SETTLEMENT AGREEMENT

WHEREAS, on April 17, 2015, the United States Environmental Protection Agency ("EPA") published a regulation promulgated pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. §6901, *et seq.* ("RCRA"), titled "Hazardous and Solid Waste Management System; Disposal of Coal Combustion Residuals from Electric Utilities," 80 Fed. Reg. 21,302 (Apr. 17, 2015) ("Final Rule");

WHEREAS, Clean Water Action, Environmental Integrity Project, Hoosier Environmental Council, PennEnvironment, Prairie Rivers Network, Sierra Club, Tennessee Clean Water Network, and Waterkeeper Alliance (collectively "Environmental-Petitioners") and Utility Solid Waste Activities Group, Edison Electric Institute, National Rural Electric Cooperative Association, American Public Power Association, Beneficial Reuse Management, Lafarge North America Inc., Lafarge Midwest, Inc., Lafarge Building Materials Inc., Associated Electric Cooperative, Inc., City of Springfield, Missouri Board of Public Utilities, and AES Puerto Rico, LP (collectively "Industry-Petitioners"), have petitioned for review of the Final Rule in the United States Court of Appeals for the District of Columbia (the "Court") in seven separate actions consolidated under D.C. Circuit Case No. 15-1219 (the "Pending Action");

WHEREAS, in response to certain of the claims in the Pending Action, Respondent EPA has determined that it is prudent to reconsider through further administrative proceedings certain specific provisions of the Final Rule ("Reconsidered Provisions") and to file with the Court a Motion to Remand the Reconsidered Provisions ("Motion to Remand"), said Motion being unopposed by Environmental-Petitioners and Industry-Petitioners, except that the undersigned Industry-Petitioners take no position on the remand of Reconsidered Provision D and the remand and vacatur of Reconsidered Provision B; the remaining Industry-Petitioners have authorized counsel for the undersigned Industry Petitioners to state that the issues addressed in the Motion

to Remand are not among the issues they are pursuing in the Pending Action and that they accordingly take no position on the Motion to Remand;

WHEREAS, the Reconsidered Provisions call for the following:

A. Remand with vacatur of the of the phrase "not to exceed 6 inches above the slope of the dike" within 40 C.F.R. §§ 257.73(a)(4), 257.73(d)(1)(iv), 257.74(a)(4), and 257.74(d)(1)(iv);

B. Remand with vacatur of 40 C.F.R. § 257.100, *except* for the following clause contained in 40 C.F.R. § 257.100(a): "Inactive CCR surface impoundments are subject to all of the requirements of this subpart applicable to existing CCR surface impoundments;" Such vacatur shall be effective as set forth in the Motion to Remand;

C. Remand without vacatur of:

1. The sentence in 40 C.F.R. § 257.90(d) that provides: "The owner or operator of the CCR unit must comply with all applicable requirements in 257.96, 257.97, and 257.98;" and

2. The phrase in 40 C.F.R. § 257.96(a) that provides "or immediately upon detection of a release from a CCR unit," said remand for the purpose of proposing to clarify the type and magnitude of non-groundwater releases that would require a facility to comply with some or all of the corrective action procedures set forth in 40 C.F.R. §§ 257.96-257.98 in meeting their obligation to clean up the release;

D. Remand without vacatur of Appendix IV to the Final Rule for the sole purpose of proposing that Boron be added to the list of constituents in Appendix IV that trigger assessment monitoring and corrective action; and

E. Remand without vacatur of 40 C.F.R. § 257.103(a) and § 257.103(b) for further consideration of whether to expand this provision to situations in which a facility needs to continue to manage waste streams other than CCR in the waste unit;

WHEREAS the remand, and vacatur where applicable, of the Reconsidered Provisions may have some effect on one or more of the Environmental and/or Industry Petitioners or members thereof, and the Parties agree to attempt to address those effects through this Settlement Agreement ("Agreement"); and

WHEREAS, it is in the interest of the public, the Parties, and judicial economy to resolve the identified issues without further litigation;

NOW, THEREFORE, the Environmental-Petitioners, the undersigned Industry-Petitioners, and EPA, each intending to be bound by this Agreement, hereby agree as follows:

I. PARTIES

1. The Parties to this Agreement are Environmental-Petitioners, the undersigned Industry-Petitioners, and EPA (collectively the "Parties"). The Parties understand that Gina McCarthy was sued in her official capacity as Administrator of the United States Environmental Protection Agency and that the obligations arising under this Agreement are to be performed by EPA and not by Gina McCarthy in her individual capacity.

2. This Agreement applies to, is binding upon, and inures to the benefit of Environmental-Petitioners and the undersigned Industry-Petitioners (and their successors, assigns, and designees) and EPA.

