

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

<hr/>)
UNITED STATES OF AMERICA)
and STATE OF NEW JERSEY)
)
Plaintiffs)
)
v.)
)
GLOUCESTER COUNTY UTILITY)
AUTHORITY)
)
Defendant.)
<hr/>)

Civil No. 2:19-cv-12818

CONSENT DECREE

TABLE OF CONTENTS

I. JURISDICTION AND VENUE 1

II. APPLICABILITY 2

III. DEFINITIONS 3

IV. CIVIL PENALTY 4

V. NEW JERSEY ELECTRIC VEHICLES CHARGING PROJECT 6

VI. REPORTING REQUIREMENTS 7

VII. REVIEW AND APPROVAL PROCEDURES FOR NEW JERSEY ELECTRIC
VEHICLES CHARGING PROJECT 9

VIII. STIPULATED PENALTIES 10

IX. FORCE MAJEURE 14

X. DISPUTE RESOLUTION 16

XI. INFORMATION COLLECTION AND RETENTION 19

XII. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS 21

XIII. COSTS 23

XIV. NOTICES 23

XV. EFFECTIVE DATE 25

XVI. RETENTION OF JURISDICTION 25

XVII. MODIFICATION 25

XVIII. TERMINATION 26

XIX. PUBLIC PARTICIPATION 27

XX. SIGNATORIES/SERVICE 27

XXI. INTEGRATION 27

XXII. FINAL JUDGMENT 28

XXIII. APPENDICES 28

Appendix A – New Jersey Electric Vehicles Charging Project A-1

WHEREAS, Plaintiffs United States of America, on behalf of the United States Environmental Protection Agency (“EPA”), and the State of New Jersey, on behalf of the New Jersey Department of Environmental Protection (“DEP”), have filed a complaint in this action concurrently with this Consent Decree, for civil penalties under Sections 113(b)(2) of the Clean Air Act (“CAA”), 42 U.S.C. § 7413(b)(2), alleging that the Defendant, Gloucester County Utilities Authority (hereinafter “the Defendant” or “GCUA”), violated regulations set forth in 40 C.F.R. Part 62, Subpart LLL (“Subpart LLL”), which were promulgated by EPA under Title I of the CAA, 42 U.S.C. §§ 7411 and 7429, and Section 129(f)(3) of the CAA, 42 U.S.C. § 7429(f)(3); and N.J.A.C. 7:27-8.3(e), which was promulgated by DEP pursuant to New Jersey’s Air Pollution Control Act, N.J.S.A. 26:2C-1 *et seq.*

WHEREAS, the DEP alleges that Defendant has or may have violated additional regulations set forth in N.J.A.C. § 7:27-1, *et seq.*, which was promulgated by DEP pursuant to New Jersey’s Air Pollution Control Act, N.J.S.A. 26:2C-1 *et seq.*

WHEREAS, the Defendant’s wastewater treatment facility, located at 2 Paradise Road, West Deptford, NJ 08066 (“Facility”), was designed to treat domestic sewage sludge with two fluidized bed sewage sludge incineration (“SSI”) units;

WHEREAS, the Complaint against the Defendant alleges that the Defendant operated the SSI units without timely compliance with the requirements of the above listed federal and state environmental statutes and regulations;

WHEREAS, EPA issued a notice of violation (“NOV”) to the Defendant with respect to such allegations on April 13, 2017;

WHEREAS, EPA provided the Defendant and the State of New Jersey with actual notice of the alleged violations, in accordance with Section 113(b) of the CAA, 42 U.S.C. § 7413(b);

WHEREAS, the Defendant has permanently closed both SSI units at the Facility, and the SSI units have been removed from all of Defendant's air permits;

WHEREAS, the Defendant does not admit any liability to the United States or the State of New Jersey arising out of the transactions or occurrences alleged in the Complaint;

WHEREAS, the objectives of the Parties in entering into this Consent Decree are to further the purposes of the CAA as described in Sections 111 and 129 of the CAA, 42 U.S.C. §§ 7411 and 7429, to protect public health, public welfare, and the environment, to have the Defendant perform the actions described below, and to ensure that the Defendant achieves and maintains compliance with the CAA, applicable state and local laws, and the terms and conditions of applicable CAA permits;

WHEREAS, the Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW THEREFORE, before the taking of any testimony, without the adjudication or admission of any issue of fact or law except as provided in Section I, and with the consent of the Parties, **IT IS HEREBY ADJUDGED, ORDERED, AND DECREED** as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action, pursuant to 28 U.S.C. §§ 1331, 1345, and 1355; Section 113(b) of the CAA, 42 U.S.C. § 7413(b); and over the Parties, and has supplemental jurisdiction over the claims by New Jersey under 28 U.S.C. § 1367. Venue lies in this District pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1391(b) and (c) and 1395(a), because the alleged violations took place in this District. For purposes of this Decree, or any action to enforce this Decree, the Defendant

consents to the Court's jurisdiction over this Decree and any such action, and over the Defendant, and consents to venue in this judicial district.

