IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

UNITED STATES OF AMERICA and THE STATE OF WEST VIRGINIA by and through the WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION, Plaintiffs, v. CHESAPEAKE APPALACHIA, LLC, Defendant.	Civil Action No. 5:13-CV-170

CONSENT DECREE

WHEREAS, Plaintiffs the United States of America ("United States"), on behalf of the United States Environmental Protection Agency ("EPA"), and the State of West Virginia ("the State"), by and through the West Virginia Department of Environmental Protection ("WVDEP"), filed the Complaint herein against Defendant Chesapeake Appalachia, LLC, alleging that Defendant violated Section 301(a) of the Clean Water Act ("CWA"), 33 U.S.C. § 1311(a), and the West Virginia Water Pollution Control Act ("West Virginia WPCA"), W. Va. Code Chapter 22, Article 11;

WHEREAS, the Complaint alleges that Defendant violated CWA Section 301(a) and Sections 6 and 8 of the West Virginia WPCA, §§ 22-11-6 and 22-11-8 and applicable regulations (including the State's Requirements Governing Water Quality Standards, W. Va. Code R. § 47-2-1 *et seq.*) by discharging pollutants, including dredged or fill material, and/or controlling and directing the discharge of pollutants, including dredged or fill material, into waters of the United

States and/or the State, without authorization, at various locations in Boone, Kanawha, Lewis, Marshall, Mingo, Preston, Upshur and Wetzel Counties, West Virginia (the "Sites"), and more fully described in Appendix A;

WHEREAS, Defendant promptly investigated the potential for similar alleged violations at its other assets in West Virginia, and Defendant voluntarily suspended the construction of new sites in West Virginia in order to provide relevant employees and contractors with enhanced training regarding CWA and WPCA compliance;

WHEREAS, as a result of Defendant's investigation, certain Sites addressed by the Complaint were disclosed by Defendant to Plaintiffs as locations where potential violations of CWA Section 301(a) and the West Virginia WPCA may have occurred, and Plaintiffs allege that violations occurred at those locations, as more fully described in Appendix A;

WHEREAS, as part of its cooperation, Defendant prepared and presented to Plaintiffs its analyses of impacts at all of Defendant's well pads, ponds and associated access roads in West Virginia existing as of October 2010, including the disclosed locations, and provided Plaintiffs an opportunity to visit the locations to further assess such analyses;

WHEREAS, Defendant has responded to a Request for Information issued by EPA on November 2, 2010;

WHEREAS, Defendant has worked cooperatively with EPA to comply with Administrative Orders issued by EPA for eleven of the Sites identified in Appendix A;

WHEREAS, Defendant has paid penalties with respect to its activities at the Blake Fork site addressed by the Complaint and identified in Appendix A as part of its resolution of *United*

States v. Chesapeake Appalachia, L.L.C., 5:12-cr-00030-FPS (N.D.W.V. filed Sept. 28, 2012), and the civil penalty required by this Consent Decree does not include a civil penalty for CWA violations at that site;

WHEREAS, the Complaint seeks (1) to enjoin the discharge of pollutants into waters of the United States and the State in violation of CWA Section 301(a), 33 U.S.C. § 1311(a), and Sections 6 and 8 of the West Virginia WPCA, §§ 22-11-6 and 22-11-8, and applicable regulations (including the State's Requirements Governing Water Quality Standards, W. Va. Code R. § 47-2-1 *et seq.*) at or from the Sites; (2) to require Defendant, at its own expense and at the direction of EPA, to restore and/or mitigate the impacts caused by its allegedly unlawful activities; and (3) to require Defendant to pay civil penalties as provided in 33 U.S.C. § 1319(d) and W. Va. Code § 22-11-22;

WHEREAS, Defendant denies any liability for the claims set forth in the Complaint;

WHEREAS, this Consent Decree is intended to constitute a complete and final settlement of the United States' civil claims under the CWA set forth in the Complaint regarding the Sites, and the State's claims under the West Virginia WPCA set forth in the Complaint regarding the Sites;

WHEREAS, the Plaintiffs and Defendant agree that settlement of this case is in the public interest, that settlement of this matter will avoid the costs and uncertainties of litigation, and that entry of this Consent Decree is the most appropriate means of resolving the claims against Defendant in this case;

WHEREAS, Plaintiffs and Defendant agree that the restoration of the Sites by Defendant, consistent with Sections II and III of Appendix B, is a central objective of this Consent Decree; and

WHEREAS, the Court finds that this Consent Decree is a reasonable and fair settlement of the claims against Defendant in this case, and that this Consent Decree adequately protects the public interest in accordance with the CWA, the West Virginia WPCA, and all other applicable federal and state law.

THEREFORE, before the taking of any testimony upon the pleadings, without further adjudication of any issue of fact or law, and upon consent of the parties hereto by their authorized representatives, it is hereby ORDERED, ADJUDGED and DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of these actions and over the parties pursuant to 28 U.S.C. §§ 1331, 1345, 1355, and 1367, and Section 309(b) of the CWA, 33 U.S.C. § 1319(b).

2. Venue is proper in the Northern District of West Virginia pursuant to CWA Section 309(b), 33 U.S.C. § 1319(b), and 28 U.S.C. § 1391(b) and (c), because Defendant conducts business in this District, the subject properties are primarily located in this District, and the causes of action alleged herein arose primarily in this District.

3. For the purposes of this Consent Decree, Defendant agrees that the Complaint states claims upon which relief can be granted pursuant to Sections 301, 309 and 404 of the

CWA, 33 U.S.C. §§ 1311, 1319 and 1344, and Sections 8 and 22 of the West Virginia WPCA, W. Va. Code §§ 22-11-8 and 22-11-22.

II. APPLICABILITY

4. The obligations of this Consent Decree shall apply to and be binding upon Defendant, its officers, directors, agents, employees and servants, and its successors and assigns, and the Plaintiffs and their respective officers, directors, agents, employees and servants. Defendant is responsible for compliance with the CWA, the West Virginia WPCA, and this Consent Decree at the Sites, at any stream or wetland mitigation project to be completed or funded by Defendant in accordance with Paragraph 22 and Appendix B of this Consent Decree, and in the future construction and operation of OG Facilities (as defined herein) covered by the terms of Paragraph 33 of this Consent Decree. In the event that Defendant hires contractors to perform any work at the Sites or at any stream or wetland mitigation project to be completed or funded by Defendant in accordance with Paragraph 22 and Appendix B of this Consent Decree that may involve land disturbance, or any work in the future construction and operation of OG Facilities covered by the terms of Paragraph 33(a)(i) of this Consent Decree (including, but not limited to, land disturbance outside the Limits of Disturbance at any existing OG Facilities), Defendant shall provide a copy of this Consent Decree to such contractor(s) and ensure that the contractor complies with the Consent Decree. In any action to enforce this Consent Decree against Defendant, Defendant shall not raise as a defense the failure of any of its officers, directors, agents, employees, successors or assigns or any person, firm or corporation (including,

but not limited to, contractors of Defendant) acting in concert or participation with Defendant, to take any actions necessary to comply with the provisions hereof.

