

**IN THE MATTER OF:**

**\* BEFORE**

**PSEG KEYS ENERGY**

**\* THE MARYLAND DEPARTMENT**

**CENTER, LLC**

**\* OF THE ENVIRONMENT**

\* \* \* \* \*

**SETTLEMENT AGREEMENT**

**WHEREAS**, the Air and Radiation Administration of the Maryland Department of the Environment (“the Department”) is charged with the responsibility for regulating air pollution in the State of Maryland and enforcing State air pollution control laws and regulations. The Department’s authority is set forth in §1-401 and §§ 2-101 through 2-1211 of the Environment Article of the Maryland Code, and its implementing regulations, found in Title 26, Chapter 11 of the Code of Maryland Regulations (“COMAR”); and

**WHEREAS**, PSEG Keys Energy Center, LLC (“PSEG”) owns and operates an electric generating station located at 10322 North Keys Road in Brandywine, Maryland 20613 (“Facility”); and

**WHEREAS**, on December 1, 2018, the Department issued to PSEG State Permit to Operate No. 033-2737 (“Operating Permit”), governing operations at the Facility which cause emissions to the ambient atmosphere; and

**WHEREAS**, Part C1, Condition No. 10 of the Operating Permit requires, among other things, that the Facility’s two combustion turbines (CT1 and CT2) meet the best available control technology (“BACT”) emissions limit for inhalable particulates with diameters that are 10 micrometers and smaller (i.e. “PM<sub>10</sub>”) identified in Table B-1 of the Operating Permit. Table B-1 of the Operating Permit requires PSEG to conduct annual stack testing on each combustion turbine (both with and without operation of the duct

burners), to demonstrate compliance with the PM<sub>10</sub> limit, based on the average of three test runs; and

**WHEREAS**, the Department alleges that on September 23 through 29, 2019, PSEG had Air Hygiene International, Inc. perform annual particulate matter stack testing of CT1 and CT2. The stack test results indicated that both combustion turbines exceeded the PM<sub>10</sub> limits of the Operating Permit while operating both with and without duct burners, in violation of COMAR 26.11.02.05A; and

**WHEREAS**, following receipt of the stack test results, PSEG performed various inspections, forensic analyses, and physical/operational improvements to diagnose and correct the cause of the elevated particulate matter readings; and

**WHEREAS**, on December 2 through 5, 2019, PSEG had Air Hygiene International, Inc. perform particulate matter stack testing which demonstrated CT1 and CT2's were in compliance with the Operating Permit's PM<sub>10</sub> limit, both with and without duct firing. Based on the stack testing results, the Department alleges that the Facility violated COMAR 26.11.02.05A by emitting particulate matter in excess of the Operating Permit's PM<sub>10</sub> limits during each day CT1 and/or CT2 operated between September 23, 2019 and December 5, 2019; and

**WHEREAS**, Part B, Condition No. 2(z)(2) and Part D.2, Condition No. 2(c) of the Operating Permit require PSEG to perform a combustion analysis on the Facility's auxiliary boiler at least once a year and optimize combustion within that boiler based on the analysis results; and

**WHEREAS**, the Department alleges that PSEG failed to perform a combustion analysis of the auxiliary boiler, and subsequently optimize the boiler based on the results therefrom, during calendar year 2019. The Department further alleges that PSEG's failure to perform the combustion analysis and optimize the auxiliary boiler are violations of COMAR 26.11.02.05A and COMAR 26.11.09,08E(3) on each day the Facility operated during 2019; and

**WHEREAS**, on July 18, 2020, PSEG had an exceedance of its carbon monoxide (CO) limit during startup and the unit was immediately shut down.

**WHEREAS**, prior to the effective date of this Settlement Agreement, PSEG has taken corrective actions to resolve the allegations described above (collectively, "Alleged Violations") and made physical and operational changes which reduce their chance of recurrence; and

**WHEREAS**, the Department and PSEG agree that resolution of the Department's claims for the Alleged Violations without further delay or litigation is in the best interests of the parties and in the public interest; and

**WHEREAS**, PSEG denies the factual and legal assertions in the Alleged Violations; and

**WHEREAS**, PSEG expressly acknowledges that this Settlement Agreement is intended to fully resolve any civil liability which the Department may have against PSEG for the Alleged Violations, that this Settlement Agreement pertains only to the specific violations of the State's environmental laws and regulations described herein, and that the Department has made no promises or representations with regard to any criminal liability which may exist for the above-referenced violations as the Department has no authority

over any criminal actions.

