

MEMORANDUM OF AGREEMENT  
BETWEEN THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY  
AND  
REGION V, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

INTRODUCTION

The Environmental Protection Agency (EPA) Guidelines for State program elements necessary for participation in the National Pollutant Discharge Elimination System (NPDES), 40 CFR 124, prepared pursuant to the authority contained in Section 304(h) (2) of the Federal Water Pollution Control Act Amendments of 1972 (referred herein as the Federal Act) were published in the Federal Register on December 22, 1972. Various sections of the Guidelines permit the Chief Administrative Officer of a State water pollution control agency and the Regional Administrator of EPA to reach agreement on the manner in which the 40 CFR 124 Guidelines are to be implemented.

To satisfy the requirements of the Guidelines, the following procedures are hereby agreed to by the Chief Administrative Officer of the Ohio Environmental Protection Agency, referred to herein as the Director and the Regional Administrator.

The sections and subsections of 40 CFR 124 related to these agreements are: 124.22, 124.23, 124.35(b), 124.35(c), 124.41(c), 124.44(d), 124.46, 124.47, 124.61(b), 124.62(c), 124.71(c), 124.72(b), 124.73(b)(2), and 124.80(d). The terms used in this Memorandum of Agreement have the same meaning as those used and defined in 40 CFR 124.1.

-1-

## I. SECTION 124.22 RECEIPT AND USE OF FEDERAL DATA

- A. The two purposes of this part of the Agreement are: (1) to provide for the transfer of data bearing on NPDES permit and Refuse Act applications from the U.S. EPA to the Ohio EPA, and (2) to insure that any deficiencies in the transferred NPDES and Refuse Act applications will be corrected prior to the issuance of an NPDES permit.
- B. Commencing immediately, the Regional Administrator will transmit to the Ohio EPA a list of all NPDES permit and Refuse Act applications received by the U.S. EPA. This list will include the name of each discharger, SIC Code, the application number, and will indicate those NPDES and Refuse Act permit applications which U.S. EPA has determined to be administratively complete.
- C. After receipt of the list, the Ohio EPA will identify the priority order to be used by U.S. EPA to transmit application files to the Ohio EPA. The application file will include the NPDES and Refuse Act permit application and any other pertinent data collected by U.S. EPA. The application files will be transmitted to the NPDES Permit Records Section of the Ohio EPA according to the priority order identified, and U.S. EPA will retain one copy of each file transmitted to the Ohio EPA.
- D. When an NPDES or Refuse Act application transmitted to the Ohio EPA has been identified as administratively incomplete, the Ohio EPA will request the necessary information from the applicant and correct the application. The Director, at his discretion, may also obtain additional information for those applications identified by U.S. EPA as administratively complete to update or evaluate and process the application.
- E. The Ohio EPA NPDES Permit Records Section will transmit two (2) copies of completed NPDES applications (other than those determined by U.S. EPA to be complete under paragraph B. above) to the Regional Administrator, Attention: Permit Branch.
- F. If the Regional Administrator determines that an NPDES or Refuse Act application is not complete, he will specifically identify the deficiencies by letter to the NPDES Permit Records Section, Ohio EPA. If no objection is received from the Regional Administrator within 20 days of the date of the postmark of the transmittal, the application shall be deemed to be complete and the Ohio EPA will act upon the permit application without further action by the Regional Administrator. If deficiencies are identified by the Regional Administrator during the time period specified above, no NPDES permit will be issued by the Director until all deficiencies are corrected in a revised NPDES application, the revised application is transmitted to the Regional Administrator, and 15 days from the date of the postmark of the transmittal elapse without objection by him.
- G. The Ohio EPA will transmit weekly to the Regional Administrator, Attention: Permit Branch, a listing of applications sent to U.S. EPA. This listing will include the application number, name of applicant, and period of comment. U.S. EPA will confirm that the listing accurately represents those applications received.

-2-

II. SECTION 124.23 TRANSMISSION OF DATA TO REGIONAL ADMINISTRATOR

- A. The procedure specified in this section (Section II) of this Memorandum of Agreement will apply to NPDES applications, forms and reporting forms received by the Director from dischargers after the receipt of permit authorization under Section 402(b) of the Federal Act.
- B. When the Ohio EPA determines that NPDES forms received from the discharger are complete, two (2) copies of the forms with a cover letter indicating that the forms are complete will be transmitted by the Ohio EPA NPDES Permit Records Section to the Regional Administrator, Attention: Permit Branch. If the U.S. EPA concurs with the Director's findings of completeness, one (1) copy will be routed to the Regional Data Management Section, Surveillance and Analysis Division, through the Compliance Section, Enforcement Division for processing into the National Data Bank and the other copy will be placed in the Regional NPDES Permit Branch file. The Ohio EPA may transmit forms directly into the National Data Bank subject to prior approval of procedures by the NPDES Permit Branch and Data Management Section. If the U.S. EPA determines that any NPDES application or reporting form received from the Ohio EPA is not complete, the deficiencies will be identified by letter to the NPDES Permit Records Section, Ohio EPA. The Ohio EPA will request the necessary information from the applicant or reporting entity and correct the application or reporting form. If no objection to an NPDES application is received from the Regional Administrator within 15 days of the date of the postmark of the transmittal of the application or within 40 days of the postmark of the transmittal of the reporting form, the application or reporting form shall be deemed to be complete. If deficiencies are identified in an NPDES application by the Regional Administrator during the time period specified above, no NPDES permit will be issued by the Director until a revised NPDES application is transmitted to the Regional Administrator and 15 days from the date of the postmark of the transmittal elapse without objection by him.
- C. The Regional Administrator may waive his rights to receive copies of NPDES forms with respect to classes, types and sizes within any category of point sources and with respect to minor discharges or discharges to particular navigable waters or parts thereof. Such written waiver must be transmitted by the Regional Administrator to the Ohio EPA before the Director can discontinue sending the EPA copies of NPDES forms. In exercising his discretion in relation to the provisions of this paragraph, the Regional Administrator shall pay heed to Section 101(f) of PL 92-500.
- D. Upon receiving an NPDES form from the Director, if the Regional Administrator identifies any discharge which has a total volume of less than 50,000 gallons on every day of the year as a discharge which is not a minor discharge and notifies the Director, the Director will require the applicant for the discharge to submit additional NPDES application forms or any other information requested by the Regional Administrator.
- E. When requested by the Regional Administrator, the Director will transmit copies of notices received by him from publicly owned treatment works pursuant to 40 CFR 124.45(d) and (e) within 20 days of the postmark of the request.