5. The transfer of ownership or other interest in the Sites or any stream or wetland mitigation project to be completed or funded by Defendant in accordance with Paragraph 22 and Appendix B of this Consent Decree shall not alter or relieve Defendant of its obligation to comply with all of the terms of this Consent Decree. At least fifteen (15) days prior to the transfer of ownership or other interest in any Sites or any stream or wetland mitigation project to be completed or funded by Defendant in accordance with Paragraph 22 and Appendix B of this Consent Decree by Defendant that alters Defendant's rights or responsibilities to conduct surface activities at such Sites or such project, Defendant shall provide written notice and a true copy of this Consent Decree to its successors in interest to such Sites or such project and shall contemporaneously notify the United States Department of Justice, EPA, the United States Army Corps of Engineers ("the Corps"), and the State at the addresses specified in Section XI below that such notice has been given. As a condition to any such transfer by Defendant, Defendant shall reserve all rights necessary to comply with the terms of this Consent Decree.

III. DEFINITIONS

Terms used in this Consent Decree that are defined in the CWA, the West Virginia WPCA or in regulations promulgated pursuant to the CWA or the West Virginia WPCA shall have the meanings assigned to them in the statute or such regulations, unless otherwise provided in this Consent Decree. Whenever the terms set forth below are used in this Consent Decree, the definitions in the following subparagraphs shall apply.

"Fair Market Value" means the difference between the relevant property value (a) before the restriction to be imposed pursuant to this Consent Decree is placed and (b) as if the restriction to be imposed pursuant this Consent Decree is in place as of a current date. Absent an objection from EPA as set forth below, such difference in value shall be determined by an appraisal that complies with the Uniform Appraisal Standards for Federal Land Acquisition (UASFLA or Yellow Book) and is performed by an appraiser who (a) is a State Certified General Real Property Appraiser, (b) is in good standing with the licensing authority where the credential was issued, (c) has demonstrated competency in compliance with UASFLA in conducting appraisals of properties with and without the restriction of the type to be imposed pursuant to this Consent Decree, (d) can provide documentation of appraisal education courses attended including course completion for the restriction to be imposed pursuant to this Consent Decree, and (e) has been approved by EPA, in consultation with the State, in writing. If EPA, in consultation with the State, does not object to the proposed appraiser within 60 days following notification of the selection of the proposed appraiser, the proposed appraiser shall be approved for the purpose of performing the appraisal. If EPA, in consultation with the State, does not object to the appraised difference in value within 30 days of receipt of the appraisal, then that figure shall be the Fair Market Value for the purposes of this Consent Decree. If EPA, in consultation with the State, objects to the appraised difference in value as not complying with the UASFLA standards within 30 days of receipt of the appraisal, and the parties cannot otherwise resolve EPA's objection, then the Fair Market Value shall be determined pursuant to the Dispute Resolution provisions in Section VIII of this Consent Decree.

"Impoundment" means a man-made excavation or diked area for the retention of fluids.

"Limits of Disturbance" means the outermost boundary of the area planned to be disturbed by construction, material storage, grading, grubbing, or landscaping as indicated by the design plan submitted to the State in an application to obtain a permit to construct.

"OG Facility" or "OG Facilities" means any surface impoundments, ponds, compressor stations, pipelines, well pads, and associated access roads that were or will be constructed or modified by, or on behalf of, Defendant.

"Qualified Wetlands Professional" means an individual trained to identify potential aquatic resources by education and experience. A QWP shall include one who has obtained a four-year degree in a wetland-related field and has completed at least a basic delineation training course (minimum of 24 hours of course time) in wetland science offered by professional trade associations, societies, government agencies or universities.

"Sites" means all of the locations where the Complaint filed with this Consent Decree alleges violations of the CWA and/or the West Virginia WPCA, as listed and fully described in Appendix A.

IV. SCOPE AND EFFECT OF CONSENT DECREE

6. This Consent Decree shall constitute a complete and final settlement of all civil and administrative claims for injunctive relief and penalties for the matters alleged in the Complaint against Defendant under CWA Section 301 and under Sections 8 and 22 of the West Virginia WPCA, W. Va. Code §§ 22-11-8 and 22-11-22, concerning the Sites. Accordingly, Plaintiffs hereby release Defendant from, and covenant not to sue Defendant again with respect

to, the civil claims for injunctive relief and civil penalties alleged in the Complaint against Defendant under CWA Section 301 and under Sections 8 and 22 of the West Virginia WPCA, W. Va. Code §§ 22-11-8 and 22-11-22, concerning the Sites, subject to Defendant's compliance with this Consent Decree.

7. It is the express purpose of the parties in entering this Consent Decree to further the objectives set forth in CWA Section 101, 33 U.S.C. § 1251, and Section 2 of the West Virginia WPCA, W. Va. Code § 22-11-2. All plans, studies, construction, remedial maintenance, compliance programs, and other obligations in this Consent Decree or resulting from the activities required by this Consent Decree shall have the objective of causing Defendant to achieve and maintain compliance with, and to further the purposes of, the CWA and the West Virginia WPCA.

8. Defendant and its agents, successors and assigns are enjoined from discharging any pollutant into waters of the United States at or from the Sites, unless such discharge complies with the provisions of the CWA and its implementing regulations.

9. The parties acknowledge that Nationwide Permit 32, found at 77 Fed. Reg. 10,184 (Feb. 21, 2012), authorizes any fill that was placed as of the date indicated on Appendix A to remain in place, subject to the conditions provided in Nationwide Permit 32, West Virginia's Standard Conditions for CWA Section 401 certification of Nationwide Permit 32, and this Consent Decree. The parties further acknowledge that Nationwide Permit 32 authorizes the discharge of dredged or fill material insofar as such discharge is necessary to complete the work required to be performed pursuant to this Consent Decree. Any such discharge of dredged or fill

material necessary for work required pursuant to this Consent Decree shall be subject to the conditions of Nationwide Permit 32, West Virginia's Standard Conditions for CWA Section 401 certification of Nationwide Permit 32, and this Consent Decree.

10. This Consent Decree is not and shall not be interpreted to be a permit or modification of any existing permit issued pursuant to Sections 402 or 404 of the CWA, 33 U.S.C. §§ 1342 or 1344, or any other law. Nothing in this Consent Decree shall limit the ability of the Corps to issue, modify, suspend, revoke or deny any individual permit or any nationwide or regional general permit, nor shall this Consent Decree limit the EPA's ability to exercise its authority pursuant to Section 404(c) of the CWA, 33 U.S.C. § 1344(c).

