and continuing for two (2) years after startup of the Enhanced Collection and Treatment System required to be installed pursuant to the 2019 Consent Order and Agreement as Amended, PPG shall monitor monthly the water level at each existing internal SLA well and piezometer included in the SLA Monitoring Plan that is to be included as part of the Revised Cleanup Plan required by Paragraph 4.a.ix of the 2019 Consent Order and Agreement as Amended. At the conclusion of two (2) years, the monitoring frequency shall reduce to quarterly. After five (5) years of quarterly monitoring, PPG may request further reduction in the frequency or elimination of the monitoring altogether by submitting a request to PADEP with a copy notifying Plaintiffs of the request, so that Plaintiffs have an opportunity to comment on the request and challenge any decision PADEP may make

with regard to the request. All such monitoring data shall be included with the quarterly Progress Reports required by the 2019 Consent Order and Agreement as Amended.

18. Beginning nine (9) months after the startup of the Enhanced Collection and Treatment System required to be installed pursuant to the 2019 Consent Order and Agreement as Amended, PPG shall monitor pH at each railroad culvert that is identified on the figure that is attached as Appendix 9 to this Consent Settlement in accordance with the same schedule required by the NPDES Permit for monitoring Outfall 004. Provided further, that such sampling shall be conducted on an established schedule and the weather conditions shall be recorded and provided with the monitoring data. In the event that an unpermitted discharge is identified that has a pH greater than 9.0 S.U. during the sampling of these culverts, PPG shall address such discharge pursuant to the requirements and schedule established by Paragraph 5(d) of the First Amendment. If after full implementation of the remedy required by the 2019 Consent Order and Agreement as Amended, the pH at the monitored culverts is consistently less than 9.0 S.U., then said monitoring may be discontinued consistent with the terms of the 2019 Consent Order and Agreement as Amended. All such monitoring data shall be included with the quarterly Progress Reports required by the 2019 Consent Order and Agreement as Amended.

19. Beginning on the effective date of the First Amendment and continuing for two (2) years after startup of the Enhanced Collection and Treatment System required to be installed pursuant to the 2019 Consent Order and Agreement as Amended, PPG shall monitor pH on a monthly basis at the emergence of the seeps associated with W2, W3, and W20 as identified in the figure attached as Appendix 10 to this Consent Settlement. Such monitoring shall not be conducted during a precipitation event. In the event that an unpermitted discharge is identified that has a pH greater than 9.0 S.U. during the sampling at the emergence of these seeps, PPG shall address such

discharge pursuant to the requirements and schedule established by Paragraph 5(d) of the First Amendment. If after full implementation of the remedy required by the 2019 Consent Order and Agreement as Amended, the pH at the emergence of such seeps is consistently less than 9.0 S.U., then said monitoring may be discontinued consistent with the terms of the 2019 Consent Order and Agreement as Amended. All such monitoring data shall be included in the quarterly Progress Reports required by the 2019 Consent Order and Agreement as Amended.

20. PPG shall hold an NPDES Permit for the Site for as long as the NPDES Permit system or its equivalent is in effect and such system requires a permit for discharges from the Site. PPG shall submit a permit renewal application 180 days prior to the expiration of its NPDES Permit and shall file a renewal application for any future NPDES Permits for the Site thereafter as required by applicable laws and regulations.

21. PPG shall provide Plaintiffs with the quarterly Progress Reports required by the 2019 Consent Order and Agreement as Amended at the same time they are provided to the Department.

22. PPG shall provide the financial assurances as required by Paragraph 13 of the First Amendment. PPG shall provide Plaintiffs with the initial financial assurances documentation submitted to the Department at the same time that it makes such submission to the Department. PPG shall provide Plaintiffs with annual valuations of the remedial cost for the financial assurances at the same time that each financial assurance instrument is renewed, replaced, and/or substituted and at the same time PPG responds to any request by the Department for an update or change to the valuation. Provided further, that in lieu of an annual valuation, where PPG is not seeking a change, and has determined that no change in the amount of financial assurances is warranted, PPG may provide Plaintiffs with a professional engineer's certification representing that no change

in circumstance or conditions related to the implementation or long term maintenance and operation of the remedy has occurred that has materially changed the underlying assumptions and estimates that were submitted to support the amount of financial assurance most recently approved by PADEP. PPG shall provide notice to Plaintiffs of all decisions made by the Department regarding the financial assurances. PPG shall provide notice to Plaintiffs of any request to substitute or change the form of the financial assurance under the First Amendment. In no event shall the form of such financial assurance be based upon a financial test of net worth and/or corporate guarantee. Plaintiffs reserve the right to challenge any substitute or change in the form of the financial assurance under applicable law. PPG shall not substitute or change the form of the financial assurances prior to the issuance of a final decision on any challenge to the Department's decision, whether it entails an administrative and/or judicial review. If Plaintiffs fail to timely challenge the Department's decision, PPG may then substitute or change the form of the financial assurances consistent with the Department's decision. Unless otherwise specified, notice required under this paragraph shall be provided by PPG within five (5) business days of the event requiring notice to Plaintiffs.