**NOW, THEREFORE**, without any admission of the Alleged Violations by PSEG and in full settlement thereof, the Department and PSEG hereby AGREE to the following terms and conditions:

PENALTY

1. PSEG shall pay a civil penalty to the Department in the amount of one-hundred twenty-five thousand dollars (**\$125,000.00**). The penalty shall be paid no later than 30 days following the effective date of this Settlement Agreement. Payment shall be by certified check made payable to the Maryland Department of the Environment/Clean Air Fund and sent to:

The Maryland Department of the Environment  
P.O. Box 2037  
Baltimore, Maryland 21203-2037

SUPPLEMENTAL ENVIRONMENTAL PROJECT

2. Within ninety (90) days of execution of this Settlement Agreement, or within any time extension granted in writing by the Department at its discretion, PSEG shall pay seventy-five thousand dollars (\$75,000.00) to EarthReports, Inc., trading as the Patuxent Riverkeeper, to support implementation of a supplemental environmental project (“SEP”) designed to serve people, organizations, or communities in the vicinity of PSEG, including the unincorporated area known as Brandywine in Prince George’s County, Maryland. No later than thirty (30) days following its payment to the Patuxent Riverkeeper, PSEG shall submit to the Department a written notice and documentation confirming that the payment was made.

3. Notwithstanding PSEG’s obligation to make the payment described in

Paragraph 2, the parties agree that this agreement does not create any obligation on the part of PSEG to ensure implementation of the SEP. Rather, proper performance of the SEP shall be the sole responsibility of the funding recipient, who shall guarantee performance of the SEP in accordance with the Guarantee Agreement attached as Addendum A and hereby incorporated by reference.

4. Any statement, publication, or other material published or distributed by PSEG or on PSEG's behalf referencing the SEP shall include a statement that "this project was required in settlement of an enforcement action by the State of Maryland."

RELEASE

5. By this Settlement Agreement, payment in accordance with Paragraph 1 and Paragraph 2 will release, resolve, and settle any civil claims against PSEG, and its past or present officers, directors, agents, employees, representatives, predecessors, affiliates, parent or subsidiary companies, successors or assigns, that the Department may have under Title 2 of the Environment Article, its implementing regulations, and/or the Facility's Operating Permit for the Alleged Violations.

6. Other than the Department's release in Paragraph 5, nothing herein shall be deemed to be a waiver of the Department's right to seek any and all legal and equitable remedies available to it for violation of any statute, regulation, permit or order, nor shall anything set forth in this Settlement Agreement be deemed to be a waiver of PSEG's right to contest such actions by the Department.

7. Nothing herein shall be deemed to be a waiver of the Department's right to seek any and all legal and equitable remedies, including sanctions, available to it for violation of this Settlement Agreement.

### EFFECT OF AGREEMENT

8. Neither PSEG's execution of this Settlement Agreement nor payment pursuant to Paragraph 1 or Paragraph 2 shall constitute an admission of the facts alleged or violations of law asserted in this Settlement Agreement, an adjudication of liability or fact with regard to the Alleged Violations, all of which PSEG disputes, or a waiver of defenses by PSEG in any subsequent enforcement action.

9. Nothing in this Settlement Agreement shall be construed to limit any authority of the Department to issue orders or to take any other act permitted under applicable law that it deems necessary to protect the public health or safety, or to limit any other authority the Department now has or may hereafter be delegated.

10. Nothing in this Settlement Agreement shall be construed to alter PSEG's obligation to comply with all applicable federal, State, or local statutes, regulations or permits.

### GENERAL PROVISIONS

11. The terms of this Settlement Agreement are contractual and not mere recitals. This Settlement Agreement contains the entire agreement of the parties and shall not be modified by any prior oral or written agreement, representation, or understanding. No modification or termination of this Settlement Agreement, or any party thereof, shall be valid except by written amendment executed by the Department and PSEG.

12. The terms of this Settlement Agreement are binding on the parties and shall be enforceable in the Maryland courts. This Settlement Agreement shall be governed by and interpreted under the laws of the State of Maryland.

13. This Settlement Agreement shall not be construed to create any rights in persons other than the Department and PSEG.

14. It is the intent of the parties that the provisions of this Settlement Agreement are severable and that, should any provision be declared by a court of law to be invalid or unenforceable, the other provisions shall remain in effect to the maximum extent reasonable.

15. This Settlement Agreement has been freely negotiated by the Department and PSEG and shall in all cases be construed as a whole, according to its fair meaning and not strictly for or against the Department or PSEG.

16. This Settlement Agreement shall be deemed effective as of the date the last party signs the Settlement Agreement. This Settlement Agreement may be executed in several counterparts, each of which may be deemed an original, and all of such counterparts together shall constitute one and the same instrument. For the purposes of this Settlement Agreement, signatures delivered by facsimile or other electronic means shall be as binding as originals upon the parties so signing.