11. This Consent Decree in no way affects or relieves Defendant of its responsibility to comply with any applicable federal, state, or local law, regulation or permit.

12. This Consent Decree in no way affects the rights of the United States or the State as against any person not a party to this Consent Decree. This Consent Decree shall not be construed to create rights in, or to grant any cause of action to, any party that is not a party to this Consent Decree.

13. The United States and the State reserve any and all legal and equitable remedies available to enforce the provisions of this Consent Decree and applicable law.

14. Nothing in this Consent Decree shall constitute an admission of fact or law by any party.

15. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, civil penalties, or other appropriate relief relating to Defendant,

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 in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved as specified in Paragraph 6 of this Consent Decree.

16. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Consent Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein.

V. SPECIFIC PROVISIONS

CIVIL PENALTIES

17. Defendant shall pay a civil penalty to the United States in the amount of $1,600,000 and to the State in the amount of $1,600,000 within 30 days of entry of this Consent Decree.

18. Defendant shall make the above-referenced payment to the United States by FedWire Electronic Funds Transfer ("EFT" or wire transfer) to the U.S. Department of Justice account in accordance with current electronic funds transfer procedures, referencing U.S.A.O. file number 2013v00209, EPA Region 3 and the DOJ case number 90-5-1-1-19241. Payment shall be made in accordance with instructions provided to the Defendant by the Financial Litigation Unit of the United States Attorney's Office for the Northern District of West Virginia. Any payments

received by the Department of Justice after 4:00 P.M. (Eastern Time) will be credited on the next business day.

19. At the time of the making the payment as set forth in Paragraph 18, Defendant shall send by mail a copy of the EFT authorization form and the EFT transaction record, together with a transmittal letter stating that the payment is for the civil penalty owed pursuant to this Consent Decree in United States, et al. v. Chesapeake Appalachia, LLC, and referencing the DOJ case number, 90-5-1-1-19241, to the Department of Justice and EPA at the addresses set forth in Section XI of this Decree. Defendant shall also send a copy of the EFT form, transaction record, and transmittal letter by electronic mail to acctsreceivable.CINWD@epa.gov, and by mail to:

EPA Cincinnati Finance Office
26 Martin Luther King Drive
Cincinnati, Ohio 45268

20. Defendant shall make the payment to the State, as required by Paragraph 17 above, by certified or cashier's check to the WVDEP for deposit in the WVDEP's Water Quality Management Fund. The payment shall be mailed to:

Chief Inspector
Environmental Enforcement
West Virginia Department of Environmental Protection
601 57th Street, SE
Charleston, WV 25304

21. Defendant shall not deduct any penalties paid under this Consent Decree pursuant to this Section or Section X (Stipulated Penalties) in calculating its federal, state, or local income tax.

RESTORATION, MITIGATION AND PRESERVATION

22. Defendant shall perform restoration and mitigation projects under the terms and conditions stated in Appendix B appended hereto and incorporated herein by reference.

23. For the Sites in Lewis, Marshall, Upshur and Wetzel Counties, within 30 days of entry of this Consent Decree, Defendant shall purchase or shall have purchased at least 488.17 stream mitigation credits and at least 1.83 wetland mitigation credits ("Northern WV Mitigation Credits") from mitigation banks authorized to sell offsite mitigation credits, which may include the Hayes Run Mitigation Bank, Permit No. LRH-2009-150-LKR. To the extent such purchase is consistent with the instrument of each such mitigation bank, and subject to Paragraph 27(d) and Section II(f) of Appendix B, Plaintiffs agree that purchase of such Northern WV Mitigation Credits satisfies Defendant's compensatory mitigation obligations for such Sites. For the Site in Preston County, Plaintiffs agree that Defendant's compensatory mitigation obligation at such Site shall be satisfied by compliance with the relevant provisions as to that Site set forth in Section II(f) of Appendix B.

24. For the Sites in Boone, Kanawha and Mingo Counties, within 180 days of entry of this Consent Decree, Defendant shall purchase or shall have purchased at least 80.58 stream mitigation credits and at least 0.11 wetland mitigation credits ("Southern WV Mitigation Credits") from wetlands mitigation banks authorized to sell offsite mitigation credits, which may include the Spanishburg Mitigation Bank, Permit No. LRH-2010-00116-NEW. To the extent such purchase is consistent with the instrument of each such mitigation bank, and subject to Paragraph 27(d) and Section II(f) of Appendix B, Plaintiffs agree that purchase of such Southern

WV Mitigation Credits satisfies Defendant's compensatory mitigation obligations for such Sites; *provided, however*, to the extent that such Southern WV Mitigation Credits are not reasonably available from mitigation banks authorized to sell offsite mitigation credits, Defendant may (i) seek an extension based upon a demonstration that such Southern WV Mitigation Credits are reasonably expected to become available within the next 180 days, (ii) propose a stream and/or wetland mitigation project to be completed or funded by Defendant in compliance with Appendix B, or (iii) otherwise undertake compensatory mitigation in a manner consistent with 40 C.F.R. §§ 230.91-230.98 (2013).

25. Notwithstanding any other provisions of this Consent Decree, Defendant's acquisition of mitigation credits shall not, in the aggregate, exceed 1,693.03 stream credits and 2.22 wetland credits, as set forth in Appendix F, Table 2, to satisfy all its obligations to obtain compensatory mitigation pursuant to this Consent Decree ("Maximum Credit Obligation"); *provided, however*, that to the extent Defendant cannot obtain access to perform onsite restoration work consistent with Section VI of Appendix B at any particular Site, Defendant's Maximum Credit Obligation shall be increased based upon the stream (perennial, intermittent and ephemeral) and wetland impacts at such Site as set forth on Appendix F, Table 2 and the West Virginia Stream and Wetland Valuation Metric.

26. Defendant shall not mow, cut, clear, cultivate, dredge, excavate, farm, fill, dewater, drain or otherwise similarly disturb soils, vegetation, and/or water resources in any manner whatsoever at any site listed on Appendix C, except as approved by EPA (in consultation with the Corps) and the State. Upon completion of the terms and conditions of Appendix B at any other

Site, Defendant shall not mow, cut, clear, cultivate, dredge, excavate, farm, fill, dewater, drain or otherwise similarly disturb soils, vegetation, and/or water resources in any manner whatsoever at such Site, except as approved by EPA (in consultation with the Corps) and the State.

