

IN THE CIRCUIT COURT FOR CAROLINE COUNTY

MARYLAND DEPARTMENT
OF THE ENVIROMENT,

Plaintiff,

v.

TRI-GAS & OIL CO., INC,

Defendant.

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Case No. C-05-CV-23-000008

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CONSENT DECREE

Plaintiff, Maryland Department of the Environment (the “Department” or “MDE”) and Defendant, Tri-Gas & Oil Co., Inc. (“Defendant”) hereby request that this Court enter this Consent Decree as follows:

I. FACTUAL BACKGROUND

1. At all times material, Defendant leased and operated a petroleum product storage facility on a 10.39-acre property located at 3941 Federalsburg Highway, Federalsburg, Maryland, 21632 (Tax Map 61, Parcel 442) (the “Facility” or “Site”) from which emanated a release of petroleum product that impacted an adjacent 2.51-acre parcel (Tax Map 61, Parcel 520), and potentially impacted a 14.89-acre parcel (Tax Map 61, Parcel 9).

2. On March 26, 2019, the Department issued Oil Operations Permit number 2019-OPT-4523 (the “Oil Operations Permit”) to the Defendant for the Facility. The Oil Operations Permit authorized the operation of the oil storage facility with a loading rack,

the delivery of oil by truck tank or by transport, and the storage of oil in nine identified aboveground storage tanks (“ASTs”) at the Site.

3. On or about July 20, 2019, the Defendant observed an oil stain adjacent to the 500,000 gallon capacity AST identified as AST-2 on and attempted to remove as much oil (aka, “product”) from AST-2 as possible. As described further below, Defendant did not realize that the stain was associated with a larger release until March 2020.

4. On August 22, 2019, a contractor pumped out as much oil as possible from AST-2, and on September 28, 2019, another contractor vacuumed out the remaining oil from the AST.

5. The Department contends that Defendant should have reported the oil discharge adjacent to AST-2 to the Department under State law and as specified within Defendant’s Oil Operations Permit.

6. On February 15, 2020, the Department received an anonymous complaint that there was evidence of a fuel oil leak emanating from the Facility into a nearby stream that flows to the Marshyhope River. The stream and the Marshyhope River are waters of the State. Defendant denies ever having been notified of this report or having any knowledge of any evidence of a fuel oil leak emanating from the Facility in February 2020.

7. On March 13, 2020, the Maryland Department of Emergency Management (“MEMA”) received a report of an oily sheen moving through a water of the State identified as the Faulkner Branch (also known as the Faulkner Branch Creek) and

originating from the Facility. MEMA then received a follow-up call from a nearby resident advising of an active leak or spill from the Facility.

8. On March 19, 2020, an out-of-service internal API 653 inspection was performed on AST-2. The inspection found deficiencies including a previously-undiscovered hole in a welded joint on the bottom plate of the tank.

9. Subsequent investigation revealed oil in the subsurface between the ASTs and the nearby stream.

10. Defendant retained an environmental consultant and began emergency field activities to contain the release, including deployment and changing of absorbent materials on the surface of the wetland to the rear of the Site and deployment and changing of absorbent materials and a hard boom in the impacted portion of the stream.

11. In the course of performing site remediation activities and related site characterization activities, in or around July 2021, Defendant and its environmental consultant discovered evidence of previously-unknown oil contamination.

12. This Consent Decree is intended to ensure remediation of all oil contamination at the Site, whether currently known or discovered during remediation of the Site.

Statutory and Regulatory Authority

13. The Department is charged with responsibility for enforcing the State's oil control laws in accordance with Title 4, Subtitles 4 through 7, of the Environment Article and the Code of Maryland Regulations ("COMAR") 26.10, and for enforcing the State's water pollution control laws in accordance with Title 9, Subtitle 3, of the Environment Article and COMAR 26.08. Md. Code Ann., Envir. § 1-301(a).

14. Title 4, Subtitle 4 of the Environment Article prohibits the discharge of oil in any manner into or on water of the State except in case of emergency imperiling life or property, unavoidable accident, collision, or stranding, or as authorized by permit. Any person who violates any provision of Title 4, Subtitle 4, of the Environment Article, or any rule, regulation, order, or permit issued pursuant to Subtitle 4, is liable for a civil penalty of up to \$25,000 for each violation, and each day upon which a violation occurs is a separate offense. Envir. § 4-417(a).

15. Title 9, Subtitle 3 of the Environment Article prohibits the discharge of any pollutant into the waters of the State unless authorized by a discharge permit issued by the Department. The term "discharge" includes the placement of a pollutant in a position where it is likely to pollute waters of the State. Title 9, Subtitle 3 also provides that any person who violates any provision of Title 9, Subtitle 3 of the Environment Article or any rule, regulation, order, or permit adopted or issued by the Department thereunder, is liable for a civil penalty of up to \$10,000 per violation. Each day a violation occurs is a separate violation.

