

MARYLAND DEPARTMENT	*	IN THE
OF THE ENVIRONMENT	*	CIRCUIT COURT
<i>Plaintiff,</i>	*	FOR
v.	*	FREDERICK COUNTY
D.M. BOWMAN, INC.,	*	Civil Action No.: C-10-CV-23-000393
AND	*	
DAY AND SONS, INC.,	*	
AND	*	
THE POTOMAC EDISON COMPANY.	*	
<i>Defendants.</i>	*	

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**CONSENT DECREE**

Plaintiff, Maryland Department of the Environment (“Department” or “MDE”) and defendants, D.M. Bowman, Inc. (“Bowman”), Day and Sons, Inc. (“Day & Sons”), and the Potomac Edison Company (“Potomac”) (collectively “Defendants”) (together the Department and the Defendants, are the “Parties”), hereby request that this Court enter this Consent Decree as follows:

1. On or about June 14, 2023, the Department filed a complaint against Bowman and Day & Sons, which was later amended (hereinafter the “Complaint”) to add Potomac as a Defendant, in the Circuit Court for Frederick County, Maryland, styled *Maryland Department of the Environment v. D.M. Bowman, Inc., et al.*, as Case No. C-10-CV-000393 (hereinafter the “MDE Action”). The factual background of the MDE Action is as follows:

**I. FACTUAL BACKGROUND**

2. Bowman is a Maryland corporation formed on or about November 17, 1970, with its principal place of business located in Williamsport, Maryland. Bowman is a trucking business which also performs truck repairs and maintenance and dispenses fuel from underground storage tank (“UST”) systems (“UST systems”) owned and operated by Bowman.

3. Day & Sons is a Maryland corporation formed on or about February 20, 2004. Day & Sons is a drilling and utility construction company with its principal place of business in Millersville, Maryland.

4. Potomac is a Maryland corporation formed on or about October 16, 1922. Potomac is an electric utility company with its principal place of business in Lutherville-Timonium, Maryland, that does business throughout Maryland including in Frederick County.

5. At all times pertinent to the MDE Action, Bowman owned and operated an oil storage facility located at 6816 English Muffin Way, Frederick, Maryland 21703, in Frederick County, which is registered with the Department under Facility ID 2651 (“Site”).

6. Equitable title to the Site is held by The Bowman Group, LLC, a Maryland limited liability company (f/k/a The Bowman Group, LLP, a Maryland limited liability partnership, which was f/k/a The Bowman Group, a Maryland general partnership), and legal title is held by Donald M. Bowman, Jr., a Maryland resident (collectively, “Site Owners”) pursuant to written agreements between those parties. The Site is leased to Bowman by and/or with the consent of the Site Owners pursuant to written agreements between those parties.

7. On or about September 10, 2019, Bowman entered into a consent agreement (“Consent Agreement”) with the United States Environmental Protection Agency (“EPA”) for violations found in May 2018 by the EPA during compliance evaluation inspections of UST systems owned or operated Bowman at the Site.

8. Bowman paid a penalty of \$66,038 pursuant to the Consent Agreement.

9. The Consent Agreement alleged violations of the Resource Conservation and Recovery Act (“RCRA”) and the Code of Maryland Regulations (“COMAR”), including the failure to perform: (a) release detection on UST systems (including inventory control); (b) automatic line leak detector testing annually on UST systems; (c) testing of cathodic protection system on UST systems; and, (d) line tightness testing or monthly monitoring on piping.

10. Bowman certified in the Consent Agreement based “upon personal investigation and to the best of its knowledge and belief that it is currently complying with applicable provisions of RCRA Subtitle I, 40 C.F.R. Part 280, and the State of Maryland’s federally authorized underground storage tank program, COMAR 26.10.02 *et seq.*”

**UST system inspections**

11. On October 2, 2019, the Department received a third-party inspection report (a/k/a UST System Compliance Inspection Report) (“October 2019 Inspection Report”) for the Site that noted multiple items in “fail” status.

12. On February 28, 2020, the Department sent a notice to Bowman requiring that the failed items be corrected within 30 days.

13. On March 31, 2020, in the early weeks of the COVID pandemic, the Department inspected the Site and found that four items from the October 2019 Inspection Report had not been corrected.

14. On June 23, 2020, the Department conducted another follow-up inspection and found the Site to still be in “fail” status because the required corrective actions had not been performed.

15. On June 3, 2022, the Department mailed a notice to inspect letter directing Bowman to conduct a certified inspection of the four UST systems at the Site and to submit a signed inspection report to the Department by September 3, 2022, which Bowman did not receive.

16. On October 28, 2022, because the Department did not receive an inspection report by September 3, 2022, a final notice to inspect was issued to Bowman via email requiring it to submit the inspection report to the Department within ten days.

17. On November 23, 2022, counsel for Bowman acknowledged receipt of the inspection notices and stated that Bowman would respond within the next seven to ten days. Bowman then informed the Department that it was having trouble scheduling the required third-party inspections. On December 1, 2022, and December 20, 2022, Bowman informed the Department that it would be removing the USTs from service. The Department did not receive UST inspection reports for the gasohol and diesel UST systems.

18. On January 10, 2023, the Department issued Bowman a notice of delivery ban of petroleum products for failure to submit the required third-party inspection report.

19. On January 12, 2023, the diesel and gasohol UST systems were removed, and, on January 18, 2023; the lube oil and used oil UST systems at the Site were removed. The used oil UST system was replaced at the Site on or about January 27, 2023.

**Impressed current corrosion protection system inspection and record keeping**

20. On June 23, 2020, the Department directed Bowman to provide records for the operation and testing of its impressed current corrosion protection system (“ICCP system”) at the Site.

21. On August 3, 2020, a five-year assessment of the ICCP system was due as the last five-year assessment of that system had been conducted on August 3, 2015. A post-repair assessment of the ICCP system was conducted in September 2020.

22. The Department requested a copy of the most recent complete assessment of the ICCP system from Bowman on June 23, 2020, December 8, 2021, and January 4, 2022.

23. On October 26, 2021, Bowman had a five-year assessment of the ICCP system performed. That assessment was provided to the Department on January 4, 2022.

#### **Spill of diesel at the Site**

24. On or about November 2021, Bowman began experiencing electrical problems at the Site and called Potomac to repair those problems.

25. Potomac retained Day & Sons as its contractor to conduct subgrade horizontal drilling on the Site so that an electrical cable could be installed to repair the electrical problems.

26. On November 30, 2021, Day & Sons mobilized equipment to the Site to conduct subgrade horizontal drilling pursuant to its agreement with Potomac to assist in providing power to the Site.

27. Prior to Day & Sons commencing drilling activities, Miss Utility and a private underground utility locator service provider were called to the Site by Day & Sons, with the authorization of Potomac, but failed to locate the underground fuel lines connecting the diesel UST to the dispensers at the Site.

28. Bowman asserts that it was unaware of the location that Day & Sons, acting as the contractor of Potomac, was going to conduct its horizontal drilling. There is a dispute as to whether Day & Sons requested from Bowman information pertaining to the location of utilities at the Site

prior to Day & Sons commencing drilling activities, and whether Day & Sons informed Bowman of the location that Day & Sons was going to conduct its horizontal drilling at this time.

29. On December 3, December 6, and December 7, 2021, Day & Sons conducted drilling at the Site. The direction in which Day & Sons drilled on each date during that time period is disputed.

30. At some point during that time period, Bowman received at least one report from a driver that at least one diesel dispenser at the Site was operating with a reduced flow which is an abnormal operating condition known as “slow flow.” “Slow flow” can have a number of causes, including clogged filters in the diesel dispensers or microbial contamination in the diesel fuel tank and leaks in the UST system. Despite this reported slow flow condition, all diesel dispensers remained available and in use for drivers to dispense diesel until the UST systems were shut down on December 6, 2021.