27. To ensure that Defendant takes all reasonable steps to prevent disturbance at all Sites, Defendant shall, within one-hundred and eighty (180) days after entry of this Consent Decree:

(a) for all Sites that Defendant holds in fee simple, record (or deliver to the grantee for recording) conservation easements ("Conservation Easements") with the deed recording office for the county where the parcel is located. The Conservation Easements shall comply with West Virginia's Conservation Easement Act, W. Va. Code Chapter 20, Article 12, identify EPA, the Corps, and WVDEP as third-party beneficiaries, and be substantially similar to the sample attached as Appendix D. The Conservation Easements must be granted to the WVDEP, the West Virginia Department of Natural Resources, or a "holder" satisfying the definition set forth at W. Va. Code Section 20-12-3(b) agreed to by EPA (in consultation with the Corps) and by WVDEP (in consultation with the West Virginia Department of Natural Resources). Upon recording of the Conservation Easements (or upon delivery to the grantee for recording), Defendant shall give notice to the United States, EPA, the Corps, and the State at the addresses in Section XI; or

(b) for all Sites that Defendant does not hold in fee simple, make a reasonable attempt to secure and record a conservation easement in the same form and manner as required by Paragraph 27(a) of this Consent Decree. In the event that a conservation easement is not secured

for any Site after Defendant has made and documented a reasonable attempt to secure one, Defendant shall make a reasonable attempt to secure and record deed restrictions ("Deed Restrictions") for the subject parcel with the deed recording office for the county where the parcel is located. The Deed Restrictions shall be substantially similar to the sample attached as Appendix E, and shall provide that each deed, title, or other instrument conveying an interest in the subject parcel shall contain a notice stating that the property is subject to this Consent Decree and shall reference the recorded location of the Consent Decree and any restrictions applicable to the property under this Consent Decree. Upon recording of the Deed Restrictions Defendant shall give notice to the United States, EPA, the Corps, and the State at the addresses in Section XI.

(c) For the purposes of this Paragraph 27, Defendant makes and documents a reasonable attempt to secure a conservation easement or a deed restriction by presenting the property owner with a certified letter, copied to EPA, the Department of Justice, the Corps, and the State at the addresses set forth in Section XI below, setting forth an offer to purchase or otherwise obtain the conservation easement or deed restrictions for a price reflecting at least the Fair Market Value for the conservation easement or deed restriction. Nothing in this Paragraph shall foreclose Defendant from negotiating with the property owner or offering a price that is less than the Fair Market Value.

(d) In the event that Defendant is unable to secure a conservation easement or deed restrictions after making a reasonable attempt to do so as required by Paragraph 27(b), then Defendant shall, as directed by EPA (in consultation with WVDEP and the Corps), provide additional compensatory mitigation to off-set the loss of permanent protection for the subject

parcel or parcels; *provided, however*, that such additional compensatory mitigation (i) shall not exceed the amount allocated to such Site on Appendix F, Table 2, and (ii) may be offset by mitigation at other Sites within the same eight-digit Hydrologic Unit Code to the extent the amount of such mitigation exceeds the mitigation obligations specified on Appendix F, Table 1, at the other Sites, the amount of such excess is established by a Restoration Plan approved by EPA in accordance with Appendix B, and the excess is at a Site subject to a Conservation Easement or Deed Restriction obtained in accordance with this Paragraph 27.

28. If the Conservation Easements or Deed Restrictions described in Paragraph 27 are found to be defective or unlawful at any time, the United States and/or the State may: (1) enforce this Paragraph against Defendant, or its successors or assigns, to obtain the granting of a conservation easement or deed restriction for the subject parcel that applies with applicable law; or (2) require additional compensatory mitigation to off-set the loss of permanent protection of a specific site in accordance with Paragraph 27(d).

COMPLIANCE ASSURANCE PROGRAM

29. Compliance. As required by existing law with regard to the discharge of dredged and/or fill material, at existing OG Facilities in West Virginia and at any OG Facilities subject to Paragraph 33(a)(i) of this Consent Decree, Chesapeake Appalachia, LLC, shall comply with Section 404 of the CWA and applicable regulations, shall comply with Sections 6 and 8 of the WPCA, W. Va. Code §§ 22-11-6 and 22-11-8, and applicable regulations (including the State's Requirements Governing Water Quality Standards, W. Va. Code R. § 47-2-1, *et seq.*), shall not violate the prohibition in Section 301(a) of the CWA by discharging dredged or fill material to

waters of the United States without a permit, and shall obtain all necessary permits prior to undertaking any action that may involve the discharge of dredged or fill material to waters of the United States.

30. Training. Within thirty (30) days after entry of this Consent Decree, Defendant shall develop a training program to ensure compliance with the CWA with respect to the discharge of dredged and/or fill material and to ensure implementation of the Compliance Protocol required in Paragraph 33. The training program shall be provided to employees and contractors of Defendant and Defendant's affiliates whose responsibilities include the design and construction of Defendant's OG Facilities in West Virginia, Virginia, Maryland, and Pennsylvania, and to employees of Defendant and Defendant's affiliates who supervise employees and contractors whose responsibilities include the design and construction of Defendant's OG Facilities, in West Virginia, Virginia, Maryland, and Pennsylvania, for a period of five years after the entry of this Consent Decree.

31. List of Facilities. For a period of five years after the entry of this Consent Decree, Defendant shall establish and provide to EPA, the Corps, and the State, upon their written request as specified below, at the addresses set forth in Section XI, a list of all well pads and Impoundments constructed or under construction by, or on behalf of, Defendant in West Virginia. The list required by this Paragraph shall identify the latitude/longitude of each such facility, the county where the facility is located, and the type of operation; provided, however, that nothing in this Paragraph shall preclude EPA, the Corps, or the State from requesting additional information in accordance with applicable law. Within 30 days of a written request by EPA, the Corps, or the

State, a current list shall be provided to representatives of EPA, the Corps, and/or the State and shall include any such facilities existing or under construction as of the date of the request. Defendant may assert that all or portions of such list include confidential business information ("CBI"). If Defendant asserts that all or portions of such list include CBI, EPA, the Corps, and the State will follow their existing procedures for handling CBI. See 40 C.F.R. §§ 2.201-2.215 & 2.302; 32 C.F.R. §§ 286.12(d), 518.13(d); W. Va. Code § 29B-1-4; and WVDEP Communication Policy #10 (Information Requests).

