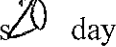


COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

In the matter of:

Brunner Island, LLC : The Clean Streams Law
835 Hamilton Street, Suite 150 : NPDES Permit No. PA 0008281
Allentown, PA 18101 : East Manchester Township, York County

CONSENT ASSESSMENT OF CIVIL PENALTY

This Consent Assessment of Civil Penalty ("CACP") is entered into this  day of *February* 2018, by and between the Commonwealth of Pennsylvania, Department of Environmental Protection ("Department") and Brunner Island, LLC ("Brunner").

The Department has found and determined the following:

- A. The Department is the agency with the duty and authority to administer and enforce the Pennsylvania Clean Streams Law, the Act of June 22, 1937, P.L. 1987, as amended, 35 P.S. § 691.1 et seq. ("The Clean Streams Law"); Section 1917-A of the Administrative Code, the Act of April 9, 1929, P.L. 177, as amended, 71 P.S. § 510-17 ("Administrative Code") and the rules and regulations promulgated thereunder, and which has been delegated authority to administer the National Pollutant Discharge Elimination System ("NPDES") permit program under the Federal Clean Water Act, 33 U.S.C § 1342.
- B. Brunner is a Delaware Limited Liability Company registered to conduct business in the Commonwealth of Pennsylvania. Brunner maintains a business address of 835 Hamilton Street, Suite 150, Allentown, Pennsylvania 18101.
- C. Brunner owns and operates a coal-fired electric generation facility, Brunner Island Steam Electric Station ("BISES"), with three coal-fired electric generation units. The design generation capacity is 1,495 MW. BISES discharges once through cooling water to the Susquehanna River at a rate of approximately 795 million gallons a day based on design of the condensers. Outfall 001 is the condenser discharge channel, which conveys cooling water approximately 2,000 feet to the Susquehanna River.
- D. The discharge from the condensers constitutes industrial waste under Sections 301 and 307 of the Clean Streams Law, 35 P.S. §§ 691.301 and 691.307.
- E. The authority to discharge industrial wastewater from Outfall 001 into the Susquehanna River, a water of the Commonwealth, is authorized under the terms and conditions of NPDES Permit No. PA0008281 issued to Brunner on September 1, 2006. The permit was

amended on April 2, 2007 and September 24, 2008, effective through September 30, 2011, and administratively extended at the time of execution of this CACP. On January 20, 2018, the Department published in the Pennsylvania Bulletin the draft NPDES permit for Brunner.

- F. Fish are generally attracted to the warm temperatures within the condenser discharge channel during the winter, and generally avoid the channel, the thermal plume and some of the naturally warm areas in the river during warm weather months
- G. On December 20, 2016, Brunner initiated a shutdown of all units starting with Units 1 & 2. The shutdown concluded with Unit 3 on December 21, 2017. The shutdown of all 3 units resulted in temperature drop within the discharge channel.
- H. On December 21, 2016, Brunner notified the Department via phone call of a few dead fish in the discharge channel. The Department requested that Brunner conduct an independent investigation and submit a report via email.
- I. On December 21, 2016, the Department received an email from Brunner describing the results of the investigation. Brunner stated that it had discovered 3-5 dead fish on the bank of the discharge channel south of the cooling towers. Brunner stated that its temperature trends showed a 7-8 Fahrenheit degree change over a 30 minute time span.
- J. On December 26, 2016, in response to a citizen complaint, the Department conducted an investigation downstream of Brunner's discharge channel. The complaint stated a fish kill had occurred at the Brunner fishing area. Department personnel documented approximately 150 to 200 dead fish. Department personnel noted that the documented number of dead fish might have been significantly lower than the actual number of dead fish, due to poor visibility at the time of inspection.
- K. On December 27, 2016, the Department conducted a follow-up inspection onsite at Brunner's facility. The Department documented dead fish downstream of the discharge channel. The Department also requested that Brunner provide the data recorded by the monitoring equipment in the discharge channel.
- L. On December 27, 2016, the Fish and Boat Commission ("FBC") conducted an investigation of the fish kill. The FBC staff documented approximately 12,000 dead fish.
- M. On December 28, 2016, Brunner provided the Department with the daily average effluent temperature of the discharge channel, the Unit 3 shutdown procedure, and Unit 3 Fish comfort system.
- N. On December 28, 2016, the Department requested that Brunner provide the raw temperature monitoring data from all 6 probes within the Brunner discharge channel.
- O. On December 29, 2016, the Brunner submitted the raw temperature data for the Department to review.