IV. SETTLEMENT OF NPDES APPEAL

23. Within five (5) business days of the entry of this Consent Settlement, Plaintiffs and PPG shall present to the Department a settlement agreement resolving the Plaintiffs' appeal of the NPDES Permit pending before the Pennsylvania Environmental Hearing Board at EHB Docket No. 2020-015-B that has been executed by both Plaintiffs and PPG. Within five (5) business days of execution of that agreement by the Department, Plaintiffs shall take the necessary steps to notify the Board that the case has been settled, provide the Board with a copy of the settlement agreement for inclusion in the record, and request that the docket be marked settled.

V. ACCESS TO THE SITE

24. PPG, Ford City, and the Railroad shall take such actions as are reasonable, necessary and appropriate to assure that Plaintiffs have reasonable access to the Site for purposes of Plaintiffs inspecting the remedy and compliance with the terms of the 2019 Consent Order and Agreement, the First Amendment, and the NPDES Permit. Plaintiffs shall comply with the Declaration of Restrictive Covenants and Grant of Access Rights, recorded in the Armstrong County Recorder of Deeds on October 28, 2002, at Record Book No. 2487, pp. 0234-0243, and the draft Environmental Covenant, filed at ECF No. 392-3, pp. 1816-1823 and as modified pursuant to paragraph 25 (collectively “the Covenants”), to the extent Plaintiffs’ access and activities at the Site are subject to or covered by the Covenants. In providing access to and/or accommodating a request for access by Plaintiffs, PPG, Ford City, and the Railroad shall not be required to take any action that would violate or be inconsistent with the Covenants. No replacement or additional environmental/restrictive covenant shall alter or restrict Plaintiffs’ access any further than it may be under the Covenants without the consent of Plaintiffs. Access shall be granted to Plaintiffs upon reasonable notice and subject to reasonable conditions regarding safety and insurance and/or financial responsibility with respect to the Railroad, Ford City and PPG as the case may be. Provided further that PPG, Ford City and the Railroad shall take such actions as are necessary to assure that any successor owner, transferee, or assignee of their respective properties within the Site provide like access to Plaintiffs for such purposes.

25. PPG shall submit to the Department draft Environmental Covenants that meet the requirements of paragraph 7(a) of the 2019 Consent Order and Agreement as Amended as set forth below:

7. a. Draft environmental covenants, with PPG, the Railroad, and Ford City as signatories, that demonstrate present or intended compliance with Act 2, the NPDES permit, the content, notice, execution and recording requirements pursuant

to the Uniform Environmental Covenants Act (“UECA”), 27 Pa. C.S. §§ 6501 – 6517, and Department regulations and policy promulgated thereunder. The Environmental Covenants shall contain express language requiring current and all future owners of the Site to abide by the activity and use limitations. The Environmental Covenants shall contain express language that grants to the Department and its duly authorized representatives and contractors the right to access the Property to monitor, operate, maintain, and replace the Enhanced Collection and Treatment System required by the Consent Order and Agreement, as Amended.

VI. REPORTS TO COURT

26. Beginning ninety (90) days after the entry of this Consent Settlement and continuing for three (3) years thereafter, PPG shall submit quarterly progress reports to the Court. Such reports may be the same as the reports submitted to the Department under the 2019 Consent Order and Agreement as Amended, but are not required to be the same.

VII. SEDIMENTS

27. Within thirty (30) days of entry of this Consent Settlement, PPG shall pay two hundred fifty thousand dollars (\$250,000.00) to the Stroud Water Research Center in consideration of resolution of Plaintiffs’ claims regarding the river and wetland sediments.

VIII. CIVIL PENALTY

28. The Parties have been unable to resolve their dispute regarding any civil penalty payable under 33 U.S.C. 1365(a) and 1319(d). Accordingly, pursuant to a scheduling order to be issued by this Court after entry of this Consent Settlement, PPG’s liability for and the amount of the civil penalty, if any, to be imposed under the Clean Water Act will be litigated by the Parties. Such litigation may include PPG and Plaintiffs filing motions seeking summary judgment on the issues related to civil penalty liability in this case.