32. Designation of Compliance Representatives.

a. Within 21 days after the entry of this Consent Decree, Defendant shall designate, and for a period of five years thereafter shall maintain, one Regional Compliance Representative with responsibility for oversight of all activities that involve or may involve discharges of dredged or fill material into waters of the United States for each of Defendant's OG Facilities in West Virginia. The Regional Compliance Representative must:

(i) be an employee of Defendant or Defendant's affiliates;

(ii) have completed the training described in Paragraph 30 not later than 60 days after entry of this Consent Decree or, with respect to a Regional Compliance Representative designated pursuant to Paragraph 32(c), within 30 days of such designation;

(iii) serve as Defendant's point of contact for EPA, the Corps, and WVDEP with respect to matters involving Defendant's compliance with the CWA and the West Virginia WPCA, as each is applied to the discharge of dredged and/or fill material, for OG

Facilities within West Virginia; provided, however, that any communications regarding compliance with this Consent Decree shall include the addressees identified in Paragraph 60.E;

(iv) be authorized by Defendant and have the responsibility to supervise the actions of the Facility Compliance Representatives, as described below, and all work necessary to meet the requirements of Sections 301 and 404 of the CWA and the requirements of the West Virginia WPCA, as each is applied to the discharge of dredged and/or fill material, at OG Facilities within West Virginia; and

(v) be responsible for providing and updating the list of facilities described in Paragraph 31 above.

b. Within 21 days after the entry of this Consent Decree, Defendant shall designate, and for a period of five years thereafter shall maintain, at least one Facility Compliance Representative for each OG Facility within West Virginia. Defendant may designate the same Facility Compliance Representative for one or more OG Facilities covered by this subparagraph. The Facility Compliance Representative must fulfill all responsibilities and requirements as set forth below, regardless of the number of OG Facilities where that individual has been designated as the Facility Compliance Representative. Each Facility Compliance Representative shall:

(i) be an employee of Defendant or Defendant's affiliates;

(ii) have completed the training described in Paragraph 30 above not later than 90 days after entry of this Consent Decree or, with respect to a Facility Compliance Representative designated pursuant to Paragraph 32(c), within 30 days of such designation;

(iii) be authorized by Defendant and have the responsibility to supervise

all work necessary (including work performed by contractors, sub-contractors and consultants) to comply with Sections 301 and 404 of the CWA and to meet the requirements of the West Virginia WPCA, as each is applied to the discharge of dredged and/or fill material, at OG Facilities within West Virginia;

(iv) be authorized by Defendant and have the responsibility to order employees, contractors, sub-contractors, consultants, and other agents to take appropriate actions to ensure compliance, and address any failure to comply, with Sections 301 and 404 of the CWA and with the West Virginia WPCA, as each is applied to the discharge of dredged and/or fill material, at OG Facilities within West Virginia;

(v) report to the Regional Compliance Representative regarding compliance with the CWA and the West Virginia WPCA with respect to such OG Facilities; and

(vi) ensure that operations at such OG Facilities are consistent with the Compliance Protocol described in Paragraph 33 below.

c. If a Regional or Facility Compliance Representative must be replaced and Defendant replaces him or her within 30 days of the vacancy, the gap in designation shall not be considered a violation of Paragraph 32. However, the gap in designation shall not excuse non-compliance with any other requirement of this Consent Decree. Defendant shall notify EPA, the State, and the Corps of any change in a Regional or Facility Compliance Representative within fifteen days of such replacement.

33. Compliance Protocol. Within thirty (30) days of the entry of this Consent Decree, and for a period of five years thereafter, Defendant shall implement the Compliance Protocol described in this Paragraph at all of its OG Facilities in West Virginia:

a. The Compliance Protocol shall include the following elements:

(i) Prior to the submission to WVDEP of any application for a permit to drill for a well pad that would require new land disturbing activities or additional land disturbing activities outside any existing Limits of Disturbance at an OG Facility, or the submission of any application to WVDEP for a permit to construct any Impoundment (including any pond) or to conduct any other construction activity, or any application to the West Virginia Division of Highways to construct or enhance an access road associated with a well pad, Defendant shall use a Qualified Wetlands Professional, trained in the implementation of the 1987 Corps Wetlands Manual and Regional Supplements, as may be amended, to visit such OG Facility and provide an assessment regarding the potential presence of all aquatic resources (including but not limited to streams and wetlands), both within the Limits of Disturbance and within 300 horizontal feet beyond the Limits of Disturbance of the OG Facility ("Pre-Application Assessment"). In the event that Defendant, after making a reasonable effort, cannot obtain access to property that is beyond the Limits of Disturbance, the Qualified Wetlands Professional may rely upon remote sensing data to identify aquatic resources on such property for the purpose of the Pre-Application Assessment. The remote sensing data must include review of the NRCS Soil Survey Geographic Database for the presence of mapped hydric soils and the 1:4,800 Scale WV SAMB Stream Layer available at http://wvgis.wvu.edu/data/dataset.php?ID=265. In addition, the

Pre-Application Assessment based on such remote sensing data must include an analysis of reasonably available aerial photographs and topographic features, such as contours, to identify small streams not identified in the WV SAMB Stream Layer or the USGS National Hydrography Dataset;

(ii) To the extent that a Pre-Application Assessment identifies potential impacts to aquatic resources (including but not limited to streams and wetlands) within the Limits of Disturbance or within 100 horizontal feet beyond the Limits of Disturbance of the OG Facility and Defendant does not elect to pursue an alternative for the construction activity that would avoid impacts to aquatic resources based upon a Pre-Application Assessment, Defendant shall:

(a) Prepare documentation of the consideration of alternatives for such OG Facility that would involve fewer impacts to aquatic resources, and documentation of why such alternatives were not selected, including, as applicable, why such alternatives were not deemed practicable as that term is defined at 40 C.F.R. § 230.2(q);

(b) Design such OG Facility to avoid and minimize to the maximum extent practicable impacts to aquatic resources within the Limits of Disturbance or within 100 horizontal feet of the Limits of Disturbance of the proposed OG Facility;

(c) Implement construction techniques at such OG Facility that: are certified by a registered professional engineer as consistent with sound engineering practices; ensure rapid stabilization of disturbed earth, including but not limited to, construction on/of a slope no greater than 2:1; provide for temporary and permanent seed planting (including the use of native, non-invasive species), appropriate erosion and sediment controls consistent with the

State or local Erosion & Sediment Handbook applicable to the proposed physical operation location;

(d) Submit, prior to construction of such OG Facility, all necessary permit applications, including but not limited to, any necessary application pursuant to the West Virginia WPCA, and any necessary application pursuant to Section 404 of the CWA for the discharge of dredged and/or fill material, including but not limited to individual permits or any applicable Nationwide Permits for which a preconstruction notification is required;

(e) Comply with the advance notification requirements of this Consent Decree, described in Paragraph 34 below;

(f) Delay construction of such OG Facility until all required permits and/or authorizations for the discharge of dredged and/or fill material are received from the Corps and/or the State;

(g) Stabilize disturbed areas, and restore any affected aquatic resources, as soon as practicable at such OG Facility insofar as such stabilization and restoration is not inconsistent with the terms of any West Virginia WPCA permit or CWA Section 404 permit authorizing the discharge of dredged and/or fill material at the OG Facility.

b. Defendant shall incorporate the Compliance Protocol into Defendant's standard operating procedures in West Virginia, including any applicable manuals or other documentation setting forth such procedures, ensure that the Compliance Protocol is provided to each Facility Compliance Representative, and ensure that Defendant's contractors performing the land disturbing activities described in Paragraph 33(a)(i) comply with the Compliance Protocol.

c. Nothing in this Paragraph 33 shall be interpreted to relieve Defendant from the requirements of the CWA or the West Virginia WPCA, including the requirement to obtain authorization under Section 404 of the CWA for the discharge of dredged or fill material into waters of the United States. Moreover, except for the claims resolved under Paragraph 6 of this Consent Decree, Plaintiffs reserve in full their authority to institute a civil, criminal, or administrative action pursuant to the CWA and/or the West Virginia WPCA for any unauthorized discharge of dredged or fill material.

