

**ALLEGHENY COUNTY HEALTH DEPARTMENT
AIR QUALITY PROGRAM**

In the Matter of: ALCOSAN (Allegheny County Sanitary Authority)
 3300 Preble Ave
 Pittsburgh, PA 15233

CONSENT ORDER AND AGREEMENT

This Consent Order and Agreement (“Consent Agreement”) is entered into effective this 1st day of May, 2023 (“Effective Date”), by and between the Allegheny County Health Department (hereinafter referred to as “ACHD”) and the Allegheny County Sanitary Authority (“ALCOSAN”).

RECITALS

WHEREAS, ACHD has found and determined the following:

1. The Director of the ACHD has been delegated authority pursuant to the federal Clean Air Act (“CAA”), 42 U.S.C. §§ 7401 et seq., and the Pennsylvania Air Pollution Control Act (“APCA”), 35 P.S. §§ 4001 et seq., and the ACHD is a local health agency organized under Local Health Administration Law, Act 315 of August 24, 1951, P.L. 1304, as amended, 16 Pa.C.S. § 12001 et seq., whose powers and duties include the enforcement of laws relating to public health within Allegheny County, including the ACHD’s Rules and Regulations, Article XXI, Air Pollution Control (“**Article XXI**”);

2. ALCOSAN operates a publicly owned treatment works facility in Allegheny County, Pennsylvania (“POTW”). The facility is physically located at 3300 Preble Ave, Pittsburgh, Allegheny County, Pennsylvania. ALCOSAN serves eighty-three (83) local municipalities within Allegheny County and processes over 200 million gallons of wastewater per day (on average). ALCOSAN is a minor source of all criteria pollutants and HAPs.

3. Pursuant to Section 129 of the CAA, 42 U.S.C. § 7429, EPA promulgated the “Federal Plan Requirements for Sewage Sludge Incineration Units Constructed on or Before October 14, 2010” at 40 C.F.R. Part 62, Subpart LLL (“Subpart LLL”). ALCOSAN owns and operates two sewage sludge incineration (“SSI”) units subject to the requirements in Subpart LLL and, as such, is required to obtain a Title V permit pursuant to Section 129(e) of the CAA, 42 U.S.C. § 7429(e) and 40 C.F.R. §62.16035.

4. The Department issued a Title V Operating Permit and Federally Enforceable State Operating Permit (ACHD Permit No. 0035-OP22) to ALCOSAN on September 21, 2022

5. Subpart LLL requires, among other things, that affected SSI units meet specified emission limitations for cadmium, carbon monoxide, dioxins/furans, hydrogen chloride, lead, mercury, nitrogen oxides, particulate matter, and visible emissions. The Subpart LLL emission limitations are set forth in Table 2 of that subpart and apply at all times when an affected SSI unit is in operation. 40 C.F.R. § 62.15955.

6. Subpart LLL requires periodic stack tests to demonstrate compliance with the applicable emission limits. 40 C.F.R. § 62.16000. These stack tests must follow the requirements at 40 C.F.R. § 62.16015. Generally, Subpart LLL requires stack tests to be completed on an annual basis (between 11 and 13 calendar months following the previous stack test), but it also allows stack tests for a given pollutant to be performed less often when two prior consecutive stack test results for a given pollutant are at or below 75 percent of the respective emission limit and there are no changes in operation that could increase emissions. 40 C.F.R. § 62.16000(a)-(c).

7. From August 25 to 27, 2020, ALCOSAN conducted a stack test on one of its SSI units, known as Fluidized Bed Incinerator #2 (FBI-2), for all the pollutants with emission limits

in Table 2 of Subpart LLL. On August 28, 2020, and prior to receiving the August 2020 stack test results, ALCOSAN took FBI-2 out of service. The results for this stack test, which ALCOSAN received and submitted to the ACHD in October 2020, showed that the measured emissions of hydrogen chloride and lead exceeded the emission limits set forth in Table 2 of Subpart LLL. .

8. At ALCOSAN's request, ACHD, ALCOSAN, and the U.S. Environmental Protection Agency ("U.S. EPA") met on February 9, 2021, to discuss plans for ALCOSAN to conduct another stack test on FBI-2. Following this meeting, ALCOSAN sent ACHD and U.S. EPA a letter, dated March 25, 2021, describing its plans to re-test FBI-2 in mid-June 2021. In its March 25, 2021 letter, ALCOSAN indicated that it would keep FBI-2 out of service until it performed the follow-up stack test.

9. From June 22 to 24, 2021, ALCOSAN conducted another stack test on FBI-2 for all the pollutants with emission limits in Table 2 of Subpart LLL. On August 24, 2021, ALCOSAN sent the results from the June 2021 stack test to ACHD and U.S. EPA. The June 2021 stack test results showed that the measured emissions of cadmium and lead exceeded the emission limits set forth in Table 2 of Subpart LLL. Regarding hydrogen chloride, ACHD examined the June 2021 stack test results and later determined that the stack test results for hydrogen chloride were incomplete and/or invalid. FBI-2 was active in 2021 only long enough to conduct stack testing.