-3-

- F. The Ohio EPA will transmit weekly to the Regional Administrator, Attention: Permit Branch, a listing of applications sent to U.S. EPA. This listing will include the application number, name of the applicant, and period of comment. U.S. EPA will confirm that the listing accurately represents those applications received.

-4-

## III. 124.35(b) and (c) PUBLIC ACCESS TO INFORMATION

- A. The Ohio EPA will protect any information (other than effluent data) contained in NPDES application forms or other documents as confidential upon a showing by any person that such information if made public would divulge methods or processes entitled to protection as trade secrets of that person. If such information appears in NPDES applications or other documents that must be forwarded to the Regional Administrator under the terms of this Memorandum of Agreement, the information for which confidential treatment has been requested will be specifically identified by the Director when the information is transmitted. If the Regional Administrator finds it necessary to consider releasing such information to the public, he will request advice from the Office of General Counsel, requesting a determination of the validity of the claim of confidentiality. The Regional Administrator will simultaneously provide a copy of the request to the person claiming trade secrecy. The General Counsel will determine whether the information in question would, if revealed, divulge methods or processes entitled to protection as trade secrets. In making such determinations, he will consider any additional information submitted to the Office of General Counsel within 30 days of the date of postmark of the request from the Regional Administrator. If the General Counsel determines that the information being considered does not contain trade secrets, he will so advise the Regional Administrator, the Director, and the person claiming trade secrecy of such determination by certified mail. No sooner than 30 days following the date of the postmark of such notice, the Regional Administrator will communicate to the Director his decision not to concur in the withholding of such information, and the Director and the Regional Administrator will then make available to the public, upon request, that information determined not to constitute trade secrets, unless an appeal is made to EPA by the person claiming trade secrecy. Following an appeal, the determination made by EPA will be conclusive unless reviewed in an appropriate district court of the United States.
- B. Any information accorded confidential status, whether or not contained in an NPDES form, will be disclosed by the Director, upon written request, therefore, to the Regional Administrator, or his authorized representative, who will maintain the disclosed information as confidential.

IV. 124.44(d) COMPLIANCE SCHEDULE REPORTS

On the last day of the months of February, May, August, and November, the Director will transmit to the Regional Administrator, Attention: Compliance Section, Enforcement Division, a list of all known instances, as of 30 days prior to the date of such report, of failure or refusal of an NPDES permittee to comply with an initial, interim or final requirement or to notify the Director of compliance or non-compliance with each initial, interim or final requirement (as required pursuant to paragraph, 40 CFR 124.44(b)). The list will be available to the public for inspection and copying and will contain at least the following information with respect to each instance of non-compliance:

- (1) The name and address of each non-complying NPDES permittee;
- (2) A short description of each instance of non-compliance (e.g., failure to submit preliminary plans, two-week delay in commencement of construction of treatment facility, failure to notify the Director of compliance with an interim requirement to complete construction by June 30, etc.);
- (3) A short description of any action or proposed action by the permittee or the Director to comply or enforce compliance with an interim or final requirement; and  
Any details which tend to explain or mitigate an instance of non-compliance with an interim or final requirement (e.g., construction delayed due to materials shortage, plan approval delayed by objections from State Fish and Wildlife Agency).

