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File #: 201030

June 1, 2023

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: IN THE MATTER OF THE APPLICATION OF THE YORK WATER COMPANY, Under Sections 1102(a)(1)-(3) of the Public Utility Code, for (1) approval of the right to transfer certain public wastewater facilities and rights from the Estate of Jane M. Alexander acting through its executors Lorinda Krause and Marstin Alexander and MESCO, Inc. to The York Water Company; (2) the abandonment by MESCO, Inc. of wastewater service to the public in its service territory in Monaghan Township, York County; and (3) approval for The York Water Company to begin to offer, render, furnish or supply wastewater service to the public in a portion of Monaghan Township, York County, Pennsylvania Docket No. A-~~2023-3041009~~

Dear Secretary Chiavetta:

On May 30, 2023, The York Water Company (“York Water”) and MESCO, Inc. (“MESCO”) filed the above-captioned Joint Application. As stated on page 6 of the Joint Application, MESCO executed a Consent Order and Agreement with the Pennsylvania Department of Environmental Protection (“DEP”). That Consent Order and Agreement has since been executed by both MESCO and DEP as of May 31, 2023. Therefore, as a supplement to the Joint Application, attached is a copy of the fully-executed Consent Order and Agreement.

Copies of this filing are being served as indicated on the Certificate of Service.

Rosemary Chiavetta, Secretary
June 1, 2023
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Respectfully submitted,

A handwritten signature in blue ink, appearing to be "Devin Ryan", written over a light blue horizontal line.

Devin Ryan

DR/dmc
Attachments

cc: Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this filing has been served by certified mail, return receipt requested, upon the following:

Office of Consumer Advocate
555 Walnut Street
Forum Place, 5th Floor
Harrisburg, PA 17101-1923

York County Planning Commission
28 East Market Street
York, PA 17401


Office of Small Business Advocate
555 Walnut Street
Forum Place, 1st Floor
Harrisburg, PA 17101

Monaghan Township Planning Commission
202 S. York Road
Dillsburg, PA 17019

Bureau of Investigation and Enforcement
PA Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor West
Harrisburg, PA 17105-3265

Department of Environmental Protection
Southcentral Regional Office
909 Elmerton Avenue
Harrisburg, PA 17110-8200

Dated: June 1, 2023



Devin T. Ryan, Esq.

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

In the matter of:

MESCO, Inc.	:	The Clean Streams Law
a/k/a "Memphord Estates Sewerage Company, Inc"	:	Memphord Estates STP
18 Redhaven Drive	:	NPDES Permit No. PA0081361
Selinsgrove, PA 17870	:	Monaghan Township, York County

CONSENT ORDER AND AGREEMENT

This Consent Order and Agreement is entered into this 31st day of May, 2023, by and between the Commonwealth of Pennsylvania, Department of Environmental Protection ("Department") and MESCO, Inc. ("MESCO").

The Department has found and determined the following:

A. The Department is the agency with the duty and authority to administer and enforce The Clean Streams Law, the Act of June 22, 1937, P.L. 1987, as amended, 35 P.S. § 691.1 – 691.1001 ("Clean Streams Law"); 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. MESCO is a Pennsylvania corporation registered with the Pennsylvania Department of State. MESCO maintains a mailing address of 18 Redhaven Drive, Selinsgrove, PA 17870.

C. MESCO owns and operates sewage facilities serving a residential community located in Monaghan Township, Pennsylvania. MESCO's sewage facilities consist of a sewage treatment plant ("STP"), sanitary sewer collection and conveyance system ("SSCS"), and a sewage pumping station ("pumping station"). The STP treats sewage generated within the residential community and discharges

to Stony Run. The MESCO STP discharge constitutes sewage pursuant to Sections 201 and 202 of the Clean Streams Law, 35 P.S. §§ 691.201 and 691.202.