16. On or about February 8, 2023, the Department filed a Complaint in the Circuit Court for Caroline County, Maryland, styled *Maryland Department of the Environment v. Tri-Gas & Oil, Inc.*, as Case No. C-05-CV-00008 (hereinafter the “MDE Action”).

17. To avoid protracted litigation of the alleged violations and the corrective action required, and in light of Defendant’s ongoing proactive Site remediation efforts, Plaintiffs and Defendant (collectively, “Parties”), have reached an Agreement on the terms of this Consent Decree. The Parties recognize that, and the Court by entering this Consent Decree finds that, this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation between the Parties and that this Consent Decree is fair, reasonable, and in the public interest.

18. It is the mutual objective of the Parties, by entering into this Consent Decree, to provide for and achieve compliance with the environmental laws addressed by this Consent Decree in an expeditious manner to protect public health and the environment.

19. The Department believes that this Consent Decree is in the best interests of, and will benefit the residents of, the State of Maryland.

20. It is expressly understood that this Consent Decree pertains to the specific alleged violations described herein and that the Parties have made no promises or representations other than those contained in this Consent Decree and that no other promises or representations will be made unless in writing, and the Department makes no

representations with regard to any criminal liability for the above-referenced allegations and has no authority over any criminal actions.

21. Entry of this Consent Decree represents a settlement of contested claims.

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

II. JURISDICTION AND VENUE

22. This Court has jurisdiction over the Defendant under § 6-102 and § 6-103 of the Courts and Judicial Proceedings Article of the Annotated Code of Maryland because the Defendant maintains its principal place of business in the State and regularly conducts business in the State. Venue is proper under § 6-201 of the Courts and Judicial Proceedings Article because the Defendant carries on a regular business in Caroline County, Maryland.

23. For purposes of this Consent Decree, or any action to enforce this Consent Decree, the Parties consent to this Court’s jurisdiction over this Consent Decree and consent to venue in this Court.

III. CIVIL PENALTY

24. Upon execution of this Consent Decree by the Parties, Defendant shall deliver to the Department a certified check made payable to the “Maryland Oil Disaster Containment, Clean-Up and Contingency Fund,” in the amount of Six Hundred Thousand Dollars (\$600,000.00.) The check and any accompanying correspondence must reference Case No. C-05-CV-23-000008 and be delivered to Matthew Zimmerman, Office of the Attorney General at 1800 Washington Blvd., Baltimore, Maryland 21230.

IV. WORK TO BE PERFORMED

25. All documents required under this Section IV (Work to be Performed) of this Consent Decree shall be submitted to the Department (“Submittal(s)”). The Department shall review each Submittal and may approve, disapprove, or require revisions to the Submittal. The Defendant asserts that it has heretofore submitted all requested and required documentation and plans.

26. The Department shall notify the Defendant in writing if it determines that a Submittal is substantially deficient or flawed and shall set forth the basis for that determination in such notification.

27. If the Department requires revisions to a Submittal, the Defendant shall provide a revised Submittal within 45 days of the Department’s notice unless an alternative time period is provided by the Department.

28. All plans, studies, schedules, deadlines, models, and reports set forth in Submittals approved by the Department shall be incorporated by reference into this Consent Decree and enforceable as if fully set forth herein.

29. Defendant’s current remediation is being conducted pursuant to the interim Corrective Action Plan (iCAP), approved by MDE on August 9, 2022, and incorporated herein by reference. The iCAP establishes an interim remedial plan to be followed until delineation is completed and a formal corrective action plan (“CAP”) is approved.

Defendant agrees to continue to comply with all applicable provisions and Department-approved modifications of the iCAP.

30. Discharged oil has been characterized in accordance with the Department-approved plans. If the Department determines that site conditions warrant additional characterization of the discharged oil, the Department will request in writing such additional characterization from the Defendant. Upon receipt of such a request, the Defendant shall perform such additional characterization, and submit it to the Department within 60 days for review and approval.

31. Defendant has submitted a CAP dated November 30, 2022, which the Department is evaluating for approval. The CAP is subject to all provisions set forth in Paragraphs 25 to 28 of this Consent Decree.

