



commonly referred to as the Clean Water Act, and other federal and state statutes actions concerning water pollution control. Specifically, pursuant to S.C. Code Ann. §§ 48-1-10(9), 48-1-100(A)-(C), and South Carolina Water Pollution Control Permits Regulation, S.C. Code Ann. Regs. 61-9.124.6(a), the Department is authorized and responsible for the review and issuance of permitting decisions on complete, submitted applications for National Pollutant Discharge Elimination System (“NPDES”) permits; and

WHEREAS, Marshall Taylor is the Acting Director of the South Carolina Department of Health and Environmental Control and is authorized to direct SCDHEC personnel to act in accordance with S.C. Code Ann. §§ 48-1-10(9), 48-1-100(A)-(C), and S.C. Code Ann. Regs. 61-9.124.6(a); and

WHEREAS, Shawn Clarke is the Director of the Water Facilities Permitting Division in the Department’s Bureau of Water and is authorized to issue permitting decisions in accordance with S.C. Code Ann. §§ 48-1-100(A)-(C) (as related to the discharge of wastes) and S.C. Code Ann. Regs. 61-9.124.6(a); and

WHEREAS, on or about March 3, 2010, the Department received from Santee Cooper an administratively-complete and timely renewal application for NPDES Permit SC0037401 for the Cross Station Generation Facility, which is located at 533 Cross Station Road, Pineville, South Carolina 29468 (“Cross Station”). Although NPDES Permit SC0037401 expired in August 2010, pursuant to S.C. Code Ann. Regs. 61-9.122.6(a)(1) & (2) the Cross Station has remained in operation pending a decision on its application; and

WHEREAS, on or about January 31, 2011, the Department received from Santee Cooper an administratively-complete and timely renewal application for NPDES Permit SC0022471 for

the Winyah Station Generation Facility located at 661 Steam Plant Drive, Georgetown, South Carolina 29440 (“Winyah Station”). Although NPDES Permit SC0022471 expired in July 2011, pursuant to S.C. Code Ann. Regs. 61-9.122.6(a)(1) & (2) the Winyah Station has remained in operation pending a decision on its application; and

WHEREAS, on or about June 14, 2012, the Department received from SCANA Services, Inc. an administratively complete and timely renewal application for NPDES Permit SC0002038 for the Wateree Station Generation Facility located at 142 Wateree Station Road, Eastover, South Carolina 29044 (“Wateree Station”). Although NPDES Permit SC0002038 expired in December 2012, pursuant to S.C. Code Ann. Regs. 61-9.122.6(a)(1) & (2) the Wateree Station has remained in operation pending a decision on its application; and

WHEREAS, the Sierra Club commenced this mandamus action by filing a Complaint and Petition for Writ of Mandamus in the Court of Common Pleas for Richland County seeking, *inter alia*, an order of the Court compelling the Department to act on the pending renewal applications for the Cross Station, Winyah Station, and Wateree Station; and

WHEREAS, the Department intends to process the pending renewal applications for the Cross Station, Winyah Station, and Wateree Station in a reasonably expeditious time frame; and

WHEREAS, on October 13, 2020, the United States Environmental Protection Agency (“EPA”) published the Steam Electric Reconsideration Rule (“2020 Rule”) in the Federal Register (85 FR 64650 (Oct. 13, 2020)). This final rule revises the technology-based effluent limitations guidelines and standards (“ELGs”) for steam electric power generating NPDES point sources applicable to flue gas desulfurization (“FGD”) wastewater and bottom ash (“BA”) transport water. Pursuant to 40 CFR Part 23, the 2020 Rule is considered issued for the purposes

of judicial review on October 27, 2020 and may only be challenged in accordance with Section 509(b)(1) of the Clean Water Act by filing a petition in the United States Court of Appeals within 120 days of the judicial issuance date. The effective date of the 2020 Rule is December 14, 2020; and

WHEREAS, the Sierra Club and the Department desire to resolve this mandamus action and to compromise and settle the disputed claims pending in this action.