D. MESCO is authorized to discharge from the STP through Outfall 001 to Stony Creek, under the terms and conditions of NPDES Permit No. PA0081361 (“NPDES Permit”), which was issued on July 18, 2019, became effective on August 1, 2019, and expires on July 31, 2024. Stony Run is “a water of the Commonwealth” as that phrase is defined in Section 1 of the Clean Streams Law, 35 P.S. § 691.301.

E. MESCO is required by its NPDES Permit and Sections 201 and 202 of the Clean Streams Law, 35 P.S. §§ 691.201 and 691.202 to fully comply with the effluent limits set forth in its NPDES Permit.

F. On September 1, 2017, the Department issued a Notice of Violation (“NOV”) to MESCO for failure to submit a NPDES Permit renewal application 180 days prior to its permit expiration date of February 28, 2018. In the NOV, the Department requested that MESCO submit a renewal application by October 1, 2017. The Department did not receive a response within this timeframe.

G. At times between May 2018 and May 2020, MESCO discharged sewage contrary to the terms and conditions set forth in the NPDES Permit. The violations are listed in Exhibit 1, which is attached hereto and incorporated herein by reference.

H. At times between July 2018 and September 2021, MESCO failed to collect effluent samples at the frequency set forth in the NPDES Permit. The violations are listed in Exhibit 2, which is attached hereto and incorporated herein by reference.

I. On September 28, 2018, the Department conducted an inspection of the MESCO pumping station, located off Summer Drive in Monaghan Township, in response to an anonymous complaint received by the Department on September 26, 2018. The complainant stated that a Sanitary Sewer

Overflow (“SSO”) occurred from a manhole adjacent to the pumping station on three separate occasions on September 18, 21, and 25 of 2018. In its inspection report, the Department documented that MESCO’s certified operator left a voicemail with the Department’s York District Office describing a September 26, 2018 SSO.

J. On October 2, 2018, the Department received an email from MESCO’s certified operator regarding the September 26, 2018 complaint, described in Paragraph I, above. The email from MESCO’s certified operator stated that at the time of the SSO, the pumping station was not operational and that an environmental contractor was hired to bypass the pumping station by vacuum truck (“pump and haul”).

K. On October 9, 2018, the Department received a written report from MESCO’s certified operator addressing the SSO, described in Paragraph I, above. The sewage discharge volume was unknown and reached a storm drain. MESCO’s certified operator also stated that the pumping station could not operate normally due to faulty pump controls and that a truck pumped and hauled sewage from the pumping station from September 18, 2018 until September 26, 2018.

L. On October 10, 2018, the Department conducted a compliance inspection of the STP. The inspection revealed that MESCO was in violation of its NPDES Permit requirement to properly operate and maintain all facilities and systems of treatment and control. In its inspection report, the Department documented the following conditions:

- i. The two main Equalization Tank lift pumps were inoperable;
- ii. Both clarifier units had a surface accumulation of sewage sludge;
- iii. Clarifier 1 skimmer unit was not functioning as designed;
- iv. Clarifier 1 and Clarifier 2 effluent troughs were in disrepair;
- v. Chlorine unit tank was leaking; and,

- vi. The pumping station alarm system was not functioning as designed.

Additionally, analysis of the Department's effluent grab samples revealed that MESCO's discharge from the STP exceeded the NPDES Permit effluent limitation for ammonia-nitrogen. MESCO's sewage discharge violations are listed in Exhibit 1. In its inspection report, the Department requested an update from MESCO regarding the pumping station alarm system within ten (10) days and a proposed timeframe to address operation and maintenance items within thirty (30) days.

M. On November 28, 2018, the Department issued a NOV to MESCO for the violations described in Paragraph I and L, above. The NOV also notified MESCO about the pattern of effluent violations of NPDES Permit limits and failure to collect effluent samples as frequently as required by the NPDES Permit in July 2018. The Department requested a written report within ten (10) days explaining the cause of the violations and remediation actions.