IX. LITIGATION COSTS

29. The Parties have been unable to resolve their dispute regarding the amount of litigation costs, if any, payable to Plaintiffs and their counsel pursuant to 33 U.S.C. 1365(d) and 42 U.S.C. 6972(e). Plaintiffs do not concede that resolution of the issues related to civil penalties under the Clean Water Act are a prerequisite to the award of litigation costs to them under applicable law. However, in order to allow for the efficient resolution by the Court of the outstanding disputes between the parties, Plaintiffs shall file their application for an award of litigation costs only after final resolution of all civil penalty issues under paragraph 28 above, has been completed through all available levels of judicial review. Plaintiffs' time for filing such application is extended until sixty (60) days after such final resolution. Provided, however, that Plaintiffs have the option of seeking an award of the portion of their litigation costs unrelated to the civil penalty issues at any time, but no earlier than one (1) year after the entry of this Consent Settlement.

X. GENERAL PROVISIONS

30. All correspondence with and documentation due to Plaintiffs under this Consent Settlement shall reference this litigation and shall be sent via electronic and first-class mail to:

PennEnvironment
c/o David Masur
1831 Murray Ave., Ste. 216
Pittsburgh, PA 15217
E-mail: david@pennenvironment.org

Sierra Club, Pennsylvania Chapter
c/o Chapter Director
PO Box 606
Harrisburg, PA 17108
E-mail: pennsylvania.chapter@sierraclub.org

A copy of all correspondence with and documentation due to Plaintiffs under this Consent Settlement shall reference this litigation and shall be sent via electronic and first-class mail to:

Carolyn Smith Pravlik
Nicholas Soares
Terris, Pravlik & Millian, LLP
1816 12th Street NW, Suite 303

Washington, DC 20009
E-mail: cpravlik@tpmlaw.com
E-mail: nsoares@tpmlaw.com

Plaintiffs shall notify PPG and its counsel whenever there is a change in this contact information. Such notice shall be sent via electronic and first-class mail to:

Mark Terril
Corporate Director Environmental Affairs PPG Industries, Inc.
1 PPG Place
Pittsburgh, PA 15272
Phone: 412-434-2708
E-mail: terril@ppg.com

Richard S. Wiedman, Esq.
Babst Calland
Two Gateway Center
Pittsburgh, PA 15222
Phone: (412) 394-5400
E-mail: rwiedman@babstcalland.com

31. This Consent Settlement shall be binding upon and shall inure to the benefit of the successors, assigns, heirs, corporate parents, subsidiaries, and affiliates of each Party. No assignment or delegation of the obligations hereunder shall release the assigning Party from its obligations under this Consent Settlement.

32. The Court shall retain jurisdiction over the matters addressed in this Consent Settlement for purposes of enabling the Parties to apply to the Court for any further order as may be necessary to construe, carry out, or enforce the terms of this Consent Settlement.

33. Upon entry of this Consent Settlement, Ford City and the Railroad shall be dismissed from this action, subject to being re-joined by motion, individually or collectively, for proceedings under paragraph 32 of this Consent Settlement.

34. Questions regarding the interpretation of this Consent Settlement shall not be resolved against any Party on the ground that this Consent Settlement has been drafted by that Party. This Consent Settlement is the result of review, negotiation, and compromise by each Party.

35. The undersigned representative for each Party represents, certifies, and warrants that he or she is duly authorized by the Party whom he or she represents to enter into the terms of this Consent Settlement and bind such Party legally to this Consent Settlement.

36. This Consent Settlement may be modified by mutual agreement of the Parties but such agreement must be in writing, duly and properly signed by all Parties, and shall be submitted to the Court for approval.

37. This Consent Settlement contains the entire agreement between the Parties relating to the subject matters addressed herein and supersedes all prior written and oral agreements and understandings between the Parties. Each Party expressly acknowledges and represents that in entering into this Consent Settlement, it is not relying upon any statement, representation, agreement or understanding that is not contained in this Consent Settlement.

Consented to and approved for entry:

/s/ Carolyn Smith Pravlik

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PA ID No. 71101

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*Counsel for Defendant Borough of Ford
City*

APPROVED AND ENTERED as an Order of the Court, this 26 day of March

2021.



Patricia L. Dodge
United States Magistrate Judge

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

Objections to the Department's Action
Appellants' Exhibit
3
EHB No. Not Yet Assigned

In the Matter of:

PPG Industries, Inc. :
Ford City Disposal Site : The Clean Streams Law
Slurry Lagoon Area : Solid Waste Management Act
Solid Waste Disposal Area and Annex : Land Recycling Act
Cadogan and North Buffalo Townships :
Armstrong County, PA :

FIRST AMENDMENT TO 2019 CONSENT ORDER AND AGREEMENT

This First Amendment to the 2019 Consent Order and Agreement (“First Amendment”) is entered into this 4th day of November, 2020 by and between the Commonwealth of Pennsylvania Department of Environmental Protection (“Department”) and PPG Industries, Inc. (“PPG”).