-6-

V. SECTION 124.46 TRANSMISSION TO REGIONAL ADMINISTRATOR  
OF PROPOSED NPDES PERMITS

- A. At the time the public notice required by 40 CFR 124.32 is issued, the Director will transmit one copy of the NPDES public notice, fact sheets, proposed NPDES permit, and a list of all persons receiving the public notice, fact sheets, and proposed NPDES permit, together with a description of any other procedure used to circulate the public notice, to the Regional Administrator, Attention: Permit Branch. The information transmitted with the proposed permit will include any and all terms, conditions, requirements, or documents which are part of the proposed NPDES permit or which affect the authorization by the proposed NPDES permit of the discharge of pollutants.
- B. The Director will provide periods of public notice and, where appropriate, Public Meetings on proposed NPDES permits in accordance with the provisions of the Ohio EPA Rules of Procedure, which satisfy the Public Notice and Public Hearing requirements of the U.S. EPA Guidelines. If the Director has received a specific request that a Public Meeting be held on a proposed NPDES permit, he will notify the Regional Administrator of that fact and his decision whether to hold such a Public Meeting within 45 days of the date of public notice. If the Director decides not to hold such a Public Meeting, he will provide the Regional Administrator and all parties requesting the Public Meeting, within 45 days of the date of public notice, with a written explanation of why the Public Meeting was not held.
- C. If a proposed NPDES permit issued with a public notice is modified as a result of the Public Notice or Public Meeting, a revised copy of the proposed NPDES permit will be transmitted to the Regional Administrator, Attention: Permit Branch, together with a copy of all statements received from the public notice, and where a Public Meeting is held, a summary of all objections. In lieu of a summary, the Director may provide a verbatim transcript of the entire Public Meeting. If no comment is received by the Director within 35 days of the date of the postmark of the transmittal of the revised permit, he will assume U.S. EPA has no objections to NPDES permit issuance.
- D. If a proposed NPDES permit is not revised after a public notice or, if held, a public hearing, the Director will notify the Regional Administrator, Attention: Permit Branch, by letter that the proposed NPDES permit issued with the public notice has not been revised and will include a copy of all written statements received from the public notice. If no comment is received by the Director within 20 days of the date of the postmark of this letter, he will assume U.S. EPA has no objection to NPDES permit issuance. Before any permit is issued by the Director, he shall confirm that a copy of the permit was received by the Regional Administrator.
- E. No NPDES permit will be issued by the Director until he receives a letter from the Regional Administrator or his designee approving the issuance of the NPDES permit under Section 402(b) of the Federal Act, or if no comment is received by the Director from U.S. EPA within the time provided in paragraphs C and D above. Before any permit is issued by the Director, he shall confirm that a copy of the permit was received by the Regional Administrator.
- F. If the Regional Administrator objects to a proposed NPDES permit he will notify the Director in writing within the time period or sooner as identified in paragraphs C or D above and specify the nature of the objection

-7-

and the terms and conditions required to eliminate his objection to the proposed permit. The response of the Director to these objections will be communicated in writing by the Director to the Regional Administrator, and no permit will be issued before written approval of a revised NPDES discharge permit is received by the Director from the Regional Administrator.

- G. The Regional Administrator may waive his rights to receive, review, object to, or comment upon proposed NPDES permits for classes, types, or sizes within any category of point sources. Such written waiver must be transmitted by the Regional Administrator to the Ohio EPA before the Director can issue an NPDES permit without U.S. EPA approval.
- H. The Ohio EPA will transmit weekly to the Regional Administrator, Attention: Permits Branch, a list of permits to be issued. Before any permit is issued by the Director, he shall confirm that a copy of the permit has been received by the Regional Administrator.

-8-

VI. 124.47 TRANSMISSION TO REGIONAL ADMINISTRATOR  
OF ISSUED NPDES PERMITS

- A. The Director will transmit to the Regional Administrator, Attention: Permit Branch, two (2) copies of every issued NPDES permit, together with any and all terms, conditions, requirements, or documents which are a part of the NPDES permit or which affect the authorization by the NPDES permit of the discharge of pollutants.
- B. The Director will transmit the above information together with a copy of the Director's letter to the applicant forwarding the NPDES permit, at the same time the NPDES permit is issued.

## VII. 124.61(b) MONITORING

- A. Permit conditions issued by the Ohio EPA for any discharge authorized by an NPDES permit which (1) is not a minor discharge as defined by 40 CFR 124, (2) the Regional Administrator requests, in writing, be monitored, or (3) contains toxic pollutants for which an effluent standard has been established by the Administrator pursuant to Section 307(a) of the Federal Act, will require monitoring by the permittee for at least the following:
- i. Flow in gallons per day and
  - ii. All of the following pollutants:
    - a. Pollutants (either directly or indirectly through the use of accepted correlation coefficients or equivalent measurements) which are subject to reduction or elimination under the terms and conditions of the permit;
    - b. Pollutants which the Director finds, on the basis of information available to him, could have a significant impact on the quality of navigable waters;
    - c. Pollutants specified by the Administrator, in regulations issued pursuant to the Federal Act, as subject to monitoring; and
    - d. Any pollutants in addition to the above which the Region Administrator requests, in writing, be monitored.
- B. The Regional Administrator may make the request specified in A (2) and A (3) (ii) (d) above at any time before an NPDES permit is issued.
- C. The Director will transmit to the Regional Administrator data submitted by NPDES permittees on self-monitoring reporting forms, either by (1) forwarding copies of the reporting forms to the Regional Administrator, Attention: Compliance Section, Enforcement Division, or (2) by direct entry into the General Point Source File data system.
- D. The Director will transmit on the last day of the months of February, May, August, and November, to the Regional Administrator, Attention: Compliance Section, Enforcement Division, a list of all known instances as of 30 days prior to the date of such report, of all violations of effluent limitations indicated by self-monitoring reports. At the time of transfer of permanent authority, the Director shall formulate and continually update a list of all other permittees for which effluent monitoring data will be forwarded monthly. The list, which may be a computer printout, will be available to the public for inspection and copying and will contain at least the following information with respect to each instance of non-compliance:
- (1) The name and address of each non-complying NPDES permittee;
  - (2) The effluent limitations exceeded;
  - (3) Any action or proposed action by the NPDES permittees or the Director to comply or enforce compliance with the effluent limitations; and
  - (4) Any details which tend to explain or mitigate an instance of non-compliance.