31. On December 6, 2021, Bowman changed the filters on the diesel dispensers which did not correct the slow flow problem. Bowman hired Dark Horse Enterprises, Inc. (“Dark Horse”) to investigate the reports of slow flow conditions. Dark Horse then subcontracted to Atlas Fuel Solutions, Inc. (“Atlas”) to troubleshoot the slow flow issue.

32. During the afternoon and evening of December 6, 2021, Atlas performed precision line and pressurized line tests on the diesel fuel lines which resulted in failed tests. The failed tests were not reported to the Department at that time. Atlas shut down the diesel UST system before leaving the Site on the evening of December 6, 2021.

33. On December 7, 2021, Atlas returned to the Site to perform the precision line and pressurized line tests on the diesel fuel lines again and to use a combustible gas detector to

investigate the Site. The failed line tests were recorded at 8:29 a.m. Atlas called the Department at 9:37 a.m. to report the line test failures and to report the loss of an unknown amount of diesel.

34. The diesel line test failures and the loss of diesel from the lines were attributed to the lines being damaged during subgrade horizontal drilling conducted by Day & Sons, which was acting as Potomac's contractor at the time the lines were damaged. The precise date(s) on which the fuel lines were damaged and diesel was discharged into the groundwaters of the State (the "Spill") are disputed.

35. The Department responded to the Site on December 8, 2021. Inventory records provided by Bowman to the Department on that date did not record the loss of diesel, incorrectly showed that 575 gallons of diesel fuel were dispensed to vehicles on both December 5, 2021, and December 6, 2021, and incorrectly showed that 233 gallons of diesel fuel were dispensed to vehicles on December 7, 2021, instead of December 6, 2021.

36. On December 8, 2021, the Department directed Bowman to: (a) take corrective action to remedy the COMAR violations with respect to Bowman's ownership, operation, and maintenance of the diesel UST system at the Site; and (b) submit a work plan to investigate the soil and groundwater conditions in the vicinity of the suspected discharge from its diesel UST system.

37. On December 16, 2021, an email received by the Department from Dark Horse incorrectly indicated that Bowman's statistical inventory reconciliation report showed a sudden loss of approximately 8,688 gallons of diesel on December 8, 2021, instead of December 7, 2021.

38. Investigation by the Department revealed multiple errors in the inventory control records provided by Bowman to the Department. Using the correct tank charts, the Department calculated a loss of approximately 7,687 gallons of diesel.

39. Bowman was the registered owner and operator of the UST system at the Site from which diesel was discharged and was the owner of the petroleum<sup>1</sup> discharged at the Site into the groundwaters of the State.

40. On December 17, 2021, the Department returned to the Site and Bowman began to excavate the Site using a mechanical digger in order to pinpoint the source of the Spill. That excavation confirmed that the fuel lines connecting the diesel UST to the diesel dispensers had been severed. Soil below the damaged pipes had petroleum odors and exhibited evidence of petroleum contamination.

41. To date, Bowman has been working to conduct and fund the remediation of the Spill at the Site, including conducting site assessment, product recovery, and quarterly reporting to the Department. There have been disputes between Bowman and the Department regarding that work.

42. To date, the extent of the Spill and the location of the remaining free product has not yet been delineated. The geology of the Site, consisting primarily of limestone and karst, can make it difficult to locate and recover the released diesel.

43. To date, Bowman has recovered approximately 2,786 of the approximately 7,687 gallons of oil that was discharged. Petroleum continues to be located and recovered as investigations progress.

## **II. STATUTORY AND REGULATORY AUTHORITY**

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<sup>1</sup> The terms petroleum, oil, diesel, and free product as used herein all refer to the petroleum released at the Site which is the subject matter of the Complaint.

44. The legal authority for the Department to administer and enforce State laws relating to oil-related facilities, oil-related activities, and oil pollution in and on the land and waters of the State is set forth in §§ 1-301, 1-404, and 4-401 through 4-708 of the Environment Article, and implementing regulations codified in COMAR 26.10.01 through 26.10.18.

45. Pursuant to its statutory powers, duties, and responsibilities, the Department has adopted regulations codified in COMAR 26.10.01 through 26.10.18 which address the methods, standards, and requirements for storage of oil to prevent pollution in waters of the State. Env't § 4-405.

46. Title 4, Subtitle 4 of the Environment Article, Annotated Code of Maryland, prohibits the discharge of oil in any manner into or on waters of the State except in case of emergency imperiling life or property, unavoidable accident, collision, or stranding, or as authorized by a permit issued by the Department. 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 Twenty-Five Thousand Dollars (\$25,000) for each violation, and each day upon which a violation occurs is a separate offense. Env't § 4-417(a).

47. The Department may seek injunctive relief for violations of Title 4 of the Environment Article for violations of any valid order or permit issued by the Department and to enjoin continuing violations. Env't § 4-416 and §4-417(a).

### **III. JURISDICTION AND VENUE**

48. This Consent Decree is intended to resolve the disputes between the Parties described in the MDE Action, to ensure remediation of oil contamination at the Site and surrounding areas, and to ensure Bowman's compliance with statutory and regulatory requirements pertaining to its UST systems at the Site.

49. This Court has jurisdiction over the Defendants under § 6-102 and § 6-103 of the Courts and Judicial Proceedings Article of the Annotated Code of Maryland because the Defendants maintain their principal places of business in the State and regularly conduct business in the State. Venue is proper under § 6-201 of the Courts and Judicial Proceedings Article of the Annotated Code of Maryland because the Defendants carry out their business in Frederick County, Maryland.

50. 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 judicial district.

### **IV. RESOLUTION OF DISPUTED CLAIMS**

51. To avoid protracted litigation of the alleged violations and the corrective action required, the 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.

52. 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.

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

54. It is expressly understood that this Consent Decree pertains to the specific alleged violations described in the MDE Action and that the Parties have made no promises or representations other than those contained in this Consent Decree 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.

55. Entry of this Consent Decree represents a settlement of contested claims and disputed facts.

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

**V. CIVIL PENALTIES**

56. Upon execution of this Consent Decree by the Parties, Bowman shall deliver a certified check made payable to the "Maryland Oil Disaster Containment, Clean-Up and Contingency Fund," in the amount of Two Hundred and Fifty Thousand Dollars (\$250,000). The check and any accompanying correspondence must reference Case No. C-10-CV-23-000393 and PCA code 13406.

57. Upon execution of this Consent Decree by the Parties, Day & Sons shall deliver a certified check made payable to the "Maryland Oil Disaster Containment, Clean-Up and Contingency Fund," in the amount of One Hundred Thousand Dollars (\$100,000). The check and any accompanying correspondence must reference Case No. C-10-CV-23-000393 and PCA code 13406.

58. Upon execution of this Consent Decree by the Parties, Potomac shall deliver a certified check made payable to the "Maryland Oil Disaster Containment, Clean-Up and Contingency Fund," in the amount of Ten Thousand Dollars (\$10,000). The check and any accompanying correspondence must reference Case No. C-10-CV-23-000393 and PCA code 13406.

#### **VI. WORK TO BE PERFORMED**

59. The provisions of this Section VI (Work to be Performed) apply to Bowman and the Department only.

60. All documents required under this Section VI (Work to be Performed) shall be submitted by or on behalf of Bowman to the Department ("Submittal(s)"). The term "Submittals" includes all final documents required under this Section of the Consent Decree, including the following: Company UST System Compliance Policies ("Company Policies") (defined below); logs and training records required by this Consent Decree; an interim Corrective Action Plan ("iCAP") (defined below); an Electric Resistivity Testing Plan ("ER Plan") (defined below); a Conceptual Site Model ("CSM") (defined below); a Corrective Action Plan ("CAP") (defined below); Progress Reports (defined below); and other records, reports, policies, logs, documents, or other submittals required by this Consent Decree.