32. The remedial goal is to return the groundwater to conditions that are protective of public health and the environment or achieve contamination levels at or below the Department's current groundwater standards and action levels where possible as determined by the Department. It is acknowledged by both parties that the remedial action may employ natural attenuation and may also include engineering or institutional controls. The recovery actions within the CAP submittal, including the groundwater recovery rates, shall be monitored by Defendant, reported to the Department on a quarterly basis, and are subject to the Department's approval as part of the ongoing CAP evaluation. It is acknowledged by both parties that the CAP will continue to be evaluated and may require periodic modifications as conditions warrant. If the Department determines that a modification is warranted, the Department shall request a modification

in writing. Upon request by the Defendant, the Department may conduct a technical meeting with the Defendant to negotiate the scope of the Department's requested modification. The Defendant shall submit the requested modification to the Department for the Department's review and approval within 60 days of the written request or the technical meeting whichever is later. Upon approval of the modification from the Department, Defendant shall implement the approved modified CAP including all interim deadlines.

33. Within ninety (90) days of receiving written approval from the Department, Defendant shall execute the terms of the approved CAP.

34. The Parties will review CAP actions, the schedule, and remedial goals at regular technical meetings to be conducted at a frequency directed by the Department.

35. The Defendant shall complete remediation of the site to the Department's satisfaction within 5 years of the Department's approval of the CAP (or the Court's approval of this Consent Decree if the Department has already approved the CAP). In the event that remediation is not completed within the 5 years, the Defendant shall submit a report to the Department setting forth the reasons for failure to complete the remediation. The Defendant may seek an extension of the 5-year deadline by submitting, for the Department's review and approval, a proposed amended CAP to complete the remaining remediation within 2 years. Consistent with the above paragraphs, the Department may require a modified CAP to be submitted. This process shall continue on a year-to-year basis thereafter, until the Department has determined the remediation has been completed to an extent that is protective of public health and the environment. It is within the

Department's reasonable discretion as to whether to extend the remediation deadline. Provided that the Defendant has acted diligently in pursuit of the approved CAP to remediate the Site, the Department may exercise its discretion to extend the remediation deadline upon a reasonable request by the Defendant.

36. Defendant shall refine and update the Conceptual Site Model,¹ as directed by the Department. If the Department determines that any changes are necessary to the Conceptual Site Model, the Department shall submit a written request to the Defendant to update the Conceptual Site Model. Upon receipt of the Department's request, the Defendant shall submit to the Department, within 45 days, a revised Conceptual Site Model for the Department's review and approval.

37. Defendant shall remove by non-mechanical means all sediment and erosion controls between the area of disturbance and Faulkner's branch, and the area shall be properly backfilled and stabilized. If petroleum saturation of sediment control materials has occurred, Defendant shall coordinate removal and/ or replacement of contaminated materials with the Department's Water and Science Administration. All petroleum impacted sediment control materials must be properly disposed of in accordance with federal, State, and local laws and proper documentation of disposal must be provided to the Department. Revised sediment and erosion control plans shall be approved by the Caroline County Soil Conservation District prior to future earth disturbance in excess of

¹ The Conceptual Site Model is part of the technical response required to evaluate and remediate the site. It must be updated from time to time as information is acquired.

5000 square feet or impact to more than 100 cubic yards of material, as outlined in COMAR 26.17.01.05.

38. If the Department determines that petroleum saturation of the sediment control materials have occurred, the Department shall require the Defendant to submit a written plan for the Department's approval to remove and/or replace the contaminated materials. The Defendant shall submit a written plan within 45 days of the Department's request. Upon approval of the plan from the Department, Defendant shall implement the approved plan, including all interim deadlines.

39. The area located between the former AST dike and Faulkner's branch was an historic landfill. Materials buried in this area may inhibit remedial efforts and may prohibit achieving remedial goals within 5 years. Removal of buried materials must be completed in a manner approved by the Department in order to increase remedial efficiency. When directed by the Department in writing, Defendant shall submit within 45 days to the Department for review and approval a written plan detailing the removal of the solid waste, including the scope of work to be performed, the proposed limit of disturbance, a sediment and erosion plan, and an implementation schedule. Upon approval of the plan from the Department, Defendant shall implement the approved plan, including all interim deadlines.

40. Defendant shall submit a quarterly progress report to the Department in a form approved by the Department. The quarterly reports shall be submitted by April 15, July 15, October 15, and December 15 providing information for each of the previous

calendar quarters. Upon mutual agreement, the Parties may adjust the timing and frequency of the submission of progress reports.

41. When submitting a progress report to the Department, Defendant shall submit three paper copies and one electronic copy (the number and format of copies may be modified by mutual, written agreement signed by all parties). The progress reports shall contain applicable information that describes information necessary to determine compliance with the approved iCAP or approved CAP, including but not limited to the following information collected during the reporting period:

- a. gauging data from monitoring wells;
- b. gauging data from recovery wells;
- c. product thickness in each monitoring well;
- d. product thickness in each recovery well;
- e. sampling data from monitoring wells;
- f. sampling data from former recovery wells;
- g. amount of petroleum product recovered tabulated for the current quarter and cumulative total;
- h. amount of groundwater pumped and treated;
- i. potentiometric surface maps;
- j. sampling data from the site supply well;
- k. sampling data from Faulkner's branch;
- l. information regarding an anticipated or actual delay that may or will result in an inability to complete an activity in accordance with a MDE approved

schedule, including the nature and cause of the delay, and any steps taken by Defendant to mitigate such delay; and

m. updates on all other plans and approvals required by this Consent Decree.