N. On January 12, 2019, the Department received a written report from MESCO in response to the NOV described in Paragraph M, above. In the report, MESCO stated the following:

- i. Exceedances of ammonia-nitrogen limits were a result of malfunctioning aeration blowers and diffusers;
- ii. Total suspended solids and fecal coliform effluent exceedances were a result of high influent flows during storm events;
- iii. In the pumping station, one of the pumps required repair and the Auto Dialer alarm system could not call out when triggered; and,
- iv. As corrective actions, MESCO removed sewage solids from the chlorine contact tank and aeration diffusers and airlines were repaired.

O. On April 5, 2019, the Department conducted an inspection of the STP in response to notification received from MESCO's certified operator, of a discharge of inadequately treated sewage

from the STP to Stony Run on April 4, 2019. The inspection revealed that Aeration Tank 3 was not aerated and that the discharge from the STP to Stony Run was turbid with sewage solids. Additionally, analysis of the Department's effluent grab samples revealed the STP's discharge exceeded the NPDES Permit effluent limitation for ammonia-nitrogen and total suspended solids. MESCO's sewage discharge violations are listed in Exhibit 1. In its inspection report, the Department requested a written report within five (5) days, describing the cause of the incident and actions taken to prevent future pollution events. The Department did not receive the requested written report from MESCO.

P. On April 8, 2019, the Department conducted a follow-up inspection to the incident described in Paragraph O, above. The inspection revealed a nonoperational return activated sludge ("RAS") line in Clarifier 1. Additionally, analysis of the Department's effluent grab samples revealed the STP's discharge exceeded the NPDES Permit effluent limitation for ammonia-nitrogen. MESCO's sewage discharge violations are listed in Exhibit 1.

Q. On November 13, 2019, the Department conducted an inspection of the STP. The inspection revealed that MESCO was in violation of its NPDES Permit requirement to properly operate and maintain all facilities and systems of treatment and control. In its inspection report, the Department documented the following conditions:

- i. The two main Equalization Tank lift pumps were inoperable;
- ii. Both clarifier units had a surface accumulation of sewage sludge;
- iii. Clarifier 1 skimmer unit was not functioning as designed;
- iv. Clarifier 1 and Clarifier 2 effluent troughs were in disrepair; and,
- v. Seven (7) instances of electrical issues at the pumping station were recorded in the STP operation log.

R. On December 30, 2019, the Department conducted an inspection of the pumping station in response to an anonymous complaint. The inspection revealed a discharge of raw sewage from the manhole adjacent to the pumping station to the surface of the ground and to a storm drain. In the inspection report, the Department recommended an electrical evaluation of the pumping station. Additionally, the Department requested that MESCO provide an update on the condition of the pumping station alarm system.

S. On January 29, 2020, the Department issued a NOV to MESCO for the violations described in Paragraph O, P, Q, and R, above. The NOV also notified MESCO about MESCO's pattern of effluent violations with respect to NPDES Permit limitations. The Department requested that MESCO submit a written report within thirty (30) days to include the cause of the violations, remediation actions, and an implementation schedule to address the Department's recommendations as listed on its November 13, 2019 and December 30, 2019 inspection reports. The Department did not receive the requested written report from MESCO.

T. On September 17, 2020, the Department conducted an inspection of the STP. In its inspection report, the Department requested that MESCO submit a written report as requested in the January 29, 2020 NOV, described in Paragraph S, above. The Department did not receive the requested written report from MESCO.

U. On January 21, 2021, the Department conducted an administrative inspection of the STP. In its inspection report, the Department documented that the responsible official for the STP had changed.

V. On April 22, 2021, the Department and MESCO held a teleconference to discuss MESCO's violations of the Clean Streams Law including permitted effluent limit exceedances, and

unauthorized discharges of sewage to the surface of the ground and to Stony Run, a water of the Commonwealth.

W. On April 27, 2021, in follow-up to the teleconference described in Paragraph V, above, the Department requested that MESCO submit a written report to the Department by July 2, 2021 including the following items:

- i. A description of the circumstancing leading to noncompliance with the NPDES Permit;
- ii. A description of actions taken to prevent future noncompliance with the NPDES Permit;
- iii. An evaluation of the STP and sewage pumping station by an operator with appropriate wastewater license certifications; and,
- iv. A schedule of planned corrective actions.