10. On December 12, 2021, the ACHD issued Notice of Violation ("NOV") #211203 to ALCOSAN for emission exceedances during the June 2021 stack test. FBI-2 was already under increased scrutiny due to reported exceedances during the August 2020 stack test. These

reported exceedances (cadmium, lead and hydrogen chloride) were measured during the stack test of only FBI-2.

11. Following issuance of NOV #211203, on January 25, 2022, ACHD and ALCOSAN met to discuss ALCOSAN's plans to perform another stack test on FBI-2. FBI-2 remained inactive during this time. ACHD informed ALCOSAN that ACHD Permit No. 0035-OP22 could not be issued until stack testing of FBI-2 could be successfully completed, thereby demonstrating that it could operate in full compliance. At ACHD's request, ALCOSAN performed daily sampling tests on the sludge feed for several weeks before the compliance test and implemented a compliance plan.

12. On March 15 and 16, 2022, ALCOSAN completed a stack test on FBI-2 for cadmium, lead and hydrogen chloride. ALCOSAN submitted the results of the March 2022 stack test to ACHD on May 12, 2022. These results demonstrated compliance with the Subpart LLL emission limits for all three pollutants.

13. On June 23, 2022, ALCOSAN met with ACHD to discuss a potential resolution of the reported exceedances during the August 2020 and June 2021 stack tests. The parties reviewed the results of the March 2022 successful compliance test for completeness and accuracy. Thereafter, ACHD issued ACHD Permit No. 0035-OP22 on September 21, 2022.

WHEREAS, the Parties recognize that this Consent Agreement has been negotiated in good faith and that any actions undertaken by ALCOSAN in accordance with this Consent Agreement do not constitute an admission of fault or liability;

WHEREAS, after a full and complete negotiation of all matters set forth in this Consent Agreement, and upon mutual exchange of covenants contained herein, the Parties agree that this Consent Agreement is in the best interest of the Parties and the public.

NOW, THEREFORE, without any final determination or admission of fact or law, intending to be legally bound hereby, and with the consent of the Parties, it is hereby **ADJUDGED, ORDERED, and DECREED** as follows:

I. JURISDICTION AND COMPLIANCE WITH APPLICABLE LAWS

A. Solely for the purposes of this Consent Agreement and the underlying reported exceedances, ALCOSAN waives all objections and defenses it may have to jurisdiction or venue. ALCOSAN shall not challenge ACHD's jurisdiction to enter into or to enforce this Consent Agreement.

B. The Parties agree that based on the results of the March 2022 stack test of FBI-2, no further corrective actions are required by ALCOSAN.

C. This Consent Agreement shall not be construed to relieve ALCOSAN of any obligation to comply with all applicable federal, state, and local environmental regulations, statutes, and laws, including but not limited to the CAA, the APCA, and Article XXI, as now in effect or as hereafter amended.

II. CIVIL PENALTY

A. ALCOSAN consents to the assessment of a civil penalty of \$5,995 in full settlement of any and all civil liability for the reported exceedances identified in the NOV #211203, those stemming from the operation of FBI-2 during the August 2020 and June 2021 stack tests, and those referenced in Paragraphs 7 and 9 of this Consent Agreement.

B. ALCOSAN shall pay the assessed civil penalty in Paragraph II.A. within sixty (60) Calendar Days of the Effective Date by corporate check, or the like, made payable to the "Allegheny County Clean Air Fund," and sent to the Program Manager, Air Quality Program,

Allegheny County Health Department, 301 39th Street, Bldg. No. 7, Pittsburgh, Pennsylvania 15201.

C. Upon receipt of the Civil Penalty and any Stipulated Penalties due under Paragraph III.A., the ACHD shall release and forever discharge ALCOSAN from civil liability for the reported exceedances identified in NOV #211203, those stemming from the operation of FBI-2 during the June 2021 stack test, and those referenced in Paragraphs 7 and 9, above.

D. Nothing in this Consent Agreement is intended to operate in any way to resolve any other civil claims against ALCOSAN or to limit the authority of the ACHD with respect to violations that may have occurred prior to the Effective Date of this Consent Agreement that are not intended to be the subject of resolution hereunder. This Consent Agreement may not be construed to prevent or limit the rights of the ACHD to obtain penalties or injunctive relief under the Clean Air Act, Article XXI, or under other federal, state, or local laws, regulations, or permit conditions for matters not covered by this Consent Agreement.

III. INTEREST AND LATE PAYMENT PENALTY

A. If ALCOSAN fails to make a timely payment to the ACHD of the civil penalty set forth in Paragraph II.A, above, ALCOSAN shall be liable to the ACHD for interest on the late payment and shall pay a stipulated penalty of \$500 per day for each day that the payment is late. Any assessment of interest and/or stipulated penalty is subject to challenge under ACHD's Rules and Regulations for Hearings and Appeals, Article XI.