61. All plans, studies, schedules, deadlines, models, reports and other documents and information required by or set forth in the Spill Management Plan (defined below) and Approved Submittals (defined below) are incorporated by reference into this Consent Decree and shall be enforceable as if fully set forth herein. Any failure of Bowman to comply with the requirements of the Spill Management Plan, Approved Submittals, and this Consent Decree, including any final deadlines therein or herein, shall be deemed noncompliance with this Consent Decree.

62. All Submittals shall be submitted to the Department in accordance with Section XV (Notification). Three hard copies and a digital copy of the iCAP, ER Plan, CSM, CAP, Progress Report(s), and modifications of Submittals in response to a Department request shall be provided to the Department. The number and format of these copies may not be modified except by mutual agreement confirmed in writing by the Department.

63. The Department shall review each Submittal and may approve, disapprove, or require revisions to the Submittal. The Department shall notify Bowman in writing if it determines that a modification to a Submittal or Approved Submittal is required.

64. The Department reserves the right to require revisions to the Spill Management Plan (defined below) and other Approved Submittals (defined below), additional assessment, sampling, gauging, monitoring, remediation, and reporting based on the data collected from the Site or nearby properties impacted by the Spill, as may be required under Maryland law and regulations, to achieve the Remedial Goals (defined below). Bowman acknowledges that the Department may require investigation and remediation of nearby properties to which contamination may have migrated in order to achieve the Remedial Goals. In the event that the Department determines that contamination has migrated to nearby properties from the Site, the references to the Site in Section VI (Work Performed) shall be deemed to include those nearby properties.

65. The Department shall notify Bowman in writing of its approval, disapproval, or required revisions of a Submittal. Upon the Department's approval of a Submittal, it becomes an "Approved Submittal" pursuant to this Consent Decree and Bowman shall implement the Approved Submittal and comply with all deadlines in the Approved Submittal.

66. The Department's approval of any Submittal does not constitute an implied or express warranty or representation by the Department that the work required by an Approved Submittal will achieve the Remedial Goals.

67. Upon the Department's disapproval and/or request for required revisions of a Submittal, the Department or Bowman may request a technical meeting to discuss the scope of the Department's disapproval or requested modification. Bowman and the Department will make reasonable efforts to hold the technical meeting within 15 days of the Department's or Bowman's written request for such a meeting. Bowman shall use good faith efforts to submit the requested modified Submittal to the Department within 30 days of the Department's written request for the modification, or the date of the technical meeting, whichever is later, which deadline may be extended upon Bowman's request, not to be unreasonably denied, in the event the Department's request requires coordination with third party vendors, additional discussion or clarification between the Department and Bowman, or permits or approvals from local or state agencies pursuant to Maryland law.

68. Pending the Department's evaluation and consideration of any Submittal, Bowman shall comply with the terms of this Consent Decree. The Department's evaluation and consideration of a Submittal shall not excuse, toll, or suspend any compliance obligation or deadline required by this Consent Decree; nor shall it stay the accrual of stipulated penalties unless agreed in writing by the Department and except as provided in Section VII (Stipulated Penalties), Section VIII (Extension of Deadlines and Modification of Work), and Section IX (Force Majeure and Excusable Delay).

**Work to be performed pertaining to operation, maintenance, repair, testing and inspection of UST systems owned and operated by Bowman located at the Site**

69. Bowman acknowledges that it must comply with all COMAR requirements applicable to the UST systems operated by Bowman located at the Site (collectively “Bowman’s UST systems”). In addition to complying with Maryland laws and regulations applicable to UST systems, Bowman shall perform the following additional work described below.

70. Third-party inspections and testing of UST systems. For so long as this Consent Decree is in effect or for three years from the Effective Date, whichever is shorter, Bowman shall timely perform all COMAR-required third-party inspections and testing of the components of Bowman’s UST systems in accord with the “UST System Inspection and Testing Schedule” attached hereto as Attachment A. Bowman shall hire a MDE-certified UST System Inspector to conduct the third-party inspections. Bowman shall submit inspection and/or testing reports to the Department within 15 days of the deadline to complete the inspection and/or testing identified in Attachment A. Thereafter, deadlines for inspection and testing of Bowman’s UST systems shall be conducted in compliance with the schedules established by COMAR.

71. Corrective action for deficiencies identified in third-party inspection and testing reports. For so long as this Consent Decree is in effect or for five years from the Effective Date, whichever is shorter, Bowman shall take corrective action with respect to any deficiencies identified in third-party inspection and/or test reports within 30 days of receipt, by Bowman, of a third-party inspection and/or testing report that identifies a deficiency, or other time period determined by the Department. Bowman shall ensure that a certified UST System Technician is present on-site during all UST system installation, upgrade, or repair work at Bowman’s UST systems. Bowman shall submit to the Department proof of the corrective actions performed to correct any such deficiency within 30 days of completion of the corrective actions unless otherwise directed by the Department.

72. Release detection, and walkthrough inspection records. Beginning on the first calendar month after the Effective Date (defined below) of this Consent Decree, and by the fifth day of each consecutive month until, and including December, 2026, and then by January 5<sup>th</sup> and July 5<sup>th</sup> for each year thereafter so long as the Consent Decree is in effect or for five years from the Effective Date, whichever is shorter, Bowman shall provide to the Department the following records, for the preceding six month timeframe:

- a. Tank release detection records.
- b. Walkthrough inspection records.

73. Designated Operators and Operator Training.

- a. Within ten days of the Effective Date of this Consent Decree, Bowman shall provide the Department with its list of certified Class A, Class B, and Class C Operators designated by Bowman in accord with COMAR 26.10.16.03A(1) ("Bowman's Designated Operator List"), and shall thereafter comply with COMAR 26.10.16.03C(4).
- b. Prior to permitting newly designated operators (for whom proof of training has not previously been provided to the Department) to perform duties related to Bowman's UST system, Bowman shall train such newly designated operators through a Department approved certification program and provide proof of such training to the Department within 30 days of completion. Thereafter, for as long as this Consent Decree is in effect or for five years from the Effective Date, whichever is shorter, proof of training of newly designated operators shall be provided to the Department within 30 days of the completion of such training.

74. Written UST system instructions. The written instructions required by COMAR 26.10.16.03A(3) for Bowman's UST systems shall be submitted to the Department for review and evaluation within ten days of the Effective Date of this Consent Decree. Photographic evidence demonstrating the written instructions are readily accessible to Class A, Class B, and Class C Operators of Bowman's UST systems shall be provided to the Department within ten days of the Effective Date of this Consent Decree.

75. Company Policies. Bowman shall develop and submit Company UST System Compliance Policies ("Company Policies") within 30 days of the Effective Date of this Consent Decree. The Company Policies shall, at a minimum, address the requirements of COMAR applicable to Bowman's UST systems (defined above) to ensure that Bowman is in substantial compliance with COMAR 26.10 in its ownership and operation of those systems.<sup>2</sup> The Company Policies shall require mandatory compliance by all persons performing work or duties related to Bowman's UST systems located at the Site. For the avoidance of doubt, the Department shall not have authority to enforce the Company Policies and may only enforce the terms of this Consent Decree and Maryland's laws and regulations. The Company Policies applicable to Bowman's UST systems located at the Site shall be provided to the Department within 30 days of the Effective Date of this Consent Decree for review and evaluation. For so long as this Consent Decree is in effect or for five years from the Effective Date, whichever is shorter, in addition to addressing the COMAR requirements applicable to Bowman's UST systems, the Company Policies shall include the following additional requirements:

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<sup>2</sup> The fact sheet posted on the Department's website titled "Underground Storage Tank System Compliance Guide – What You Need to Know" provides guidance as to the compliance obligations applicable to Bowman's UST systems which can aid in the development of the Company Policies. *See* [https://mde.maryland.gov/programs/land/OilControl/Documents/UST\\_System\\_Compliance\\_Guide\\_4.6.23\\_16pgs.pdf](https://mde.maryland.gov/programs/land/OilControl/Documents/UST_System_Compliance_Guide_4.6.23_16pgs.pdf).