42. In any periodic progress report submitted pursuant to this section, Defendant may incorporate by reference information previously submitted.

43. Defendant shall obtain and comply with all permits required by the Department, including permits issued by the Water and Science Administration.

44. Defendant acknowledges that following completion of the CAP, the Department may require remediation of the impacted wetlands, to the extent any wetlands are impacted.

V. STIPULATED PENALTIES

45. Within thirty (30) days of written demand by the Department, Defendant shall pay stipulated penalties in accordance with the following criteria. If the Defendant fails to meet any deadline or schedule under this Consent Decree, including those set forth in the Submittals incorporated herein, Defendant shall pay \$500 per day of non-compliance for the first 1 to 15 days of noncompliance; \$1,000 per day of non-compliance between 16 and 120 days, and \$5,000 per day of non-compliance thereafter until the requirement is met.

46. Each violation of a provision of this Consent Decree is a separate instance of noncompliance subject to a stipulated penalty. All stipulated penalties shall begin to accrue on the day after the performance was due or on the day a violation occurs, whichever is applicable, and except as provided in Paragraph 51 below, shall continue to

accrue until performance is completed to the Department's reasonable satisfaction or until the violation ceases. Nothing in this Consent Decree shall prevent the simultaneous accrual of separate stipulated penalties for separate violations of this Consent Decree.

47. Stipulated penalties shall continue to accrue as provided in this Section during Dispute Resolution pursuant to Section VIII (Dispute Resolution) but need not be paid until thirty (30) days after final resolution of the dispute, including resolution of any judicial appeal.

48. Any demand for stipulated penalties shall be sent by email and mailed by First Class U.S. Mail to:

Keith McMahan
Nash McMahan
Tri-Gas & Oil, Inc.
3941 Federalsburg Hwy.
Federalsburg, MD 21632
nmcman@trigas-oil.com
kmcman@trigas-oil.com
410-754-1027

With a copy to:

Michael G. Rust, Esquire
Armistead, Lee, Rust & Wright, P.A.
114 Bay Street, Building C
Easton, MD 21601
Tel: (410) 822-4777
Fax: (410) 822-4787
E-mail: rust@alrwlaw.com

And

William H. White Jr., Esq.
Kiernan Trebach LLP
1233 20th Street, NW, 8th Floor
Washington, DC 20036

Tel: 202-712-7000
Fax: 202-712-7100
Email: wwhite@kiernantrebach.com

49. Except as otherwise expressly set forth in this Consent Decree, none of the stipulated penalties in this Consent Decree shall be construed as an election of remedy or other limitation on the Department's discretion to seek in lieu of stipulated penalties any other remedy or sanction available to it for violations of this Consent Decree or any other violation of State law or regulation not expressly made the subject of this Consent Decree. The Department's failure to demand any stipulated penalty under this Consent Decree does not constitute a waiver of the Department's right to make such a demand.

50. Except as otherwise expressly set forth in this Consent Decree, payment of any stipulated penalty shall not relieve the Defendant from the obligations imposed by this Consent Decree, any permit that may be issued, or any statute or regulation, nor shall such payment limit the right of the Department to seek enforcement of the terms of this Consent Decree or any other statute or regulation.

51. The Department may, in its discretion, reduce or waive any stipulated penalty for any reason deemed appropriate by the Department. If the Defendant requests the Department reduce or waive any stipulated penalties, the Defendant must do so in writing and the Department may consider the request.

52. No penalties hereunder shall be levied by the Department if the Department determines that noncompliance is due to an event of *Force Majeure* as set forth further below in this Consent Decree.

VI. MODIFICATION OF WORK TO BE PERFORMED

53. Any request to modify any deadline in this Consent Decree, including deadlines in an approved Submittal, shall be made in writing to the Department at least 10 days prior to the expiration of the required deadline.

54. Any request to modify work shall not excuse, toll, or suspend any compliance obligation or deadline required pursuant to this Consent Decree and/or as set forth in any approved Submittals during the pendency of the Department's consideration of the request, nor shall it stay the accrual of stipulated penalties unless agreed to by the Parties. The Department shall use best efforts to respond to a request to modify in writing within sixty (60) days from receipt of a complete request. A failure by the Department to respond in writing to a request to modify within sixty (60) days shall not constitute approval of any such request. No penalties hereunder shall be levied against Defendant for any delay or other failure of compliance arising from the Department's unreasonable delay beyond 60 days in responding to any request to modify work or issue any required approval.