2. For purposes of this Consent Decree, the Defendant agrees that the Complaint states claims upon which relief may be granted pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b).

3. Notice of commencement of this action has been given to the Defendant and the State of New Jersey, specifically the New Jersey Department of Environmental Protection, by the United States.

II. APPLICABILITY

4. The obligations of this Consent Decree apply to and are binding upon the United States, New Jersey, and upon the Defendant and any successors, assigns, or other entities or persons otherwise bound by law.

5. No transfer of ownership or operation of the Facility, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve the Defendant of its obligation to ensure that the terms of the Decree are implemented. At least 30 Days prior to such transfer, the Defendant shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the proposed written agreement, to EPA Region 2, the United States Department of Justice, and the State of New Jersey in accordance with Section XIV (Notices). Any attempt to transfer ownership or operation of the Facility without complying with this Paragraph constitutes a violation of this Decree.

6. The Defendant shall provide a copy of this Consent Decree to all officers, employees, and agents whose duties might reasonably include compliance with any provision of

this Decree, as well as to any contractor retained to perform work required under this Consent Decree. The Defendant shall condition any such contract upon performance of the work in conformity with the terms of this Consent Decree.

7. In any action to enforce this Consent Decree, the Defendant shall not raise as a defense the failure by any of their officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

III. DEFINITIONS

8. Terms used in this Consent Decree that are defined in the CAA, or in regulations promulgated pursuant to the CAA, shall have the meanings assigned to them in the CAA or such regulations, unless otherwise provided in this Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

a. “Business Day” shall mean a Day other than a Saturday, Sunday, or federal holiday.

b. “Complaint” shall mean the complaint filed by the United States and New Jersey in this action.

c. “Consent Decree” or “Decree” shall mean this Decree and all appendices attached hereto (listed in Section XXIII (Appendices)).

d. “Date of Lodging” shall mean the date on which the Consent Decree is lodged with the District Court.

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

- f. “Defendant” shall mean defendant Gloucester County Utilities Authority.
- g. “DEP” shall mean the New Jersey Department of Environmental Protection and any of its successor departments or agencies.
- h. “EPA” shall mean the United States Environmental Protection Agency and any of its successor departments or agencies.
- i. “Effective Date” shall have the definition provided in Section XV (Effective Date).
- j. “Facility” shall mean the sewage sludge treatment facility located at 2 Paradise Road, West Deptford, NJ 08066.
- k. “New Jersey” shall mean the State of New Jersey, on behalf of DEP.
- l. “Paragraph” shall mean a portion of this Decree identified by an Arabic numeral.
- m. “Parties” shall mean the United States, the State of New Jersey, and Defendant.
- n. “Section” shall mean a portion of this Decree identified by a Roman numeral.
- o. “United States” shall mean the United States of America, acting on behalf of EPA.

IV. CIVIL PENALTY

9. Defendant shall pay the sum of \$132,500 as a civil penalty, in installments, as follows. Defendant shall make a first payment of \$66,250 within thirty (30) Days after the Effective Date, together with interest accruing from the Effective Date at the rate specified in 28 U.S.C. § 1961 on that date. Defendant shall make a second and final payment of \$66,250 within

365 Days after the Effective Date, together with interest accruing from the Effective Date at the rate specified in 29 U.S.C. § 1961 on that date. Each payment shall be divided between the Plaintiffs as follows:

- a. \$33,125, plus applicable interest, to the United States; and
- b. \$33,125, plus applicable interest, to the State of New Jersey.

10. The Defendant shall pay the civil penalty in the following manner:

- a. The Defendant shall pay the civil penalty due to the United States by FedWire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice account, in accordance with instructions provided to the Defendant by the Financial Litigation Unit (“FLU”) of the United States Attorney’s Office for the District of New Jersey after the Effective Date. The payment instructions provided by the FLU will include a Consolidated Debt Collection System (“CDCS”) number, which the Defendant shall use to identify all payments required to be made in accordance with this Consent Decree. The FLU will provide the payment instructions to:

John J. Vinci
Executive Director, Gloucester County Utilities Authority
2 Paradise Road
West Deptford, New Jersey 08066
Email: jvinci@gcuanj.com

on behalf of the Defendant. The Defendant may change the individual to receive payment instructions on their behalf by providing written notice of such change to the United States and EPA in accordance with Section XIV (Notices).

At the time of payment, the Defendant shall send notice that payment has been made: (i) to EPA via email at cinwd_acctsreceivable@epa.gov or via regular mail at EPA Cincinnati Finance 20 Office, 26 W. Martin Luther King Drive, Cincinnati, Ohio 45268;

(ii) to the United States via email or regular mail in accordance with Section XIV (Notices); and (iii) to EPA Region 2 in accordance with Section XIV (Notices). Such notice shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in the matter of *U.S. v. Gloucester County Utilities Authority* and shall reference the civil action number, CDCS Number and DOJ case number 90-5-2-1-11877.

b. The Defendant shall pay the civil penalty due to the State of New Jersey by cashier's or certified check payable to "Treasurer, State of New Jersey" and shall submit the payment with the appropriate invoice (to be provided by DEP) to the following address:

Division of Revenue
New Jersey Department of Treasury
P.O. Box 417
Trenton, New Jersey 08625-0417

11. The Defendant shall not deduct any penalties paid under this Decree pursuant to this Section or Section VIII (Stipulated Penalties), and shall not deduct any amounts paid under this Decree pursuant to Section V (New Jersey Electric Vehicles Charging Project), in calculating its federal or state income tax.