Findings

The Department has found and determined the following:

Background

A. On April 2, 2019, the Department and PPG entered into a Consent Order and Agreement (hereinafter “2019 Consent Order and Agreement”) concerning the referenced site. The site is designated by the Department’s Environmental Cleanup Program as LRP#5-3-927-11151.

B. In a settlement of a third-party lawsuit in Federal Court (*PennEnvironment v. PPG Industries, Inc.*, No. 12-0342 (W.D. Pa.)), PPG agreed to certain additional monitoring requirements and modifications to the proposed site remedy and has requested to amend the 2019 Consent Order and Agreement to reflect the settlement. The modifications to the site remedy are

detailed in drawings attached to this First Amendment as Attachments 1 through 8, which are hereby incorporated by reference.

C. The 2019 Consent Order and Agreement is amended by this First Amendment and shall hereby be referred to collectively as the “Consent Order and Agreement, as amended.”

After full and complete negotiation of all matters set forth in this First Amendment and upon mutual exchange of covenants contained herein, the parties desiring to avoid litigation and intending to be legally bound, it is hereby ORDERED by the Department and AGREED to by PPG as follows:

1. **Authority.** This First Amendment to the 2019 Consent Order and Agreement is an Order of the Department authorized and issued pursuant to The Clean Streams Law, Act of June 22, 1937, P.L. 1987, *as amended*, 35 P.S. §§ 691.1 – 691.1001 (“The Clean Streams Law”); the Solid Waste Management Act, Act of July 7, 1980, P.L. 380, *as amended*, 35 P.S. §§ 6018.101 – 6018.1003; the Land Recycling and Environmental Remediation Standards Act, Act of May 19, 1995, P.L. 4, No. 1995-2, 35 P.S. §§ 6026.101 – 6026.909 (“Act 2”); Section 1917-A of the Administrative Code of 1929, Act of April 9, 1929, P.L. 177, as amended, 71 P.S. § 510-17; and the rules and regulations promulgated thereunder. Pursuant to a delegation from the United States Environmental Protection Agency (“EPA”), the Department also administers and is the primary enforcement authority for the National Pollutant Discharge Elimination System (“NPDES”) Program of the Federal Water Pollution Control Act, 33 U.S.C. § 1342 (also known as the Clean Water Act “CWA”). Pursuant to formal authorization by EPA and a Memorandum of Understanding, the Department also administers and is the primary enforcement authority for the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6901 *et seq.*, and has

agreed to ensure that all response activities conducted under Act 2 protect human health and the environment and comply with all applicable Federal law, including RCRA.

2. **Findings.**

a. PPG agrees that the findings in Paragraphs A through C are true and correct and, in any matter or proceeding involving PPG and the Department, PPG shall not challenge the accuracy or validity of these findings.

b. The parties do not authorize any other persons to use the findings in this First Amendment in any matter or proceeding.

3. Paragraph 3 of the 2019 Consent Order and Agreement is hereby replaced in its entirety with the following text:

PPG shall implement the SWDA/SWDA Annex portion of the Department-approved Act 2 Cleanup Plan submitted by PPG pursuant to Act 2, according to the following schedule:

3.a. Within ninety (90) days of the execution of this First Amendment, PPG shall complete any remaining investigation activities at the SWDA/SWDA Annex included in the Cleanup Plan, including complete reconnaissance of the SWDA/SWDA Annex for slope stability assessment and complete delineation sampling for arsenic;

3.b. Within thirty (30) days of the execution of this First Amendment, PPG shall submit a Revised Cleanup Plan to the Department for review and approval.

The Revised Cleanup Plan shall include, but not be limited to the following additions:

i. The SWDA/SWDA Annex cleanup area shall be extended to include the areas identified in the figure attached as Attachment 1 to this First Amendment;

ii. *The soil cover for the entirety of the areas proposed for geotextile/soil cover to be covered as identified in Attachment 1 to this First Amendment shall be a minimum of 12 inches;*

3.c. *PPG shall correct all deficiencies in the Revised Cleanup Plan noted by the Department within the time frame set forth in the Department's notice of deficiency.*

3.d. *Within ten (10) days of Department approval of the Revised Cleanup Plan submitted pursuant to Paragraph 3.b, above, PPG shall request a pre-application permit meeting with the Department. Within ninety (90) days after having the pre-application meeting with the Department, PPG shall submit full and complete applications for all permits necessary to complete the remedial tasks included in the Revised Cleanup Plan at the SWDA/SWDA Annex, and shall correct all deficiencies noted by the Department within the timeframe set forth in the Department's notice of deficiency, except those deficiencies requesting information and approvals from other agencies.*