VII. FORCE MAJEURE AND EXCUSABLE DELAY

55. Defendant shall perform the requirements of this Consent Decree in the manner and within the time limits set forth herein, unless the performance is delayed by events or circumstances arising from causes not reasonably foreseeable or beyond the reasonable control of Defendant, which cannot be avoided or overcome by due diligence and which delays or prevents performance in the manner or by a date required by this Consent Decree.

56. Circumstances beyond the reasonable control of Defendant include earthquake, flood, hurricane, severe weather or other act of God, war, riot, injunction, fire, pandemic, and compliance with any law, rule, or decree of any governmental body either existing now or hereafter created that conflicts with the requirements or obligations of this Consent Decree. Such circumstances do not include increased costs of performance, changed economic circumstances, normal inclement weather, or failure to obtain federal, State, or local permits unless Defendant has made timely and complete application for such permits.

57. The mere existence of a novel coronavirus and COVID-19 in the state in which the work contemplated by this Consent Decree and plans submitted hereunder does not excuse performance. Defendant must take all reasonable steps to mitigate any delay that may occur as a result of the novel coronavirus or COVID-19. Delays attributable to the novel coronavirus or COVID-19 may only constitute a *force majeure* where the Defendant could not reasonably have taken the known circumstances associated with COVID-19 into account when developing plans and implementation schedules.

58. Within ten (10) business days after becoming aware that an event Defendant believe constitutes an unforeseeable event or circumstance beyond its reasonable control may prevent or delay performance of an obligation under this Consent Decree, Defendant shall notify the Department of such event in writing. Defendant's written notification shall describe in detail the precise cause or causes of the delay, the anticipated length of the delay, the measures taken and to be taken by Defendant to prevent or minimize the delay, and a timetable by which those measures will be implemented. Defendant shall adopt all reasonable measures to avoid or minimize any such delay. Defendant shall include in the written notification a request to extend the deadline associated with any obligation under this Consent Decree whose performance may be prevented or delayed by unforeseeable events or circumstances beyond Defendant's reasonable control.

59. Failure by Defendant to comply with the notice requirements set forth in the preceding Paragraph constitutes a waiver of Defendant's right to request an extension of the applicable deadline associated with an obligation to be performed under this Consent Decree.

60. If the Department determines that the event or anticipated event which has caused or will cause the delay constitutes an unforeseeable event or circumstance beyond the control of Defendant, the time for performance hereunder shall be extended for an appropriate period of time as determined by the Department, but not less than a period of time substantially equal to the length of the necessary delay, and any stipulated penalty

shall not accrue. The Department shall inform Defendant in writing of its approval or denial.

61. In the event the Department and Defendant does not agree that a delay or failure has been or will be caused by a force majeure event or if there is no agreement on the length of the extension, the dispute shall be resolved in accordance with Section VIII (Dispute Resolution).

VIII. DISPUTE RESOLUTION

62. The dispute resolution procedures of this Section shall be the exclusive mechanism for the Parties to raise and resolve disputes arising under or with respect to this Consent Decree.

63. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the Department and Defendant in an attempt to resolve the dispute in a good faith and expeditious manner. A dispute shall be considered to have arisen when one party sends the other party a written Notice of Dispute by electronic mail.

64. The Parties shall have thirty (30) days following receipt of a Notice of Dispute to reach agreement, the Parties shall have the right to jointly meet during this thirty (30) day period. If the Parties cannot reach an agreement on the disputed issue, the Department shall serve on the disputing party a written statement setting forth its proposed resolution of the dispute within fifteen (15) days after expiration of the initial thirty (30) day period. The dispute shall be resolved in accordance with the Department's proposed resolution unless, within sixty (60) days after receipt of such proposed

resolution, the disputing party files a petition for resolution of the dispute with the Court. Any such petition shall describe the nature of the dispute and the disputing party's proposal for resolution of the dispute. The Department and the disputing party shall have thirty (30) days after service of such petition to file a response to the petition.

65. The Court shall have exclusive and continuing jurisdiction to issue any Decree or resolve any dispute arising between or among the Parties with respect to matters within the scope of this Consent Decree. With respect to the resolution of any dispute pursuant to a petition to the Court, the Court shall resolve the dispute in accordance with applicable law, deciding for itself the extent to which it should defer to any administrative determination by the Department with respect to any matters of fact or law, but in no event shall the Court be precluded from holding evidentiary hearings, considering testimony, or otherwise making determinations of fact if it deems such to be appropriate.