V. NEW JERSEY ELECTRIC VEHICLES CHARGING PROJECT

12. New Jersey and GCUA agree that GCUA will spend no less than \$50,000 to implement a New Jersey Electric Vehicles Charging Project (the "Project") to install electric vehicles charging stations as specified in Appendix A. GCUA shall update the DEP on the progress of the Project in the progress reports submitted in accordance with Section VI and Appendix A.

VI. REPORTING REQUIREMENTS

13. Quarterly New Jersey Electric Vehicles Charging Project Reports. Commencing upon the Date of Lodging and continuing until the completion of the New Jersey Electric Vehicles Charging Project required under Section V and Appendix A, GCUA shall submit to DEP quarterly reports, in accordance with Section XIV (Notices), on the status of its performance of the New Jersey Electric Vehicles Charging Project. Such reports shall be due within 15 Days of the close of each calendar quarter (i.e., by the 15th day of January, April, July, and October).

14. If the Defendant violates, or has reason to believe that it may violate, any requirement of this Consent Decree, the Defendant shall notify EPA and DEP of such violation and its likely duration, in writing, within 72 hours of when the Defendant first becomes aware of the actual or potential violation, with an explanation of the violation's likely cause and of the remedial steps taken, or to be taken, to prevent, correct, or minimize such violation. If the cause of a violation cannot be fully explained at the time the report is due, the Defendant shall so state in the report. The Defendant shall investigate the cause of the violation and shall then submit an amendment to the report, including a full explanation of the cause of the violation, within 30 Days of the Day the Defendant becomes aware of the cause of the violation. Nothing in this Paragraph or the following Paragraph 15 relieves the Defendant of its obligation to provide the notice required by Section IX (Force Majeure).

15. Whenever any violation of this Consent Decree, or of the environmental statutes, regulations and permits referenced herein, or any other event affecting the Defendant's performance under this Decree, or the performance of its Facility, may pose an immediate threat to the public health or welfare or the environment, the Defendant shall notify EPA and DEP orally or by electronic transmission as soon as possible, but in no event later than 24 hours after

Defendant first knew of the violation or event. This notification requirement is in addition to any other notifications requirement(s) under federal or New Jersey law, including but not limited to N.J.A.C. 7:1E-5.3. This procedure is in addition to the requirements set forth in the preceding Paragraph.

16. All reports and notifications made pursuant to this Section shall be submitted to the persons designated in Section XIV (Notices).

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

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I have no personal knowledge that the information submitted is other than true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

18. This certification requirement does not apply to emergency or similar notifications where compliance would be impractical.

19. The reporting requirements of this Consent Decree do not relieve the Defendant of any reporting obligations required by the Act or its implementing regulations, or by any other federal, state, or local law, regulation, permit, or other requirement. Notwithstanding DEP's review and approval of any documents submitted to it by the Defendant pursuant to this Decree, Defendant shall remain solely responsible for compliance with the terms of the CAA and its implementing regulations, and this Decree.

20. Any information provided pursuant to this Consent Decree may be used by the United States or New Jersey in any proceeding to enforce the provisions of this Consent Decree and as otherwise permitted by law.

VII. REVIEW AND APPROVAL PROCEDURES FOR NEW JERSEY ELECTRIC VEHICLES CHARGING PROJECT

21. Approval of Deliverables. After review of any plan, report, or other item that is required to be submitted to DEP for approval pursuant to Section V and Appendix A of this Consent Decree, DEP shall in writing:

- a. approve the submission;
- b. approve the submission upon specified conditions;
- c. approve part of the submission and disapprove the remainder; or
- d. disapprove the submission.

22. If the submission is approved pursuant to Paragraph 21.a, the Defendant shall take all actions required by the plan, report, or other document, in accordance with the schedules and requirements of the plan, report, or other document, as approved. If the submission is conditionally approved or approved only in part pursuant to Paragraph 21.b or 21.c, the Defendant shall, upon written direction from DEP, take all actions required by the approved plan, report, or other item that DEP determines are technically severable from any disapproved portions, subject to the Defendant's right to dispute only the specified conditions or the disapproved portions, under Section X (Dispute Resolution).

23. If the submission is disapproved in whole or in part pursuant to Paragraph 21.c or 21.d, the Defendant shall, within 45 Days or such other time as DEP may allow as provided in writing, correct all deficiencies and resubmit the plan, report, or other item, or disapproved portion thereof, for approval, in accordance with the preceding Paragraphs. If the resubmission

is approved in whole or in part, the Defendant shall proceed in accordance with the preceding Paragraph.