3.e. *Within two-hundred seventy (270) days of receiving all permits and approvals needed to complete a remedial task included in the Revised Cleanup Plan at the SWDA/SWDA Annex, PPG shall initiate the remedial task for which the permits and approvals have been issued.*

3.f. *PPG shall complete all remedial tasks included in the Revised Cleanup Plan at the SWDA/SWDA Annex within two (2) years of receiving all permits and approvals necessary to implement said remedy.*

4. Paragraph 4 of the 2019 Consent Order and Agreement is hereby replaced in its entirety with the following text:

PPG shall implement the approved Revised Treatment Plan Report portion of the Department-approved Act 2 Cleanup Plan, including the additional remedial measures identified in the March 2020 Water Quality Management permit application, according to the following schedule:

4.a. Within thirty (30) days of the execution of this First Amendment, PPG shall submit a Revised Cleanup Plan to the Department for review and approval. The Revised Cleanup Plan shall include, but not be limited to the following additions consistent with the additional remedial measures identified in the March 2020 Water Quality Management permit application:

i. Installation and operation of a shallow collection trench at the base of the southeastern portion of the SLA as depicted on the figures attached as Attachments 2 and 3 to this First Amendment. Such trench shall be designed to prevent the infiltration of non-impacted surface waters. Construction details of this collection system and expected pumping rates shall be included. Water removed from this trench shall be conveyed to the treatment system required by the Consent Order and Agreement, as amended;

ii. Installation and operation of a collection trench in the northwestern portion of the SLA as depicted on the figures attached as Attachment 4 to this First Amendment. Such trench shall be designed to prevent the infiltration of non-impacted surface waters. Construction details of this collection system and expected pumping rates shall be included. Water removed from this trench shall be conveyed to the

treatment system required by the Consent Order and Agreement, as amended;

iii. *Installation and operation of five vertical extraction wells spaced approximately forty-five feet apart in the southeast corner of the SLA as depicted on the figures attached as Attachments 2 and 3 to this First Amendment. Construction details of the extraction wells and expected pumping rates shall be included. Water removed from these wells shall be conveyed to the treatment system required by the Consent Order and Agreement, as amended;*

iv. *Installation and operation of six vertical extraction wells spaced approximately twenty-five feet apart in the south-central portion of the SLA as depicted on the figures attached as Attachments 2 and 3 to this First Amendment. Construction details of the extraction wells and expected pumping rates shall be included. Water removed from these wells shall be conveyed to the treatment system required by the Consent Order and Agreement, as amended;*

v. *Installation and operation of the western slope seep collection system that is conceptually depicted on the figures that are attached as Attachments 2 and 3 to this First Amendment intended to collect elevated pH impacted seeps, if any, associated with the areas designated as Wetlands 21 and 22 and the seeps associated with Outfalls 005, 006, 007, 018, 019, 020, 021, and 022 as shown on the figure attached as Attachment 3 to this First Amendment. Construction details of the collection system and expected pumping rates shall be included. The*

collection points shall include anti-seep collars that extend sufficiently below the pipe to prevent seepage beyond the collar as conceptually depicted in the figure attached as Attachment 5 to this First Amendment. Water removed from this collection system shall be conveyed to the treatment system required by the Consent Order and Agreement, as amended;

vi. Installation and operation of flow meters that independently record the flow from the eastern segment of the interceptor trench, the southern segment of the interceptor trench, the northwestern collection trench, and the western slope collection system; and

vii. Installation and operation of a treatment system that shall include a two-stage pH control or adjustment system as conceptually depicted on the schematic attached as Attachment 6 to this First Amendment.

viii. Installation of a minimum of 12 inches of clean topsoil in all SLA areas within the designated areas of disturbance depicted in site permits that lack robust vegetation. The installed topsoil shall be vegetated and shall be augmented as necessary to enhance the growth of vegetation.

ix. A SLA Monitoring plan that indicates how leachate levels will be monitored to aid in assessing performance of the Enhanced Collection and Treatment System. The plan shall address the requirements of Paragraph 5 of this First Amendment and shall identify the monitoring wells and piezometers within the SLA to be monitored, as well as a monitoring schedule based upon collection system installation, operation and performance.

x. *Provision for on-site management on or within the SLA of excess spoils associated with the collection trench construction, if any. Said plan shall provide the location, grading plan and cover plan for the on-site management of such excess trench construction spoils, if any, consistent with the requirements of subparagraph 4.a.viii above.*

xi. *Provision for management of all ground or surface water encountered during the collection trench construction, if any. Said plan shall provide details for the conveyance, storage, sampling, treatment and discharge location for all collected water.*

4b. *PPG shall correct all deficiencies in the Revised Cleanup Plan noted by the Department within the time frame set forth in the Department's notice of deficiency.*