- P. On August 29, 2016, the Department issued a Notice of Violation (“NOV”) to Brunner for the unpermitted discharge of industrial waste into the Susquehanna River. The Department requested that Brunner provide a revised cold weather shutdown procedure to ensure downstream fish populations would not be exposed to cold shock.
- Q. On September 22, 2017, the Department received Brunner’s response to the NOV described in Paragraph P, above. Brunner stated its belief that it was not the cause of the fish mortality event. Brunner agreed to revise its shutdown procedures and planned to submit a new version to the Department by November 3, 2017.
- R. On November 2, 2017, the Department received Brunner’s revised shutdown procedure which reduced the target temperature change within the discharge channel from 10 degrees Fahrenheit to 6 degrees Fahrenheit.
- S. On February 2, 2018, Brunner agreed that it will implement the reporting requirement below, in the interim period until the Department issues the final NPDES permit. After the Department reviews the comments it receives during the public comment period for the Brunner draft permit, based upon its review, the Department will insert reporting language in the final NPDES permit which it deems appropriate and potentially is not the reporting language provided below.
1. **Temperature changes.** If during a unit shut down in which the heat source is removed from the discharge channel, and results in a 6 degree Fahrenheit change of temperature during a one hour period, Brunner will notify the Department within 4 hours of completion of the shutdown.
- T. The discharge of industrial waste to waters to the Commonwealth in such a manner as to create a nuisance or to render such waters harmful, detrimental or injurious to fish or other aquatic life, including but not limited to, such contamination by a change in temperatures constitutes pollution as defined by the Clean Streams Law, 35 P.S. § 691.1. Brunner’s unpermitted discharge of industrial waste into a water of the Commonwealth, as described in Paragraphs G-L, above, constitutes a violation of 25 Pa. Code §91.34; NPDES Permit PA 0008281, and Sections 301 and 307 of the Pennsylvania Clean Streams Law, 35 P.S. §§ 691.301 and 691.307.
- U. Brunner’s violation described in Paragraph T, above, constitutes unlawful conduct under Section 611 of The Clean Streams Law, 35 P.S. § 691.611; and subjects Brunner to a claim for civil penalties under Section 605 of The Clean Streams Law, 35 P.S. § 691.605.

After full and complete negotiation of all matters set forth in this CACP and upon mutual exchange of the covenants herein, the parties desiring to avoid litigation and intending to be legally bound, it is hereby ASSESSED by the Department and AGREED to by Brunner as follows:

1. **Assessment.** In resolution of the Department’s claim for civil penalties, which the Department is authorized to pursue under Section 605 of The Clean Streams Law, 35 P.S.

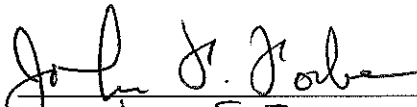
§ 691.605, the Department hereby assesses a civil penalty of \$25,000.00, which Brunner hereby agrees to pay.

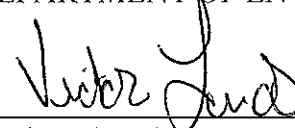
2. **Civil Penalty Settlement.** Upon signing this CACP, Brunner shall pay the civil penalty assessed in Paragraph 1. This payment is in settlement of the Department's claim for civil penalties for the violations and dates set forth in paragraphs G-L, T, and U, above. The payment shall be by corporate check or the like, made payable to "Commonwealth of Pennsylvania," with the memo line specifying the "Clean Water Fund," and sent c/o Andrew Hall, DEP Clean Water Program, 909 Elmerton Avenue, Harrisburg, PA 17110-8200.
3. **Findings.**
 - a. Brunner agrees that the findings in paragraphs A through U are true and correct, and in any matter or proceeding involving Brunner and the Department, Brunner shall not challenge the accuracy or validity of these findings.
 - b. The parties do not authorize any other persons to use the findings in this CACP in any matter or proceeding.
4. **Reservation of Rights.** The Department reserves all other rights with respect to any matter addressed by this CACP, including the right to require abatement of any conditions resulting from the events described in the Findings. Brunner reserves the right to challenge any action which the Department may take, but waives the right to challenge the content or validity of this CACP.