24. If a resubmitted plan, report, or other item, or portion thereof, is disapproved in whole or in part, DEP may again require Defendants to correct any deficiencies in accordance with the preceding Paragraphs, subject to Defendant's right to invoke Dispute Resolution and the right of DEP to seek stipulated penalties as provided in the preceding Paragraphs.

25. Any stipulated penalties applicable to the original submission, as provided in Section VIII (Stipulated Penalties), shall accrue during the 45-Day period or other specified period, but shall not be payable unless the resubmission is untimely or is disapproved in whole or in part; provided that, if the original submission was so deficient as to constitute a material breach of the Defendant's obligations under this Decree, the stipulated penalties applicable to the original submission shall be due and payable notwithstanding any subsequent resubmission.

VIII. STIPULATED PENALTIES

26. The Defendant shall be liable for stipulated penalties to the United States and New Jersey for violations of this Consent Decree as specified below, unless excused under Section IX (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Decree, including any payment of civil penalties, compliance requirements of this Decree, and any work plan or schedule approved under this Decree, and submission of any required reports or notifications, according to all applicable requirements of this Decree and within the specified time schedules established by or approved under this Decree.

27. Late Payment of Civil Penalty. If the Defendant fails to pay the civil penalty required to be paid under Section IV (Civil Penalty) when due, the Defendant shall pay a stipulated penalty of \$1,000 per Day for each Day that the payment is not paid after the due date,

plus interest accruing from the due date at the rate specified in 28 U.S.C. § 1961 as of the due date. Interest shall continue to accrue on any unpaid amounts until the total amount due has been paid.

28. Electric Vehicles Charging Project. The following stipulated penalties, payable to New Jersey only, shall accrue for each Day that GCUA fails to implement the Electric Vehicles Charging Project set forth in Section V and Appendix A:

<i>Period of Noncompliance</i>	<i>Penalty per Day</i>
1st through 14th Day	\$500.00
15th through 30th Day	\$1000.00
31st Day and beyond	\$2500.00

29. Reporting Requirements. The following stipulated penalties shall accrue per violation per Day for each violation of the reporting requirements of Section VI (Reporting Requirements):

<i>Period of Noncompliance</i>	<i>Penalty per Violation per Day</i>
1st through 14th Day	\$250.00
15th through 30th Day	\$500.00
31st Day and beyond	\$1000.00

30. Stipulated penalties under this Section shall begin to accrue on the Day after performance is due or on the Day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree. Stipulated penalties shall accrue regardless of whether the United States or New Jersey has notified the Defendant that a violation of this Consent Decree has occurred.

31. The Defendant shall pay any stipulated penalty to the United States and New Jersey within thirty (30) Days of receiving a written demand by either Plaintiff. Except as otherwise provided in this Paragraph, stipulated penalties shall be payable as follows: fifty

percent (50%) to the United States and fifty percent (50%) to New Jersey. Any stipulated penalties for failure to implement the Electric Vehicles Charging Project or to submit reports for that project shall be payable to New Jersey only. The Plaintiff making a demand for payment of a stipulated penalty shall simultaneously send a copy of the demand to the other Plaintiff.

32. Stipulated penalties shall continue to accrue as provided in Paragraph 30 during any dispute resolution, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of the Plaintiff(s) that is not appealed to the Court, the Defendant shall pay accrued penalties determined to be owing, together with interest accruing from the date Defendant received the written demand pursuant to Paragraph 31, at the rate specified in 28 U.S.C. § 1961 as of that date. Payment shall be due within 30 Days of the effective date of the agreement or the receipt of EPA's decision or order.

b. If the dispute is appealed to the Court and the Plaintiff(s) prevail in whole or in part, the Defendant shall pay all accrued penalties determined by the Court to be owing, together with interest accruing from the date Defendant received the written demand pursuant to Paragraph 31, at the rate specified in 28 U.S.C. § 1961 as of that date. Payment shall be due within 60 Days of receiving the Court's decision or order, except as provided in subparagraph c, below.

c. If any Party appeals the Court's decision, the Defendant shall pay all accrued penalties determined by the appellate court to be owing, together with interest accruing from the date the Defendant received the written demand pursuant to Paragraph 31, at the rate specified in 28 U.S.C. § 1961 as of that date, within 15 Days of receiving the final appellate court decision.

33. Obligations Prior to the Effective Date. Upon the Effective Date, the stipulated penalties provisions of this Decree shall be retroactively enforceable with regard to any and all violations of Sections V and VI that have occurred between the Date of Lodging and the Effective Date of this Decree, provided that stipulated penalties that may have accrued prior to the Effective Date may not be collected unless and until this Consent Decree is entered by the Court.

34. The Defendant shall pay stipulated penalties owing to the United States in the manner set forth and with the confirmation notices required by Paragraph 10.a, except that the transmittal letter shall state that the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid. The Defendant shall pay stipulated penalties to New Jersey in the manner set forth in Paragraph 10.b.

35. Notwithstanding any other provision of this Section, the United States or New Jersey may, in its unreviewable discretion, waive any portion of stipulated penalties owed to it that have accrued pursuant to this Consent Decree.