This Settlement Agreement is hereby agreed to and the terms and conditions herein consented to:

19 Jan. 2022  
Date

STATE OF MARYLAND  
DEPARTMENT OF THE ENVIRONMENT  
George S. Aburn, Jr.  
George S. Aburn, Jr., Director  
Air & Radiation Administration

PSEG KEYS ENERGY CENTER

*Brian Clark*

12/23/21

Date

Brian J. Clark, Senior Vice President

Printed Name, Title

Approved as to form and legal sufficiency  
this 19<sup>th</sup> day of January, 2022.

*MFS*

*Michael F. Strande*

Michael F. Strande  
Assistant Attorney General



Addendum A to Settlement Agreement Between Maryland Department of the Environment and PSEG Keys Energy Center LLC:

**Guarantee Agreement Between Maryland Department of the Environment and EarthReports, Inc., t/a Patuxent RiverKeeper**

THIS GUARANTEE AGREEMENT is made this 21<sup>st</sup> day of December 2021 by and between the Maryland Department of the Environment ("the Department") and EarthReports, Inc., trading as Patuxent Riverkeeper, a corporation formed under the laws of Maryland with a principal office located at 17412 Nottingham Road, Upper Marlboro, Maryland 20772,<sup>1</sup> and a resident agent address of 18600 Queen Anne Road, Upper Marlboro, Maryland 20774, in Prince George's County, Maryland ("Earth Reports") (collectively, the "Parties").

**WHEREAS**, the Air and Radiation Administration of the Maryland Department of the Environment ("the Department") is charged with the responsibility for regulating air pollution in the State of Maryland and enforcing State air pollution control laws and regulations. The Department's authority is set forth in §1-401 and §§ 2-101 through 2-1211 of the Environment Article of the Maryland Code, and its implementing regulations, found in Title 26, Chapter 11 of the Code of Maryland Regulations; and

**WHEREAS**, on or about February 19, 2021, the Department initiated settlement discussions with PSEG Keys Energy Center LLC ("PSEG") regarding alleged violations of PSEG's air permit to operate at its electric generating station located at 10322 North Keys Road in Brandywine, Prince George's County, Maryland ("Facility"); and

<sup>1</sup> Earth Reports acknowledges that the State Department of Assessments and Taxation lists its principal office as 18600 Queen Anne Road, Upper Marlboro, Maryland 20774, which is no longer accurate and requires correction.

**WHEREAS**, the Department and PSEG have reached a settlement in principle which will require PSEG, in part, to pay seventy-five thousand dollars (\$75,000.00) to support the implementation of a supplemental environmental project ("SEP") designed to serve people, organizations, or communities in the vicinity of PSEG, including the unincorporated area known as Brandywine, in Prince George's County, Maryland ("SEP Payment"); and

**WHEREAS**, the Department has identified Earth Reports, t/a Patuxent Riverkeeper, as a recipient of the funding to be provided under the Department's settlement, for the explicit purpose of establishing and operating the Patuxent Summer Skills Boot Camp, a to benefit the communities and citizens of Prince George's County and specifically the Brandywine area; and

**WHEREAS**, the Department approves the implementation of the Patuxent Summer Skills Boot Camp, intended to be a series of intensive outdoor experiences in warm weather months where young people in Brandywine and the surrounding areas can experience the natural environment and acquire outdoor skills that build confidence and personal character, while reinforcing important values and knowledge, including environmental stewardship; and

**WHEREAS**, in exchange for acting as recipient of that funding, Earth Reports, t/a Patuxent Riverkeeper, enters into this Guaranty Agreement to provide the Department with an enforceable contractual agreement guaranteeing implementation of the Project, including certain minimum deliverables to be provided under the terms described herein.

**NOW THEREFORE**, in consideration of the mutual promises noted above, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged by Earth Reports and the Department, the Parties, agree that, upon receipt of the SEP Payment, Earth Reports shall be obligated as follows:

1. Promptly after receiving the SEP Payment, Earth Reports agrees to deposit the payment in an account dedicated to the Patuxent Summer Skills Boot Camp (the "Dedicated Account"). The Dedicated Account shall be solely for uses related to the Patuxent Summer Skills Boot Camp and shall not be commingled with any other funds, including but not limited to funds for other activities or general operations of Earth Reports.

2. Within thirty (30) days of receipt of the SEP Payment, Earth Reports shall provide to PSEG and the Department written confirmation that the Dedicated Account has been established and the SEP Payment has been deposited in the Dedicated Account.

3. Earth Reports shall establish and operate the Patuxent Summer Skills Boot Camp, and in doing so, shall expend no less than \$75,000 in support of that project within three years of receipt of the SEP Payment, unless an extension is approved in writing by the Department. Earth Reports will remit to the Department any unexpended or unencumbered funds associated with the SEP Payment from the Dedicated Account at the end of the three-year implementation period, unless the Department either extends the three-year period or waives this requirement in its sole discretion.

