

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement (“Agreement”) is entered into on this 22nd day of October, 2020, by and between the City of Burlington, North Carolina (“City” or “Burlington”) and Haw River Assembly.

WHEREAS, the City operates a wastewater collection system and two wastewater treatment plants (“WWTPs”), the East Burlington wastewater treatment plant and the South Burlington wastewater treatment plant;

WHEREAS, Haw River Assembly sent a letter to the City notifying it of Haw River Assembly’s intent to sue to address the City’s per- and polyfluoroalkyl substances (“PFAS”) and 1,4-dioxane discharges from its wastewater treatment plants;

WHEREAS, notwithstanding Burlington’s position that its discharges of PFAS and 1,4-dioxane are compliant with its discharge permits, Burlington has been investigating the potential source(s) of PFAS and 1,4-dioxane in the City’s discharges;

WHEREAS, Burlington plans to continue its investigation of the potential source(s) of the City’s PFAS and 1,4-dioxane discharges, and has contracted Hazen & Sawyer (“Consultant”) to conduct a more comprehensive investigation that includes sampling of its industrial users, its collection system, and its internal wastewater treatment plant processes to determine the sources of the PFAS and 1,4-dioxane in the City’s discharges (“Investigation”);

WHEREAS, Haw River Assembly wishes to support Burlington’s Investigation, and ultimately expects Burlington to exercise its authority under the Clean Water Act pretreatment program to address the source(s) of its PFAS and 1,4-dioxane pollution;

WHEREAS, this Agreement represents the initial mutual commitments of the City and the Haw River Assembly, and is intended to (1) foster continued cooperation and transparency during the Investigation; and (2) lead to the development and execution of a broader agreement that includes additional steps the City will take to (a) prevent to the extent practicable the industrial discharges of PFAS and 1,4-dioxane into its WWTPs, and (b) minimize its WWTPs’ PFAS and 1,4-dioxane discharges;

NOW, THEREFORE, in consideration of the promises, mutual covenants, and obligations contained herein, the City and Haw River Assembly enter into this Agreement.

I. ROLES AND RESPONSIBILITIES

A. The City of Burlington agrees to the following:

1. Ongoing Cooperation and Transparency

- a. Within one week of finalizing this agreement, Burlington will provide Haw River Assembly with a geospatial layer of its East Burlington WWTP collection system, including information on sewer force mains, sewer gravity mains, sewer manholes, and sewer flow direction, if available. Haw River Assembly will access and use that layer for the sole purpose of assisting the City's Investigation into PFAS and 1,4 Dioxane sources and levels. Unless the parties otherwise subsequently agree in a follow-on agreement, Haw River Assembly agrees to delete the geospatial files and any maps created based upon those files no later than October 31, 2021.
- b. Burlington will provide Haw River Assembly with a status report by the 15th day following each calendar quarter through the third quarter of 2021. The quarterly reports will provide the following information for the prior calendar quarter: updated data from any sampling conducted under sections A.2 or A.3 below, along with the associated WWTP flow rates; a summary of the recent steps taken in the Investigation; and planned next steps.
- c. Beginning in October, 2020, Burlington and its Consultant will participate in a monthly meeting/call (scheduled at a mutually agreeable time) with Haw River Assembly and/or its expert(s) to discuss the status of the Investigation and next steps.

2. Burlington's Investigation Sampling Plan

- a. Burlington provided Haw River Assembly with an opportunity to review and provide input on Burlington's (or its Consultant's) written Investigation Sampling plan ("Sampling Plan" or "Plan").
- b. Upon finalizing the Plan, Burlington will promptly provide Haw River Assembly with a full copy of the final Plan, as well as full copies of all subsequent Plan deliverables, including collection system and industrial user sampling locations.
- c. As part of the Investigation, Burlington will evaluate the presence of PFAS precursors within the East Burlington WWTP collection system, including industrial discharges into the WWTP, and investigate the industrial source(s) of precursors identified by Burlington, its Consultant, Haw River Assembly, or Haw River Assembly's expert(s) that are suspected to be causing the elevated levels of PFAS detected in the City's effluent.

