

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA, and
THE STATE OF ILLINOIS,

Plaintiffs,

v.

Civil No. [3:22-cv-02659]

BIG RIVER SOLAR, LLC,

Defendant.

CONSENT DECREE

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WHEREAS, Plaintiffs United States of America, on behalf of the United States Environmental Protection Agency (“EPA”), and the State of Illinois (“the State”), on behalf of the Illinois Environmental Protection Agency (“Illinois EPA”), have filed a complaint in this action concurrently with this Consent Decree, alleging that Defendant, Big River Solar, LLC (“Big River”), violated the Clean Water Act (“Act”) and the Illinois Environmental Protection Act by failing to comply with the conditions and limitations of a National Pollutant Discharge Elimination System (“NPDES”) permit issued by the Illinois EPA pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

WHEREAS, the Complaint against Big River alleges that Big River violated the conditions and limitations in its NPDES permit during construction of a solar energy facility in White County, Illinois, resulting in construction at the Site taking place without adequate safeguards designed to prevent discharges of excess sediment in stormwater to nearby waterways.

WHEREAS, the Consent Decree may be used in any subsequent State enforcement action or State permit proceeding as proof of a past adjudication of violation of the Illinois Environmental Protection Act and Illinois Pollution Control Board regulations for all violations alleged in the Complaint in this matter, for purposes of Sections 39 and 42 of the Illinois Environmental Protection Act, 415 ILCS 5/39 and 42 (2020).

WHEREAS, Big River does not admit any liability to the United States or the State arising out of the transactions or occurrences alleged in the Complaint.

WHEREAS, the Parties recognize, 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 among the Parties and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, before the taking of any testimony, without the adjudication or admission of any issue of fact or law except as provided in Section I, and with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action, pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Section 309 of the Act, 33 U.S.C. § 1319, and over the Parties. This Court has jurisdiction over the State's claims pursuant to 28 U.S.C. § 1367 (supplemental jurisdiction), because they are related to the federal claims and form part of the same case or controversy. Venue lies in this District pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1391(b)–(c) and 1395(a), because the violations alleged in the Complaint are alleged to have occurred in, and Big River conducts business in, this judicial district. For purposes of this Decree, or any action to enforce this Decree, Big River consents to the Court's jurisdiction over this Decree and any such action and over Big River and consents to venue in this judicial district.

2. For purposes of this Consent Decree, Big River agrees that the Complaint states claims upon which relief may be granted pursuant to Section 309 of the CWA, 33 U.S.C. § 1319, and Section 42(d) and (e) of the Illinois Environmental Protection Act, 415 ILCS 5/42 (d) and (e).

II. APPLICABILITY

3. Parties Bound. The obligations of this Consent Decree apply to and are binding upon the United States and the State, and upon Big River and any successors, assigns, or other entities or persons otherwise bound by law.

4. No transfer of ownership or operation of the Site, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve Big River of its obligation to ensure that the terms of the Decree are implemented. At least 30 Days prior to such transfer, Big River shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the proposed written agreement, to EPA and DOJ in accordance with Section XIII (Notices). Any attempt to transfer ownership or operation of the Facility without complying with this Paragraph constitutes a violation of this Decree.

5. Big River shall provide a copy of this Consent Decree to all officers, employees, and agents whose duties might reasonably include compliance with any provision of this Decree, as well as to any contractor retained to perform work required under this Consent Decree or who is otherwise responsible for compliance with the Consent Decree and the Illinois Permit. Big River shall condition any such contract upon performance of the work in conformity with the terms of this Consent Decree.