4. At least \$1,000 of the awarded funds will be used to plant trees in the Brandywine area.

5. Earth Reports shall submit to the Department program finance and expenditure reports within thirty (30) days following the end of each calendar quarter. The first report under this Paragraph shall be required at the end of the first full calendar quarter following receipt of the SEP Payment, with the requirement to submit quarterly reports continuing until at least \$75,000 in funding has been expended.

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6. In addition to the requirement of Paragraph 5, Earth Reports shall submit to the Department by February 1 of each year, an annual report that is narrative in nature describing the previous year's activities and the number of students served. A final report will be provided 45 days after \$75,000 in funding has been expended.

7. Earth Reports shall submit to the Department for its approval the following expenditures before incurring the expense. Any expenditure which is not approved in advance, or which fails to receive subsequent approval by the Department, shall either be reimbursed by to the Dedicated Fund or returned to the Department, at the Department's discretion.

- a. Any expenditure for any fixed asset that is anticipated to be in excess of \$10,000 (e.g. ground transportation);
- b. any expenditure in excess of \$1,000 for the services of an entity or individual supporting the camp in any capacity;
- c. any expenditure in excess of \$1,000 for any single piece of equipment or physical item associated with the operation of the camp;
- d. any aggregated equipment or item purchase in excess of \$2,500.

8. In order to receive expenditure approval pursuant to Paragraph 7, an individual or entity that is providing educational services shall, at a minimum, possess the appropriate expertise on the topic being taught and the costs for such services shall be reasonable.

9. The Department will be allowed to audit the isolated account and the documentation for any expenditure drawn against that account, including any documentation regarding the appropriate expertise a person possesses.

10. Any funds associated with the SEP Payment not used in accordance with this

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Agreement as determined by the Department will be returned to the Department upon demand.

11. Any notifications or reports required under this agreement shall be sent to:

Angeló Bianca  
Maryland Department of the Environment  
Air & Radiation Administration  
1800 Washington Blvd, Suite 710  
Baltimore, MD 21230-1720  
[angelo.bianca@maryland.gov](mailto:angelo.bianca@maryland.gov)

12. The terms of this Guarantee Agreement are contractual and not mere recitals. This Guarantee Agreement contains the entire agreement of the Parties and shall not be modified by any prior oral or written agreement, representation, or understanding. No modification or termination of this Guarantee Agreement, or any party thereof, shall be valid except by written amendment executed by the Department and Earth Reports.

13. The terms of this Guarantee Agreement are binding on the parties and shall be enforceable in the Maryland courts. This Guarantee Agreement shall be governed by and interpreted under the laws of the State of Maryland.

14. This Guarantee Agreement shall not be construed to create any rights in persons other than the Department and Earth Reports.

15. It is the intent of the parties that the provisions of this Guarantee Agreement are severable and that, should any provision be declared by a court of law to be invalid or unenforceable, the other provisions shall remain in effect to the maximum extent reasonable.

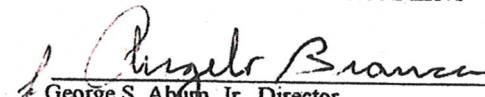
16. This Guarantee Agreement has been freely negotiated by the Department and Earth Reports and shall in all cases be construed as a whole, according to its fair meaning and not strictly for or against the Department or Earth Reports.

17. This Guarantee Agreement shall be deemed effective as of the date the last party signs the Guarantee Agreement. This Guarantee Agreement may be executed in several counterparts, each of which may be deemed an original, and all of such counterparts together shall constitute one and the same instrument. For the purposes of this Guarantee Agreement, signatures delivered by facsimile or other electronic means shall be as binding as originals upon the parties so signing.

As confirmed by the signatures below, the Parties agree and consent to the terms and conditions of this Guarantee Agreement.

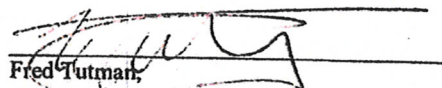
STATE OF MARYLAND  
DEPARTMENT OF THE ENVIRONMENT

12/20/2021  
Date

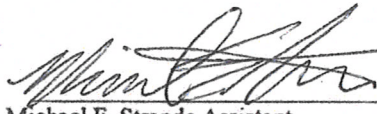
  
George S. Abum, Jr., Director  
Air & Radiation Administration

EARTHREPORTS, INC.  
t/a PATUXENT RIVERKEEPER

12-17-21  
Date

  
Fred Tutman

Approved as to form and legal sufficiency this  
21<sup>st</sup> day of December, 2021.

A handwritten signature in black ink, appearing to read "Michael F. Strande", with a long horizontal line extending to the right from the end of the signature.

Michael F. Strande Assistant  
Attorney General