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Dear Mr. Holliman,

This letter is to inform the Environmental Protection Agency (“EPA”) of the presence of the **Kentucky Energy & Environment Cabinet Division of Water Off Permit/One Time Discharge Authorization program** (“Off-Permit Program” or “OTP Program”), in contravention of the federal Clean Water Act (“CWA”). This letter further requests that EPA take immediate action to halt Kentucky’s Off-Permit Program and to repair the damage the Program has caused.

Through its Off-Permit Program, the Kentucky Energy & Environment Cabinet (“EEC”) has illegally issued and continues to issue Off-Permit Authorizations for hundreds of unpermitted, point-source discharges of pollution into federal waters across Kentucky. The Off-Permit Program is inconsistent with the federal CWA and Kentucky’s obligations to implement the CWA under the Commonwealth’s delegated National Pollutant Discharge Elimination System (“NPDES”) program.

In February 2023, EIP and Kentucky Resources Council formally notified the Kentucky EEC that the Off-Permit Program was contrary to the CWA and requested that Kentucky end the program.<sup>1</sup> In response, the EEC states that it is developing a general permit for hydrostatic testing discharge and is on schedule to public notice the draft permit by the Spring of 2024. The EEC also states that a significant number of the off-permit discharge requests will be addressed by this new general permit since over 40% of the requests received over the prior 5 years have been for Hydrostatic Test Water discharges. We applaud this step forward — as described below, Kentucky has failed to issue a number of needed general permits, including one for hydrostatic testing discharges, and instead has illegally relied upon Off-Permit Program. However, one general permit is not sufficient, as approximately 60% of past Off-Permit Authorizations have not been for hydrostatic discharges and, as of December 2023, **Kentucky has not ended the**

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<sup>1</sup> Letter to Kentucky Department of Environmental Protection Commissioner Hatton (Feb. 2023), <https://drive.google.com/file/d/1A8Losw-09ebE3tFHXNzuR836Ydh9t9ps/view?usp=sharing>

**Off-Permit Program, continues to publicize the Off-Permit Program on its website, and continues to process Off-Permit Authorizations.<sup>2</sup>**

Given Kentucky’s failure to end the Off-Permit Program after being put on notice of its legal deficiencies, we now request that EPA do the following:

- a) Order the Kentucky EEC to shut down the Off-Permit Program immediately and to require permits for all future point-source discharges of pollutants into federal waters as required under the CWA;
- b) Take enforcement action as needed against illegal unpermitted discharges that the EEC purported to authorize under the Off-Permit Program;
- c) Require permitted dischargers who have used the Off-Permit Program to modify their permit applications and apply for permit modifications to reflect their Off-Permit Program discharges; and
- d) Conduct a public, formal evaluation of Kentucky’s compliance with its NPDES delegation responsibilities in light of the Off-Permit Program.

**We further request a response to these requests by February 16, 2024.**

Additional information regarding the Off-Permit Program and its inconsistency with the CWA and Kentucky’s NPDES delegation responsibilities is below.

**1. Kentucky’s Off-Permit Authorization Program**

Kentucky EEC describes Off-Permit Program authorizations on its website as:

[A] one-time or temporary discharge of pollutants to the waters of the Commonwealth. Examples of OTDs potentially covered by this One-Time Discharge program include maintenance or repair of systems, hydrostatic tests of pipelines or of field-built, above-ground tanks, farm pond drainage, construction excavation de-watering, oil and gas pit close out, and fire system testing.<sup>3</sup>

The EEC has issued at least 270 Off-Permit Authorizations since 2017 for discharges from pipeline projects, natural gas distribution facilities, rubber and chemical manufacturing plants, landfills, aluminum smelters, gas stations, and power plants.<sup>4</sup> Most of these Off-Permit dischargers hold no NPDES permit at all, but some dischargers hold NPDES discharge permits that do not authorize these kinds of discharge or from these locations. Many dischargers have obtained a large number of these “one-time” Off-Permit Authorizations.<sup>5</sup>

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<sup>2</sup> <https://eec.ky.gov/Environmental-Protection/Water/PermitCert/KPDES/Pages/default.aspx>.

<sup>3</sup> <https://eec.ky.gov/Environmental-Protection/Water/PermitCert/KPDES/Pages/default.aspx>.

<sup>4</sup> Chart, [KY Off Permit Authorizations 2017-2022.xlsx](#). This chart combines three charts obtained through the Kentucky Open Records Act.