-10-

VIII. 124.62(c) MONITORING RESULTS

During the period of a permit, upon request of the Regional Administrator, the Director shall notify and require the permittee to extend the normal three year retention of monitoring records under 40 CFR 124.62(c).

IX. 124.71(c) RECEIPT AND FOLLOW-UP NOTIFICATIONS AND REQUESTS

If the Director determines that a condition of a permit of a publicly owned treatment works relating to a new introduction of pollutants or changes in the volume or character of pollutants introduced into such treatment works is violated, he will notify the Regional Administrator in writing and take appropriate steps to assure compliance, including where necessary, the restriction or prohibition of introduction of pollutants into treatment works under Section 402(h) of the Federal Act.

X. 124.72(b) MODIFICATION, SUSPENSION AND REVOCATION OF NPDES PERMITS

- A. If an issued NPDES permit is subsequently revised, suspended, or modified, the Director shall notify the Regional Administrator of such revision or modification and provide the Regional Administrator up to 30 days from the date of the postmark of the notice in which to comment or object and make recommendations to the Director. The Regional Administrator shall respond no later than 30 days from the date of postmark of the notice and may request additional time (not to exceed a total of 40 days from the date of the postmark of the notice).
- B. If the Director upon request of the permittee, decides to make a revision, suspension, or modification of the NPDES permit for good cause, such as strikes, floods and acts of God, he shall notify the Regional Administrator in writing and, if no written objection or request for additional time (not to exceed a total of 40 days from the date of the postmark of the notice) is received from the Regional Administrator within 30 days of the date of the postmark of the notice, he shall deem it approved. Any such revision, suspension or modification of a schedule of compliance shall be included in proper time on the list submitted under Paragraph V of this Agreement.
- C. The Director will transmit to the Regional Administrator two (2) copies of any document modifying, suspending, or revoking an NPDES permit or schedule of compliance.

-12-

XI. 124.73(b) (2) EMERGENCY NOTIFICATION

The Director or his authorized representative will notify the Regional Administrator by telephone as soon as he is notified of any actual or threatened endangerments to the health or welfare of persons resulting from the discharge of pollutants. The Director or his authorized representative will utilize the telephone numbers identified in the current Regional Oil and Hazardous Materials Contingency Plan to notify the Regional Administrator. Telephone contact may be made with either the District Offices or the Regional Offices, as the Director determines appropriate.

XII. 124.80(d) CONTROL OF DISPOSAL OF POLLUTANTS INTO WELLS

The Regional Administrator will transmit to the Director any policies, technical information, or requirements specified by the Administrator in regulations issued pursuant to the Federal Act or in directives issued to the U.S. Environmental Protection Agency Regional Offices governing the disposal of pollutants into deep wells.

### XIII. OTHER ITEMS

- A. Attached hereto is a list of all dischargers including major dischargers along with a schedule covering a six-month period for the processing of the permits for those dischargers. This schedule is the first part of a schedule aimed at issuing all permits to be issued in the State of Ohio by December 31, 1974. This schedule will be expanded by the Ohio EPA on a quarterly basis thereafter to schedule the remainder of the workload until all permits are issued. A copy of each quarterly schedule will be forwarded by the Ohio EPA to the Regional Administrator for his information.
- B. This Memorandum of Agreement may be modified by the Director and the Regional Administrator following the public hearing to evaluate the State's Section 402(b) program submittal on the basis of the issues raised at the hearing. The hearing record will be left open for a period of five days following the hearing to permit any person to submit additional written statements or to present views or evidence tending to rebut testimony presented at the public hearing. Any revisions of the Agreement following the public hearing will be finalized, reduced to writing, and signed by the Director and the Regional Administrator prior to forwarding of the recommendations of the Regional Administrator to the Administrator of U.S. EPA for review and approval. The Director and the Regional Administrator will make any such revised Agreement available to the public for inspection and copying.
- C. All Agreements between the State of Ohio and the Regional Administrator are subject to review by the Administrator of U.S. EPA. If the Administrator of U.S. EPA determines that any provisions of such Agreements do not conform to the requirements of Section 402(b) of the Federal Act or to the requirements of the Section 304(h) (2) Guidelines, he will notify the Ohio EPA and the Regional Administrator of any deficiencies, and the Agreement will be renegotiated in light of these comments.
- D. This Memorandum of Agreement will take effect upon signature of the Director and Regional Administrator and concurrence by the Administrator, U.S. EPA.
- E. No later than 120 days from the effective date of this Agreement, the Regional Administrator shall consider whether to waive his rights to receive, comment upon, object to any class or category of NPDES permit or reporting form. The Regional Administrator shall promptly notify the Director in writing of his decision.
- F. This Memorandum of Agreement shall remain in effect until modified or suspended.

Ohio Environmental Protection Agency

by

Ira L. Whitman

Ira L. Whitman,  
Director

1-17-74

Date

United States  
Environmental Protection Agency  
Region V

by

Francis T. Mayo

Francis T. Mayo  
Regional Administrator

1/24/74

Date

Approved:

United States Environmental Protection Agency

Ronald T. ...