6. In any action to enforce this Consent Decree, Big River shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

III. DEFINITIONS

7. Terms used in this Consent decree that are defined in the Act or in regulations promulgated pursuant to the Act have the meanings assigned to them in the Act or such regulations, unless otherwise provided in this Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions apply:

- a. “Act” or “Clean Water Act” means the Federal Water Pollution Control

Act, as amended, 33 U.S.C. §§ 1251–1387.

b. “Big River” or “Defendant” means Big River Solar, LLC, and any current or future entity over which Big River Solar and/or its successors or assigns has either (a) ownership and operational control or (b) day-to-day operational control over Construction Activity.

c. “Calendar Quarter” means the 3-month periods ending on March 31, June 30, September 30, and December 31.

d. “Complaint” means the complaint filed by the United States and the State in this action.

e. “Consent Decree” or “Decree” means this Decree and all appendices attached hereto (listed in Section XXIV).

f. “Construction Activity” shall have the meaning set forth in the Illinois Permit.

g. “Contractor(s)” means any of Big River’s consultants, contractors, or sub-contractors at the Site, including any employees of the consultants, contractors, or sub-contractors working at the Site.

h. “Corrective Action” means any action taken to (1) maintain, repair, modify, or replace any stormwater control used at the Site; (2) clean up and dispose of spills, releases, or other deposits found on the Site; or (3) remedy a permit violation at the Site.

i. “Date of Lodging” shall mean the date this Consent Decree is lodged with the Court in accordance with Section XVIII.

j. “Day” means a calendar day unless expressly stated to be a business day. In computing any period of time for a deadline under this Consent Decree, where the last day would

fall on a Saturday, Sunday, or federal holiday, the period runs until the close of business of the next business day.

k. “DOJ” means the United States Department of Justice and any of its successor departments or agencies.

l. “Effective Date” means the definition provided in Section XIV.

m. “Electronic Records Portal” means the records portal described in Paragraph 20 below.

n. “EPA” means the United States Environmental Protection Agency and any of its successor departments or agencies.

o. “Illinois EPA” means the State of Illinois Environmental Protection Agency.

p. “Illinois Permit” means the General National Pollutant Discharge Elimination System (“NPDES”) Permit for Storm Water Discharges from Construction Site Activities, General NPDES Permit No. ILR10, issued on August 3, 2018, by Illinois EPA pursuant to Section 402(p) of the CWA and Section 39 of the Illinois Environmental Protection Act. This term applies to that permit in its current form or as it may be amended, re-issued, or administratively continued in the future.

q. “Notice of Termination” or “NOT” means a request to terminate Illinois Permit coverage for the Site pursuant to Part I.F of the Illinois Permit.

r. “NPDES” means the National Pollutant Discharge Elimination System created pursuant to the Clean Water Act.

s. “Paragraph” means a portion of this Decree identified by an Arabic numeral.

- t. “Parties” means the United States, the State, and Big River.
- u. “Section” means a portion of this Decree identified by a Roman numeral.
- v. “Site” means the Big River Solar construction site located at the intersection of County Road 1200 North and County Road 400 East in White County, Illinois, and as depicted in Appendix A.
- w. “State” means the State of Illinois.
- x. “Stormwater Compliance Management Team” means Big River’s stormwater contractor assigned pursuant to Paragraph 16 (Designation of Stormwater Compliance Management Team) to oversee stormwater compliance activities at the Site.
- y. “Stormwater Compliance Qualifications” means qualifications demonstrating knowledge in the principles and practices of erosion and sediment controls measures that include one of the following: (i) a licensed Professional Engineer who has taken the training required by Paragraph 17.b of this Decree; (ii) a Certified Professional in Erosion and Sediment Control (“CPESC”); (iii) a Certified Erosion Sediment and Stormwater Inspector (“ECSSWT”); or a Certified Stormwater Inspector.
- z. “Stormwater Pollution Prevention Plan” (or “SWPPP”) means a plan for controlling pollutants in stormwater discharges and managing non-stormwater discharges that meets Stormwater Requirements.
- aa. “Stormwater Requirements” means the terms and conditions of this Decree and the Illinois Permit, as well as the laws and regulations that apply to, interpret, or enforce the Illinois Permit.
- bb. “United States” means the United States of America, acting on behalf of EPA.

IV. CIVIL PENALTY

8. Within 30 Days after the Effective Date, Big River shall pay the sum of \$ 175,000 as a civil penalty, together with interest accruing from the date on which the Consent Decree is lodged with the Court, at the rate specified in 28 U.S.C. § 1961 as of the Date of Lodging. The civil penalty payment will be divided between the United States and the State of Illinois as specified below.