<sup>5</sup> Chart, [KY Off Permit Authorizations 2017-2022.xlsx](#).

Kentucky's Off-Permit Authorizations do not hold themselves out to be NPDES permits and do not meet EPA requirements for NPDES permit contents, like the requirements in 40 C.F.R. §§ 122.41, 122.42, and 122.43. The basic, two-page Off-Permit Authorization request form<sup>6</sup> does not include many of the elements required for NPDES applications listed in 40 C.F.R. § 122.21. The Off-Permit Authorizations themselves are minimal, one-page letters typically requiring notification 48 hours before the discharge occurs and some basic best management practices.<sup>7</sup> They do not include: requirement to meet pollution discharge limits, including federal technology-based effluent limits (“ELGs”) and water quality based effluent limits, or even the basic conditions of NPDES permits, like opening the premise for an inspection and providing records when needed per 40 C.F.R. § 122.41.

Kentucky EEC's Off-Permit Authorization approval process, which often happens in a few days, also does not meet federal permitting requirements. There does not appear to be any evaluation of whether the discharge complies with water quality standards and antidegradation designations for the receiving waterbodies, as required by 40 C.F.R. § 122.4. Off-Permit Authorizations are not public noticed and the process does not include a public comment period, as required by 40 C.F.R. § 124.10. Nor are these Off-Permit Authorizations available in EPA's ECHO database. Although the application states that the “results of the discharge monitoring must be submitted to the appropriate Regional Office of the Division of Water within 10 days of the discharge occurring” it is not clear if the Division of Water is enforcing this requirement, and the results are not publicly available. It is also unclear what kind of enforcement mechanism exists for these Off-Permit Authorizations, if any.

## **2. Kentucky's Off-Permit Program is a Violation of the CWA**

The federal CWA provides that “the discharge of any pollutant by any person shall be unlawful,” unless it falls within certain exceptions, like a NPDES permit. 33 U.S.C. §§ 1311(a), 1342. The NPDES program in turn “requires permits for the discharge of ‘pollutants’ from any ‘point source’ into ‘waters of the United States,’” unless the discharge falls into a few narrow categories. 40 C.F.R. §§ 122.1(b), 122.3.

State law cannot create exceptions to these permitting requirements. *See N. Plains Res. Council v. Fidelity Exploration and Development Co.*, 325 F.3d 1155, 1165 (9th Cir. 2003) (Montana has no authority to create a permit exemption from the CWA for discharges that would otherwise be subject to the NPDES permitting process); *see also West Virginia Highlands Conservancy, Inc. v. Huffman*, 588 F.Supp.2d 678, 688 (N.D.W.Va. 2009) (citing same).

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<sup>6</sup> <https://eec.ky.gov/layouts/download.aspx?SourceUrl=https://eec.ky.gov/Environmental-Protection/Water/PermitCert/KPDES/Documents/One-Time-Temporary%20Discharge%20Request.doc>

<sup>7</sup> *See, e.g.*, Ft. Mitchell OTD Authorization (May 13, 2021), [OTD Letter Ft Mitchell Shell 5-13-21.pdf](#). Additional examples of Kentucky's OTD authorization letters can be found in this folder: [OTD Documents](#).

By purporting to authorize hundreds of unpermitted point-source discharges into federal waters, Kentucky's Off-Permit Program violates the CWA's permitting requirements in a number of ways. These are described below.

***a. Kentucky's Off-Permit Program Violates Kentucky's CWA Delegation Responsibilities***

EPA delegated the authority to implement the NPDES program in Kentucky to the Commonwealth in 1983 through a Memorandum of Agreement ("MOA"). *See* 48 Fed. Reg. 45,597 (Oct. 6, 1983) (approving Kentucky's NPDES permitting program). The MOA was revised in 2008. *National Pollutant Discharge Elimination System [MOA] Between the Commonwealth of Kentucky and the United States Environmental Protection Agency (Region 4)* (Mar. 10, 2008).<sup>8</sup> The Off-Permit Program violates numerous MOA requirements.