36. If the Defendant fails to pay stipulated penalties according to the terms of this Consent Decree, the Defendant shall be liable for interest on such penalties, as provided for in 28 U.S.C. § 1961, accruing as of the date payment became due, together with additional penalties and administrative costs to the extent allowed by applicable law. Nothing in this Paragraph shall be construed to limit the United States or New Jersey from seeking any remedy otherwise provided by law for the Defendant's failure to pay any stipulated penalties.

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

38. Non-Exclusivity of Remedy. The stipulated penalty provisions of this Section shall be in addition to all other rights reserved by the United States and New Jersey pursuant to Section XII (Effect of Settlement/Reservation of Rights) below. Nothing in this Section shall be construed as prohibiting, altering or in any way limiting the ability of the United States or New Jersey to seek any other relief they deem appropriate for Defendant's violations of this Decree or statutes, regulations, or permits referenced within it, including but not limited to an action against the Defendant for statutory penalties, additional injunctive relief, mitigation or offset measures, and/or contempt. However, the amount of any statutory penalty assessed for a violation of this Consent Decree shall be reduced by an amount equal to the amount of any stipulated penalty assessed and paid pursuant to this Consent Decree.

IX. FORCE MAJEURE

39. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of the Defendant, of any entity controlled by the Defendant, or of the Defendant's contractors, which delays or prevents the performance of any obligation under this Consent Decree despite the Defendant's best efforts to fulfill the obligation. The requirement that the Defendant exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (a) as it is occurring and (b) following the potential force majeure, such that the delay and any adverse effects of the delay are minimized. "Force majeure" does not include the Defendant's financial inability to perform any obligation under this Consent Decree.

40. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, the

Defendant shall provide notice orally or by electronic mail to Robert Buettner, EPA Region 2's Chief of the Air Compliance Branch, Division of Enforcement and Compliance Assistance, and to Director, Division of Air Enforcement, DEP within 72 hours of when the Defendant first knows that the event might cause a delay. Within seven Days thereafter, the Defendant shall provide in writing to EPA and DEP an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; the Defendant's rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of the Defendant, such event may cause or contribute to an endangerment to public health, welfare or the environment. The Defendant shall include with any notice all available documentation supporting the claim that the delay was attributable to a force majeure event. Failure to comply with the above requirements shall preclude the Defendant from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. The Defendant shall be deemed to know of any circumstance of which the Defendant, any entity controlled by the Defendant, or the Defendant's contractors knew or should have known.

41. If the Plaintiffs agree that the delay or anticipated delay is attributable to a force majeure event, the time for performance of obligations under this Decree that are affected by the force majeure event will be extended for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. The Plaintiffs will

notify the Defendant in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

42. If either or both Plaintiffs disagree that the delay or anticipated delay has been or will be caused by a force majeure event, the Plaintiff(s) will notify the Defendant in writing of its decision.

43. If the Defendant elects to invoke the dispute resolution procedures set forth in Section X (Dispute Resolution), it shall do so no later than 15 Days after receipt of EPA's notice. In any such proceeding, the Defendant shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that the Defendant complied with the requirements of Paragraphs 39 and 40. If the Defendant carries this burden, the delay at issue shall be deemed not to be a violation by the Defendant of the affected obligation of this Consent Decree identified to the Plaintiffs and the Court.

X. DISPUTE RESOLUTION

44. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. The Defendant's failure to seek resolution of a dispute under this Section shall preclude the Defendant from raising any such issue as a defense to an action by the United States or New Jersey to enforce any obligation of the Defendant arising under this Decree.

45. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when the Defendant sends the United States and New Jersey a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 20 Days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States, after consultation with New Jersey, shall be considered binding unless, within 15 Days after the conclusion of the informal negotiation period, the Defendant invokes formal dispute resolution procedures as set forth below.

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

47. The United States, after consultation with New Jersey, shall serve its Statement of Position within 45 Days of receipt of the Defendant's Statement of Position. The United States' Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States. The United States' Statement of Position shall be binding on the Defendant, unless the Defendant files a motion for judicial review of the dispute in accordance with the following Paragraph.

48. The Defendant may seek judicial review of the dispute by filing with the Court and serving on the United States and New Jersey, in accordance with Section XIV (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within ten Days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of the Defendant's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree. Defendant's motion shall not raise new issues or submit new facts that were not previously presented to the United States during formal dispute resolution.

49. The United States, after consultation with New Jersey, shall respond to the Defendant's motion within the time period allowed by the Local Rules of this Court. The Defendant may file a reply memorandum, to the extent permitted by the Local Rules.

50. Standard of Review.

a. Disputes Concerning Matters Accorded Record Review. Except as otherwise provided in this Consent Decree, in any dispute brought under Paragraph 48 pertaining to the adequacy or appropriateness of plans, procedures to implement plans, schedules or any other items requiring approval under this Consent Decree; the adequacy of the performance of work undertaken pursuant to this Consent Decree; and all other disputes that are accorded review on the administrative record under applicable principles of administrative law, the Defendant shall have the burden of demonstrating, based on the administrative record, that the position of the United States is arbitrary and capricious or otherwise not in accordance with law.

b. Other Disputes. Except as otherwise provided in this Consent Decree, in any other dispute brought under Paragraph 48, the Defendant shall bear the burden of demonstrating that its position complies with this Consent Decree and better furthers the objectives of the Consent Decree.

51. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of the Defendant under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 32. If the Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section VIII (Stipulated Penalties).

XI. INFORMATION COLLECTION AND RETENTION

52. The Plaintiffs and their representatives, including attorneys, contractors, and consultants, shall have the right of entry into the Facility covered by this Consent Decree, at all reasonable times, upon presentation of credentials, to:

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

53. Until five years after the termination of this Consent Decree, the Defendant shall retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in

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

54. At the conclusion of the information-retention period provided in the preceding Paragraph, the Defendant shall notify the Plaintiffs at least 90 Days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding Paragraph and, upon request by the United States or New Jersey, the Defendant shall deliver any such documents, records, or other information to the requesting Plaintiff.

55. The Defendant may assert that certain documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Defendant asserts such a privilege, they shall provide the following: (a) the title of the document, record, or information; (b) the date of the document, record, or information; (c) the name and title of each author of the document, record, or information; (d) the name and title of each addressee and recipient; (e) a description of the subject of the document, record, or information; and (f) the privilege asserted by the Defendant. However, no documents, records, or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on grounds of privilege.

56. The Defendant may also assert that information required to be provided under this Section is protected as Confidential Business Information ("CBI") under 40 C.F.R. Part 2. As to

any information that the Defendant seeks to protect as CBI, the Defendant shall follow the procedures set forth in 40 C.F.R. Part 2. The Defendant may make no claim of business confidentiality, privilege, or protection regarding any records that the Defendant is required to create or generate pursuant to this Consent Decree. Under no circumstances shall emissions or effluent data be identified or considered CBI.

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

XII. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

58. This Consent Decree resolves the civil claims of the United States and New Jersey for the violations alleged in the Complaint filed in this action through the Date of Lodging. This Consent Decree does not limit any rights or remedies available to the United States for any criminal violations.

59. Except as expressly provided in this Consent Decree, the United States and New Jersey reserve all legal and equitable remedies available to enforce the provisions of this Consent Decree. This Consent Decree shall not be construed to limit the rights of the United States or New Jersey to obtain penalties or injunctive relief under the Act or implementing regulations, or under other federal, State, or local laws, regulations, or permit conditions. The United States and New Jersey further reserve all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed

by, the Defendant's Facility, whether related to the violations addressed in this Consent Decree or otherwise.

60. In any subsequent administrative or judicial proceeding initiated by the United States or New Jersey for injunctive relief, civil penalties, or other appropriate relief relating to the Facility, the Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim splitting, or other defenses based upon any contention that the claims raised by the United States or New Jersey in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraph 58.

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

62. This Consent Decree does not limit or affect the rights of the Defendant or of the United States or New Jersey against any third parties not party to this Consent Decree, nor does it limit the rights of third parties not party to this Consent Decree, against the Defendant, except

as otherwise provided by law. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

XIII. COSTS

63. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States and New Jersey shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to enforce this Decree or to collect any portion of the civil penalty or any stipulated penalties due but not paid by the Defendant.

XIV. NOTICES

64. Unless otherwise specified in this Decree, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and addressed as follows:

As to the United States by e-mail: eescdcopy.enrd@usdoj.gov
RE: DJ # 90-5-2-1-11877

As to the United States by mail: Chief
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044-7611
RE: DJ # 90-5-2-1-11877

As to EPA by phone or email: 212-637-5031
Robert Buettner, Chief
Air Compliance Branch
buettner.robert@epa.gov

As to EPA by mail: Robert Buettner, Chief
Air Compliance Branch
Division of Enforcement and Compliance Assistance
EPA Region 2
290 Broadway
New York, NY 10007

As to the State of New Jersey by email: Gary Wolf, II
Section Chief
Environmental Enforcement Section
Gary.Wolf@law.njoag.gov

As to the State of New Jersey by mail: Section Chief
Environmental Enforcement Section
Department of Law & Public Safety
Division of Law
R.J. Hughes Justice Complex
25 Market Street
P.O. Box 093
Trenton, New Jersey 08625-093

As to DEP by email: Christopher Odgers, Acting Director
Division of Air Enforcement
Christopher.Odgers@dep.nj.gov

Mary Toogood, Manager
Bureau of Air Compliance &
Enforcement—Southern Region
Mary.Toogood@dep.nj.gov

As to DEP by mail: Director, Division of Air Enforcement
NJDEP
401 East State Street
Mail Code 401-04B
PO Box 420
Trenton, NJ 08625-042

Manager
Bureau of Air Compliance &
Enforcement—Southern Region
2 Riverside Dr., Suite 201
Camden, NJ 08103

As to Defendant: John J. Vinci, Executive Director
Gloucester County Utilities Authority
2 Paradise Road
West Deptford, NJ 08066

With a copy to: Philip A. Norcross, Esquire
Parker McCay, P.A.
9000 Midlantic Drive
Suite 300
Mount Laurel, NJ 08054

65. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above.