- a. Records of leak detection and walkthrough inspections shall be reviewed on a monthly basis by a Certified Class A or Class B Operator identified on Bowman's Designated Operator List in order to verify that leak detection and walkthrough inspections are being properly performed in accordance with COMAR requirements. A log shall be maintained and signed by the designated operator performing the record review indicating that the records satisfied COMAR requirements or describing the deficiencies in the records. For each instance in which the records did not satisfy COMAR requirements, there must be a record of a prompt investigation and repair of the cause of the failure to satisfy COMAR requirements. That log shall be provided to the Department by the fifth day of each consecutive month until the end of 2026, and then by January 5<sup>th</sup> and July 5<sup>th</sup> for each year thereafter for the preceding 6-month timeframe.
- b. The written instructions required by COMAR 26.10.16.03A(3) shall be maintained readily accessible to Class A, Class B, and Class C Operators of Bowman's UST systems. Any changes to those instructions shall be provided to the Department in accord with COMAR 26.10.16.03C(4).
- c. All third-party inspections and testing of Bowman's UST systems and their components shall be scheduled 30 days in advance of the date upon which the inspection or testing is required in accord with COMAR and Paragraph 70.

**Work to be performed pertaining to investigation, remediation, delineation and cleanup of the Spill**

76. Spill Management Plan. The investigation, delineation, remediation, and cleanup of the Spill is being conducted by Bowman pursuant to directives issued by the Department. The Department's final, written, directives to Bowman regarding Submittals to be submitted to the

Department in connection with the investigation, delineation, remediation and cleanup of the Spill (a) that have been issued to date as set forth in the “Spill Management Plan as of Effective Date of Consent Decree” list attached hereto as Attachment B, and (b) that are issued in the future and clearly labeled “Updated Spill Management Plan” by the Department, are collectively referred to herein as the “Spill Management Plan.” The purpose of Attachment B is to identify existing directives as of the Effective Date of the Consent Decree. For the avoidance of doubt, MDE shall not be required to update the list attached hereto as Attachment B with directives issued after the Effective Date of this Consent Decree. One of the goals of this Consent Decree is to formalize the work to be performed, deadlines, reporting, and significant milestones of the cleanup of the Spill.

77. Interim Corrective Action Plan (iCAP). The Department acknowledges that Bowman submitted a stand-alone Interim Correction Action Plan (“iCAP”) on August 11, 2025, and an iCAP Addendum on August 22, 2025. The iCAP was approved by the Department on September 24, 2025. The approved iCAP shall supplement and modify but not supplant the Spill Management Plan which shall remain in full force and effect to the extent it does not conflict with the approved iCAP.

78. Electric Resistivity Testing Plan (ER Plan). The Department acknowledges that Bowman submitted a stand-alone Electric Resistivity Testing Plan (“ER Plan”) on August 15, 2025. The ER Plan was approved by the Department on September 24, 2025. The approved ER Plan shall supplement and modify but not supplant the Spill Management Plan which shall remain in full force and effect to the extent it does not conflict with the approved ER Plan

79. Conceptual Site Model (CSM). The Department acknowledges that Bowman submitted a stand-alone Conceptual Site Model (“CSM”) via email on September 26, 2025, and provided hard copies on September 30, 2025. The CSM is currently being evaluated by the

Department. The CSM is a report that assembles, among other things, information about the Site, the Spill, and the information gained while investigating and delineating the Spill. The approved CSM shall supplement and modify but not supplant the Spill Management Plan which shall remain in full force and effect to the extent it does not conflict with the approved CSM. The CSM shall be amended throughout the investigative and remedial activities as the understanding of the hydrogeologic conditions of the Site evolve. The Department will advise Bowman in writing when an update of the CSM is required. In addition, Bowman may update the CSM at Bowman's discretion. The CSM shall include at a minimum the following:

- a. All documents proposed in *Section 4.0 – Site Characterization Report (DM Bowman Sampling and Analysis Report Revised – Passive Soil Gas Monitoring, revised 6/4/24)*.
- b. Updated to scale Site maps depicting surveyed locations of existing monitoring wells and newly installed borings.
- c. A well gauging summary for the existing monitoring wells and the newly installed boreholes; gauging tables that include total depth of the well, well construction, and corrected groundwater elevation; product recovery tables for each well; and a total product recovered table for the Site.
- d. Summary tables including all soil and groundwater analytical data collected from existing monitoring wells and newly installed borings.
- e. All final geophysical survey data packages and an evaluation of the geophysical data.
- f. Documentation of any additional work that was performed along with its respective data.

- g. A determination regarding the discharge point of the floor drains located inside the vehicle maintenance building.
- h. Discussion of data gaps and recommendations for additional investigation and remediation activities.

80. Corrective Action Plan (CAP). When directed by the Department in writing, Bowman must submit a stand-alone Corrective Action Plan (“CAP”), provided, however, that a CAP will not be required by the Department in the event that there are no changes to the Site conditions and remedial plan set forth under the iCAP. The CAP sets forth a formal written remedial plan based upon the information set forth in the Spill Management Plan and Approved Submittals. The approved CAP shall supplement and modify but not supplant the Spill Management Plan which shall remain in full force and effect to the extent it does not conflict with the CAP. Due to the difficulties in remediating a spill in the limestone and karst terrain of the Site, the CAP may need to be revised as the investigation and remediation progresses. The CAP shall include at a minimum the following:

- a. Synopsis of Site conditions and events of release.
- b. Synopsis of previous work performed.
- c. Proposals for preferred remedial action.
- d. List of proposed remedial actions and a completion schedule for each action.
- e. Proposals for preferred sampling and maintenance actions.
- f. Description of needed permits.

81. Progress Reports. The recovery and remediation actions required by the Spill Management Plan and Approved Submittals shall be monitored by Bowman and reported to the Department in progress reports as required therein (“Progress Reports”). Quarterly Progress

Reports shall be submitted by May 15, August 15, November 15, and February 15, providing information for each of the previous calendar quarters. By way of example, a Progress Report due on May 15 shall provide progress for the quarter starting January 1 and concluding on March 31. Any other Progress Reports required on a more or less frequent basis by the Spill Management Plan or Approved Submittals shall be submitted by the deadlines set forth therein. Upon mutual agreement, the Department and Bowman may adjust the timing and frequency of the submission of Progress Reports. Bowman may incorporate by reference information contained in previously submitted Progress Reports. Progress Reports shall contain information required by the Spill Management Plan and Approved Submittals, including at a minimum, 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's industrial well.
- k. Sampling data required by the Spill Management Plan and/or Approved Submittals.

- l. Information regarding an anticipated or actual delay that may or will result in an inability to complete an activity in accordance with the Spill Management Plan and/or Approved Submittals, including the nature and cause of the delay, and any steps taken by Bowman to mitigate such delay.
- m. Updates on all other plans, work activities, and approvals required by this Consent Decree.

82. Remedial Goals. The remedial goals of the remediation and cleanup efforts, including the Spill Management Plan and Approved Submittals, is to return the groundwater to conditions that are protective of human health and the environment or to achieve contamination levels at or below the Department's current groundwater standards and action levels where possible, each as determined by the Department ("Remedial Goals").