First, the MOA requires Kentucky ensure compliance with its state permitting laws and take appropriate enforcement action against those violating these laws. 2008 MOA §§ V, VI, VI.A.1. Kentucky must "[m]aintain a vigorous program of taking timely and appropriate enforcement actions in accordance with State statutes, the CWA, 40 C.F.R. § 123.27, and as outlined in Section VI of this MOA." MOA § III.A.6. Kentucky regulations in turn state that a Kentucky NPDES permit "shall be required to discharge pollutants from a point source into waters of the Commonwealth," using the same definitions of discharge and point source as the CWA. 401 KAR 5:055, §2(1); 401 KAR 10:001. Kentucky's NPDES regulations establish four narrow exceptions to the permitting requirement, primarily addressing agriculture or the discharge of dredged and fill material. 401 KAR 5:055, §4.

Ensuring compliance and taking timely enforcement with Kentucky's NPDES program includes ensuring that those discharging pollutants from a point source into waters of the Commonwealth have a permit, consistent with 401 KAR 5:055. Illegally issuing more than 270 Off-Permit Authorizations for unpermitted discharges, rather than requiring permits and taking enforcement action against those discharging without permits, is not ensuring compliance and taking timely enforcement. Kentucky's Off-Permit Program is a blatant violation its MOA requirements to Kentucky to "[m]aintain a vigorous program of taking timely and appropriate enforcement actions in accordance with State statutes, the CWA, 40 C.F.R. § 123.27, and as outlined in Section VI of this MOA." MOA § III.A.6.

Second, the MOA requires that Kentucky "[p]rocess in a timely manner and propose to issue, reissue, modify, terminate, or deny Commonwealth NPDES permits," including permits for "[i]ndustrial, federal facilities, commercial, mining and silvicultural dischargers." 2008 MOA § III.A.4. Failure to exercise control over CWA-regulated activities, "including failure to issue permits," is grounds for withdrawal of a state program's NPDES delegation. 40 C.F.R. § 123.63(2)(i).

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<sup>8</sup> Kentucky-EPA Clean Water Act delegation MOA, <https://www.epa.gov/sites/default/files/2013-09/documents/ky-moa-npdes.pdf><https://www.epa.gov/sites/default/files/2013-09/documents/ky-moa-npdes.pdf>

Kentucky lacks general permits for at least two large categories of discharges typically covered under general permits — hydrostatic testing and groundwater dewatering discharges.<sup>9</sup> Without general permits, the Kentucky EEC should be issuing individual permits for these discharges. Instead, the EEC funnels these discharges into its illegal Off-Permit Authorization program as a matter of course. For instance, a consulting company working on behalf of Atmos Energy Company wrote in a number of cover letters accompanying Off-Permit Authorization requests for hydrostatic testing discharges that “[b]ased on similar requests for previous projects, it is our understanding that this letter provides the project information necessary for your review.”<sup>10</sup>

The Kentucky EEC’s failure to issue hydrostatic testing and groundwater remediation general permits (or to individually permit these discharges) is a failure to “[p]rocess in a timely manner and propose to issue, reissue, modify, terminate, or deny Commonwealth NPDES permits,” for industrial dischargers, as required by the MOA. 2008 MOA § III.A.4. It is also a failure to exercise control over activities federally required to be regulated, which is grounds for withdrawal of Kentucky’s NPDES delegation. 40 C.F.R. § 123.63(2)(i). Although we appreciate that EEC is currently working on a general permit for hydrostatic test water discharges, we do not believe there are any plans for a general permit for groundwater dewatering discharges, and no plans to end the Off-Permit Authorization program for other discharges of pollutants historically authorized under the program.

Third, both the MOA and EPA’s permitting regulations require that Kentucky’s NPDES permits meet certain EPA requirements, such as including ELGs when applicable. 2008 MOA § IV; 40 C.F.R. Part 122, Subpart C; 40 C.F.R. §§ 122.43, 123.25(a)(15), 122.44(a)(1). Kentucky’s issuance of Off-Permit Authorizations at already-permitted facilities has caused the Commonwealth to violate this ELG requirement in at least two major permits. For instance, Kentucky issued KPDES permit KY0001821 to Century Hawesville for discharges from Century’s primary aluminum smelter. KPDES Permit KY0001821 (2022).<sup>11</sup> While EPA regulations include specific ELGs for primary aluminum smelting activities, Kentucky did not include these ELGs in Century’s permit because the permit does not authorize the discharge of process water that would have triggered the primary aluminum smelting ELGs. *See* KPDES Permit KY0001821 at 5 (only authorizing the discharge of non-contact cooling water, stormwater, and automobile rinse water from Outfall 9); 40 C.F.R. § 421.20. Despite this