II. ACTIONS TO BE TAKEN BY EPA

3. EPA shall publish a proposed rule or rules ("Remand Rule") to:

A. In response to the vacatur and remand of the provisions requiring "vegetative slopes of dikes not to exceed a height of 6 inches above the slope of the dike" in 40 C.F.R. §§ 257.73(a)(4), 257.73(d)(1)(iv), 257.74(a)(4), and 257.74(d)(1)(iv), establish requirements relating to the use of vegetation as slope protection on CCR surface impoundment dikes;

B. Clarify the type and magnitude of non-groundwater releases that would require a facility to comply with some or all of the corrective action procedures set forth in 40 C.F.R. §§ 257.96-257.98 in meeting their obligation to clean up the release; and

C. Add Boron to the list of contaminants in Appendix IV of the Final Rule that trigger the assessment monitoring and corrective action requirements under the Final Rule.

4. EPA shall issue the proposed Remand Rule(s) described in paragraph 3 above as soon as practicable. EPA presently intends to take final action on the matters set forth in paragraph 3 above (the Remand Rule) within three years of an Order from the Court granting the Motion for Remand. Any final rule or rules issued with regard to the remanded issues will be based on the comments received on the proposed Remand Rule(s) and other pertinent information and data. Nothing herein shall be construed to prejudge the substance, findings or provisions of any final Remand Rule(s) issued by EPA pursuant to this Agreement.

5. In order to ameliorate the effects to those owners or operators who relied on the early closure provision (40 C.F.R. § 257.100) that EPA seeks to vacate through the Motion to Remand, EPA shall propose a rule (the "Extension Rule") that is applicable only to those owners or operators that by December 17, 2015, submitted notification of their intent to initiate closure of an inactive CCR surface impoundment pursuant to 40 C.F.R. § 257.100(b) and placed such notification on the owner or operator's CCR Web site by January 18, 2016, as required by 40

C.F.R. § 257.107(i)(1). The proposed Extension Rule shall extend by 525 days (the approximate number of days between the signature date of the Final Rule, December 19, 2014, and an Order from the Court granting the Motion to Remand), the following deadlines ("Extension Period"):

A. Deadline to complete the demonstrations for compliance with the location restrictions, set forth in 40 C.F.R. §§ 257.60(c)(1), 257.61(c)(1), 257.62(c)(1), 257.63(c)(1), 257.64(d)(1));

B. Deadline to document whether the CCR impoundment is lined or unlined, set forth in 40 C.F.R.§ 257.71(a)(1);

C. Deadline to install permanent markers, set forth in 40 C.F.R. § 257.73(a)(1);

D. Deadline to document the CCR unit's history of construction set forth in 40 C.F.R. § 257.73(c)(1);

E. Deadline to complete the initial hazard potential classification assessment, initial structural stability assessment, and initial safety factor assessment set forth in 40 C.F.R. § 257.73(f)(1);

F. Deadline to prepare an Emergency Action Plan, set forth in 40 C.F.R. § 257.73(a)(3);

G. Deadline to prepare a fugitive dust control plan set forth in 40 C.F.R. § 257.80(b)(5);

H. Deadline to prepare an initial inflow design flood control system plan set forth in 40 C.F.R. § 257.82(c)(3);

I. Deadline to initiate weekly inspections of the CCR unit and monthly monitoring of CCR unit instrumentation set forth in 40 C.F.R. § 257.83(a)(2);

J. Deadline to complete the initial annual inspection of the CCR unit set forth in 40 C.F.R. § 257.83(b)(3);

K. Deadline to install the groundwater monitoring system, and begin monitoring, set forth in 40 C.F.R. § 257.90(b);

L. Deadline to prepare an initial groundwater monitoring and corrective action report, set forth in 40 C.F.R. § 257.90(e);

M. Deadline to prepare a written closure plan, set forth in 40 C.F.R. § 257.102(b)(2); and

N. Deadline to prepare a written post-closure care plan, set forth in 40 C.F.R. § 257.104(d)(2).

6. EPA shall issue the proposed Extension Rule within 60 days of an Order from the Court granting the Motion for Remand. EPA will transmit the proposed Extension Rule to the Office of the Federal Register as expeditiously as possible thereafter for publication. EPA will make its best efforts to sign a notice taking final action on the proposed Extension Rule within 120 days of the close of the comment period, but will in any event sign a notice taking final action no later than April 17, 2017. EPA will transmit the signed notice to the Office of the Federal Register as expeditiously as possible thereafter for publication.

7. The Parties agree that EPA may satisfy the requirements set forth in Paragraphs 5 and 6 of this Agreement through the promulgation of a direct final Extension Rule, which it may issue simultaneously with the proposed Extension Rule. If EPA receives adverse comments on such direct final Extension Rule and as a consequence withdraws it, EPA will inform the Parties and continue to proceed with the proposed Extension Rule referenced in Paragraph 6.