3. Burlington's Sampling

- a. East Burlington. Burlington will conduct sampling at the East Burlington WWTP:
- i. In accordance with Burlington's Sampling Plan. The City will begin Event 1 set forth in the Sampling Plan by January 6, 2021. This deadline may be extended for reasons that are beyond the City's control.
 - ii. Of the influent and effluent for the PFAS compounds listed in Burlington's Sampling Plan and 1,4-dioxane at least every two weeks through March 31, 2021 (the City may agree to extend this date depending on the status and results to date of the Investigation). This sampling requirement may be met through compliance with Burlington's Sampling Plan, and
 - iii. Of the landfill leachate for the PFAS compounds listed in Burlington's sampling plan and 1,4-dioxane at least once per month through February 2021 (the City may agree to extend this date depending on the status and results to date of the Investigation).
 - iv. Burlington's final draft Sampling Plan is attached hereto and will be finalized to HRA's satisfaction no later than November 16, 2020.
- b. South Burlington. Burlington will conduct at least monthly sampling of South Burlington WWTP's influent, effluent, and biosolids through February 2021 for the listed PFAS and 1,4-dioxane.
- c. As more data and information become available, the Parties may agree on a more tailored sampling schedule. For example, if PFAS concentrations for the effluent from South Burlington WWTP significantly depart from prior levels, sampling of significant and categorical industrial users may be warranted.

4. Haw River Assembly's Sampling and Investigation

- a. Burlington will provide split samples to Haw River Assembly's designated expert(s) for all samples taken from the East Burlington WWTP's landfill leachate and influent and effluent, as well as for all samples taken as part of Events 2, 3, and 4 within Burlington's Sampling Plan—for analysis by Haw River Assembly's expert(s) (using total oxidizable precursor (TOP) assay, non-targeted analysis, or other method).
- b. Haw River Assembly may propose sampling locations and frequencies not included in Burlington's Sampling Plan, but that Haw River Assembly's expert(s) deem necessary to identify the potential source(s) of PFAS to the East Burlington WWTP, Burlington agrees to consider the addition of such locations/frequencies and, if it concurs, either (1) allow Haw River Assembly's designated expert(s) access to the East Burlington WWTP and collection system to collect the samples,

- or (2) collect the samples and provide split samples to Haw River Assembly's expert(s).
- c. Haw River Assembly, its expert(s), and Burlington will coordinate to determine logistics for the collection and delivery of split samples. Burlington and Haw River Assembly will make their expert(s) and Consultants available to discuss sampling locations and other logistics, as necessary.
- d. The Parties shall have a right to a split of any sample collected by or on behalf of the other party.
- e. Haw River Assembly agrees that it will not release any results or information based upon its sampling taken in support of the Investigation without 7 calendar days of advance notice to City. This excludes results or information based on sampling taken outside the Investigation of downstream drinking water or intakes conducted or received by the Haw River Assembly.
- f. Burlington will provide Haw River Assembly and its designated expert(s) with at least one site visit of the East Burlington WWTP, upon request.

5. Investigation of Industrial Users

- a. Burlington and the Haw River Assembly agree to review the sampling data to determine if further investigation of industrial users to the Burlington collection system is warranted. If such further investigation is deemed to be warranted, the parties will make good faith efforts to develop a plan of action for collecting information from industrial users as necessary to identify the potential source(s) of PFAS to the East Burlington WWTP.