The Department did not receive the requested written report from MESCO.

X. On August 10, 2021, the Department issued a NOV to MESCO for its failure to collect effluent samples at the frequency set forth in the NPDES Permit. In the NOV, the Department acknowledged receipt of MESCO's noncompliance report, received with its June 2021 Discharge Monitoring Report.

Y. Section 201 of the Clean Streams Law states: "No person or municipality shall place or permit to be placed, or discharge or permit to flow, or continue to discharge or permit to flow, into any of the waters of the Commonwealth any sewage, except as hereinafter provided in this act."

Z. Section 202 of the Clean Streams Law provides, in relevant part, that "no municipality or person shall discharge or permit the discharge of sewage in any manner, directly or indirectly, into the waters of this Commonwealth unless such discharge is authorized by the rules and regulations of the department or such person or municipality has first obtained a permit from the [D]epartment."

AA. Section 611 of the Clean Streams Law states: "It shall be unlawful to fail to comply with any rule or regulation of the [D]epartment or to fail to comply with any order or permit or license of the [D]epartment, to violate any of the provisions of this act or rules and regulations adopted hereunder, or any order or permit or license of the [D]epartment, to cause air or water pollution, or to hinder, obstruct, prevent or interfere with the [D]epartment or its personnel in the performance of any duty hereunder or to violate the provisions of 18 Pa. C.S. section 4903 (relating to false swearing) or 4904 (relating to unsworn falsification to authorities). Any person or municipality engaging in such conduct shall be subject to the provisions of sections 601, 602 and 605." 35 P.S. § 691.611.

BB. MESCO's discharges of raw or inadequately treated sewage to the surface of the ground or Stony Run, a water of the Commonwealth, as described in Paragraphs I, M, O, and R above, constitute violations of Sections 201 and 202 of the Clean Streams Law, 35 P.S. §§ 691.201 and 691.202, are violations of MESCO's NPDES Permit, and unlawful conduct under Sections 402 and 611 of the Clean Streams Law, 35 P.S. §§ 691.402 and 691.611.

CC. MESCO's discharge exceedances and violations of its NPDES Permit effluent limitations described in Paragraphs G, L, O, and P, above, and listed in Exhibit 1, constitute violations of Sections 201 and 202 of the Clean Streams Law 35 P.S. §§ 691.201 and 691.202.

DD. MESCO's failure to maintain in good working order and properly operate all facilities and systems which are installed or used by the permittee to achieve compliance with the terms and conditions of the NPDES Permit, as described in Paragraphs J, L, O, P, and Q, above, constitute violations of the NPDES Permit at Part B. I. D. and constitutes violations of Sections 201 and 202 of the Clean Streams Law, 35 P.S. §§ 691.201 and 691.202.

EE. MESCO's failure to submit a timely permit renewal application, as described in Paragraph F, above, constitutes a violation of 25 Pa Code § 92a.75, the NPDES Permit, and Section 202 of the Clean Streams Law, 35 P.S. § 691.202; and is unlawful conduct under Section 611 of the Clean Streams Law, 35 P.S. § 691.611.

FF. MESCO's failure to comply with the sampling frequency requirements of the NPDES Permit, as described in Paragraphs H and X above, and listed in Exhibit 2, was not authorized by permit or regulations and thereby constitutes violations of Sections 201 and 202 of the Clean Streams Law, 35 P.S. §§ 691.201 and 691.202.