8. If the number of days between the signature date of the Final Rule (December 19, 2014) and issuance of the Order granting the Motion to Remand turns out to be greater than 525 days, the number of days comprising the extension period in the proposed Extension Rule described in Paragraph 5 shall automatically be increased to reflect the actual number of days between signature of the Final Rule (December 19, 2014) and the issuance of the Order granting the Motion to Remand.

III. ACTIONS BY PETITIONERS AND REMEDIES FOR NON-PERFORMANCE

9. Environmental-Petitioners and the undersigned Industry-Petitioners agree to the dismissal of their claims challenging the Remanded Provisions as set forth in EPA's Motion for Remand, said dismissal to become effective upon issuance of an Order from the Court granting the Motion to Remand. Specifically, the undersigned Industry-Petitioners agree to dismissal of their claims described in their Brief submitted to the Court (Doc. No. 1589625) at issues III,D and III,E (lack of notice of two specific criteria) and IV,C,ii (Alternative Closure as applied to non-CCR waste), and Environmental-Petitioners agree to dismissal of their claims described in their Brief submitted to the Court (Doc. No. 1589399) at issues IV (early closure provision) and V (Boron as a covered contaminant).

10. In the event EPA fails to issue a Final Remand Rule(s) within the time periods set forth in paragraph 4 above or sign a notice taking final action on the proposed Extension Rule by April 17, 2017, the undersigned Petitioners' sole remedy is to initiate an action under the Administrative Procedure Act, 5 U.S.C. §§ 551-706, asserting unreasonable delay by EPA in concluding proceedings on the Final Remand Rule(s) or taking final action in issuing the Extension Rule. EPA fully intends to issue the Final Remand Rule(s) within the time periods set forth in paragraph 4 above and to sign a notice taking final action on the proposed Extension

Rule by April 17, 2017. Nevertheless, because future events cannot be predicted, nothing herein shall be deemed to waive any defense to any action alleging unreasonable delay by EPA in issuing the Final Remand Rule(s) or signing a notice taking final action on the proposed Extension Rule. Any such filed challenge renders any remaining EPA obligations under this Agreement pertaining to the Challenged Rule (i.e., the Remand Rule or Extension Rule, whichever is challenged) null and void.

11. Under no circumstances shall any provision of this Agreement be the basis for any action for specific performance, mandamus, or any other remedy seeking to compel EPA to take any of the actions referenced in this Agreement. The Parties agree that contempt of court is not an available remedy for a breach of this Agreement. Nothing herein prevents any party from bringing an action asserting that EPA has unreasonably delayed taking some action.

12. Nothing herein shall prohibit any Petitioner from challenging the Final Remand Rule(s) or Extension Rule upon their promulgation.

IV. EFFECTIVE DATE

13. This Agreement shall not become effective unless and until it is executed by the representatives of all Parties and until the Court issues an Order granting the Motion to Remand. The Agreement may be executed in counterparts.

14. In the event the Agreement is executed by representatives of all Parties but the Court does not issue an Order granting the Motion to Remand substantially in the form set forth in the Motion to Remand, the Parties may attempt to renegotiate this Agreement to conform with the actions of the Court. In such event, nothing herein shall obligate any Party to agree to a modified Settlement Agreement.

V. GENERAL PROVISIONS

15. The Parties may agree in writing to modify any term of this Agreement. Except for the modification referred to in paragraph 8, above, any such written modification must be executed by all Parties.

16. This Agreement was negotiated between the undersigned Petitioners and EPA in good faith and jointly drafted by the Parties. The Parties hereby agree that any and all rules of construction to the effect that ambiguity is construed against the drafting party shall be inapplicable in any dispute concerning the terms, meaning, or interpretation of this Agreement.

17. This Agreement contains all terms and conditions agreed upon by the Parties. All statements, representations, promises, agreements, or negotiations, oral or otherwise, among the Parties or counsel that are not included herein are specifically superseded by this Agreement and shall have no force or effect.

18. This Agreement shall not constitute or be construed as an admission or adjudication by the United States or EPA or by any other person or entity of any question of fact or law with respect to any of the claims raised in the Pending Action, nor is it an admission of violation of any law, rule, regulation, or policy by the United States or EPA.

19. Nothing in this Agreement shall be construed to limit or modify the discretion accorded to EPA under RCRA, general principles of administrative law, or under any other statues or regulations, nor shall it in any way be deemed to limit EPA's discretion in adopting any final rule or taking any other administrative action.

20. Nothing in this Agreement shall be construed to limit EPA's authority to alter, amend, or revise any final rule, guidance, permit, interpretation or other administrative action that EPA has issued or may issue, or to promulgate superseding regulations. Correspondingly, nothing herein shall be construed to limit the undersigned Petitioners' ability to seek

administrative or judicial review of any such alteration, amendment, revision, superseding regulation or administrative action.