83. Remediation Deadline. Due to the geology and the risk of migration of contamination from the Site, Bowman shall make good faith efforts consistent with prevailing industry practices to complete remediation of the Spill by achievement of the Remedial Goals, in accordance with applicable law and regulations, within five years of the Court's approval of this Consent Decree. Should the Remedial Goals not be met within the time frame designated, the Department and Bowman will evaluate the conditions and, if needed, make adjustments to the Spill Management Plan and Approved Submittals with the objective to meet the Remedial Goals within the subsequent two years or a different mutually agreed upon subsequent period. This process shall continue on a year-to-year basis thereafter.

84. Technical Meetings. The Department and Bowman will review at regular technical meetings, to be conducted at least once annually and at a frequency directed by the Department or as requested by Bowman, matters related to the progress of the investigation, delineation,

remediation and cleanup efforts required by this Consent Decree including, by way of example and not limitation, the following: (a) actions required by this Consent Decree; (b) the Department's proposed investigative tasks and schedules; (c) Bowman's progress towards the achievement of the Remedial Goals; and (d) other issues that the Parties wish to address.

85. Permits. Bowman shall obtain and comply with all permits required by the Department, including permits issued by the Water and Science Administration, and shall obtain and comply with all other necessary permits and approvals from local and state agencies that may be required under Maryland and local law and regulations prior to commencing approved activities.

86. Notification of Work. Bowman must notify the Department at least five working days prior to conducting any activities encompassed by the Spill Management Plan and Approved Submittals including the scheduling of any work required by the Spill Management Plan. Regularly scheduled or routine activities encompassed by the Spill Management Plan and Approved Submittals that occur on a monthly or more frequent basis, including but not limited to tri-weekly monitoring activities, shall not require five days' prior notice to the Department. In addition, if Bowman's Environmental Consultant (defined below) reasonably determines that an unexpected field condition requires a modification of approved work or scheduling ("Emergent Conditions"), then Bowman will notify the Department as soon as it determines a modification of approved work or scheduling is required and/or within two hours of discovery of the Emergent Condition. Bowman is then permitted to proceed with such modifications following such good faith notification to the Department. Notifications of Emergent Conditions and proposed modifications shall be provided to the Department via email sent to christopherj.king@maryland.gov, jim.richmond@maryland.gov, and susan.bull@maryland.gov.

If Bowman has complied with the terms of this Paragraph, failure to provide the Department with notice five days prior to a modification of approved work or scheduling required by reason of Emergent Conditions shall not be subject to Section VII (Stipulated Penalties).

87. Notification of Change of Environmental Consultants. If Bowman elects to change its environmental consultant (currently Geo-Technology Associates, Inc.) (“Environmental Consultant”), it must notify the Department of the change within five days of making that change by providing the identity and contact information of the new environmental consultant. A change in Environmental Consultants shall not of itself be a justification for any changes to or extensions of deadlines in this Consent Decree. Nothing herein shall be interpreted to require the Department’s approval of Bowman’s Environmental Consultant. In addition, for the avoidance of doubt, failure to comply with this Paragraph shall not be subject to Section VII (Stipulated Penalties).

88. New occurrence or uncharacteristic increase in amount of LPH observed. If a new occurrence of LPH is observed where it has not ever been previously been observed, or if a measured thickness of 0.1 feet of LPH is recorded during a gauging or other field visit at any monitoring well or other location, Bowman shall report the findings to the case manager and the case manager’s supervisors within two hours of discovery via email sent to christopherj.king@maryland.gov, jim.richmond@maryland.gov, and susan.bull@maryland.gov, and Bowman shall document such occurrence or increase in its Progress Report. Additionally, if such occurrence or increase requires a modification of work, Bowman shall submit a request for modification pursuant to Part VIII (Extensions of Deadlines and Modification of Work) of this Consent Decree within ten days of the event giving rise to the need for a modification of work.

## **VII. STIPULATED PENALTIES**

89. The provisions of this Section VII (Stipulated Penalties) apply to Bowman and the Department only.

90. Within 30 days of written demand by the Department, and subject to the tolling provisions of Section VIII (Extension of Deadlines and Modification of Work) and Section IX (Force Majeure and Excusable Delay), the Party subject to any stipulated penalty shall pay stipulated penalties in accordance with the following criteria. If the Party subject to any stipulated penalty fails to meet any final deadline under this Consent Decree, including those set forth in documents incorporated herein, the Party failing to meet the final deadline shall pay Five Hundred Dollars (\$500) per day of non-compliance for the first 1 to 15 days of noncompliance; One Thousand Dollars (\$1,000) per day of non-compliance between 16 and 120 days; and, Five Thousand Dollars (\$5,000) per day of non-compliance thereafter until the requirement is met; provided, however, that stipulated penalties shall apply to violations of the work requirements applicable to Bowman only as set forth in the "UST System Inspection and Testing Schedule" attached hereto as Attachment A (see above) until the earlier of three years from the Effective Date of this Consent Decree or termination of this Consent Decree.

91. 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 complete performance was due or on the day a violation occurs, whichever is applicable, and, except as otherwise provided in this Consent Decree, shall continue to accrue each day 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.

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

93. Any demand for stipulated penalties shall be mailed by First Class U.S. Mail to:

Stephanie Moore, Director of Safety & Compliance  
D.M. Bowman, Inc.  
10228 Governor Lane Boulevard, Suite 3006  
Williamsport, Maryland 21795  
(301) 223-1080 (office)  
smoore@dmbowman.com

With a copy to:

Stephen E. Luttrell, Shareholder  
Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C.  
100 Light Street, Suite 1900  
Baltimore, Maryland 21202  
(410) 862-1052 (office)  
s.luttrell@bakerdonelson.com

94. 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 addition to 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.

95. Payment of any stipulated penalty shall not relieve the Party subject to any stipulated penalty, 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.

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

97. No penalties under this Section shall be levied by the Department if the Department determines that noncompliance of the Party subject to any stipulated penalty is due to an event of *force majeure* or excusable delay as set forth in Section IX (Force Majeure and Excusable Delay).

#### **VIII. EXTENSION OF DEADLINES AND MODIFICATION OF WORK**

98. The provisions of this Section VIII (Extension of Deadlines and Modification of Work) apply to Bowman and the Department only.

99. Extension of Deadline(s) and Modification of Work. The Department may exercise its reasonable discretion to extend deadlines and/or to modify work required by this Consent Decree.

100. Extension and Work Modification Request(s). Any request to modify a deadline or to modify the work required by this Consent Decree must be made in writing prior to the deadline by which the work must be completed or the expiration of the deadline for which an extension is sought. The Department shall not consider a work modification or extension request until the request is complete. The term "complete" means that all the information necessary for the Department's evaluation of the request has been provided to the Department. If the Department requires additional information to consider a request, it shall timely notify Bowman in writing describing the additional information required to complete the request as soon as practicable. Provided that Bowman has acted diligently to continue to remediate the Site, the Department may exercise its reasonable discretion to grant the request. The Department shall use its best efforts to

respond in writing to a complete request within 15 days from receipt of all required information. A failure by the Department to respond in writing to a complete request shall not constitute approval of any such request; provided, however, that if the Department does not respond in writing to a complete request within 15 days, the deadline or work obligation that is the subject of the request and any deadlines or work obligations that rely on or incorporate information that is being developed through the work that is the subject of the request shall be excused or tolled until such time as the Department is able to respond.

101. Deadlines Affected by Department Review of Submittals. If Bowman's compliance with a final deadline under this Consent Decree is dependent upon the Department's final written approval of a Submittal by Bowman to the Department, that final deadline shall be tolled until the Department issues a final written determination on the Submittal provided that the Submittal expressly identifies the final deadline that it is to be tolled and explains why compliance with the deadline is dependent upon the Department's approval of the Submittal.