Administrator

3-11-74

Date



John R. Kasich, Governor  
Mary Taylor, Lt. Governor  
Scott J. Nally, Director

February 4, 2013

**Re:** Belmont County  
Ohio Valley Coal Co.  
Powhatan #6 Mine  
Notice of Violation  
OIL00046\*DD  
Correspondence (IWW)

Mr. Farley Wood  
Ohio Valley Coal Company  
56854 Pleasant Ridge Road  
Alledonia, Ohio 43902

Dear Mr. Wood:

We have received your self-monitoring reports covering the months of January through November 2012 for the referenced facility. Our review indicates violations of the conditions of your NPDES permit. The specific instances of noncompliance and/or deficiencies are as follows:

Reporting Period	Outfall	Parameter	Limit Type*	Limit	Reported Value	Violation Date
January 2012	013	Manganese, Total (Mn)	30D Conc	2000	2180.	1/1/2012
June 2012	002	Fecal Coliform	1D Conc	2000	2800.	6/6/2012
July 2012	002	Chlorine, Total Residual	1D Conc	0.019	.05	7/18/2012

\* 1D Conc = Daily Average Concentration Value  
1D Qty = Daily Average Loading Value  
7D Conc = Weekly Average Concentration Value  
7D Qty = Weekly Average Loading Value  
30D Conc = Monthly Average Concentration Value  
30D Qty = Monthly Average Loading Value

Please be advised that failure to comply with the effluent limitations or to satisfy the monitoring or reporting requirements of your NPDES permit may be cause for enforcement action pursuant to the Ohio Revised Code Chapter 6111.

Please inform this office, in writing, within ten days of receipt of this notification as to the reasons for the above referenced violations, as well as a description of the actions taken or proposed to prevent any further violations. Your response should include the dates, either actual or proposed, for completion of the actions.

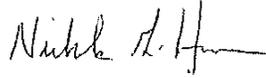
# Exhibit 2

Page 2 of 2

Ohio Valley Coal Co., Powhatan #6 Mine  
Page 2

If there are any questions, please contact me at (740) 380-5416 or  
[nick.hammer@epa.ohio.gov](mailto:nick.hammer@epa.ohio.gov).

Sincerely,



Nicholas G. Hammer  
Environmental Specialist  
Division of Surface Water

NH/dh

c: Jon Nagel, Coordinator of Environmental Compliance

OEPA FINAL - 4/4/2014

AGREEMENT OF SETTLEMENT AND RELEASEIntroduction

The following is an Agreement reached between the Ohio Environmental Protection Agency and George Elmaraghy, former Chief of Division of Surface Water of the OEPA. The OEPA acknowledges and expresses its appreciation of Mr. Elmaraghy's nearly 40 years of dedicated public service to Ohio and the OEPA. His experience and expertise has well served the agency and the people of Ohio in protecting Ohio's waterways and establishing a positive legacy for future leaders of the Agency. As Division Chief he guided and implemented policy as well as directing the work of the employees of the Division.

This Agreement of Settlement and Release ("Agreement") is entered into this 25<sup>th</sup> day of April, 2014, by and between George Elmaraghy for himself and any and all of his heirs, successors, assigns, agents, representatives, spouse, attorneys and all other affiliated and related individuals (collectively referred to as "Elmaraghy") and the State of Ohio, the Ohio Environmental Protection Agency, individually and all of its present, former and future directors, officers, representatives, employees, insurers, successors, agents, attorneys, assigns, heirs, beneficiaries, personal representatives, executors, administrators and any and all persons acting by, through under or in concert with any of them, including any other employees or agents of any agency or branch of government of the State of Ohio, and the Ohio Environmental Protection Agency (collectively referred to as "Agency").

WHEREAS, Elmaraghy and the Agency wish to resolve all of Elmaraghy's potential and existing claims and disputes against the Agency, whether known or unknown, as of the date of this Agreement;

WHEREAS, the Agency believes that it has acted lawfully and properly in all respects but wants to avoid the time and expense of litigation;

WHEREAS, Elmaraghy filed administrative appeals with the State Personnel Board of Review, Case Numbers 13-REM-08-0203, 13-REM-09-0226, and 13-WHB-08-0204 and filed a complaint with the U.S. Department of Labor, Case Number 5-1800-14-027;

WHEREAS, the Agency has steadfastly denied any and all liability and refuted each and every allegation made in these actions; and

WHEREAS, the parties now desire to amicably and completely resolve all of their differences involving the subject of all claims that were or could have been raised in conjunction with employment of Elmaraghy with the Agency.

NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained, and for good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged by the parties, Elmaraghy and the Agency hereby agree as follows:

1. Elmaraghy does hereby fully and forever release and discharge the Agency of and from any and all claims in the Appeal, any other claims, demands and complaints which Elmaraghy may have had or now has up to the date of this Agreement arising out of his employment with the Agency, whether in law or in equity, civil or criminal, vested or contingent, before any federal, state, local or private court, agency, arbitrator or other entity, whether for damages, wages, severance pay, front pay, back pay, pension or retirement benefits, interest, attorneys' fees, costs, expenses and/or any other relief or remedy under any contract and/or federal, state or local law, ordinance or regulation, including but not limited to laws or regulations covering unemployment insurance benefits, workers' compensation, industrial accidents, the National Labor Relations Act, as amended (29 U.S.C. §141 *et seq.* and 29 U.S.C.