**NOW, THEREFORE,** in view of the foregoing recitals, and for and in consideration of the mutual promises and covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Sierra Club and the Department agree and consents to following:

1. The Sierra Club and the Department agree to settle the action in accordance with the following terms and conditions:

a. The Department agrees that staff will conduct reviews of the renewal applications on file for the Cross Station, Winyah Station, and Wateree Station and place a draft permit on public notice for each Station in accordance with the following schedule:

1. Wateree Station - July 1, 2021;
2. Winyah Station- October 1, 2021; and
3. Cross Station- October 1, 2021.

b. The above dates are subject to the following conditions:

1. The Department's review will be in accordance with the provisions of the 2020 Rule as set forth in 68 FR 64650 (Oct. 13, 2020). This review may be modified based on the applicability of following factors:

- i. A judicial challenge(s) to the 2020 Rule is filed in accordance with Section 509(b) of the Clean Water Act within the 120-day time period commencing on October 27, 2020, as set forth in the EPA publication in the Federal Register; and

- ii. As result of such filing, a judicial order is issued staying the applicability of the 2020 Rule in part or in its entirety until a final resolution of the merits of the challenge is issued; or
    - iii. A court of competent jurisdiction issues an order invalidating the 2020 Rule in part or in its entirety; or
    - iv. The EPA rescinds or otherwise withdraws the 2020 Rule.
  - 2. If any of the conditions listed in paragraphs 1(i)-(iv) occurs, the Department review shall be in accordance with the rule in effect on October 12, 2020, hereinafter referred to as the “2015 Rule.”
  - 3. If the 2020 rule is stayed or invalidated in its entirety or the EPA rescinds or otherwise withdraws the 2020 rule, the Department’s review changes from the 2020 Rule to the 2015 Rule, and the Department’s time to place the draft permits for the three facilities on public notice shall be extended by a period of three months to the following dates:
    - a. Wateree Station- October 1, 2021;
    - b. Winyah Station- January 1, 2022; and
    - c. Cross Station- January 1, 2022.
  - 4. If the 2020 rule is stayed or invalidated in part, the Department’s review changes from the 2020 Rule to the 2015 Rule for the part(s) that are stayed or invalidated, and the Department’s time to place the draft permits for the three facilities on public notice shall be extended by a period of three months to the following dates:
    - a. Wateree Station- October 1, 2021;
    - b. Winyah Station- January 1, 2022; and
    - c. Cross Station- January 1, 2022.
  - 5. If litigation as described in paragraph b(1) causes or raises issues not described above, the Sierra Club and the Department agree to meet to modify the time period set forth above so that the Department can issue draft permits in using the appropriate rule in a reasonable time period.
  - 6. The Sierra Club agrees that it will not unreasonably withhold its consent to a different time period for the issuance of the permit in light of changed circumstances.
- c. The Department agrees that with regard to the three Stations, Cross Station, Winyah Station, and Wateree Station, it will notify the Sierra Club of the public notice of the draft permits and will provide a copy of the draft permits and rationales (including attachments) electronically via an email containing a

link to the draft permit and rationale (including attachments). The notifications will be sent to the email address for Leslie S. Lenhardt, Esquire ([leslie@scelp.org](mailto:leslie@scelp.org)), Benjamin D. Cunningham, Esquire ([ben@scelp.org](mailto:ben@scelp.org)); and Dori Jaffe, Esquire ([dori.jaffe@sierraclub.org](mailto:dori.jaffe@sierraclub.org)).

- d. The Department agrees this Consent Settlement Agreement constitutes a written request of and the Sierra Club's consent, pursuant to S.C. Code Ann. § 44-1-60(E)(1), to receipt of written notice of the issuance of the final permits for the three Stations by emails to the email addresses of Leslie S. Lenhardt, Esquire and Benjamin D. Cunningham, Esquire and Dori Jaffe, Esquire. The notifications will contain either a link to the final permits and rationales (including attachments) or copies of these documents as attachments.
- e. The Department agrees that upon the notice of the draft permit for each Station there will be a 60-day comment period in accordance with the procedures set forth in S.C. Code Ann. Regs. 61-9.124.10 and 124.11.
- f. The Department agrees that in accordance with S.C. Code Ann. Regs. 61-9.124.12, public hearings will be held for the three draft permits. Because of COVID-19, the hearings may be held either fully electronically or as a hybrid electronic/in-person hearing at the sole discretion of the Department but in consultation with the Sierra Club.
- g. In consideration of the Department's promise to conduct reviews of the renewal applications on file and, as updated as necessary, for the Cross Station, Winyah Station, and Wateree Station and place a draft permit on public notice for each facility as set forth in paragraphs (a) and (b), the Sierra Club agrees to dismiss this action with prejudice.

2. This Consent Settlement Agreement is entered into solely for the purpose of compromising and settling the dispute set forth in the Complaint and Petition for Writ of Mandamus between such Parties, and to avoid the time and expense that would be involved in proceeding with litigation. Further, the Consent Settlement Agreement shall have no effect on matters not expressly set forth in the Complaint and Petition for Writ of Mandamus.