GG. MESCO's violations described in Paragraphs CC through FF, above, constitute unlawful conduct under Section 611 of the Clean Streams Law, 35 P.S. § 691.611; a statutory nuisance under Section 601 of the Clean Streams Law, 35 P.S. § 691.601; and subject MESCO 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 Consent Order and Agreement and upon mutual exchange of covenants contained herein, the parties desiring to avoid litigation and intending to be legally bound, it is hereby ORDERED by the Department and AGREED to by MESCO as follows:

1. **Authority.** This Consent Order and Agreement is an Order of the Department authorized and issued pursuant to Sections 5, 316, 402 and 610 of the Clean Streams Law, 35 P.S. §§ 691.5, 691.316, 691.402 and 691.610; and Section 1917-A of the Administrative Code, 71 P.S. § 510-17.

2. **Findings.**

a. MESCO agrees that the findings in Paragraph A through GG, above, are true and correct and, in any matter or proceeding involving MESCO and the Department, MESCO 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 Consent Order and Agreement in any matter or proceeding.

3. **Corrective Actions.**

a. Within one year (365 days) of the date of this Consent Order and Agreement, MESCO shall complete an evaluation of the STP. MESCO shall submit the results of the evaluation to the Department.

b. Within thirty (30) days of submitting the results of the STP evaluation to the Department, MESCO shall submit to the Department, for its review and approval, a schedule of planned corrective actions needed to achieve compliance with the NPDES Permit.

4. **Additional Information.** If the Department requires additional information to review and/or approve any submission or obligation required by this Consent Order and Agreement, MESCO shall submit the requested information within the time frame set forth by the Department, which shall be reasonable.

5. **Progress Report.** By July 15, 2023, and quarterly thereafter (October 15, January 15 and April 15), MESCO shall submit progress reports to the Department documenting its efforts to comply with its obligations under this Consent Order and Agreement in the prior calendar quarter ("Progress Report"). The Progress Report shall be submitted electronically through the Department's Onbase Electronic Forms Upload Tool at:

<http://www.dep.pa.gov/DataandTools/pages/Application-Form-Upload.aspx>. The Progress Report shall include, but not be limited to:

a. A description of the actions that have been taken toward achieving compliance with this Consent Order and Agreement;

b. A description of all activities scheduled for the remainder of the Consent Order

and Agreement; and,

c. A description of any problems or delays encountered or anticipated regarding the performance of the activities required by this Consent Order and Agreement.

6. **Incorporation of Approved Plans and Schedules.** All plans and schedules required by this Consent Order and Agreement and approved by the Department are incorporated herein as obligations of this Consent Order and Agreement. MESCO shall comply with all approved plans in accordance with their approved schedules.

7. **Civil Penalty Settlement.** MESCO consents to the assessment of a civil penalty of \$15,193.00, which shall be paid in full upon signing this Consent Order and Agreement. This payment is in settlement of the Department's claim for civil penalties for the violations set forth in Paragraphs DD through HH, above. The payment shall be made by corporate check or the like made payable to "Commonwealth of Pennsylvania" with a notation of "Clean Water Fund" on the memo line and sent c/o Kevin Buss, Environmental Compliance Specialist, DEP Clean Water Program, 909 Elmerton Avenue, Harrisburg, PA 17110-8200.

8. **Stipulated Civil Penalties.**

a. In the event MESCO fails to comply in a timely manner with any term or provision of this Consent Order and Agreement, MESCO shall be in violation of this Consent Order and Agreement and, in addition to other applicable remedies, shall pay a civil penalty in the amount determined under the following schedule:

- i. For any violation of Paragraph 3.a, 3.b, 5 and 6, \$100 per day for the first 30 days of each violation, and \$200 per day for each violation extending beyond the first 30 days.

ii. For any violation of MESCO's NPDES Permit effluent limits, MESCO shall pay a stipulated penalty as set forth in Exhibit 3.

b. Stipulated civil penalties for NPDES Permit effluent limit violations shall be payable monthly on or before the 28th day of each succeeding month and shall be forwarded as described in Paragraph 7, above (Civil Penalty Settlement). Stipulated civil penalty payments for any other violation herein shall be payable monthly on or before the fifteenth day of each succeeding month and shall be forwarded as described in Paragraph 7, above.

c. Any payment under this paragraph shall neither waive MESCO's duty to meet its obligations under this Consent Order and Agreement nor preclude the Department from commencing an action to compel MESCO's compliance with the terms and conditions of this Consent Order and Agreement. The payment resolves only MESCO's liability for civil penalties arising from the violation of this Consent Order and Agreement for which the payment is made.

d. Stipulated civil penalties shall be due automatically and without notice.