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

XV. EFFECTIVE DATE

67. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket. The Defendant hereby agrees that it shall be bound to perform duties scheduled to occur prior to the Effective Date. In the event the United States withdraws or withholds consent to this Consent Decree before entry, or the Court declines to enter the Consent Decree, then the preceding requirement to perform duties scheduled to occur before the Effective Date shall terminate.

XVI. RETENTION OF JURISDICTION

68. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree or entering orders modifying this Decree, pursuant to Sections X (Dispute Resolution) and XVII (Modification), or effectuating or enforcing compliance with the terms of this Decree.

XVII. MODIFICATION

69. The terms of this Consent Decree, including any attached appendices, may be modified only by a subsequent written agreement signed by all the Parties. Where the

modification constitutes a material change to this Decree, it shall be effective only upon approval by the Court.

70. Any disputes concerning modification of this Decree shall be resolved pursuant to Section X (Dispute Resolution), provided, however, that instead of the burden of proof provided by Paragraph 50, the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

XVIII. TERMINATION

71. After the Defendant has completed the requirements of Sections V (New Jersey Electric Vehicles Charging Project) and VI (Reporting Requirements) of this Decree, and has paid the civil penalty and any accrued stipulated penalties and interest as required by this Consent Decree, the Defendant may serve upon the Plaintiffs a "Request for Termination," stating that the Defendant has satisfied those requirements, together with all necessary supporting documentation.

72. Following receipt by the Plaintiffs of the Defendant's Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether the Defendant has complied satisfactorily with the requirements for termination of this Consent Decree. If the United States, after consultation with New Jersey, agrees that the Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Decree.

73. If the United States, after consultation with New Jersey, does not agree that the Decree may be terminated, the Defendant may invoke dispute resolution under Section X (Dispute Resolution). However, the Defendant shall not seek dispute resolution of any dispute regarding termination until 30 Days after service of their Request for Termination.

XIX. PUBLIC PARTICIPATION

74. This Consent Decree shall be lodged with the Court for a period of not less than 30 Days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. The Defendant consents to entry of this Consent Decree without further notice and agrees not to withdraw from or oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree, unless the United States has notified the Defendant in writing that it no longer supports entry of the Decree.

XX. SIGNATORIES/SERVICE

75. Each Party certifies that at least one of its undersigned representatives is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

76. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. The Defendant agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

XXI. INTEGRATION

77. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. The Parties acknowledge that there are no representations,

agreements, or understandings relating to the settlement other than those expressly contained in this Consent Decree.

XXII. FINAL JUDGMENT

78. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the Parties under Fed. R. Civ. P. 54 and 58.

XXIII. APPENDICES


79. The following Appendix is attached to and part of this Consent Decree:

Appendix A – New Jersey Electric Vehicles Charging Project


Dated and entered this ___ day of _____, 2019.

UNITED STATES DISTRICT JUDGE

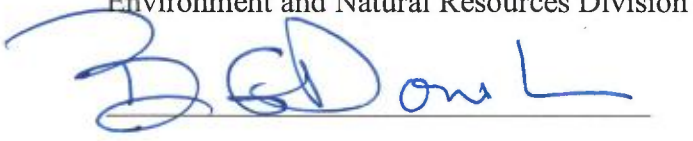
FOR PLAINTIFF UNITED STATES OF AMERICA:



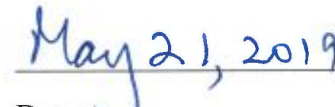
JEFFREY BOSSERT CLARK
Assistant Attorney General
U.S. Department of Justice
Environment and Natural Resources Division



Date



BRIAN DONOHUE
Senior Attorney
U.S. Department of Justice
Environmental Enforcement Section
Environment and Natural Resources Division



Date

PROVIDENCE SPINA
Special Department of Justice Counsel

Date


FOR PLAINTIFF UNITED STATES OF AMERICA:

JEFFREY BOSSERT CLARK
Assistant Attorney General
U.S. Department of Justice
Environment and Natural Resources Division

Date

BRIAN DONOHUE
Senior Attorney
U.S. Department of Justice
Environmental Enforcement Section
Environment and Natural Resources Division

Date



PROVIDENCE SPINA
Special Department of Justice Counsel

4/3/2019

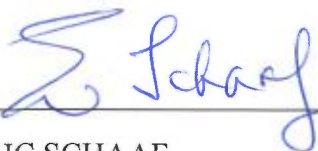
Date

FOR PLAINTIFF UNITED STATES OF AMERICA:

CRAIG CARPENITO
United States Attorney
District Of New Jersey

ALLAN B. K. URGENT
Assistant United States Attorney

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:



ERIC SCHAAF
Regional Counsel
U.S. Environmental Protection Agency, Region 2



Date

FOR PLAINTIFF STATE OF NEW JERSEY:

GURBIR S. GREWAL
Attorney General of New Jersey

By: _____

LISA J. MORELLI
Deputy Attorney General
New Jersey Department of Law &
Public Safety, Division of Law

March 11, 2019

_____ Date

CATHERINE MCCABE
Commissioner
New Jersey Department of
Environmental Protection

By: _____

CHRIS ODGERS
Acting Director
Division of Air Enforcement
Deputy Attorney General
New Jersey Department of
Environmental Protection

_____ Date

FOR PLAINTIFF STATE OF NEW JERSEY:

GURBIR S. GREWAL
Attorney General of New Jersey

By: _____

LISA J. MORELLI
Deputy Attorney General
New Jersey Department of Law &
Public Safety, Division of Law

Date

CATHERINE MCCABE
Commissioner
New Jersey Department of
Environmental Protection

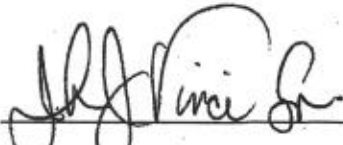
By: _____

CHRIS ODGERS
Acting Director
Division of Air Enforcement
Deputy Attorney General
New Jersey Department of
Environmental Protection

March 11, 2019

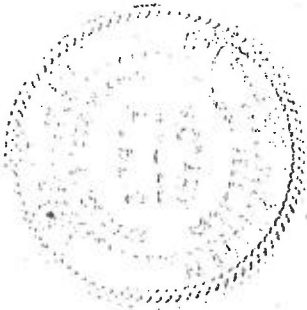
Date

FOR DEFENDANT GLOUCESTER COUNTY UTILITIES AUTHORITY:



JOHN J. VINCI, SR.
Executive Director
Gloucester County Utilities Authority

3/13/19
Date




OFFICIAL SEAL
STEPHANIE L. KILLEEN
NOTARY PUBLIC - NEW JERSEY
COMMISSION #50042563
My Comm. Expires July 25, 2021
Stephanie Killeen

Appendix A – New Jersey Electric Vehicles Charging Project

GCUA shall perform the Supplemental Environmental Project (“SEP”) identified below in the manner specified below:

1. GCUA shall purchase and install three (3) level 2 dual port 240V electric vehicle (EV) charging stations. The stations shall be installed at: (1) The Gloucester County Public Works Department in Clayton; (2) Rowan College at Gloucester County in Sewell; and (3) The Woolwich Township Municipal Building in Woolwich Township. GCUA shall request that the municipalities in which the EV charging stations are installed include and provide details of the EV charging stations on their municipal website. If requested by GCUA, the final locations of the charging stations may be relocated subject to approval of the New Jersey Department of Environmental Protection, Division of Air Enforcement, which approval shall not be unreasonably withheld. In addition, GCUA shall ensure that conspicuous signage for the EV charging stations is installed. The EV charging stations shall be networked, and GCUA shall ensure the stations are added to the Alternative Fuels Data Center database at <https://afdc.energy.gov/stations/#/find/nearest>.
2. Funds dedicated for this SEP shall not be used to pay for consultant oversight costs. If GCUA requires the assistance of a consultant, it shall provide funds directly to the consultant in addition to the funds dedicated to the SEP.
3. GCUA shall complete the purchase and installation of the EV charging stations described in Paragraph 1 of this Appendix by December 31, 2019.
4. GCUA shall submit quarterly progress reports on the SEP, due within 15 Days of the close of each calendar quarter. The progress reports shall include the progress made on purchasing and installing the EV charging stations and a description of any installation, operating, or other problems encountered and the solution/response thereto.
5. GCUA shall submit a written final report on the SEP to DEP, verifying that it has completed the SEP in accordance with the terms of this Appendix, which report shall be certified by a responsible officer or director of GCUA. GCUA shall submit the final report and certification to DEP within 30 Days of completion of the SEP.
6. The SEP completion report shall contain the following information:
 - a. A detailed description of the SEP as implemented;
 - b. A description of any operating problems encountered and the solution/response thereto;
 - c. Itemized costs;

- d. Certification that the SEP has been fully implemented pursuant to the provisions of this Appendix; and
 - e. A description of the environmental and public health benefits resulting from implementation of the SEP, with a quantification of the benefits and pollutant reductions, if feasible.
7. GCUA shall bring any unexpected issues related to the completion of the SEP to DEP's attention. If the SEP has not or cannot be completed as described herein, GCUA shall notify DEP in writing no later than October 1, 2019, and shall submit to DEP an alternative SEP proposal.

It is DEP's sole discretion to approve an alternate SEP proposal.

8. SEP documents submitted to the DEP shall be sent to:

Mary Toogood, Manager
Division of Air Enforcement
Bureau of Air Compliance & Enforcement-Southern
2 Riverside Drive, Suite 201
Camden, New Jersey 08103

9. GCUA hereby consents to reasonable access by DEP to property or documents under GCUA's control for verifying progress or completion of the SEP. The Department may demand at any time, and GCUA shall forthwith provide, any documents relating in any way to the SEP, including but not limited to its implementation, progress and completion.