21. No provision of this Agreement shall be interpreted as or constitute a commitment or requirement that EPA obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or take actions in contravention of the Administrative Procedure Act, 5 U.S.C. §§ 551-559, 701-706, RCRA, 40 U.S.C. §§ 6901 *et seq.,* or any other law or regulation, either substantive or procedural.

22. Nothing in this Agreement shall be construed to confer upon a district or appellate court jurisdiction to review any decision to be made by EPA pursuant to this Agreement that would not otherwise be reviewable by such court, or to otherwise confer upon a district court jurisdiction to review any issues that are within the exclusive jurisdiction of the United States Courts of Appeals under section 7006 of RCRA, 42 U.S.C. § 6976.

23. If a subsequent change in law alters or relieves EPA of any of its obligations concerning the matters addressed in this Agreement, then this Agreement shall be amended to conform to such changes.

24. Nothing in this Agreement shall be construed to make any other person or entity not executing this Agreement a third-party beneficiary to this Agreement.

25. This Agreement shall not be admitted against EPA for any purpose in any proceeding, except an action for unreasonable delay or non-compliance with any obligation set forth herein.

26. EPA will promptly notify the undersigned Petitioners if it believes that it will be unable to meet one or more of the dates specified in Paragraphs 4 or 6 above because of any of the following circumstances beyond its control: (a) a government shutdown; (b) an extreme

weather event that renders EPA staff unable to complete the work necessary to meet the deadlines; (c) a catastrophic environmental event (e.g., natural disaster or environmental accident) that results in the necessary diversion of EPA staff resources away from the work needed to meet the deadlines in this Agreement. Should EPA be unable to meet the dates in Paragraphs 4 or 6 due to one or more of the specific circumstances listed in this paragraph, then any resulting failure by EPA to meet that date shall not constitute a failure to comply with the terms of this Agreement, and the date or dates so affected shall be extended one business day for each day of the unavoidable delay, unless the Parties agree to a longer period. In the event that EPA invokes this provision, it will provide the undersigned Petitioners with reasonable notice and explanation for any unavoidable delay.

27. The individuals signing this Agreement on behalf of the Parties hereby certify that they are authorized to bind their respective parties to this Agreement.

28. This Agreement shall be governed and construed under the laws of the United States.

29. Any notice required or made with respect to this Agreement shall be in writing and shall be effective upon receipt. For any matter relating to this Agreement, notice shall be sent to a Party by sending such notice to signatories for such Party listed below.

30. The headings contained in this Agreement are for convenience only and shall not be construed as having any substantive effect.

31. Counsel for the following Industry Petitioners have authorized counsel for the undersigned Industry Petitioners to state that the issues addressed in this Agreement, including but not limited to the issues set out in the fourth Whereas Clause and numbered paragraph nine of this Agreement, are not among the issues they are pursuing in the Pending Action and that

they accordingly take no position on the terms of this Agreement: Beneficial Reuse Management, Lafarge North America Inc., Lafarge Midwest, Inc., Lafarge Building Materials Inc., Associated Electric Cooperative, Inc., City of Springfield, Missouri Board of Public Utilities, and AES Puerto Rico, LP.

So agreed to by:

Date: 4/13/16

Douglas H. Green
John F. Cooney
Margaret K. Kuhn
Venable LLP
575 7th Street NW
Washington, DC 20002
(202) 344-4483
dhgreen@venable.com

On behalf of: *Utility Solid Waste Activities Group, Edison Electric Institute, American Public Power Association, and National Rural Electric Cooperative Association*

Date: 4/18/16

Perry M. Rosen
U.S. Department of Justice
Environment & Natural Resources Div.
PO Box 7611, Ben Franklin Station
Washington, DC 20044

Laurel Celeste
U.S. Environmental Protection Agency
Office of General Counsel
William Jefferson Clinton Building
1200 Pennsylvania Ave., NW
Mail Code 2344A
Washington, D.C. 20460
Tel: 202-564-1751

On behalf of: *United States Environmental Protection Agency*

Date: 4/14/2016

Mary Whittle
Earthjustice
1617 JFK Blvd., Suite 1675
Philadelphia, PA 19103
(215) 717-4524
mwhittle@earthjustice.org

Matthew Gerhart

Earthjustice
705 Second Avenue, Suite 203
Seattle, WA 98104
(206) 343-7340
mgerhart@earthjustice.org

Lisa Evans
Earthjustice
21 Ocean Ave.
Marblehead, MA 01945
(781) 631-4119
levans@earthjustice.org

On behalf of: *Clean Water Action, Comité Dialogo Ambiental, Inc., Environmental Integrity Project, Hoosier Environmental Council, PennEnvironment, Prairie Rivers Network, Sierra Club, Tennessee Clean Water Network, and Waterkeeper Alliance*