9. **Additional Remedies.**

a. In the event MESCO fails to comply with any provision of this Consent Order and Agreement, the Department may, in addition to the remedies prescribed herein, pursue any remedy available for a violation of an order of the Department, including an action to enforce this Consent Order and Agreement.

b. The remedies provided by this paragraph and Paragraph 8 (Stipulated Civil Penalties) are cumulative and the exercise of one does not preclude the exercise of any other. The failure of the Department to pursue any remedy shall not be deemed to be a waiver of that remedy. The payment of a stipulated civil penalty, however, shall preclude any further assessment of civil penalties for the violation for which the stipulated penalty is paid.

10. **Reservation of Rights.** The Department reserves the right to require additional measures to achieve compliance with applicable law. MESCO reserves the right to challenge any action which the Department may take to require those measures.

11. **Liability of Operator.** MESCO shall be liable for any violations of the Consent Order and Agreement, including those caused by, contributed to, or allowed by its officers, agents, employees, or contractors. Except as provided in Paragraph 12.c., MESCO also shall be liable for any violation of this Consent Order and Agreement caused by, contributed to, or allowed by its successors and assigns.

12. **Transfer of Facility.**

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

b. If MESCO intends to transfer any legal or equitable interest in the STP which is affected by this Consent Order and Agreement, MESCO shall serve a copy of this Consent Order and Agreement upon the prospective transferee of the legal and equitable interest at least thirty (30) days prior to the contemplated transfer and shall simultaneously inform the Southcentral Regional Office of the Department of such intent.

c. The Department in its sole discretion may agree to modify or terminate MESCO's duties and obligations under this Consent Order and Agreement upon transfer of the STP. MESCO waives any right that it may have to challenge the Department's decision in this regard.

13. **Correspondence with Department.** All correspondence with the Department concerning this Consent Order and Agreement shall be addressed to:

Kevin Buss
Environmental Protection Compliance Specialist
Clean Water Program
PADEP Southcentral Regional Office

909 Elmerton Avenue
Harrisburg, PA. 17110
Ph: 717.705.4650
Fax: 717.705.4760
Email: kbuss@pa.gov

14. **Correspondence with MESCO.** All correspondence with MESCO concerning this Consent Order and Agreement shall be addressed to:

MESCO, Inc
18 Redhaven Drive
Selinsgrove, PA 17870
Email: mescoinc111@gmail.com

MESCO shall notify the Department whenever there is a change in the contact person's name, title, or address. Service of any notice or any legal process for any purpose under this Consent Order and Agreement, including its enforcement, may be made by mailing a copy by first class mail to the above address.

15. **Severability.** The paragraphs of this Consent Order and Agreement shall be severable, and should any part hereof be declared invalid or unenforceable, the remainder shall continue in full force and effect between the parties.

16. **Force Majeure.**

a. In the event that MESCO is prevented from complying in a timely manner with any time limit imposed in this Consent Order and Agreement solely because of a strike, fire, flood, act of God, or other circumstance beyond MESCO's control and which MESCO, by the exercise of all reasonable diligence, is unable to prevent, then MESCO may petition the Department for an extension of time. An increase in the cost of performing the obligations set forth in this Consent Order and Agreement shall not constitute circumstances beyond MESCO's control. MESCO's economic inability to comply with any of the obligations of this Consent Order and Agreement shall not be grounds for any extension of time.