IX. RIGHT TO ENTER

66. Defendant shall allow authorized representatives of the Department to enter upon the Site at all reasonable hours for the purpose of collecting samples, information, and/or photographs, and any other activity necessary to ascertain and evaluate whether Defendant and the Site are in compliance with this Consent Decree and State law. Upon request by the Department, Defendant shall provide the Department with access to any records or information which may be related to the Site, this Consent Decree, or Defendant's compliance with State law.

X. RELEASE AND RESERVATION OF RIGHTS

66. Upon the full completion of all of the obligations set forth in this Consent Decree, including completion of all work required under the Consent Decree, and payment of the civil penalty and all stipulated penalties, Defendant, (including its officers, directors, shareholders, employees, affiliates, successors, and assigns) shall be released from all legal liability arising from the petroleum release(s) described herein. The Department further agrees to refrain from pursuing any civil or administrative enforcement action against the Defendant for the violations alleged in the MDE Action and for any additional product contamination at or from the Site known to the Parties as of the time of execution of this Consent Decree, or discovered at or from the Site during remedial activities undertaken pursuant to its provisions, provided that all such product contamination is investigated and remediated to the satisfaction of the Department. At such time the Department will issue a Final Closure Letter pursuant to COMAR 26.10.01.07 to Defendant and file a Notice of Satisfaction with the Court that Defendant has satisfied its obligations hereunder. This Consent Decree should not be construed as a waiver or limitation of the Department's right to take enforcement, including criminal enforcement, or other action with respect to activities not addressed by this Consent Decree or unknown to the Department at this time, including newly discovered contamination or the exacerbation of existing contamination. The Department and the State of Maryland retain all authority and rights against any persons other than the Defendant (including its officers, directors, shareholders, employees, affiliates, successors, and assigns) in any way responsible for causing the contamination present at

or migrating from the Site, including the right to seek all available relief, including equitable relief and damages of any nature, such as compensatory and natural resource damages, resulting from the release of any contaminant at the Site.

67. Nothing in this Consent Decree shall be deemed to be a waiver of the Department's right to proceed in an administrative or civil action for the violation of the terms of this Consent Decree or other violations of environmental laws or regulations at the Site not covered by this Consent Decree, nor shall anything set forth in this Consent Decree be deemed to be a waiver of Defendant's right to contest such proceeding(s) by the Department.

68. Nothing in this Consent Decree shall be construed to relieve Defendant of any violations or obligations under laws and regulations promulgated or enforced by local, State, or federal entities unrelated to the subject of this Consent Decree.

69. It is expressly understood that this Consent Decree pertains to violations of Maryland's oil and water pollution control laws and regulations described herein. The Department has made no promises or representations other than those contained in this Consent Decree.

70. Unless otherwise expressly indicated, Defendant and the Department intend that nothing in this Consent Decree shall be construed as a release or covenant not to sue any third party not a signatory to this Consent Decree. Nothing contained in this Consent Decree shall affect any right, claim, cause of action, or defense of any party hereto with respect to third parties. Defendant and the Department specifically reserve any and all rights, defenses, claims, demands, and causes of action which Defendant and the

Department may have against any third parties relating in any way to the subject matter of this Consent Decree.

X. NO THIRD-PARTY BENEFICIARIES

71. Unless otherwise expressly indicated, this Consent Decree does not and is not intended to create any rights, claims, or benefits for any third party. No third party shall have any legally enforceable rights, claims, or benefits under this Consent Decree, nor shall any third party have any rights to enforce the terms of this Consent Decree. No act of performance by Defendant or the Department, nor forbearance to enforce any term of this Consent Decree by the Department, shall be construed as creating any rights, claims, or benefits for any third party.

72. This Consent Decree does not affect and is not intended to influence any third party’s rights to investigate, evaluate, and respond independently to any impacts from the violations alleged herein.

73. Neither the terms nor the conditions of this Consent Decree, nor any act of performance by the Parties, shall collaterally estop the Department in any other proceeding with any third party not a signatory to this Consent Decree.

XI. PERSONS BOUND BY THIS ORDER

74. This Consent Decree shall apply to and be binding upon the Department, Defendant and Defendant’s successors, assigns, trustees, receivers, designees, as well as upon subsequent purchasers of the Site.

75. During the period when this Consent Decree is in effect, should Defendant seek to transfer ownership or other interest in its business conducted on the Site, then at

least fifteen (15) days prior to any such transfer of ownership or other interest in the business, Defendant shall provide written notice and a true copy of this Consent Decree to its successors in interest and shall simultaneously notify the Department by sending a letter, via certified mail, to: Chief, Remediation Division, Oil Control Program, Land and Materials Administration, Maryland Department of the Environment, 1800 Washington Blvd., Baltimore, Maryland 21230. As a condition to any such transfer, Defendant shall require its successors in interest to comply with the terms of this Consent Decree.