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<sup>9</sup> List of all KPDES general permits: <https://eec.ky.gov/Environmental-Protection/Water/PermitCert/KPDES/Pages/default.aspx> Hydrostatic testing general permits from EPA, Alabama, California, Colorado, Illinois, Oklahoma, Tennessee, and Texas can be found in this folder: [Hydrostatic Testing General Permits](#). General permits for the discharge of groundwater contaminated with petroleum products, hazardous materials, or industrial-related heavy metals (remediation dewatering include the Colorado COG318000, Discharges From Long-Term Remediation Activities, <https://cdphe.colorado.gov/dewatering-general-permit-program>, and the Vermont General Permit 3-9004, Discharges From Petroleum Related Remediation Activities, <https://www3.epa.gov/region1/npdes/permits/2022/finalvtg910001permit.pdf>.

<sup>10</sup> Emphasis added, [OTD Request Atmos Crittenden County \(Oct. 4, 2017\)](#); [OTD Request Atmos Crittenden County \(Feb. 8, 2018\)](#); [OTD Request Atmos McCracken County \(Apr. 24, 2019\)](#).

<sup>11</sup> [KPDES Permit KY0001821](#) (2022) at 5.

limitation, Kentucky then gave Century Hawesville five Off-Permit Authorizations between August 2017 and August 2022 to discharge 500,000 gallons of waste through Outfall 9 from a tailings pond that captures blowdown water from the aluminum production potlines wet scrubber system.<sup>12</sup> This waste is almost certainly process wastewater triggering the application of the primary aluminum smelting ELGs, likely one of the sections associated with blowdown water from the aluminum production potlines' air pollution controls. *See, e.g.*, 40 C.F.R. §§ 421.23(j)–(o) (ELGs associated with air pollution controls). Kentucky's failure to include the ELGs at Outfall 9 in the 2022 permit, despite the Commonwealth's knowledge of the 2017, 2018, and 2019 discharges of process wastewater from Outfall 9, violates the Commonwealth's duty under federal law to include needed ELGs in permits.

Similarly, Kentucky issued East Kentucky ("EKY") Power five Off-Permit Authorizations for the H.L. Spurlock Power Station to discharge sediment from a stormwater pond and silt trap below a Coal Combustion Residual landfill through an outfall that was not included in the plant's individual NPDES permit.<sup>13</sup> This waste likely should have triggered the application of the Steam Electric Power Generating ELGs, 40 C.F.R. Part 423, like nearby Outfall 008.<sup>14</sup>

Finally, the EPA-Kentucky MOA requires that Kentucky "[e]nsure that any proposed revision of the State NPDES Program is submitted to EPA for approval pursuant to 40 C.F.R. § 123.62(b)." 2008 MOA § II.2. As described above, the Off-Permit Program undermines CWA permit requirements and affects CWA compliance in Kentucky. As such, it constitutes a revision of the State NPDES Program that should have been submitted to EPA for approval pursuant to 40 C.F.R. § 123.62(b).

#### ***b. Kentucky's Off-Permit Program Encouraged Dischargers to Violate the CWA***

All of the Off-Permit Authorizations reviewed by EIP appear to be for point-source discharges of pollutants to federal waters.<sup>15</sup> Under the federal CWA, subject to certain exceptions, the discharge of any pollutant from a point source by any person into federal waters requires a NPDES permit. 33 U.S.C. §§ 1311(a), 1342, 1362(12)(A), 1362(14); *see also* 40 C.F.R. § 122.1(b), 122.3. "The Act restructures federal regulation by insisting that a person wishing to discharge any pollution into navigable waters first obtain EPA's permission to do so." *Cnty. of Maui, Hawaii v. Hawaii Wildlife Fund*, 140 S.Ct. 1462, 1468 (2020).

The dischargers who obtained Off-Permit Authorizations rather than NPDES permits violated this basic CWA requirement to obtain a permit. 33 U.S.C. § 1311(a). By issuing them Off-Permit

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<sup>12</sup> *See, e.g.*, Request, [OTD Request Century Aluminum Hawesville 2019-3-12.pdf](#); Authorization, [OTD Letter Century Aluminum 3-13-19.pdf](#). Century Aluminum obtained five similar authorizations, found in [this folder](#).