B. In exchange for Burlington's substantial compliance with the above provisions, Haw River Assembly agrees to the following:

- 1. Reserve Filing of Civil Action Against the City. Haw River Assembly agrees not to file a civil action against the City, in any forum, related to the factual allegations contained in the November 7, 2019 Notice of Intent to Sue the City of Burlington for Violations of the Clean Water Act, through the duration of this Agreement.
- 2. Provide Notice Prior to Filing Suit. Prior to filing any civil action against the City on or after the Termination date of this Agreement, as provided for in Section II.K., Haw River Assembly shall provide the following individuals with notice at least 15 days in advance of any such filing:

Paul Calamita, Counsel for City of Burlington
Paul@aqualaw.com

Bob Patterson, City of Burlington, Water Resources Director

II. ADDITIONAL CLAUSES

- A. Mutual Cooperation. The Parties agree to work in good faith to implement this Agreement, including responding to reasonable information requests, to work toward the development of a mutually agreeable approach to investigating and addressing the source(s) of PFAS and 1,4-dioxane into its East Burlington wastewater treatment plant.
- B. Amendments to Agreement. Amendments to this Agreement must be in writing and signed by all Parties.
- C. Entire Agreement. This Agreement contains the entire agreement among the Parties with respect to the subject matter hereof and supersedes all prior agreements, written or oral, with respect thereto.
- D. Severability. If any provision of this Agreement is found to be unenforceable, the remainder of this Agreement shall remain in full force and effect.
- E. Authority. The Parties represent that they have the authority to enter into this Agreement and that the individuals signing this Agreement on their behalf have the requisite power and authority to bind the Parties to its terms and conditions.
- F. Reservation. Except as expressly provided herein, nothing in this Agreement shall be construed to limit or otherwise affect the authority, rights, or responsibilities of the Parties.
- G. Effective Date. This Agreement shall be effective and binding upon its execution by all Parties and shall continue in effect until terminated in accordance with Section II.K.
- H. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, and all of which shall together constitute one and the same instrument.
- I. Dispute Resolution.
 - 1. If any dispute arises regarding implementation of, interpretation of, or compliance with this Agreement, the Parties will attempt to informally resolve the dispute through consultation and negotiation in good faith;

2. If no resolution is reached within 30 days, then the Parties may resolve the dispute by other mutually agreeable means or by seeking enforcement in court.
- J. Force Majeure. No Party shall be responsible for its failure to fulfill an obligation under this Agreement to the extent that such failure is due to acts or events beyond its reasonable control, including the exigencies of COVID-19 (“Force Majeure event”). For this provision to be effective, the Party failing to substantially perform must (1) notify the other party in writing within a reasonable time of the nature and impact of the Force Majeure event; (2) limit any delay in performance to that required by the Force Majeure event; (3) take all reasonable steps to minimize delay and resume performance; and (4) provide as part of the monthly updates set forth in section I.A.1.a, a summary and schedule of the steps being taken to minimize delay and resume performance.
- K. Termination. Unless the Parties mutually agree to extend the duration of this Agreement in writing, this Agreement shall terminate at the earliest of (1) 9 months from the date of execution; (2) upon written agreement of the Parties; (3) upon written notice by Haw River Assembly following unsuccessful dispute resolution, as provided for in Section II.I; or (4) upon the effective date of an agreement to supersede this Agreement, provided such agreement expressly states such an intent.
- L. Binding Effect. This Agreement shall inure to the benefit of the Parties and shall, to the maximum extent permitted by law, be binding on the Parties and their successors and assigns.
- M. Notices and Submissions. Whenever notice is required to be given or a document is required to be sent by one Party to another under the terms of this Agreement, it shall be directed to the individuals at the electronic mail addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing.

As to Haw River Assembly:

Emily Sutton
Haw River Assembly, Riverkeeper
emily@hawriver.org

Kelly Moser
Southern Environmental Law Center
kmoser@selcnc.org

As to City of Burlington:

Bob Patterson
City of Burlington, Director of Water Resources
BPatterson@burlingtonnc.gov

Paul Calamita
AquaLaw
paul@aqualaw.com

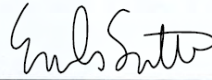
IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representative as of the dates below their respective signatures.

For the City of Burlington:

For Haw River Assembly:



Bob Patterson
Water Resources Director



Emily Sutton
Haw Riverkeeper

Dated: 10/22/2020

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