9. Big River shall pay the civil penalty of \$ 122,500, together with interest as set forth in Paragraph 8, to the United States by FedWire Electronic Funds Transfer ("EFT") to the DOJ account, in accordance with instructions provided to Big River by the Financial Litigation Unit ("FLU") of the United States Attorney's Office for the Southern District of Illinois after the Effective Date. The payment instructions provided by the FLU will include a Consolidated Debt Collection System ("CDCS") number, which Big River shall use to identify all payments required to be made in accordance with this Consent Decree. The FLU will provide the payment instructions to:

Kathy Zhang
Big River Solar, LLC
575 5th Avenue, 35th Floor
New York, NY 10017
+1 (212)403-8457
Kathy.Zhang@deshaw.com

on behalf of Big River. Big River may change the individual to receive payment instructions on its behalf by providing written notice of such change to DOJ and EPA in accordance with Section XIII (Notices).

10. At the time of payment, Big River shall send notice that payment has been made:
(i) to EPA via email at cinwd_acctsreceivable@epa.gov or via regular mail at EPA Cincinnati

Finance Office, 26 W. Martin Luther King Drive, Cincinnati, Ohio 45268; (ii) to DOJ via email or regular mail in accordance with Section XIII (Notices); and (iii) to EPA in accordance with Section XIII. Such notice shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in *United States and State of Illinois v. Big River Solar, LLC* and shall reference the civil action number 3:22-cv-02659, CDCS Number and DOJ case number 90-5-1-1-12558.

11. No later than 30 Days after the Effective Date, Big River shall pay the sum of \$ 52,500, together with interest as set forth in Paragraph 8, as a civil penalty to the State.

12. All payments required by this Consent Decree to be paid to the State shall be made by certified check or money order payable to Illinois EPA for deposit into the Environmental Protection Trust Fund ("EPTF"). Payments shall be sent by first class mail and

delivered to: Illinois Environmental Protection Agency
Fiscal Services
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

The case name and case number shall appear on the face of the certified check or money order. A copy of the certified check or money order and any transmittal letter shall be sent to:

Rachel Medina
Assistant Attorney General
Environmental Bureau
500 South Second Street
Springfield, IL 62701

13. Big River shall not deduct any penalties paid under this Decree pursuant to this Section or Section VII (Stipulated Penalties) in calculating its federal income tax.

V. COMPLIANCE REQUIREMENTS

14. Permit Coverage and Compliance.

a. Big River shall comply with the conditions and limitations of the CWA, the Illinois Environmental Protection Act, and the Illinois Permit at the Site.

b. Big River shall maintain continuous permit coverage under the Illinois Permit until Big River has fully stabilized the Site, eliminated all stormwater discharges from construction activities, and submitted a Notice of Termination to Illinois EPA.

c. Prior to submitting a Notice of Termination of permit coverage for the Site to Illinois EPA, Big River shall submit to EPA and the State, for review and approval pursuant to Paragraph 21, a Request to Submit Notice of Termination, certified by the Stormwater Compliance Management Team in compliance with Paragraph 29. The request shall address the following Site issues, and provide supporting documentation (including photographs):

- i. Full stabilization of the Site;
- ii. Removal of temporary Best Management Practices (“BMPs”) from the Site;
- iii. Removal of temporary construction entrances from the Site;
- iv. Description of permanent BMPs that will remain on Site and their current condition; and
- v. Removal or appropriate mitigation of any sediment or pollutants that have been discharged off-site in violation of the Illinois Permit.

d. Big River shall not submit a Notice of Termination for the Site until its Request to Submit Notice of Termination is approved pursuant to Paragraph 21; provided, however, if EPA does not take action on the Request to Submit Notice of Termination for a

period of sixty (60) days after it is submitted, Big River may submit a Notice of Termination.