3. The Sierra Club and the Department have been represented by competent legal counsel of their own choosing in the negotiation, preparation, and execution of this Consent Settlement Agreement. The Sierra Club and the Department further agree that they have

participated fully and freely in the negotiation and drafting of this Consent Settlement Agreement and, as a result, neither the Sierra Club nor the Department can claim that the terms of this Consent Settlement Agreement were not understood and that they did not freely agree, consent, and enter into the Consent Settlement Agreement.

4. This Consent Settlement Agreement constitutes the entire agreement between the Sierra Club and the Department with respect to the resolution and settlement of the matters discussed herein, and supersedes all prior or contemporaneous agreements, promises, or understandings between the parties. Further, neither the Sierra Club nor the Department are relying upon any representations, promises, understandings, or agreements with regard to the settlement of this action except as expressly set forth within this Consent Settlement Agreement.

5. In addition to the acts recited in this Consent Settlement Agreement, each Party agrees to perform or cause to be performed on the date of this Consent Settlement Agreement or thereafter any and all such further acts as may be reasonably necessary to consummate the transactions contemplated hereby.

6. This Consent Settlement Agreement shall be construed and any disputes concerning its performance shall be determined in accordance with the laws of the State of South Carolina.

7. This Consent Settlement Agreement may be executed in any number of counterparts, which taken together shall constitute one and the same original instrument.

8. The Department and Defendants shall each bear their own attorney's fees, costs, and expenses incurred or to be incurred in connection with the action, any related actions (whether civil or administrative), and this Consent Settlement Agreement.

10. The Effective Date of this Consent Settlement Agreement shall be deemed the date upon which the fully-executed Consent Settlement Agreement is filed with and has been approved, ordered, and filed by the Court.

11. In the event of the invalidity of any term or provision of this Consent Settlement Agreement, all terms and provisions shall be considered severable and the balance of the Consent Settlement Agreement shall remain in effect.

12. The Consent Settlement Agreement shall be executed by the attorneys for the Sierra Club, the Department, and its attorney. By signing this document each non-attorney signatory acknowledges and represents that they are authorized to execute the document and, that regarding the corporate entities, e.g. the Sierra Club and the South Carolina Department of Health and Environmental Control, their signature is binding on the corporate entity.

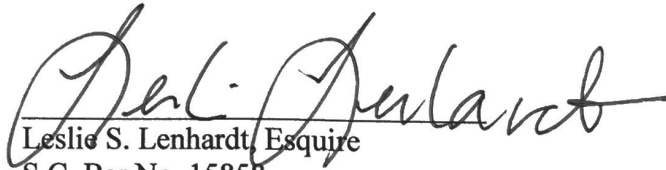
13. The failure of any Party to adhere to any of the terms or conditions of this Consent Settlement Agreement constitutes a violation of this Agreement and is subject to the enforcement and contempt powers of this Court.

[SIGNATURE PAGES FOLLOW]



**WE CONSENT:**

**SIERRA CLUB**



Leslie S. Lenhardt, Esquire

S.C. Bar No. 15858

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South Carolina Environmental Law Project

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Pawleys Island, SC 29585

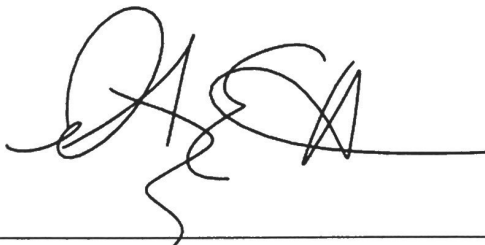
510 Live Oak Dr.

Mt. Pleasant, SC 29464

843-527-0078

Attorneys for Petitioner Sierra Club

DATE: January 9, 2021



Dorothy E. Jaffe

Senior Attorney

Sierra Club


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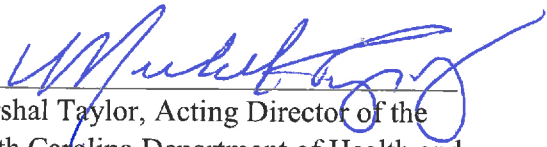
DATE: January 8, 2021

**SOUTH CAROLINA DEPARTMENT OF  
HEALTH AND ENVIRONMENTAL CONTROL**


*For*   
\_\_\_\_\_  
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Attorney for South Carolina Department  
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Marshall Taylor, Acting Director of the  
South Carolina Department of Health and  
Environmental Control; and Shawn Clarke,  
Director of the Water Facilities Permitting  
Division of the South Carolina Department  
of Health and Environmental Control

DATE: 1-11-2021

  
\_\_\_\_\_  
Marshall Taylor, Acting Director of the  
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DATE: 1/14/2021

  
\_\_\_\_\_  
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803-898-4157

DATE: 1-12-2021