b. MESCO shall only be entitled to the benefits of this paragraph if it notifies the Department within five (5) working days by telephone and within ten (10) working days in writing of the date it becomes aware or reasonably should have become aware of the event impeding performance. The written submission shall include all necessary documentation, as well as an affidavit from an authorized individual specifying the reasons for the delay, the expected duration of the delay, and the efforts which have been made and are being made by MESCO to mitigate the effects of the event and to minimize the length of the delay. The initial written submission may be supplemented within ten working days of its submission. MESCO's failure to comply with the requirements of this paragraph specifically and in a timely fashion shall render this paragraph null and of no effect as to the particular incident involved.

c. The Department will decide whether to grant all or part of the extension requested on the basis of all documentation submitted by MESCO and other information available to the Department. In any subsequent litigation, MESCO shall have the burden of proving that the Department's refusal to grant the requested extension was an abuse of discretion based upon the information then available to it.

17. **Entire Agreement.** This Consent Order and Agreement shall constitute the entire integrated agreement of the parties. No prior or contemporaneous communications or prior drafts shall be relevant or admissible for purposes of determining the meaning or extent of any provisions herein in any litigation or any other proceeding.

18. **Attorney Fees.** The parties shall bear their respective attorney fees, expenses and other costs in the prosecution or defense of this matter or any related matters, arising prior to execution of this Consent Order and Agreement.

19. **Modifications.** No changes, additions, modifications, or amendments of this Consent Order and Agreement shall be effective unless they are set out in writing and signed by the parties hereto.

20. **Titles.** A title used at the beginning of any paragraph of this Consent Order and Agreement may be used to aid in the construction of that paragraph, but shall not be treated as controlling.

21. **Decisions Under Consent Order.** MESCO waives its rights to appeal to the Environmental Hearing Board any decision that the Department makes under the provisions of this Consent Order and Agreement, including a notice that stipulated civil penalties are due, which rights may be available under Section 4 of the Environmental Hearing Board Act, the Act of July 13, 1988, P.L. 530, No. 1988-94, 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. Except as provided in Paragraph 12.c., the above, the Department agrees that any objection that MESCO may have to any such decision may be raised as a defense in any Court where the Department enforces this Consent Order and Agreement.

22. **Termination.** This Consent Order and Agreement shall terminate when MESCO has demonstrated six (6) consecutive months of compliance with the STP's NPDES Permit effluent limits, and after the Department determines that MESCO has implemented the corrective plan, described in Paragraph 3.b above, to the Department's satisfaction, Paragraph 5 above, and Paragraph 6 above, and paid the Department any stipulated civil penalties due under Paragraph 8 above.

23. **Execution of Agreement.** This Consent Order and Agreement may be signed in counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument.

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

FOR MESCO, Inc.:

FOR THE COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF ENVIRONMENTAL PROTECTION:

Martin Alexander 4/7/23
 Name: MARTIN ALEXANDER Date
 Title: SEE/TREASURER

Maria D. Bebenek 5/4/23
 Name: Maria D. Bebenek, P.E. Date
 Program Manager
 Clean Water Program

Name: _____ Date
 Title

Angela S. Bransteitter Davis 5/31/23
 Name: Angela S. Bransteitter Davis Date
 Assistant Counsel

Suzanne H. Griest 4/7/23
 Name: SUZANNE H. GRIEST Date
 Attorney for MESCO

EXHIBIT 1

MESCO's effluent violations with respect to limitations in NPDES Permit, No. PA0081361.

Samples Collected by MESCO

Monitoring Period	Statistical Base Code	Parameter	Permit Limit	Reported Value
May 2018	Average Monthly	Ammonia-Nitrogen	8.5 mg/L	24.2 mg/L
May 2018	Instantaneous Maximum	Fecal Coliform	1000 CFU/ 100 mL	2800 CFU/ 100 mL
June 2018	Average Monthly	Ammonia-Nitrogen	8.5 mg/L	23.90 mg/L
July 2018	Average Monthly	Total Suspended Solids	30 mg/L	55 mg/L
July 2018	Average Monthly	Ammonia-Nitrogen	8.5 mg/L	13.0 mg/L
October 2018	Average Monthly	Ammonia-Nitrogen	8.5 mg/L	17.25 mg/L
November 2018	Instant Maximum	Fecal Coliform	10,000 CFU/ 100 mL	25,300 CFU/ 100 mL
April 2019	Average Monthly	Ammonia-Nitrogen	8.5 mg/L	<15.25 mg/L
April 2019	Average Monthly	Total Suspended Solids	30 mg/L	<35 mg/L
May 2020	Instantaneous Maximum	Fecal Coliform	1000 CFU/ 100 mL	9500 CFU/ 100 mL