§151 *et seq.*), Title VII of the Civil Rights Act of 1964, and the Civil Rights Act of 1991 (42 U.S.C. §2000e *et seq.*), the United States or Ohio Constitutions and Amendments, Sections 1981 through 1988 of Title 42 of the United States Code, the Employee Retirement Income Security Act of 1974, as amended (29 U.S.C. §1001 *et seq.*), the Immigration Reform and Control Act (8 U.S.C. §1101 *et seq.*), the Americans with Disabilities Act of 1990 (42 U.S.C. §12101 *et seq.*), the Age Discrimination in Employment Act of 1967, as amended by the Older Worker Benefit Protection Act (29 U.S.C. §621 *et seq.*), the Fair Labor Standards Act, as amended (29 U.S.C. §201 *et seq.*), the Occupational Safety and Health Act, as amended (29 U.S.C. 651 *et seq.*), the Family and Medical Leave Act (29 U.S.C. §2601 *et seq.*), the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended (38 U.S.C. §4301 *et seq.*), the Worker Adjustment and Retraining Notification Act of 1988 (29 U.S.C. 2101 *et seq.*), and the Sarbanes-Oxley Act (18 U.S.C. §1514A *et seq.*). Elmaraghy also waives and releases the Agency from any and all claims under federal and state whistleblower statutes, codes or regulations, including but not limited to the claims filed with Elmaraghy's claims listed in his October 17, 2013 (dated October 17, 2003) claim filed with the U.S. Department of Labor. Elmaraghy further waives and releases the Agency from any and all claims or demands arising under state or local law (e.g., Ohio Revised Code §124.01 *et seq.* (Ohio Civil Service Laws); Ohio Revised Code §4112.01 *et seq.* (Civil Rights); O.R.C. §4113.51 *et seq.* (Whistleblower's Protection); O.R.C. §4123.01 *et seq.* (Workers' Compensation); O.R.C. §4123.90 (Workers' Compensation Retaliation); etc.) of like or similar import, including but not limited to any and all common law claims, including but not limited to breach of oral, express, or implied contract; promissory estoppel; wrongful discharge; violation of public policy; interference with lawful business relationships; intentional and/or negligent infliction of emotional distress; loss of consortium; any claims for personal

injury; any claims for failing to obtain employment with any other person or the Agency. Elmaraghy further waives and releases the Agency from any other claims under any other tort, contractual, common law, constitutional (including any claim for Due Process, First Amendment, Fourteenth Amendment, Equal Protection claims, etc.) or statutory theory that Elmaraghy may have had or now has up to the date of this Agreement. Elmaraghy further specifically waives any and all rights afforded to him under the Family and Medical Leave Act (29 U.S.C. §2601 *et seq.*) and the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended (38 U.S.C. §4301 *et seq.*). Notwithstanding the foregoing release and waiver of all legal rights and claims, nothing in this Agreement shall affect or be construed to affect any vested or accrued rights in any savings, pension, deferral, retirement, or welfare benefit plan in which Elmaraghy is a participant.

2. Elmaraghy further agrees to dismiss with prejudice his Appeals at the State Personnel Board of Review and any and all claims and demands therein asserted against the Agency. It is further agreed that Elmaraghy will file a Withdrawal of Appeal with Prejudice in the State Personnel Board of Review Case Numbers 13-REM-08-0203, 13-REM-09-0226, and 13-WHB-08-0204 within ten (10) calendar days after Elmaraghy receives the payments set forth in this Agreement. This Withdrawal of Appeals is attached as Exhibit A.

3. Elmaraghy further agrees to withdraw with prejudice his Appeal and claim filed with the U.S. Department of Labor Case Number 5-1800-14-027 and DOL Appeal Case Number 2014-TSC-2. Elmaraghy agrees to file in writing the Notice to Withdraw the Claim within ten (10) calendar days after receipt of the payments set forth in this Agreement. This Withdrawal of Appeal and claim is attached as Exhibit B.

4. Elmaraghy recognizes and understands that by executing this Agreement, Elmaraghy will be releasing the Agency from any claims under the Age Discrimination in Employment Act, 29 U.S.C. §621 *et seq.*, as amended by the older Workers Benefit Protection Act, 29 U.S.C. §621 *et. seq.*, by reason of any matters or things arising out of, or in any way connected with, directly or indirectly, any acts or omissions which occurred prior to and including the effective date of this Agreement.

5. The Agency will, in consideration of the terms and conditions of this Agreement, provide Elmaraghy an adjustment of the pay range assigned to Elmaraghy's position as Division Chief. The adjustment will be to pay range 17 from pay range 16 for the period beginning January 24, 2010, through the date of Elmaraghy's separation from the Agency on September 13, 2013 which includes the vacation and personal leave balances converted at the time of Elmaraghy's retirement. The attachment to this Agreement specifies the hours adjusted and the attachment is agreed by the parties and incorporated by reference. The Agency will process the pay range adjustment through the payroll of the State. Both parties acknowledge and agree that this adjustment will be subject to various deductions, pension contributions and payroll taxes and that those will be understood by both parties to be their responsibility and obligation. The Agency will also make a one-time payment to Marshall and Morrow, LLC, attorneys for Elmaraghy in the amount of twenty thousand dollars (\$20,000.00) for attorney's fees for Elmaraghy in the USDOL matter referenced above. The payments set forth in this Agreement shall be made as promptly as possible. If payments are not made within 60 days of the date of Elmaraghy's execution of this Agreement, written notice that payments have not been received shall be delivered to Jonathan J. Downes, counsel for the Agency. The Agency will be provided

an opportunity to respond and Elmaraghy may thereafter pursue enforcement in the Court of Claims.