IV. APPLICABILITY

A. The provisions of this Consent Agreement shall apply to, be binding upon, and inure to the benefit of ACHD, ALCOSAN, and upon their respective officers, directors, agents, contractors, employees, servants, successors, and assigns.

B. The duties and obligations under this Consent Agreement shall not be modified, diminished, terminated, or otherwise altered by the transfer of any legal or equitable interest in the POTW or any part thereof.

C. The Parties do not authorize any other persons to use the findings in this Agreement in any matter or proceeding.

D. In the event that ALCOSAN proposes to sell or transfer the POTW or any part thereof, ALCOSAN shall provide written notice to ACHD of such purchaser or transferee at least thirty (30) days prior to the sale or transfer. ALCOSAN shall also provide a copy of this Consent Agreement to any person or entity ALCOSAN intends to make any such sale or transfer at least thirty (30) days after thereto.

E. ACHD may, upon ALCOSAN's request, agree to modify or terminate ALCOSAN's duties and obligations under this Consent Agreement upon sale or transfer of the POTW. ALCOSAN reserves the right to challenge any decision by ACHD in response to ALCOSAN's request under ACHD's Rules and Regulations for Hearings and Appeals, Article XI.

F. The undersigned representatives of ALCOSAN certify that they are fully authorized to execute this Consent Agreement on behalf of ALCOSAN and to legally bind ALCOSAN to this Consent Agreement.

V. GENERAL TERMS

A. The ACHD reserves the right to require additional measures to achieve compliance with this Consent Agreement. ALCOSAN reserves the right to challenge any action that the ACHD may take to require such additional compliance measures.

B. All correspondence with the ACHD concerning this Consent Agreement shall be addressed to:

Geoffrey Rabinowitz
Deputy Director of Environmental Health
Air Quality Program
Allegheny County Health Department
301 39th Street, Building 7
Pittsburgh, PA 15201-1811

C. All correspondence with ALCOSAN concerning this Consent Agreement shall be addressed to:

Douglas Jackson
Deputy Executive Director
ALCOSAN
3300 Preble Ave
Pittsburgh, PA 15233

D. Service of any notice or legal process for any purpose under this Consent Agreement, including its enforcement, may be made by mailing an original or true and correct copy by First Class mail to the above contacts and addresses.

E. ALCOSAN shall notify the ACHD whenever there is a change in the contact person's name, title or address.

F. This Consent Agreement shall constitute the entire integrated agreement of the Parties. No prior or contemporaneous communications or prior drafts shall be relevant or admissible for the purposes of determining the meaning or intent of any provisions herein in any litigation or other proceeding.

G. The provisions of this Consent Agreement are severable. If any provision or part thereof is declared invalid or unenforceable or is set aside for any other reason, the remainder of the Consent Agreement shall remain in full effect.

H. A title used at the beginning of any paragraph of this Consent Agreement shall not be considered to control but may be used to aid in the construction of the paragraph.

I. No changes, additions, modifications or amendments to this Consent Agreement shall be effective unless they are set forth in writing and signed by the Parties hereto.

J. The Parties shall bear their respective attorneys' fees, expenses, and other costs with regard to the prosecution or defense of this matter or any related matters arising prior to the execution of this Consent Agreement.

K. This Consent Agreement shall become effective upon signature by the Parties as of the Effective Date first noted above.

L. This Consent Agreement shall terminate upon payment by ALCOSAN of the assessed Civil Penalty in Paragraph II.A and payment by ALCOSAN of any Stipulated Penalty due under Paragraph III.A. Upon written notice by ALCOSAN that such conditions have been satisfied, ACHD shall respond in writing whether such conditions have been satisfied, which response is subject to challenge under ACHD's Rules and Regulations for Hearings and Appeals, Article XI. If no response is received within 30 days of the written notice by ALCOSAN under this Paragraph, satisfaction of the conditions described in this paragraph shall be deemed achieved, and this Consent Agreement terminated.

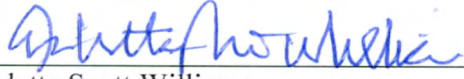
M. This Consent Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same Consent Agreement. In addition, the parties agree that this transaction may be conducted by

electronic means. This includes the use of electronic signatures and that signatures sent via facsimile or electronic mail shall constitute original signatures for purposes of this Agreement and that a photocopy may be used in place of originals for any purpose.

**THE REMAINDER OF PAGE INTENTIONALLY LEFT BLANK
SIGNATURE PAGE TO FOLLOW**

WHEREFORE, the undersigned party enters into this Consent Agreement.

FOR ALCOSAN,



Arletta Scott Williams
Executive Director
ALCOSAN



Date

IN WITNESS WHEREOF, the Parties hereto have caused this Consent Agreement to be executed by their duly authorized representatives.

FOR ALLEGHENY COUNTY HEALTH DEPARTMENT



Geoffrey Rabinowitz
Deputy Director of Environmental Health
Allegheny County Health Department

5/17/23

Date