Samples Collected by the Department

Date	Statistical Base Code	Parameter	Permit Limit	Reported Value
October 10, 2018	Instant Maximum	Ammonia-Nitrogen	17.0 mg/L	24.20 mg/L
April 5, 2019	Instant Maximum	Total Suspended Solids	60 mg/L	65 mg/L
April 5, 2019	Instant Maximum	Ammonia-Nitrogen	17.0 mg/L	29.5 mg/L
April 8, 2019	Instant Maximum	Ammonia-Nitrogen	17.0 mg/L	26.8 mg/L

EXHIBIT 2

MESCO's violations of sampling frequency requirements for NPDES Permit, No. PA0081361.

Monitoring Period	Parameter	Permit Sample Frequency	Reported Sample Frequency
July 2018	Ammonia-Nitrogen	2/Month	1/Month
July 2018	Carbonaceous Biochemical Oxygen Demand	2/Month	1/Month
July 2018	Fecal Coliform	2/Month	1/Month
July 2018	Total Suspended Solids	2/Month	1/Month
January 2021	Total Phosphorous	2/Month	1/Month
June 2021	Total Kjeldahl Nitrogen	2/Month	1/Month
June 2021	Nitrate-Nitrite	2/Month	1/Month
June 2021	Total Phosphorous	2/Month	1/Month
September 2021	Total Kjeldahl Nitrogen	2/Month	1/Month
September 2021	Nitrate-Nitrite	2/Month	1/Month

Exhibit 3: MESCO STP, NPDES Permit No. PA0081361, Stipulated Civil Penalties

Stipulated civil penalties for violations of all NPDES and WQM final effluent limits (except pH and DO)		
Monthly/Geometric Average Violations		
<i>Percent over permit limits</i>		
0-33 %	\$100.00	Assessed
33.1-67 %	\$200.00	Monthly
67.1-100 %	\$300.00	
>100 %	\$400.00	
Stipulated civil penalties for violations of all NPDES and WQM final effluent limits (except pH and DO)		
Instantaneous/Daily Maximum Violations		
<i>Percent over permit limits</i>		
0-33 %	\$75.00	Assessed
33.1-67 %	\$100.00	Daily
67.1-100 %	\$125.00	
>100 %	\$150.00	
Stipulated civil penalties for violations of pH		
Instantaneous/Daily Maximum Violations		
<i>Range of Standard Units over permit limits</i>		
9.1 – 9.6 S.U.	\$60.00	Assessed
9.7 – 10.2 S.U.	\$80.00	Daily
10.3 – 10.8 S.U.	\$100.00	
≥ 10.9 S.U.	\$120.00	
Stipulated civil penalties for violations of pH		
Instantaneous/Daily Maximum Violations		
<i>Range of Standard Units over permit limits</i>		
5.4 – 5.9 S.U.	\$60.00	Assessed
4.8 – 5.3 S.U.	\$80.00	Daily
4.2 – 4.7 S.U.	\$100.00	
≤ 4.2 S.U.	\$120.00	
Stipulated civil penalties for violations of Dissolved Oxygen		
Instantaneous/Daily Minimum Violations		
<i>Percent under permit limits</i>		
0-33 %	\$60.00	Assessed
33.1-67 %	\$80.00	Daily
67.1-100 %	\$100.00	
>100 %	\$120.00	

*Concentration and loading shall be considered separate violations.