6. Elmaraghy acknowledges that he is solely responsible for the payment of any federal, state, and local tax, which may include any assessments and retirement contributions that may be due on any of the payments made hereunder. Elmaraghy agrees to pay all tax that may be due and owing from Elmaraghy under applicable law on any sum paid to him hereunder, and agrees to indemnify and defend the Agency and hold them harmless in the event that the Agency alleged by any taxing authority to be liable to any extent on account of Elmaraghy's failure to pay such tax. Elmaraghy acknowledges and agrees that the payments he is to receive pursuant to this Agreement are to be considered as earnings subject to pension contributions under the Ohio Public Employees Retirement System and that Elmaraghy will be responsible for such contributions including reimbursing the Agency for any payments it may make for Elmaraghy's share of the pension contributions. The parties agree that none of the payments made are for punitive or liquidated damages.

7. Elmaraghy hereby agrees to indemnify and hold harmless the Agency for any and all claims, demands, deficiencies, fines, penalties, levies, assessments, executions, judgments, losses, costs or recoveries, including, but not limited to, attorneys' fees and litigation expenses, incurred by Elmaraghy concerning the payments described above. Elmaraghy also agrees that he waives all rights to interest on the above amounts under O.R.C. §1343.03, common law or any other law. Elmaraghy further agrees that the Agency has compensated him for all hours worked in accordance with federal, state and local wage and hour laws and that the Agency does not owe Elmaraghy any unpaid wages.

8. Elmaraghy acknowledges that he has not initiated a claim, lawsuit, charge of discrimination or any other legal proceeding against the Agency other than the appeals at the State Personnel Board of Review and claims with the United States Department of Labor and any claims with the United States Environmental Protection Agency.

9. Elmaraghy agrees never to file or otherwise initiate a claim, lawsuit or any other legal proceeding against the Agency for any conduct which occurred up to and including the date of this Agreement. If any such court assumes jurisdiction over any such complaint against the Agency, Elmaraghy will direct that court to withdraw from or dismiss the matter. Elmaraghy agrees that he will not assist any former, current or future employee of the Agency to pursue any employment claim(s) against the Agency, unless specifically subpoenaed or required by law to appear in such proceedings.

10. Elmaraghy acknowledges that this Agreement does not prevent Elmaraghy from participating in proceedings before any governmental administrative agency (e.g., the Ohio Civil Rights Commission, the Equal Employment Opportunity Commission, etc.), but except where prohibited by law, Elmaraghy expressly and voluntarily waives any right that he may have otherwise had to recover any damages or any other relief whatsoever, whether in law, equity, or restitution, in any proceeding that is or may be brought on his behalf by such governmental administrative agency. Elmaraghy also agrees to request the dismissal or discharge of any matter pending before either the OCRC or EEOC.

11. Unless requested to be employed or act as a consultant to the Agency by the Director of the Agency, Elmaraghy agrees not to seek employment or re-employment with the Ohio Environmental Protection Agency at any time in the future. If Elmaraghy does seek re-

employment with the Agency, Elmaraghy agrees and understands that the Ohio Environmental Protection Agency may, at its discretion deny him employment.

12. Elmaraghy and the Agency both acknowledge that by entering into this Agreement neither admit any wrongful or unlawful act or violation of any federal, state or local statute, law, ordinance or regulation. Elmaraghy and the Agency both further acknowledge that each specifically denies any wrongful or unlawful acts and that entering into this Agreement is solely for the purpose of avoiding the time and expense involved in proceeding with a lawsuit. This Agreement extends to all claims of every nature and kind whatsoever, whether known or unknown, suspected or unsuspected, that exists or might exist at the time this Agreement is executed.

13. Elmaraghy represents and acknowledges that in executing this Agreement, he does not rely and has not relied upon any representations or statements made by any other party hereto, or by any other party's agents, representatives or attorneys.

14. Under the federal Age Discrimination in Employment Act of 1967 (the "ADEA"), as amended by the Older Workers Benefit Protection Act (29 U.S.C. § 621 et seq.), Elmaraghy is hereby advised to consult with an attorney prior to signing this Agreement and has been given at least twenty-one (21) days from the receipt of this Agreement to consider this Agreement before signing it; provided that in no event shall this Agreement be returned to the Agency's attorneys later than twenty-one (21) days from the date of receipt. If Elmaraghy signs this Agreement sooner it is because he has voluntarily waived his right to consider this Agreement for the full 21 days.

Elmaraghy has the right to revoke this Agreement after he signs it. But Elmaraghy understands that if he wants to exercise this right, he must do so no later than seven (7) calendar

days after he has signed this Agreement, and must prepare a written document that says, in effect, "I revoke this Agreement," and he must deliver this document by hand delivery or certified mail to Jonathan J. Downes, Zashin & Rich Co. L.P.A., 17 S. High Street, Suite 750, Columbus, OH 43215 within that seven (7) calendar day period. Elmaraghy understands that his revocation will not be effective unless it is actually delivered no later than seven (7) calendar days after the date he has signed this Agreement. Elmaraghy also understands that if he revokes this Agreement, then Elmaraghy and Elmaraghy's Attorney will not receive the payments described in this Agreement and this Agreement will become null and void.

15. Elmaraghy represents and warrants that he has neither made, nor suffered to be made, any assignment or transfer of any right, claim, demand or cause of action which is the subject of this Agreement and that Elmaraghy is the sole and absolute legal and equitable owner of all rights, claims, demands or causes of action herein released.

16. This Agreement and any agreed attachments constitute the entire Agreement between Elmaraghy and the Agency and there are no other oral or written Agreements between Elmaraghy and the Agency. No waiver, modification or amendment of any terms, conditions or provisions of this Agreement will be valid or have any force or effect unless made in writing and signed by the parties.