<sup>13</sup> [KY0022250 Permit](#) at 5-6; Request, [OTD Request Spurlock - Pond 1 04-09-21.pdf](#), Authorization, [OTD Letter EKPC Spurlock 4-12-21.pdf](#), and Permit, [EKY Spurlock Final Permit KY0022250.pdf](#). East Kentucky Co-op received at least four similar authorizations, found [here](#).

<sup>14</sup> *Compare* Request, [OTD Request Spurlock - Pond 1 04-09-21.pdf](#) at Figure 1 (showing location of OTD outfall and Outfall 8) *with* [KY0022250 Permit](#) at 15.

<sup>15</sup> Examples of these requests can be found in this folder: [OTD Documents](#).



Authorizations that purported to allow these illegal discharges, Kentucky encouraged and facilitated these dischargers' violations of federal law.

***c. Kentucky's Off-Permit Program Encouraged Permittees to Violate the CWA and Their NPDES Permits***

Some NPDES-permitted facilities are using Off-Permit Authorizations to discharge waste that was not identified in their permit applications, meaning their permit applications are materially incorrect. For example, the Century Aluminum Hawesville plant used five Off-Permit Authorizations between 2017 and 2022 to dump waste from an aluminum-production related tailings pond through existing Outfall 9, but did not disclose this wastestream in its 2021 permit application.<sup>16</sup> Specifically, in its 2019 Off-Permit Authorization request, Century disclosed that the waste to be discharged through Outfall 9 included detectable levels of aluminum, antimony, nickel, and fluoride.<sup>17</sup> Century then certified in its 2021 NPDES permit application that these four pollutants were "believed absent" from its Outfall 9 discharges.<sup>18</sup> Similarly, the EKY Power H.L. Spurlock Station used five Off-Permit Authorizations to discharge from an outfall that is not identified in the facility's permit application at all.<sup>19</sup>

By failing to disclose these discharges in their permit applications, these facilities submitted permit applications that are materially incomplete and thus incorrect. The CWA forbids any false material statement, representation, or certification in permit applications, and such misrepresentations is grounds for criminal prosecution and permit termination. 33 U.S.C. § 1319(c)(4); 40 C.F.R. § 122.64(a)(2); *see also* 401 KY ADC 5:050:08 (the causes for revoking a KPDES permit "shall be as established in 40 C.F.R. 122.64"). Moreover, once these facilities knew their permit applications were no longer correct, EPA's standard permit conditions required them to notify the state of the changes. *See* 40 C.F.R. §§ 122.41(l)(1), (8) (permittee must notify the state "[w]here the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Director," and of any planned physical alterations or additions to the permitted facility, including when "the alteration or addition could significantly change the nature or increase the quantity of pollutants discharged"). Kentucky's Off-Permit Program disregards these federal requirements regarding permit application veracity.

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<sup>16</sup> [Century Hawesville Permit Application Form C](#) at Part B, PDF 28–30 (Nov. 9, 2021); *See, e.g.*, Request, [OTD Request Century Aluminum Hawesville 2019-3-12.pdf](#); Authorization, [OTD Letter Century Aluminum 3-13-19.pdf](#). Century Aluminum obtained five similar authorizations, found in [this folder](#).

<sup>17</sup> [Century OTD 2019 Request](#) at PDF 7–8.

<sup>18</sup> [Century Hawesville Permit Application Form C](#) at Part B, PDF 28–30 (Nov. 9, 2021).

<sup>19</sup> [EKY Permit Application Form C](#) § I (July 3, 2003). All of the EKY Spurlock OTD requests can be [found here](#).

### **3. Kentucky’s Off-Permit Program Has Likely Caused Significant Environmental Harm to Federal Waters in Kentucky**

Kentucky’s Off-Permit Program has led to the uncontrolled, unmonitored discharge of pollutants that should have been controlled by technology-based and water quality based effluent limits. These uncontrolled discharges have likely caused significant harm to federal waters in Kentucky. For instance, companies constructing and repairing pipelines have been able to discharge unlimited quantities of sediment into Kentucky’s waters, which harms aquatic life and makes drinking water treatment more difficult. Approximately 800 Kentucky segments are *already* impaired for sediment, and these unpermitted discharges may be making these impairments worse.<sup>20</sup> Hydrostatic testing discharges, particularly from pipeline repair projects, can also include oil and grease, BTEX (benzene, toluene, ethylbenzene, and xylene), benzene, and Total Organic Carbon. A 2023 Region 6 EPA general permit for hydrostatic testing discharges accordingly limits these pollutants.<sup>21</sup> These pollutants can pose dangers to aquatic life, even in small amounts.