102. Except as set forth in the preceding Paragraphs of this Section VIII (Extension of Deadlines and Modification of Work) and as set forth in Section IX (Force Majeure and Excusable Delay), any request to extend a deadline and/or modify work shall not excuse, toll, or suspend any compliance obligation or deadline required by this Consent Decree during the pendency of the Department's consideration of the request; nor shall it stay the accrual of stipulated penalties unless agreed to in writing by the Department and except as provided in this Section VIII (Extension of Deadlines and Modification of Work) and Section IX (Force Majeure and Excusable Delay).

#### **IX. FORCE MAJEURE AND EXCUSABLE DELAY**

103. The provisions of this Section IX (Force Majeure and Excusable Delay) apply to Bowman and the Department only.

104. Bowman 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 Bowman, 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.

105. Circumstances beyond the reasonable control of Bowman include earthquake, flood, hurricane, severe weather or other act of God, war, riot, injunction, fire, pandemic (to the extent that the conditions described in Paragraph 106 below are satisfied), 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, and the Department's unreasonable delay in responding to written requests for information or guidance necessary for Bowman to comply with the requirements or obligations of this Consent Decree, i.e. an unreasonable delay would be 30 days after any Bowman submittal requiring the Department's comment or approval, or 15 days after any Department response deadline set forth herein. 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 Bowman has made timely and complete application for such permits.

106. The mere existence of a pandemic (including by way of example and not limitation, a novel coronavirus and COVID-19) in the state in which the work contemplated by this Consent Decree must be completed does not excuse performance. Bowman must take all reasonable steps to mitigate any delay that may occur as a result of the pandemic. Delays attributable to the pandemic may only constitute a *force majeure* where Bowman could not reasonably have taken

the known circumstances associated with the pandemic into account when developing plans and implementation schedules.

107. Within ten business days after becoming aware that an event Bowman believes constitutes an unforeseeable event or circumstance beyond its reasonable control may prevent or delay performance of an obligation under this Consent Decree, Bowman shall notify the Department of such event. Bowman's 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 Bowman to prevent or minimize the delay, and a timetable by which those measures will be implemented. Bowman shall adopt all reasonable measures to avoid or minimize any such delay. Bowman shall include in the 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 Bowman's reasonable control.

108. Failure by Bowman to comply with the notice requirements set forth in the preceding Paragraph constitutes a waiver of Bowman's right to assert that the event(s) at issue was a *force majeure* and to request an extension of the applicable deadline under this Section associated with an obligation to be performed under this Consent Decree.

109. 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 Bowman, 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 Bowman in writing of its approval or denial.

110. In the event the Department and Bowman cannot agree that a delay or failure has been or will be caused by a *force majeure* or excusable delay event or if there is no Consent Decree on the length of the extension, the dispute shall be resolved in accordance with Section X (Dispute Resolution).

111. Bowman shall have the burden of proving that any delay is caused by circumstances beyond the control of Bowman.

## **X. DISPUTE RESOLUTION**

112. The provisions of this Section X (Dispute Resolution) apply to Bowman and the Department only.

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

114. 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 Bowman 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 in accord with the provisions of Article XV (Notification). Electronic mail is the preferred delivery method for a Notice of Dispute to Bowman or the Department.

115. Bowman and the Department shall have 30 days following receipt of a Notice of Dispute to reach agreement, and they shall have the right to jointly meet during this 30 day period. If Bowman and the Department cannot reach an agreement on the disputed issue, the Department shall serve on Bowman a written statement setting forth its proposed resolution of the dispute (“Proposed Resolution”) within 30 days after expiration of the initial 30 day period. The dispute

shall be resolved in accordance with the Department's Proposed Resolution unless, within 60 days after receipt of the Department's Proposed Resolution, Bowman files a petition for resolution of the dispute with the Court in the MDE Action. Any such petition shall describe the nature of the dispute and Bowman's proposal for resolution of the dispute. The Department shall have 30 days after service of such petition to file a response.

116. The Court shall have exclusive and continuing jurisdiction to issue any Decree or resolve any dispute arising between or among Bowman and the Department 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 may hold evidentiary hearings, consider testimony, or otherwise make determinations of fact if it deems such to be appropriate.

117. The existence of any dispute initiated under the process provided by this Section shall not excuse, toll, or suspend any compliance obligation or deadline required, or stipulated penalty accruing, pursuant to this Consent Decree during the pendency of the dispute resolution.

#### **XI. RIGHT TO ENTER AND ACCESS**

118. The provisions of this Section XI (Right to Enter and Access) apply to Bowman and the Department only.

119. Bowman 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 reasonably necessary to ascertain and evaluate whether Bowman and the Site are in compliance with this Consent Decree and State law. Upon request by the Department, Bowman shall provide the Department with access to inspect and copy any records or information which may be related to the Site, this Consent Decree, or Bowman's compliance with State law.

120. The right of access provided in this Consent Decree is supplemental and shall not limit or restrict any other right of access granted to the Department by applicable law.

121. To the extent that work required by the Consent Decree must be conducted on property that is not owned or operated by Bowman for which a third party has relevant property rights, Bowman shall use reasonable best efforts to obtain access agreements from the property right holder(s) as appropriate within 30 days of receipt of notice of the Department's approval of any Submittal requiring work on such property. "Reasonable best efforts" shall include at a minimum, but shall not be limited to, sending a certified letter to the property right holder requesting an access agreement to permit Bowman and the Department to enter such property.

122. In the event that access agreements cannot be obtained within the time period set forth above, Bowman shall promptly notify the Department in writing, indicating all efforts made to obtain such agreements, and the Department may, consistent with its legal authority, assist Bowman in obtaining access. In the event that the Department obtains such access, Bowman shall be obligated to reimburse the Department for any costs judicially awarded or reasonably incurred in exercise of its authority. If the Department does not obtain such access, the relevant approved work to be performed shall be modified by the Department in its discretion.

## **XII. RELEASE AND RESERVATION OF RIGHTS**

123. With respect solely to Day & Sons, upon the full completion of all of the obligations set forth in this Consent Decree applicable to Day & Sons, and payment of the civil penalty applicable to Day & Sons: (a) Day & Sons (including its officers, directors, shareholders, employees, affiliates, successors, and assigns) shall be released from all legal liability for the violations alleged in the MDE Action; (b) the Department agrees to refrain from pursuing any civil or administrative enforcement action against Day & Sons for the violations alleged in the MDE

Action; and, (c) the Department shall file a Notice of Satisfaction of the claims against Day & Sons alleged in the MDE Action with the Court noting that Day & Sons has satisfied its obligations hereunder.

124. With respect solely to Potomac, upon the full completion of all of the obligations set forth in this Consent Decree applicable to Potomac, and payment of the civil penalty applicable to Potomac: (a) Potomac (including its officers, directors, shareholders, employees, affiliates, successors, and assigns) shall be released from all legal liability for the violations alleged in the MDE Action; (b) the Department agrees to refrain from pursuing any civil or administrative enforcement action against Potomac for the violations alleged in the MDE Action; and, (c) the Department shall file a Notice of Satisfaction of the claims against Potomac alleged in the MDE Action with the Court noting that Potomac has satisfied its obligations hereunder.