4c. *Within ninety (90) days of the Department's approval of the Revised Cleanup Plan, PPG shall submit full and complete applications for all permits necessary to install all components of the Leachate Collection and Conveyance system as described in the Collection and Conveyance System – Interim Design Report and the Revised Cleanup Plan.*

4d. *Within one year of receiving all necessary permits, approvals, and authorizations to install the Leachate Collection and Conveyance System and install and operate the Treatment System, including the installation of Outfall 002 in the Allegheny River, PPG shall complete installation and begin, and thereafter continue, operation of the Leachate Collection and Conveyance and Treatment Systems as described in the Collection and Conveyance System – Interim Design Report and the Revised Cleanup Plan.*

4e. *PPG shall provide written notification of the startup of the Leachate Collection and Conveyance and Treatment Systems to the Department within five (5) days of the startup of the Leachate Collection and Conveyance and Treatment Systems.*

5. The following monitoring requirements shall be included in the SLA Monitoring plan required by Paragraph 4.a.ix of this First Amendment:

a. *Beginning on the effective date of this First Amendment and continuing for two (2) years after startup of the Enhanced Collection and Treatment System, PPG shall monitor monthly the water level at each internal SLA well and piezometer included in the SLA Monitoring plan. At the conclusion of two (2) years, the monthly monitoring frequency shall be reduced to quarterly monitoring. After five (5) years of quarterly monitoring, PPG may request either a further reduction in the monitoring frequency or elimination of the monitoring altogether, by submitting a request in writing to the Department. All such monitoring data shall be included with the quarterly Progress Reports required by the Consent Order and Agreement, as amended. PPG agrees to waive all of its rights to appeal any decision the Department makes concerning monitoring requirements under this subparagraph.*

b. *Beginning nine (9) months after the startup of the Enhanced Collection and Treatment System required to be installed pursuant to this Consent Order and Agreement, as amended, PPG shall monitor pH at each railroad culvert identified on the figure that is attached as Attachment 7 to this First Amendment in accordance with the same schedule required by the NPDES Permit for monitoring Outfall 004. PPG shall enter into the necessary legal agreements to gain access*

and authorization to do so. PPG shall conduct sampling on an established schedule and shall record the weather conditions and provide this information with the monitoring data submitted to the Department. All such monitoring data shall be included with the quarterly Progress Reports required by the Consent Order and Agreement, as amended. After a minimum of five (5) years of monitoring, PPG may request a reduction in the frequency or elimination of the monitoring requirement altogether by submitting a request in writing to the Department. PPG agrees to waive all of its rights to appeal any decision the Department makes concerning monitoring requirements under this subparagraph.

c. Beginning on the effective date of the First Amendment and continuing for two (2) years after startup of the Enhanced Collection and Treatment System, PPG shall monitor pH on a monthly basis at the emergence of the seeps associated with W2, W3, and W20 as identified in the figure attached as Attachment 8 to this First Amendment. Such monitoring shall not be conducted during a precipitation event. At the conclusion of two (2) years, PPG may request an additional further reduction in the frequency or elimination of the monitoring requirement altogether by submitting a request in writing to the Department. All such monitoring data shall be included with the quarterly Progress Reports required by the Consent Order and Agreement, as amended. PPG agrees to waive all of its rights to appeal any decision the Department makes concerning monitoring requirements under this subparagraph.

d. In the event an unpermitted discharge is identified that has a pH greater than 9.0 S.U. during the sampling required in Paragraphs 5.b. or 5.c., above, beginning nine (9) months after startup of the Enhanced Collection and

Treatment System required to be installed pursuant to the Consent Order and Agreement, as amended, PPG shall submit a plan and schedule to collect and treat the discharge for Department review and approval within forty-five (45) days of sampling. PPG shall initiate the activities necessary to collect and treat the discharge within ninety (90) days after issuance of all permits or authorizations required for such activities and/or upon receipt of concurrence from the Department that it is authorized to proceed. Once authorized to proceed, PPG shall complete the required activities as expeditiously as possible.

6. Paragraph 7.a. of the 2019 Consent Order and Agreement is hereby replaced with the following text:

7. a. Draft environmental covenants, with PPG, the Railroad, and Ford City as signatories, that demonstrate present or intended compliance with Act 2, the NPDES permit, the content, notice, execution and recording requirements pursuant to the Uniform Environmental Covenants Act (“UECA”), 27 Pa. C.S. §§ 6501 – 6517, and Department regulations and policy promulgated thereunder. The Environmental Covenants shall contain express language requiring current and all future owners of the Site to abide by the activity and use limitations. The Environmental Covenants shall contain express language that grants to the Department and its duly authorized representatives and contractors the right to access the Property to monitor, operate, maintain, and replace the Enhanced Collection and Treatment System required by the Consent Order and Agreement, as amended.