15. Stormwater Pollution Prevention Plan (“SWPPP”).

a. Big River has submitted to EPA and Illinois EPA, and EPA has approved consistent with procedures set forth in Paragraph 21, the SWPPP for the Site attached as Appendix B.

b. From September 15, 2022, Big River shall maintain on-Site the SWPPP attached as Appendix B, including any subsequent revisions.

c. After the Date of Lodging, Big River shall update its SWPPP in compliance with Part IV.C of the Illinois Permit.

d. From September 15, 2022, Big River shall continuously implement the current version of its SWPPP, including, but not limited to, provisions intended to comply with the requirements in Part IV.D of the Illinois Permit.

16. Stormwater Compliance Management Team.

a. No later than September 15, 2022, Big River shall ensure that a designated Stormwater Compliance Management Team oversees compliance with the Illinois Permit at the Site until submittal of a Notice of Termination for the Site. The designated Stormwater Compliance Management Team shall possess and maintain Stormwater Compliance Qualifications.

b. As of the Date of Lodging, Big River has designated a Stormwater Compliance Management Team who possesses Stormwater Compliance Qualifications.

c. In the event that a Stormwater Compliance Management Team designated by Big River pursuant to this Consent Decree is no longer available or willing to accept the work described in this Paragraph, Big River shall designate a replacement Stormwater Compliance

Management Team for the Site within two weeks of receiving notice that the current Stormwater Compliance Management Team is no longer available or willing to accept this work by notifying EPA and the State, in accordance with Section XIII, of the name, affiliation, and address of the replacement Stormwater Compliance Management Team and evidence demonstrating that the replacement Stormwater Compliance Management Team possesses and maintains Stormwater Compliance Qualifications.

- d. The Stormwater Compliance Management Team shall:
 - i. have the authority and responsibility to manage all Site activities necessary to meet the Stormwater Requirements at the Site;
 - ii. ensure that a complete, updated SWPPP that complies with the Illinois Permit and the Stormwater Requirements is available on Site at all times;
 - iii. conduct all inspections of the Site required under Part IV.D.4 of the Illinois Permit, in person and while physically on the Site, and prepare and sign all inspection reports;
 - iv. have the authority to order any person to stop any work at the Site when necessary to comply with the Stormwater Requirements, including requiring any such person to cease or correct a violation of Stormwater Requirements, and to order or recommend such other actions or sanctions as necessary to meet Stormwater Requirements pertaining to Construction Activity at the Site;
 - v. have the authority and responsibility to amend, sign, and certify the Site's SWPPP in accordance with Part VI.G of the Illinois Permit;

- vi. report any noncompliance and sign and submit all Incidence of Noncompliance reports required under Part IV.D.4.e. of the Illinois Permit;
- vii. document all Corrective Actions taken and the timeframe for taking such actions, as required by Part IV.D.5 of the Illinois Permit; and
- viii. develop and submit the Quarterly Reports in accordance with Section VII (Reporting Requirements).

e. Big River shall post in its construction office or, in the absence of a construction office, in another conspicuous location at the Site, a conspicuous notice (i) providing the name, email address, and telephone number of Big River's Stormwater Compliance Management Team, and (ii) authorizing all employees and Contractors to contact the Stormwater Compliance Management Team at the Site with any questions or to report problems relating to sediment and erosion control at the Site. If Big River's designated Stormwater Compliance Management Team is not available to answer the phone at any time, Big River shall ensure that a person or machine shall be available to answer or record a message and that those messages are retrieved and addressed by the Stormwater Compliance Management Team within a reasonable time. Likewise, Big River shall ensure that emails are retrieved and addressed within a reasonable time.

17. Stormwater Training.

a. No later than September 15, 2022, Big River shall ensure the construction supervisor at the Site, and all persons who will conduct site inspections, have Stormwater Compliance Qualifications.

b. No later than September 15, 2022, and subsequently at least once per

Calendar Quarter after September 15, 2022, Big River shall provide Site-specific training on stormwater issues for all personnel at the Site ensuring that all personnel have basic knowledge regarding maintenance and preservation of BMPs and Stormwater Requirements, including but not limited to the information described in Paragraph 16.e. For personnel starting work on the Site after September 15, 2022, Big River shall ensure that they receive such training prior to undertaking Construction Activity on the Site.