17. The provisions of this Agreement are severable, and the invalidity of any one or more of the provisions will not affect or limit the enforceability of the remaining provisions. Should any provision be held unenforceable for any reason, the remaining provisions will be enforced to the maximum extent permitted by law.

18. The parties acknowledge that this Agreement will be construed and interpreted in accordance with the laws of the State of Ohio. The parties hereto voluntarily consent to allow

the courts of the State of Ohio to assume jurisdiction over any disputes and/or controversies between the parties arising out of or concerning this Agreement. The parties agree that any litigation arising out of this Agreement or concerning the rights and obligations hereunder, will be commenced and maintained in the appropriate court in the State of Ohio.

ELMARAGHY REPRESENTS AND AFFIRMS UNDER PENALTIES OF PERJURY THAT HE EXECUTES THIS AGREEMENT KNOWINGLY, VOLUNTARILY AND WITHOUT DURESS, THAT HE HAS BEEN THOROUGHLY ADVISED OF HIS RIGHT TO DISCUSS ALL ASPECTS OF THIS AGREEMENT WITH COUNSEL PRIOR TO EXECUTING THIS AGREEMENT, THAT HE UNDERSTANDS THE TERMS OF THIS AGREEMENT, THAT HE HAS HAD A REASONABLE TIME TO CONSIDER THIS AGREEMENT, THAT ITS TERMS REPRESENT CONSIDERATION IN ADDITION TO ANYTHING OF VALUE TO WHICH HE IS ALREADY ENTITLED, AND THAT HIS ATTORNEY HAS EXPLAINED THE TERMS OF THIS AGREEMENT TO ELMARAGHY.

SWORN TO BEFORE ME and subscribed in my presence this 25<sup>th</sup> day of April, 2014

[Signature]  
Notary Public JOHN S. MARSHALL  
Lifetime Commission  
NOTARY

George Elmaraghy  
George Elmaraghy

SWORN TO BEFORE ME and subscribed in my presence this 4<sup>th</sup> day of April, 2014

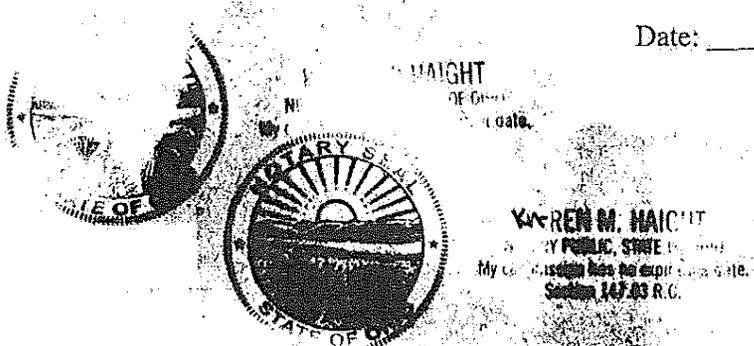
[Signature]  
Notary Public

State of Ohio, Environmental Protection Agency

By: [Signature]

Its: Director

Date: 4/4/2014



**Letter of Understanding  
Calculation of Pay Range Adjustment  
April 1, 2014**

The following is the letter of understanding between the parties and their representatives in the Agreement of Settlement and Release between George Elmaraghy and the Ohio EPA. The terms of the Agreement provide that the pay range assignment to the position of Division Chief, Division of Surface Water be adjusted. The adjustment is understood and agreed to apply for the hours worked, 40 hours per week, for the period beginning January 24, 2010 through the date of retirement of September 13, 2013 or 7535.50 hours.

The leaves converted at his retirement by Mr. Elmaraghy will also be included in the adjustment, and would include only those hours previously converted which were 26.07 hours personal leave and 720 hours vacation leave. It is understood and agreed the adjusted rate would not apply to any other leave conversions including sick leave conversion.

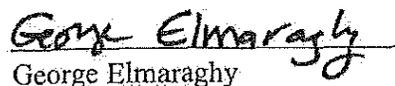
The rate adjustment shall be applied to the following total hours and conversion which is understood and agreed to be as follows:

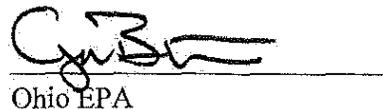
	<u>Base</u>	<u>Long</u>	<u>Total</u>	<u>Difference</u>
P.R. 16	44.38	3.38	47.76	\$4.83
P.R. 17	48.86	3.73	52.59	

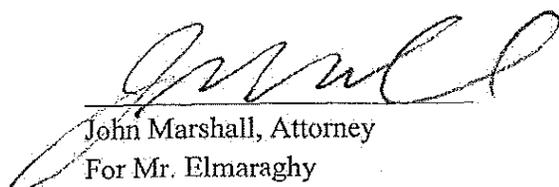
The total hours for which the rate adjustment of \$4.83 per hour shall be applied as follows:

January 24, 2010 to September 13, 2013	=	7535.50 hours
Vacation leave hours converted	=	720.00 hours
Personal leave hours converted	=	<u>26.07 hours</u>
		8281.57 Total Hours

The parties agree that these calculations are consistent with the Agreement of Settlement and Release executed between the parties and is the full and final payment to Mr. Elmaraghy.

  
George Elmaraghy

  
Ohio EPA

  
John Marshall, Attorney  
For Mr. Elmaraghy

  
Attorney for Ohio EPA