7. Paragraph 15 of the 2019 Consent Order and Agreement is replaced with the following text:

15. Stipulated civil penalties shall be due automatically and without notice from the Department. PPG shall submit the payment of stipulated penalties under Paragraph 12 on or before the fifteenth day of each succeeding month. PPG shall submit the Stipulated penalties due under Paragraph 13 as one payment for all stipulated penalties due for the preceding calendar quarter by April 15, July 15, October 15, and January 15 following the calendar quarter. PPG shall submit Stipulated penalties under Paragraph 14 within fifteen (15) days after submitting a DMR that that results in stipulated penalties due. PPG shall submit a report with all penalty payments due under Paragraphs 12 through 14 that references the Site and includes a detailed description, in a spreadsheet format, of what stipulated penalties the payment includes. All penalty payments shall reference the Site and shall be made by corporate check or the like, made payable to the “Commonwealth of Pennsylvania,” and sent to the Department in accordance with Paragraph 34, or sent by wire transfer to the account number provided by the Department for deposit by the Department into the appropriate special funds, as identified by the Department.

8. Paragraph 34 of the 2019 Consent Order and Agreement is replaced with the following text:

34. All correspondence with and submittals to the Department related to this Consent Order and Agreement, as amended, shall reference the Site and shall be addressed to:

*Compliance Specialist
Clean Water Program
Commonwealth of Pennsylvania, Department of Environmental Protection
400 Waterfront Drive
Pittsburgh, PA. 15222*

A copy of all correspondence with the Department concerning this Consent Order and Agreement, as amended, shall reference the Site and shall be addressed to:

*Edward Stokan, Esq.
Assistant Counsel, Office of Chief Counsel
Commonwealth of Pennsylvania, Department of Environmental Protection
400 Waterfront Drive
Pittsburgh, PA. 15222*

9. Paragraph 35 of the 2019 Consent Order and Agreement is replaced with the following text:

35. All correspondence with and submittals to PPG related to this Consent Order and Agreement, as amended, shall reference the Site and shall be addressed to:

*Mark Terril
Corporate Director Environmental Affairs PPG Industries, Inc.
1 PPG Place
Pittsburgh, PA 15272
Phone: 412-434-2708
E-mail: terril@ppg.com*

A copy of all correspondence with PPG concerning this Consent Order and Agreement, as amended, shall reference the Site and shall be addressed to:

*Richard S. Wiedman, Esq.
Babst Calland
Two Gateway Center
Pittsburgh, PA 15222
Phone: (412) 394-5400
E-mail: rwiedman@babstcalland.com*

PPG shall notify the Department whenever there is a change in the contact person's name, title, or address. In addition, PPG agrees that the service of any notice or any legal process for any purpose under this Consent Order and Agreement, as amended, including its enforcement, may be made by mailing a copy by certified mail, return receipt requested, or by any overnight delivery service with standard tracking, to its attorney, whose name and address are contained in this paragraph.

10. Paragraph 41 of the 2019 Consent Order and Agreement is replaced with the following text:

Except as provided in Paragraph 5 and any decision involving a disapproval or requested modification of a Final Report under Paragraph 7 or an Outfall Compliance Plan in Paragraph 6, or any decision regarding PPG's request for a substitution of financial assurance pursuant to Paragraph 13 of the First Amendment to this Consent Order and Agreement, any decision which the Department makes under the provisions of this Consent Order and Agreement, including a notice that stipulated civil penalties are due, is intended to be neither a final action under 25 Pa. Code Section 1021.2, nor an adjudication under 2 Pa. C.S. Section 101. Any objection which PPG may have to the decision will be preserved until the Department enforces this First Amendment to the Consent Order and Agreement.

11. Within thirty (30) days of the execution of this First Amendment, PPG shall either submit for Department review and approval a revised Human Health Risk Assessment that reflects the changes to the Cleanup Plan required by this First Amendment or a

report certifying that the changes to the Cleanup Plan required by the First Amendment do not significantly alter the conclusions of the previously approved risk assessment.

12. Within thirty (30) days of the execution of this First Amendment, PPG shall either submit for Department review and approval a revised Ecological Risk Assessment that reflects the changes to the Cleanup Plan required by the First Amendment or a report certifying that the changes to the Cleanup Plan required by the First Amendment do not significantly alter the conclusions of the previously approved risk assessment.