34. Advance Notification. For a period of twelve months after entry of this Consent Decree, Defendant shall, prior to undertaking any construction in West Virginia that may involve discharges of dredged or fill material into waters of the United States that Defendant believes would qualify for Nationwide Permit 12 and/or 14 under the CWA but would not otherwise require submission of preconstruction notification, submit advance notice to all parties listed in Paragraph 60 and in accordance with Nationwide Permit General Condition 31.

VI. NOTICES AND OTHER SUBMISSIONS

35. Each March 30 and September 30 Defendant shall provide the United States and the State with a written status report detailing Defendant's progress toward completing all tasks required by this Consent Decree. The status report shall be sent to the addresses specified in Section XI of this Consent Decree.

36. If a required task has been completed, the notice shall specify the date when it was completed. If the required task was completed after the scheduled time for such completion required by the Consent Decree, the notice shall explain the reasons for such delay.

37. In all notices, documents or reports submitted to the United States pursuant to this Consent Decree, the Defendant shall, by signature of a senior management official, certify such notices, documents and reports as follows:

> 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 such information, the information submitted is, to the best of my knowledge and belief, 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.

VII. RETENTION OF RECORDS AND RIGHT OF ENTRY

38. During the existence of this Consent Decree, and until five years after the termination of this Consent Decree, Defendant shall preserve and retain all records, documents, and information of any kind now in its possession or control or which come into its possession or control that relate in any manner to the performance of the tasks in this Consent Decree (including all Appendices), regardless of any corporate retention policy to the contrary. During the existence of this Consent Decree, and until five years after the termination of this Consent Decree, Defendant shall also instruct its contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to the performance of the tasks in this Consent Decree (including Appendices).

39. At the conclusion of the document retention period, Defendant shall notify the United States and the State at least 90 days prior to the destruction of any such records or documents, and, upon request by the United States or the State, Defendant shall deliver any such

records or documents to EPA or the State, as applicable. The Defendant may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Defendant asserts such a privilege, it shall provide the United States or the State, as applicable, with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Defendant. However, no final documents, reports or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on the grounds that they are privileged.

40. Inspections.

a. Until termination of this Consent Decree, the United States, WVDEP, and their authorized representatives and contractors shall have authority at all reasonable times to enter OG Facilities owned or operated by Defendant in West Virginia to:

(i) Monitor the activities required by this Consent Decree;

(ii) Verify any data or information submitted to the United States or WVDEP;

(iii) Obtain samples;

(iv) Inspect and evaluate Defendant's restoration, mitigation and/or preservation activities; and

(v) Inspect and review any records required to be kept under the terms and conditions of this Consent Decree and the CWA.

b. This Paragraph 40 of this Consent Decree is in addition to, and in no way limits or otherwise affects, the statutory authorities of the United States or WVDEP to conduct inspections, to require monitoring and to obtain information from the Defendant as authorized by law.

VIII. DISPUTE RESOLUTION

41. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section VIII shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. If Defendant is aware, or reasonably should have been aware, of a dispute with respect to the meaning or requirements of this Consent Decree prior to an action by the United States to enforce any obligation of this Consent Decree against Defendant, but Defendant fails to seek resolution of such dispute under this Section VIII prior to such action by the United States, then Defendant shall be precluded from raising the disputed issue as a defense to such action by the United States.

42. Any dispute that arises with respect to the meaning or requirements of this Consent Decree shall be, in the first instance, the subject of informal negotiations between the parties to attempt to resolve such dispute. The period for informal negotiations shall not extend beyond thirty (30) days beginning with written notice by one party to the other affected party or parties that a dispute exists, unless agreed to in writing by those parties. If a dispute between the United States and/or the State, on the one hand, and Defendant, on the other, cannot be resolved by

informal negotiations, then the written position advanced by the United States following consultation with the State shall be considered binding unless, within fourteen (14) days after the end of the informal negotiations period, the Defendant files a motion with the Court seeking resolution of the dispute. The motion shall set forth the nature of the dispute and a proposal for its resolution. The United States, in consultation with the State, shall have thirty (30) days to respond to the motion and propose an alternate resolution. In resolving any such dispute, Defendant shall bear the burden of proving by a preponderance of the evidence that the United States' position is not in accordance with the objectives of this Consent Decree and the CWA (and the West Virginia WPCA, as applicable), and that Defendant's position will achieve compliance with the terms and conditions of this Consent Decree and the CWA (and the West Virginia WPCA, as applicable).

43. If the United States or the State believes that a dispute is not a good faith dispute, or that a delay would pose or increase a threat of harm to the public or the environment, the United States or the State may move the Court for a resolution of the dispute prior to the expiration of the thirty (30) day period for informal negotiations. Defendant shall have fourteen (14) days to respond to the motion and propose an alternate resolution. In resolving any such dispute, Defendant shall bear the burden of proving by a preponderance of the evidence that the United States' position is not in accordance with the objectives of this Consent Decree, and that the Defendant's position will achieve compliance with the terms and conditions of this Consent Decree and the CWA (and the West Virginia WPCA, as applicable).

44. The filing of a motion asking the Court to resolve a dispute shall not extend or postpone any obligation of Defendant under this Consent Decree, except as provided in Section X below regarding payment of stipulated penalties.

IX. FORCE MAJEURE

45. Defendant shall perform the actions required under this Decree within the time limits set forth or approved herein, unless the performance is prevented or delayed solely by events which constitute a Force Majeure event. A Force Majeure event is defined as any event or series of related events arising from causes beyond the control of Defendant, including its employees, agents, consultants and contractors, which could not be overcome by due diligence and which delays or prevents the performance of an action required by this Consent Decree within the specified time period. A Force Majeure event does not include, inter alia, increased costs of performance, changed economic circumstances, changed labor relations, normal precipitation or climate events, changed circumstances arising out of the sale, lease or other transfer or conveyance of title or ownership or possession of a site, or failure to obtain federal, state, or local permits, unless Defendant has timely applied for such federal, state or local permits and has provided all information required by the federal, state, or local authority in connection with such permit(s).