76. Defendant shall ensure that its contractors, subcontractors, and consultants comply with this Consent Decree.

77. Defendant shall provide at least fifteen (15) days in advance written notice to the Department prior to the filing of any petition or the commencement of any proceeding arising under the Bankruptcy Code, 11 U.S.C. 1101 *et seq.*

XII. NOTIFICATION

78. Unless otherwise specified, all workplans, reports, correspondence, approvals, notices, or other submissions required by or relating to this Consent Decree shall be submitted via e-mail or, upon request, by one of the following methods: (a) hand delivery; (b) first class mail; or (c) overnight mail by private courier. In the event of a change to any of the contacts listed below, the party making the change shall notify the other contacts below within ten (10) days of the change. Notice shall be sent to the following:

The Department

Office of the Attorney General

Julie Kuspa
1800 Washington Boulevard
Suite 6048
Baltimore, Maryland 21230
(410) 537-3352 (office)
Julie.Kuspa@maryland.gov

Defendant

Keith McMahan
Nash McMahan
Tri-Gas & Oil, Inc.
3941 Federalsburg Hwy.
Federalsburg, MD 21632
nmcman@trigas-oil.com
kmcman@trigas-oil.com
410-754-1027

With a copy to:

Michael G. Rust, Esquire
Armistead, Lee, Rust & Wright, P.A.
114 Bay Street, Building C
Easton, MD 21601
Tel: (410) 822-4777
Fax: (410) 822-4787
E-mail: rust@alrwlaw.com

And

William H. White Jr., Esq.
Kiernan Trebach LLP
1233 20th Street, NW, 8th Floor
Washington, DC 20036
Tel: 202-712-7000
Fax: 202-712-7100
Email: wwhite@kiernantrebach.com

XIII. GENERAL PROVISIONS

79. Each person signing this Consent Decree certifies that he or she is duly authorized by the party on behalf of which each signs to execute this Consent Decree and to bind that party to the terms of this Consent Decree.

80. The terms of this Consent Decree are binding on each of the Parties and shall be enforceable in the Maryland courts. In the event that Defendant fails to do the work or pay the penalties or stipulated penalties required herein, the Department may institute an action to enforce this Consent Decree against Defendant. In such or any other action, this Consent Decree shall be governed by and interpreted under the law of the State of Maryland, without regard to conflicts of law principles.

81. Defendant agrees to undertake and complete all actions required by the terms and conditions of this Consent Decree. In any action by the Department to enforce the terms of this Consent Decree, Defendant consents to and agrees not to contest the authority or jurisdiction of the Department to issue or enforce this Consent Decree and agrees not to contest the validity of this Consent Decree or its terms or conditions. Defendant agrees this Consent Decree is a contract and final order enforceable in a judicial forum.

82. The Parties represent that prior to signing this Consent Decree, each has read it, understood its terms and conditions, and consulted with counsel, and that each party has voluntarily signed it.

83. Failure to pay any applicable penalties as required by this Consent Decree may result in this case being referred to the State of Maryland's Central Collection Unit

(“Central Collection Unit”) as a debt owed to the State. The Central Collection Unit is authorized to collect outstanding debts resulting from unpaid penalties. The Central Collection Unit will add a collection fee of 17%, plus interest, to the amount owed by Defendant. In addition, the Central Collection Unit is authorized to report the debt to consumer reporting agencies.

84. This Consent Decree is not intended to be nor shall it be construed to be a permit. Compliance by Defendant with the terms of this Consent Decree shall not relieve Defendant of its obligations to comply with any other applicable local, State, or federal laws and regulations.

85. In the event that Defendant fails to comply with any provision of this Consent Decree, including but not limited to failure to complete the work or pay the civil penalty or any stipulated penalties demanded hereunder, the Department shall have the right to seek any and all legal and equitable remedies available to it for any such failure, and all other provisions of this Consent Decree shall remain in full force and effect.

86. This Consent Decree has been negotiated freely by the Department and Defendant and shall in all cases be construed as a whole, according to its fair meaning.

87. This Consent Decree constitutes the entire Consent Decree between the Department and Defendant. No other prior or contemporaneous written or oral Consent Decree, action, or statement regarding the matters described herein shall be valid or have any bearing on the interpretation, application, or enforcement of this Consent Decree.