13. Within thirty (30) days of the execution of this First Amendment, PPG shall submit documentation for the provision of financial assurances to the Department in an amount sufficient to secure the implementation and post-closure care, including without limitation long-term monitoring, operation and maintenance and replacement costs necessary to effectuate and maintain the remedy required by the 2019 Consent Order and Agreement and this First Amendment, or a revision of the remedy should the original fail, in perpetuity. Said financial assurances shall consist of an irrevocable letter(s) of credit and a standby trust in favor of the Department that conforms to the requirements of 25 PA Code Section 287, Subchapter E and/or letter of credit and standby trust provisions established by 40 CFR 264.143(d) and 264.145(d). The wording of the letter(s) of credit shall explicitly state that neither the letter(s) of credit nor the proceeds of the letter(s) of credit shall be considered the property of PPG or property of the estate in the event of PPG's bankruptcy. PPG shall deliver to the Department the letter(s) of credit meeting the requirements of this paragraph within thirty (30) days of the Department's approval of PPG's documentation. PPG at its option may at any time thereafter request the Department to substitute all or part of the financial assurances provided hereunder with a different but equally secure form of financial assurance consistent with 25 Pa. Code Section 287, Subchapter E and/or letter of credit and standby trust provisions established by 40 CFR

264.143(d) and 264.145(d). Such alternative financial assurance may include, but is not limited to, a consent order and agreement requiring the establishment of a treatment trust to ensure adequate financial assurances of the remedial and post-remedial obligations required by the 2019 Consent Order and Agreement and this First Amendment, including this paragraph, in perpetuity. Any such consent order and agreement and treatment trust shall conform to the requirements established by the Department's Office of Chief Counsel at the time said alternative is requested.

14. All other provisions of the 2019 Consent Order and Agreement not explicitly revised herein remain unchanged and specifically agreed to by PPG as constituting an Order from the Department.

15. This First Amendment may be executed through counterpart signatures transmitted via electronic means.

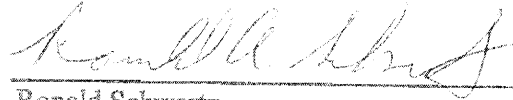
IN WITNESS WHEREOF, the parties hereto have caused this First Amendment to the 2019 Consent Order and Agreement to be executed by their duly authorized representatives. The undersigned representatives of PPG certify under penalty of law, as provided by 18 Pa. C.S. § 4904, that they are authorized to execute this First Amendment to the 2019 Consent Order and Agreement on behalf of PPG; that PPG consents to the entry of this First Amendment to the 2019 Consent Order and Agreement as a final ORDER of the Department; and that PPG knowingly waives its rights to appeal this First Amendment to the 2019 Consent Order and Agreement and to challenge its content or validity, which rights may be available under Section 4 of the Environmental Hearing Board Act, the Act of July 13, 1988, P.L. 530, No. 1988-94, 35 P.S. § 7514; the Administrative Agency Law, 2 Pa. C.S. § 103(a) and Chapters 5A and 7A; or any other provision of law. Signature by PPG's attorney certifies only that the agreement has been signed after consulting with counsel.

FOR PPG INDUSTRIES, INC.:

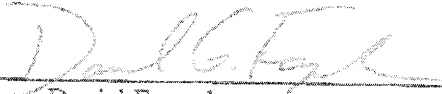
FOR THE COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT OF
ENVIRONMENTAL PROTECTION:



Name: Michael H. McGarry
Title: Chairman and CEO



Ronald Schwartz
Regional Director



Name: Daniel Fayock
Title: Assistant General Counsel and
Corporate Secretary



Name: Richard S. Wiedman
Attorney for PPG



Edward S. Stokan
Assistant Counsel

April 7, 2022

VIA EMAIL: Hadley.Stamm@ppg.com

Hadley Stamm
PPG Industries, Inc.
1 PPG Place
Pittsburgh, PA 15272

RE:

PPG Industries, Inc.
Ford City Disposal Site
Slurry Lagoon Area
Solid Waste Disposal Area and Annex
Cadogan and North Buffalo Townships, Armstrong County, PA

Dear Ms. Stamm:

The Department of Environmental Protection (DEP) has reviewed the information and bonding worksheets PPG Industries, Inc. (PPG) has submitted to DEP regarding financial assurance for the Slurry Lagoon Area, the Solid Waste Disposal Area and Annex, and site-wide operation and maintenance at the PPG Ford City Disposal Site (Site).

This is to confirm DEP's approval of letters of credit for the Site as follows:

- Slurry Lagoon Area in the amount of \$22,206,800
- SWDA and Annex in the amount of \$1,946,616
- Site-wide post-construction operation, maintenance and monitoring in the amount of \$12,363,864

PPG should deliver said letters of credit to my attention at the DEP Southwest Regional Office within thirty days.

Sincerely,

Kevin Halloran Digitally signed by Kevin
Halloran
Date: 2022.04.07 13:05:19 -04'00'

Kevin Halloran
Assistant Regional Director
Southwest Regional Office