125. With respect solely to Bowman, upon the full completion of all of the obligations set forth in this Consent Decree applicable to Bowman, Bowman's completion of all work required under the Consent Decree, and payment of the civil penalty and any stipulated penalties applicable to Bowman: (a) Bowman (including its officers, directors, shareholders, employees, affiliates, successors, and assigns) shall be released from all legal liability for the violations alleged in the MDE Action; (b) the Department agrees to refrain from pursuing any civil or administrative enforcement action against Bowman for the violations alleged in the MDE Action; (c) the Department will issue a Final Closure Letter of the matters alleged in the MDE Action to Bowman pursuant to COMAR 26.10.01.07; and, (d) the Department shall file a Notice of Satisfaction of the claims against Bowman alleged in the MDE Action with the Court noting that Bowman has satisfied its obligations hereunder.

126. 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 the MDE Action, this Consent Decree, or unknown to the Department at this time, including newly discovered contamination or the exacerbation of existing contamination, or to reduce or eliminate risks to public health or the environment that were not encompassed by the MDE Action or known to the Department at the time of approval of this Consent Decree or at the time of approval of work to be performed hereunder.

127. The Department and the State of Maryland retain all authority and rights against any persons other than the Defendants (and Defendants' 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.

128. 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 not covered by this Consent Decree, nor shall anything set forth in this Consent Decree be deemed to be a waiver of Defendants' right to contest such proceeding(s) by the Department.

129. Nothing in this Consent Decree shall be construed to relieve Defendants 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. 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.

130. Unless otherwise expressly indicated, the Parties 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 (“Unrelated Parties”). Nothing contained in this Consent Decree shall affect any right, claim, cause of action, or defense of any party hereto with respect to Unrelated Parties and/or any right, claim, or cause of action. The Parties specifically reserve any and all rights, defenses, claims, demands, and causes of action which the Parties may have against any Unrelated Parties relating in any way to the subject matter of this Consent Decree.

131. The Department reserves, and this Consent Decree is without prejudice to, all rights against the Defendants with respect to the following matters: (a) civil and administrative enforcement actions for violations that occur after the Effective Date of this Consent Decree unless those violations are subject to stipulated penalties or other remedies pursuant to this Decree; (b) criminal enforcement actions; or, (c) violations of any other State law or regulation that do not arise out of the facts or circumstances recited in the MDE Action.

132. Notwithstanding any other provision of this Consent Decree, no action or decision by the Department or any authorized representative of the Department pursuant to this Consent Decree shall constitute final agency action giving rise to any right of the Defendants to seek judicial review prior to the Department’s initiation of a judicial action to enforce this Consent Decree, including an action for penalties of any type or an action to compel Defendants’ compliance with the terms and conditions of this Consent Decree, or other action taken in accord with Section X (Dispute Resolution).

133. Nothing in this Consent Decree shall limit the authority of the Department to issue any orders or to take any action it deems necessary to protect public health, safety, or the environment, or to limit any authority the Department now has or may hereafter be delegated.

### **XIII. NO THIRD-PARTY BENEFICIARIES**

134. 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 Defendants 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.

135. 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.

136. 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.

### **XIV. PERSONS BOUND BY THIS ORDER**

137. This Consent Decree shall apply to and be binding upon the Department, the Defendants, and the Defendants' officers, directors, employees, successors, assigns, trustees, receivers, designees, and upon all persons acting on behalf of Defendants. Any change in the ownership or corporate status of Defendants, or any transfer of assets or real or personal property, shall not alter any of Defendants' responsibilities under this Consent Order.

138. Bowman represents that the Site Owners have knowledge of this Consent Decree, and have authorized and consented to Bowman entering into this Consent Decree. Bowman shall notify the Department within 15 days of receipt of any notice from the Site Owners of a planned transfer of ownership or other interest in Bowman's UST systems at the Site. Upon execution of this Consent Decree, Bowman shall provide written proof to the Department of the Site Owners' consent as set forth in this Paragraph.

139. During the period when this Consent Decree is in effect, should Bowman seek to transfer ownership or other interest in its business and/or Bowman's UST systems, then at least 60 State business days prior to any such transfer of ownership or other interest, Bowman 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, in accordance with the provisions of Section XV (Notification). Bowman shall condition all contracts or agreements in connection with the transfer on compliance by all parties to such agreements with the terms of this Consent Decree. Along with the written notice required by this Paragraph, Bowman shall provide the Department with a written agreement between Bowman and its successor-in-interest indicating the specific date of the proposed transfer, and acknowledging the obligations of Bowman and the new owner to comply with the terms and conditions of this Consent Decree.

140. Bowman shall condition all contracts or agreements with contractors, subcontractors, laboratories and/or consultants in connection with this Consent Decree, on compliance with the terms of this Consent Decree. Bowman shall ensure that its employees, contractors, subcontractors, and agents comply with this Consent Decree and have the necessary instruction regarding the scope of any work to be performed by them relative to the performance

of Bowman's obligations under this Consent Decree and the laws and regulations applicable to the Site.

141. Defendants shall provide written notice to the Department at least 20 State business days in advance of Defendants' filing of any petition or the commencement of any proceeding arising under the Bankruptcy Code, 11 U.S.C. 1101 *et seq.*

#### **XV. NOTIFICATION**

142. Unless otherwise specified herein, all Submittals, workplans, reports, correspondence, approvals, logs, notices, or other submissions required by or relating to this Consent Decree shall be in writing 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 or herein, the party making the change shall notify the other contacts below within ten days of the change. Notices shall be sent to the following:

##### The Department

Rick Kessler  
Director  
Land and Materials Administration,  
Maryland Department of the Environment  
1800 Washington Boulevard  
Baltimore, Maryland 21230  
(410) 365-8801 (office)  
rick.kessler@maryland.gov

Susan Bull  
Chief, Remediation Division, Oil Control Program  
Land and Materials Administration,  
Maryland Department of the Environment  
1800 Washington Boulevard, Suite 620  
Baltimore, Maryland 21230  
(410) 537-3499 (office)  
Susan.bull@maryland.gov

Jackie Ryan  
Chief, Compliance Division, Oil Control Program  
Land and Materials Administration,  
Maryland Department of the Environment  
1800 Washington Boulevard, Suite 620  
Baltimore, Maryland 21230  
(410) 537-4153 (office)  
Jackie.ryan@maryland.gov

Office of the Attorney General

Julie Kuspa, Assistant Attorney General  
Christopher Corzine, Assistant Attorney General  
Melanie Barney, Assistant Attorney General  
Office of the Attorney General  
Maryland Department of the Environment  
1800 Washington Boulevard, Suite 6048  
Baltimore, Maryland 21230  
(410) 537-3034 (office)  
Julie.kuspa@maryland.gov  
Chris.corzine@maryland.gov  
Melanie.barney@maryland.gov

Defendants

Stephanie Moore, Director of Safety & Compliance  
D.M. Bowman, Inc.  
10228 Governor Lane Boulevard, Suite 3006  
Williamsport, Maryland 21795  
(301) 223-1080 (office)  
smoore@dmbowman.com

With a copy to:

Stephen E. Luttrell, Shareholder  
Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C.  
100 Light Street, Suite 1900  
Baltimore, Maryland 21202  
(410) 862-1052 (office)  
s.luttrell@bakerdonelson.com

Kevin Day, President  
Day and Sons, Inc.  
230 Jumpers Hole Road  
Millersville, Maryland 21108  
443-324-4088 mobile  
410-437-5500 voice

410-437-5069 fax  
kday@dayandsonsinc.com

With a copy to:

Thomas V. McCarron, Principal  
Zachary D. Schlein, Principal  
Semmes, Bowen & Semmes  
250 W. Pratt Street, Suite 1900  
Baltimore, Maryland 21201  
(410) 576-4854  
tmccarron@semmes.com  
zschlein@semmes.com

James Meade, Corporate Counsel  
The Potomac Edison Company  
800 Cabin Hill Drive  
Greensburg, Pennsylvania 15601  
Mailstop: G-CH / Greensburg  
(724) 838-6965  
jmeade@firstenergy.com

With a copy to:

Thomas K. Prevas  
Saul Ewing, LLP  
1001 Fleet Street  
Baltimore, Maryland 21231  
(410) 332-8683  
Thomas.prevas@saul.com

## **XVI. ENFORCEMENT OF CONSENT DECREE AND OTHER LEGAL REMEDIES**

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

144. In any action by the Department to enforce the terms of this Consent Decree, Defendants consent to and agree not to contest the authority or jurisdiction of the Department to issue or enforce this Consent Decree and agree not to contest the validity of this Consent Decree or its terms or conditions. Defendants agree this Consent Decree is a contract and final order enforceable in a judicial forum.