88. If a court issues an order that invalidates any provision of this Consent Decree or finds that Defendant has sufficient cause not to comply with one or more

provisions of this Consent Decree, Defendant shall remain bound to comply with all provisions of this Consent Decree not specifically invalidated or determined to be subject to a sufficient cause defense by the Court's order. The Consent Decree shall be construed as if not containing the particular invalidated provisions or provisions which the Court finds the Defendant has sufficient cause not to comply with, and all remaining obligations of the Parties shall remain in effect and in force to the maximum extent reasonable.

89. This Consent Decree may be executed in any number of counterpart originals, each of which shall be deemed to constitute an original agreement, and all of which shall constitute one agreement. The execution of one counterpart by any party shall have the same force and effect as if that party had signed all other counterparts.

XIV. U.S. INTERNAL REVENUE SERVICE REPORTING REQUIREMENTS

90. The Parties to this Consent Decree recognize and acknowledge that the Department is required to report certain fines, penalties, and other amounts to the United States Internal Revenue Service pursuant to 26 U.S.C.A. § 6050X. Defendant agrees to cooperate with the Department in meeting this reporting obligations, to promptly provide information requested by the Department associated therewith, and to complete the Information Form attached hereto as Attachment A. The Parties acknowledge that this Consent Decree is not fully executed until a completed Attachment A is attached.

91. All penalty payments paid under this Consent Decree are penalties within the meaning of Section 162(f)(1) of the Internal Revenue Code, 26 U.S.C. § 162(f)(1), and 26 C.F.R. § 1.162-21(a)(3)(i), and Defendant shall not deduct any penalties paid

under this Consent Decree pursuant to Civil Penalties set forth in Paragraphs 21 and 22 or the Stipulated Penalties set forth in Paragraph 43 in calculating their federal income tax.

92. For purposes of the identification requirement in Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), and 26 C.F.R. § 162-21(b)(2)(iii)(A), performance of the Work to be Performed is restitution, remediation, or required to come into compliance with the law.

XV. SEVERABILITY

93. If any provision or authority of this Consent Decree or the application of this Consent Decree to any party or circumstance is held by any judicial or administrative authority to be invalid, the application of such provision or authority to other parties or circumstances and the remainder of this Consent Decree shall not be affected thereby and shall remain in full force.

XVI. TERMINATION

94. Except for the Release contained in Section X (Release and Reservation of Rights), this Consent Decree shall terminate and be of no further force and effect upon the occurrence of the following events: (a) the Defendant's payment of the full civil penalty as set forth in Section III (Civil Penalty); (b) the Defendant's payment of all stipulated penalties that may be demanded by the Department under this Consent Decree; and (c) the Department's determination that Defendant has completed all obligations set forth in and contemplated by the scope of this Consent Decree. Notwithstanding the foregoing in this Paragraph, the Parties may terminate this Consent Decree at any time by mutual written Consent Decree and the approval of the Court.


XVII. EFFECTIVE DATE

95. This Consent Decree shall become effective as a contract upon execution by all Parties (“the Effective Date”). This Consent Decree shall become effective as a Court Order upon entry by the Court.

XVIII. SUBSEQUENT MODIFICATION

96. The terms of this Consent Decree are contractual and not mere recitals. This Consent Decree contains the entire Consent Decree of the Parties and shall not be modified by any prior oral or written agreement, representation, or understanding. Prior to entry by the Court, this Consent Decree may only be modified by the mutual written agreement of all the Parties. Upon approval by the Court, this Consent Decree is not only contractual but constitutes a court order and any modification must be approved by the Court in a written order.

IT IS SO DECREED AND ORDERED this 23rd day of January, 2024:




Judge **Heather Price**
Circuit Court for Caroline County

Signature Page for Consent Decree in *Maryland Department of the Environment v. Tri-Gas & Oil Co., Inc.* Case No. C-05-CV-23-000008


FOR THE MARYLAND DEPARTMENT OF THE ENVIRONMENT:

1/18/24
DATE




Lee Currey
Director
Water & Science Administration

1/18/24
DATE

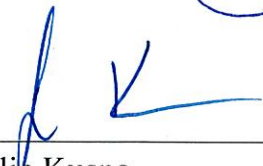


Tyler Abbott
Director
Land & Materials Administration

Approved as to form and legal sufficiency this 18 day of January, 2024



Matthew Zimmerman
Assistant Attorney General




Julie Kuspa
Assistant Attorney General

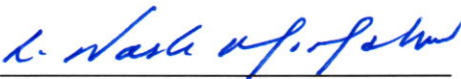
Signature Page for Consent Decree in *Maryland Department of the Environment v. Tri-Gas & Oil Co., Inc.* Case No. C-05-CV-23-000008

FOR TRI-GAS & OIL CO., INC:

1/18/2024
DATE


KEITH MCMAHAN
CHIEF EXECUTIVE OFFICER

1/18/24
DATE


NASH MCMAHAN
PRESIDENT