46. If Defendant believes that a Force Majeure event has affected its ability to perform any action required under this Consent Decree, Defendant shall notify the United States and the State in writing within ten (10) calendar days after the Force Majeure event at the addresses listed in Section XI. Such notice shall include a discussion of the following:

A. what action has been affected;

B. the specific cause(s) of the delay;

C. the length or estimated duration of the delay; and

D. any measures taken or planned by Defendant to prevent or minimize the delay and a schedule for the implementation of such measures.

Defendant may also provide to the United States and the State any additional information that Defendant deems appropriate to support its conclusion that a Force Majeure event has affected its ability to perform an action required under this Consent Decree. Failure to provide timely and complete notification to the United States and the State shall constitute a waiver of any claim of Force Majeure as to the event in question.

47. If the United States, after a reasonable opportunity for consultation with the State, determines that the conditions constitute a Force Majeure event, then the deadline for the affected action shall be extended by the amount of time of the delay caused by the Force Majeure event. Defendant shall coordinate with the United States and the State to determine when to begin or resume the operations that had been affected by any Force Majeure event.

48. If the parties are unable to agree whether the conditions constitute a Force Majeure event, or whether the length of time for fulfilling the provision of the Consent Decree at issue should be extended, Defendant or the United States (in consultation with the State) may seek a resolution of the dispute under the procedures in Section VIII of this Consent Decree.

49. Defendant shall bear the burden of proving (1) that the noncompliance at issue was caused by circumstances entirely beyond the control of Defendant and any entity controlled by

Defendant, including its contractors and consultants; (2) that Defendant or any entity controlled by Defendant could not have avoided or prevented noncompliance by due diligence; and (3) the number of days of noncompliance that were caused by such circumstances.

X. STIPULATED PENALTIES

50. After entry of this Consent Decree, if Defendant fails to timely fulfill any requirement of the Consent Decree (including Appendix B), then Defendant shall pay a stipulated penalty to the United States and the State for each violation of each requirement of this Consent Decree as follows:

A.	For Day 1 up to and including Day 30 of non-compliance	$1,000.00 per day
B.	For Day 31 up to and including 60 of non-compliance	$2,000.00 per day
C.	For Day 61 and beyond of non-compliance	$3,000.00 per day

A violation includes failing to perform any obligation required by the terms of this Consent Decree, including any work plan or schedule approved under this Decree, according to all applicable requirements of this Decree and within the specified time schedules established by or approved under this Decree. Stipulated penalties under this Section X 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.

51. Defendant shall pay any stipulated penalty within forty-five (45) days of the date Defendant receives a demand by either Plaintiff. The Plaintiff making the demand for payment of

a stipulated penalty shall simultaneously send a copy of the demand to the other Plaintiff by electronic or first-class mail. Defendant shall pay 50 percent of the total stipulated penalty amount to the United States and 50 percent to the State.

52. Either the United States or the State may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties that would otherwise be due to it under this Consent Decree.

53. Any disputes concerning the amount of stipulated penalties, or the underlying violation that gives rise to the stipulated penalties, that cannot be resolved by the parties pursuant to the Dispute Resolution provisions in Section VIII and/or the Force Majeure provisions in Section IX shall be resolved upon motion to this Court as provided in Paragraphs 42 and 43 (Dispute Resolution).

54. The filing of a motion requesting that the Court resolve a dispute shall stay Defendant's obligation to pay any stipulated penalties with respect to the disputed matter pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall continue to accrue from the first day of any failure or refusal to comply with any term or condition of this Consent Decree. In the event that Defendant does not prevail on the disputed issue, stipulated penalties shall be paid by Defendant as provided in this Section.

55. To the extent Defendant demonstrates to the Court that a delay or other non-compliance was due to a Force Majeure event (as defined in Section IX above) or otherwise prevails on the disputed issue, the Court shall excuse the stipulated penalties for that delay or non-compliance.

56. In the event that a stipulated penalty payment is applicable and not made on time, Defendant shall be liable for interest on such penalties in accordance with the statutory judgment interest rate provided for in 28 U.S.C. § 1961. The interest shall be computed daily from the time the payment is due until the date the payment is made. The interest shall also be compounded annually. Nothing in this Paragraph shall be construed to limit the United States or the State from seeking any remedy otherwise provided by law for Defendant's failure to pay any stipulated penalties.

57. Defendant shall make any payment of a stipulated penalty to the United States by FedWire Electronic Funds Transfer ("EFT" or wire transfer) to the U.S. Department of Justice account in accordance with current electronic funds transfer procedures, referencing U.S.A.O. file number 2013v00209, EPA Region 3 and the DOJ case number 90-5-1-1-19241. Payment shall be made in accordance with instructions provided to the Defendant by the Financial Litigation Unit of the United States Attorney's Office for the Northern District of West Virginia. Any payments received by the Department of Justice after 4:00 P.M. (Eastern Time) will be credited on the next business day. Further, at the time of the making the payment as set forth in this Paragraph, Defendant shall send by mail a copy of the EFT authorization form and the EFT transaction record, together with a transmittal letter stating that the payment is for stipulated penalties owed pursuant to this Consent Decree in United States, et al. v. Chesapeake Appalachia, LLC, and referencing the DOJ case number, 90-5-1-1-19241, to the Department of Justice and EPA at the addresses set forth in Section XI of this Decree. Defendant shall also send a copy of the EFT

form, transaction record, and transmittal letter by electronic mail to acctsreceivable.CINWD@epa.gov, and by mail to:

EPA Cincinnati Finance Office
26 Martin Luther King Drive
Cincinnati, Ohio 45268

58. Defendant shall make any payment of a stipulated penalty to the State by certified or cashier's check to the WVDEP for deposit in the WVDEP's Water Quality Management Fund. The payment shall be mailed to:

Chief Inspector
Environmental Enforcement
West Virginia Department of Environmental Protection
601 57th Street, SE
Charleston, WV 25304

59. Subject to Paragraph 6 of this Consent Decree, the stipulated penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to the United States or the State for Defendant's violation of this Consent Decree or applicable law.

XI. ADDRESSES

60. All notices and communications required under this Consent Decree shall be made to the parties through each of the following persons and addresses:

A. TO EPA:

(1) Stefania D. Shamet
Senior Assistant Regional Counsel
Water and General Law Branch
Office of Regional Counsel
United States Environmental Protection Agency
Region III
MC 3RC20
1650 Arch St.

Philadelphia, PA 19103-2029

(2) Associate Director, Office of Environmental Programs
Environmental Assessment and Innovation Division
United States Environmental Protection Agency
Region III
MC 3EA40
1650 Arch St.
Philadelphia, PA 19103-2029

B. TO THE UNITED STATES DEPARTMENT OF JUSTICE

Kenneth C. Amaditz
Chloe H. Kolman
Trial Attorneys
Environmental Defense Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611

C. TO THE CORPS:

Dana M. Adipietro
Assistant District Counsel
U.S. Army Corps of Engineers
Pittsburgh District
1000 Liberty Ave., 22nd Floor
Pittsburgh, PA 15222

D. TO THE STATE/WVDEP:

Chief Inspector
Environmental Enforcement
West Virginia Department of Environmental Protection
601 57th St.
Charleston, WV 25304

James Martin, Chief
Office of Oil and Gas
West Virginia Department of Environmental Protection
601 57th St.