IN WITNESS WHEREOF, the parties have caused the CACP to be executed by their duly authorized representatives. The undersigned representatives of Brunner certify, under penalty of law, as provided by 18 Pa. C.S. § 4904, that they are authorized to execute this CACP on behalf of Brunner, that Brunner consents to the entry of this CACP as an ASSESSMENT of the Department; that Brunner hereby knowingly waives any right to a hearing under the statutes referenced in this CACP; and that Brunner knowingly waives its right to appeal this CACP, which rights may be available under Section 4 of the Environmental Hearing Board Act, the Act of July 13, 1988, P.L. 530, 35 P.S. § 7514; the Administrative Agency Law, 2 Pa. C.S. § 103(a) and Chapters 5A and 7A, or any other provision of law. Signature by Brunner's attorney certifies only that the CACP has been signed after consulting with counsel.


FOR BRUNNER ISLAND, LLC.:

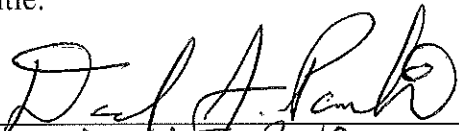
FOR THE COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF ENVIRONMENTAL PROTECTION:

 2/23/18
Name: JOHN F. FORBES Date 2/23/18
Title: PLANT MANAGER

 2/28/18
Name: Maria Bebenek P.E. Date 2/28/18
Title: Program Manager, Clean Water Program

Name: _____ Date _____
Title: _____


Name: Beth Liss Shuman Date _____
Title: Assistant Counsel

 2/22/18
Name: David S. Paulin Date 2/22/18
Title: Assistant General Counsel

TALEN ENERGY
 TALEN ENERGY SUPPLY LLC
 1780 HUGHES BLVD
 SUITE 800
 THE WOODLANDS, TX 77380

UNION BANK

52393

90-4150/1222

DATE
 02/22/2018

AMOUNT
 \$25,000.00

Twenty Five Thousand And 0/100 Dollars

VOID if over 180 days

Pay to the Order of

COMMONWEALTH OF PENNSYLVANIA-CLEAN WATER FUND
 PA DEPT OF ENVIRONMENTAL PROTECTION BUREAU OF CLEAN WATER
 PO BOX 8466
 HARRISBURG, PA 17105-8466

[Signature]
 AUTHORIZED SIGNATURE

29

SIGNATURE HAS A BLUE-GREEN BACKGROUND / BORDER CONTAINS MICROPRINTING - M2

CW

**Clean Water Program
 Compliance Check Distribution Form**

Name: TALEN ENERGY
 County: York Municipality: East Manchester
 Permit No. PA0008281 Efacts Id: 362017
 Action: CACP
 Date Rcv'd: 2-26-2018 Amount: \$25,000.⁰⁰

GL	COST CENTER	FUND	SHORT DESCRIPTION	AMOUNT
4425012	3544360000	6007200001	Fines & Penalties Clean Water Fund	\$ 25,000. ⁰⁰
Total Check Amount				\$ 25,000. ⁰⁰

From: *[Signature]* (Compliance Specialist)



John Forbes • Plant Manager • Brunner Island, LLC
PO Box 221 • York Haven, PA 17370
(717) 266-7500 • john.forbes@talenenergy.com

RECEIVED

FEB 26 2018

DEP SOUTHCENTRAL OFFICE
CLEAN WATER PROGRAM

CERTIFIED MAIL NO. 7015 3010 0000 2842 1145

February 23, 2018

Mr. Andrew Hall
PA Department of Environmental Protection
Clean Water Program
909 Elmerton Avenue
Harrisburg, Pennsylvania 17110

**RE: Signed Consent Assessment of Civil Penalty
NPDES Permit PA0008281**

Dear Mr. Hall:

Please find enclosed three (3) copies of the signed Consent Assessment of Civil Penalty (CACP) related to the Notice of Violation (NOV) letter dated August 29, 2017. Also enclosed is check number 52393 in the amount of \$25,000.00 in accordance with the CACP.

Please return the executed copy of the CACP to me at your convenience. If you have any questions on this, please contact me at 717-266-7510.

Sincerely,

A handwritten signature in black ink that reads "John Forbes". The signature is written in a cursive style with a long horizontal line extending to the right.

John Forbes
Plant Manager • Brunner Island SES