Other Off-Permit discharges include inorganic chemicals and metals that are harmful to water quality. Kentucky has purported to authorize at least 60 unpermitted discharges of contaminated groundwater from petroleum underground storage tank pits.<sup>22</sup> These contaminated groundwater discharges are likely to include BTEX, naphthalene, sediment, and oil & grease.<sup>23</sup> Century Aluminum Hawesville’s off-permit discharges included the uncontrolled released of aluminum, antimony, nickel, and fluoride,<sup>24</sup> and the EKY Power H.L. Spurlock Station discharges included selenium and thallium.<sup>25</sup>

### **4. Kentucky’s Off-Permit Program Has Led Another Federal Agency to Base its NEPA Analysis on Incorrect Facts**

Kentucky’s Off-Permit Program and its failure to properly permit hydrostatic testing discharges also has undermined the integrity of other federal authorizations. Specifically, it has led Federal Energy Regulatory Commission (“FERC”) to make incorrect assumptions about the environmental impact of a pipeline in Kentucky in an Environmental Impact Statement (“EIS”).

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<sup>20</sup> [Kentucky's 2022 Integrated Report](#) at 20.

<sup>21</sup> [EPA Region 6, NPDES General Permit for Discharges from Hydrostatic Testing of New and Existing Vessels](#) in New Mexico (NMG270000), Oklahoma (OKG27F000), and Indian Country within the States of States of Texas, Oklahoma, New Mexico, and Louisiana (TXG27I000, OKG27I000, NMG27I000, & LAG27I000).

<sup>22</sup> Chart, [KY Off Permit Authorizations 2017-2022.xlsx](#).

<sup>23</sup> See, e.g., Fort Mitchell Shell Gas Station, [OTD Request Ft. Mitchell Shell 6 MAY 2021.pdf](#) (listing these as pollutants of concern from contaminated groundwater from petroleum underground storage tank pits).

<sup>24</sup> Request, [OTD Request Century Aluminum Hawesville 2019-3-12.pdf](#).

<sup>25</sup> Request, [OTD Request Spurlock - Pond 1 04-09-21.pdf](#), Authorization, [OTD Letter EKPC Spurlock 4-12-21.pdf](#), and Permit, [EKY Spurlock Final Permit KY0022250.pdf](#).



The 2022 Henderson County Expansion Project FERC EIS included a chart stating that Texas Gas anticipates that it will apply in the fourth quarter of 2022 for authorization under a non-existent Kentucky “General Permit for Discharge of Hydrostatic Test Water.”<sup>26</sup> Based on that non-existent Kentucky NPDES permit, FERC further states that “[a]ny water withdrawals or discharges would be required to comply with applicable permits.” FEIS at 4-168 (Surface Water and Wetlands). FERC used its incorrect assumption that hydrostatic testing discharges in Kentucky would be permitted and controlled as part of its overall conclusion that “overall cumulative impacts on surface water and wetland resources as a result of stormwater runoff, hydrostatic test water withdrawals and discharges ... are anticipated to be minor and incidental.” FEIS at 4-169.

## **5. Request for Action**

Kentucky’s Off-Permit Program presents a significant and continuing harm to federal waters in Kentucky and the integrity of the CWA in the Commonwealth. This illegal program has gone on for far too long and needs to be shut down immediately. We respectfully request EPA to do the following:

- a) Order the Kentucky EEC to shut down the Off-Permit Program immediately and to require permits for all future point-source discharges of pollutants into federal waters as required under the CWA;
- b) Take enforcement action as needed against illegal unpermitted discharges that EEC purported to authorize under the Off-Permit Program;
- c) Require permitted dischargers who have used the Off-Permit Program to modify their permit applications and apply for permit modifications to reflect their Off-Permit Program discharges; and
- d) Conduct a public, formal evaluation of Kentucky’s compliance with its NPDES delegation responsibilities in light of the Off-Permit Program.

Thank you for your time and attention to this matter. We look forward to hearing from you.

Best,

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<sup>26</sup> [https://elibrary.ferc.gov/eLibrary/filelist?accession\\_number=20220825-3038&optimized=false](https://elibrary.ferc.gov/eLibrary/filelist?accession_number=20220825-3038&optimized=false)

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