Charleston, WV 25304

E. TO DEFENDANT:

Chief Compliance Officer
Chesapeake Appalachia, LLC
6100 N. Western Ave.
Oklahoma City, OK 73118

Jason B. Hutt
Richard Alonso
Bracewell & Giuliani LLP
2000 K St. NW, Suite 500
Washington, D.C. 20006

XII. COSTS OF SUIT

61. Each party to this Consent Decree shall bear its own costs and attorneys' fees in this action, except that the United States and/or the State shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to enforce this Consent Decree or to collect any portion of the civil penalty or any stipulated penalties due but not paid by Defendant.

XIII. PUBLIC COMMENT

62. The parties acknowledge that after the lodging and before the entry of this Consent Decree, final approval by the United States and the State is subject to the requirements of 28 C.F.R. § 50.7, and the W. Va. Code R. § 47-10-16.2.c, which provide for public notice and comment. The United States reserves the right to withhold or withdraw its consent to the entry of this Consent Decree if the comments received disclose facts which lead the United States to conclude that the proposed judgment is inappropriate, improper, or inadequate. Defendant agrees not to withdraw from, oppose entry of, or to challenge any provision of this Consent Decree,

unless the United States has notified Defendant in writing that it no longer supports entry of the Consent Decree.

XIV. CONTINUING JURISDICTION OF THE COURT

63. This Court shall retain jurisdiction over this action in order to enforce or modify the Consent Decree consistent with applicable law or to resolve all disputes arising hereunder as may be necessary or appropriate for construction or execution of this Consent Decree. During the pendency of the Consent Decree, any party may apply to the Court for any relief necessary to construe and effectuate the Consent Decree.

XV. MODIFICATION

64. Upon its entry by the Court, this Consent Decree shall have the force and effect of a final judgment. Any modification of this Consent Decree shall be in writing, and shall not take effect unless signed by the United States, the State, and Defendant and approved by the Court; provided, however, that schedules for the completion of tasks required by Paragraph 22 and Appendix B and revisions to plans submitted and approved pursuant to Appendix B may be modified by written agreement of the United States, the State, and Defendant.

XVI. TERMINATION

65. Except for Paragraphs 26, 28, 38, and 39, this Consent Decree may be terminated by either of the following:

a. Defendant, the United States, and the State may at any time make a joint motion to the Court for termination of this Decree or any portion of it; or

b. After Defendant has paid the civil penalty and fulfilled all of the obligations in Paragraphs 17-20, 22-25, 27 and 30-34 of this Consent Decree (including any compliance period associated with those obligations), has complied with all other requirements of this Consent Decree, and has paid any accrued stipulated penalties as required by this Consent Decree, Defendant may serve a Request for Termination on the United States, EPA and the State. The Request for Termination shall state that Defendant has satisfied all requirements of this Consent Decree, including but not limited to all obligations in Paragraphs 17-20, 22-25, 27 and 30-34, and has implemented the requirements of Paragraphs 29-34 for a period of at least 12 months. The Request for Termination shall also include supporting documentation sufficient to demonstrate that Defendant has satisfied the foregoing criteria. Following service of Defendant's Request for Termination, the Parties may confer informally concerning the Request.

(i) If the United States and the State agree that the Consent Decree may be terminated, the parties shall submit, for the Court's approval, a joint stipulation to terminate the Consent Decree.

(ii) If the United States or the State does not agree that the Consent Decree may be terminated, then Defendant may submit a motion to the Court asking for termination of the Consent Decree without invoking Dispute Resolution under Section VIII of this Consent Decree; provided, however, that Defendant shall not submit such motion until 90 days after service of its Request for Termination on the United States and the State, and Defendant shall bear the burden of proving by a preponderance of the evidence that Defendant's position is

in accordance with the terms and conditions of this Consent Decree and the requirements of the CWA (and the West Virginia WPCA, as applicable).

XVII. SIGNATORIES/SERVICE

66. Each of the undersigned certifies that he or she 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.

67. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. 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.

XVIII. APPENDICES

68. The following appendices are attached to and part of this Consent Decree: Appendix A; Appendix B; Appendix C; Appendix D; Appendix E; and Appendix F.

IT IS SO ORDERED.

Dated and entered this _____ day of _____, 201_.

_____
United States District Judge

United States, et al. v. CALLC (N.D.W. Va.)

ON BEHALF OF THE UNITED STATES:

ROBERT G. DREHER
Acting Assistant Attorney General
Environment and Natural Resources Division

Dated: 12/19/13

Kenneth C. Amaditz
Chloe H. Kolman
Trial Attorneys
Environmental Defense Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
(202) 514-3698 (Amaditz)
(202) 514-9277 (Kolman)

United States, et al. v. CALLC (N.D.W. Va.)

U.S. ENVIRONMENTAL PROTECTION AGENCY

CYNTHIA GILES
Assistant Administrator
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

SUSAN SHINKMAN
Office Director
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

for MARK POLLINS
Division Director
Water Enforcement Division
Office of Civil Enforcement
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

for BENJAMIN BAHK
Acting Branch Chief, Industrial Enforcement Branch
Water Enforcement Division
Office of Civil Enforcement
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (MC-2243A)
Washington, D.C. 20460

J. CLARKE THURMON
Attorney-Advisor
Water Enforcement Division
Office of Civil Enforcement
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (MC-2243A)
Washington, D.C. 20460

United States, et al. v. CALLC (N.D.W. Va.)

U.S. ENVIRONMENTAL PROTECTION AGENCY

Dated: 12/18/13

Regional Administrator
U.S. Environmental Protection Agency
Region III

United States, et al. v. CALLC (N.D.W. Va.)

ON BEHALF OF THE WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION:

Dated: 12/16/13

Scott Mandriola
Director
Division of Water and Waste Management
West Virginia Department of Environmental Protection
601 57th Street Southeast
Charleston WV 25304
(304) 926-0499

Dated: 12/16/13

Scott Driver
Associate Attorney
West Virginia Department of Environmental Protection
601 57th Street Southeast
Charleston WV 25304
(304) 926-0499

United States, et al. v. CALLC (N.D.W. Va.)

ON BEHALF OF DEFENDANT CHESAPEAKE APPALACHIA, LLC

David Bert

Dated: 12/16/2013

David Bert
Vice President - Drilling
Chesapeake Appalachia, LLC
6100 N. Western Ave.
Oklahoma City, OK 73118
(405) 935-6882