145. 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 shall remain in effect and in full force to the maximum extent reasonable.

146. This Consent Decree is governed by and shall be interpreted according to the laws of the State of Maryland without regard to or the application of conflict of laws principles. This Consent Decree has been negotiated freely by the Parties and shall in all cases be construed as a whole, according to its fair meaning, without regard to any presumption or other rule requiring construction against the party causing the Consent Decree to be drafted.

147. Failure of a Defendant to pay any applicable penalty or stipulated penalty 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 by that Defendant 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 seventeen percent (17%), plus interest, to the amount owed

148. In an action to enforce this Consent Order, the Defendant shall not assert as a defense against the Department any act or failure to act by any of the Defendants' officers, directors, employees, agents, servants, contractors, successors, or assigns.

#### **XVII. U.S. INTERNAL REVENUE SERVICE REPORTING REQUIREMENTS**

149. 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. Defendants agree to cooperate with the Department in meeting this reporting obligation, to promptly provide information requested by the Department associated therewith, and to complete the Information Form attached hereto as Attachment C. The Parties acknowledge that this Consent Decree is not fully executed until a completed Attachment C for each party is attached.

150. Payments of penalties or stipulated penalties 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 Defendants shall not deduct any penalties of any type paid under this Consent Decree in calculating their federal income tax.

151. 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 Section VI (Work to be Performed) is restitution, remediation, or required to come into compliance with the law.

#### **XVIII. GENERAL PROVISIONS**

152. This Consent Decree constitutes the entire agreement between the Parties regarding the resolution of the MDE Action. No other prior or contemporaneous written or oral agreement,

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.

153. This Consent Decree is not intended to be, nor shall it be construed to be a permit. Compliance by Defendants with the terms of this Consent Decree shall not relieve them of their obligations to comply with any other applicable local, state, or federal laws and regulations.

154. All factual information provided by the Defendants to the Department that forms the basis of this Consent Decree is to the best of their knowledge. To the extent that any of the factual information that is material to this Consent Decree provided by the Defendants is not true and accurate, the Department reserves the right to declare this Consent Decree null and void and to seek any available legal, equitable, administrative and/or judicial remedies.

155. 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.

156. 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.

157. 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.

#### **XIX. TERMINATION**

158. With respect solely to Day & Sons, except for the Release contained in Section XII (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) Day & Sons' payment of the full civil penalty against it set forth in Section V (Civil Penalties); and (b) the Department's written determination by the Department's filing of a Notice of Satisfaction of the claims against Day & Sons, that Day & Sons has completed all obligations set forth in and contemplated by the scope of this Consent Decree.

159. With respect solely to Potomac, except for the Release contained in Section XII (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) Potomac's payment of the full civil penalty against it as set forth in Section V (Civil Penalties); and (b) the Department's written determination by the Department's filing of a Notice of Satisfaction of the claims against Potomac, that Potomac has completed all obligations set forth in and contemplated by the scope of this Consent Decree.

160. With respect solely to Bowman, except for the Release contained in Section XII (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) Bowman's payment of the full civil penalty against it as set forth in Section V (Civil Penalties); (b) Bowman's payment of all stipulated penalties that are demanded of Bowman by the Department under this Consent Decree; and (c) the Department's written determination by the Department's filing of a Notice of Satisfaction of the claims against Bowman, that Bowman has completed all obligations set forth in and contemplated by the scope of this Consent Decree.

161. Notwithstanding the foregoing Paragraphs, the Parties may terminate this Consent Decree at any time by mutual written consent and the approval of the Court.

162. This case shall be concluded within the meaning of Paragraph 22 of the Stipulated Order Regarding Confidentiality of Documents and Information dated March 21, 2025, upon the termination of this Consent Decree as evidenced by the filing by the Department of a Notice of Satisfaction of the claims against Bowman.

**XX. EFFECTIVE DATE**

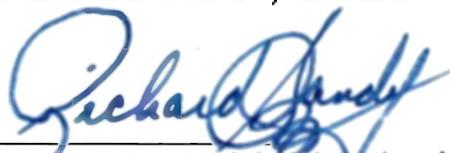
163. This Consent Decree shall become effective as a contract upon execution of this Consent Decree and completion of Attachment C by all Parties (“Effective Date”). This Consent Decree shall become effective as a Court Order upon entry by the Court.

**XXI. SUBSEQUENT MODIFICATION**

164. 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. This Consent Decree shall not be modified except by the mutual written agreement of all the Parties. Upon approval by the Court, this Consent Decree is not only a contract but also a court order. After Court approval, this Consent Decree cannot be modified except by the mutual written agreement of all the Parties and written order of the Court.

**IT IS SO DECREED AND ORDERED this 19th of December, 2025**

Entered: Clerk, Circuit Court for  
Frederick County, MD  
December 19, 2025

  
\_\_\_\_\_  
Judge **Richard Sandy, Administrative Judge**  
Circuit Court for Frederick County  
**12/19/2025 6:15:20 AM**

Signature Page for Consent Decree in *Maryland Department of the Environment v. D.M. Bowman, Inc., et al.*, Case No. C-10-CV-23-000393.

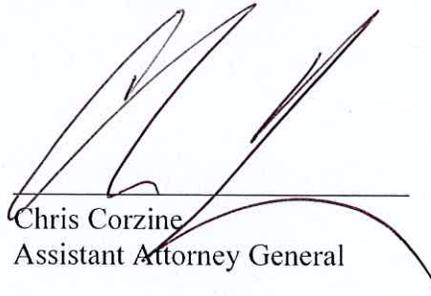
FOR THE MARYLAND DEPARTMENT OF THE ENVIRONMENT:

12/18/2025  
DATE

  
Rick Kessler  
Director  
Land and Materials Administration

Approved as to form and legal sufficiency this 18<sup>th</sup> day of December 2025

  
Julie Kuspa  
Assistant Attorney General

  
Chris Corzine  
Assistant Attorney General

  
Melanie Barney  
Assistant Attorney General

Signature Page for Consent Decree in *Maryland Department of the Environment v. D.M. Bowman, Inc., et al*, Case No. C-10-CV-23-000393.

D.M. BOWMAN, INC.:

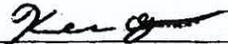
12/18/2025  
DATE

Samantha Bodnar, President  
NAME AND TITLE

Signature Page for Consent Decree in *Maryland Department of the Environment v. D.M. Bowman, Inc., et al*, Case No. C-10-CV-23-000393.

DAY AND SONS, INC.:

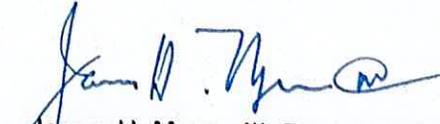
12/9/25  
DATE

  
NAME AND TITLE

Signature Page for Consent Decree in *Maryland Department of the Environment v. D.M. Bowman, Inc., et al*, Case No. C-10-CV-23-000393.

THE POTOMAC EDISON COMPANY:

12/11/2025  
DATE

  
James H. Myers, III President  
NAME AND TITLE