18. Buffer Restoration Plan.

a. Not later than the Date of Lodging, Big River shall submit to EPA and the State, for review and approval pursuant to Paragraph 21, a restoration plan to restore and maintain a 50-foot natural buffer between the wetlands identified on the Site Map and disturbed areas of the Site that requires completion of all restoration work within four months of approval of the plan by EPA.

b. Big River shall implement the restoration plan upon its approval by EPA.

19. Response to Stormwater Issues.

a. Beginning no later than September 15, 2022, if Big River, or one of its Contractors, identifies missing, ineffective, or damaged BMPs otherwise in need of maintenance or repair at the Site, Big River shall:

- i. document in the weekly inspection report any such BMPs, including photographs or videos of the full extent of the problem and any wider impacts experienced on the Site as a result of any such BMPs;
- ii. report the issue and any corrective action taken in the applicable Quarterly Report;
- iii. correct any such BMPs within the time required by and otherwise in

accordance with the terms of the Illinois Permit and SWPPP, but no later than 14 Days after identification, and document the corrective action in the current or subsequent weekly inspection report, including photographs or videos;

- iv. install or modify all required additional or different BMPs in accordance with the terms of the Illinois Permit and SWPPP; and
- v. modify the SWPPP to reflect those changes in accordance with the terms of the Illinois Permit and SWPPP.

b. Beginning no later than September 15, 2022, if Big River, or one of its Contractors, identifies a discharge of a pollutant or pollutants, including sediment, from the Site that is not authorized by the Illinois Permit, Big River shall, within 72 hours, report the discharge to EPA and the State electronically in accordance with Section XIII (Notices). Big River shall document, in videos or photographs, the discharge, any temporary or permanent corrective actions taken, and signs of sediment deposition that are visible from the Site and attributable to the discharge (e.g., sand bars with no vegetation growing on top in receiving waters or in other constructed or natural site drainage features, or buildup of sediment deposits on nearby open conveyance channels). Big River shall document the date, time, and location of all photographs or videos.

c. Within seven Days of each unauthorized discharge reported by Big River pursuant to Subparagraph (b), Big River must submit a report to EPA and the State, for review and approval pursuant to Paragraph 21, identifying whether further actions are required to mitigate any adverse effects to the environment caused by the discharge. If Big River identifies that mitigating actions are required, Big River must propose such actions, including a proposed

schedule, in the report.

20. Maintenance and Submission of Site Stormwater Compliance Documents.

a. Big River shall ensure that the SWPPP (including all revisions), and all inspection reports, are available at the Site at all times for review by any Contractor or employee of Big River, as well as by any local, state, or federal inspector in accordance with Paragraph 61 (Right of Entry).

b. No later than September 15, 2022, Big River shall create and fully implement an Electronic Records Portal that at all times allows for the electronic availability of all records identified under this Paragraph. The United States and the State shall have continuous access to the Electronic Records Portal.

c. Beginning from September 15, 2022, Big River shall upload the following records for the Site to the Electronic Records Portal every two weeks:

- i. Notices of Intent and Illinois EPA coverage letters;
- ii. SWPPP revisions, amendments, and updates;
- iii. Documentation required under Paragraph 19 (Response to Stormwater Issues);
- iv. Documentation of training conducted in accordance with Paragraph 17, including sign-in sheets;
- v. Documentation that any new Site personnel have qualifications required by Paragraph 17.a;
- vi. Copies of all reports required to be submitted to Illinois EPA for the Site pursuant to the Illinois Permit;
- vii. Copies of all Site inspection reports, including photographs or videos;

and

viii. Copies of all Incidence of Noncompliance reports required under Part IV.D.4.e. of the Illinois Permit.

d. Records uploaded to the Electronic Records Portal shall be organized in clearly labeled folders according to the categories in Paragraph 20.c, and shall be in text-searchable PDF format, except for photographs and videos, which shall be in standard image and video formats and in the original resolution and include information identifying the date, time, and location the photograph or video was taken.

e. Big River shall ensure records uploaded to the Electronic Records Portal pursuant to Paragraph 20.c remain on the Electronic Records Portal until termination of this Decree.

f. Any paper records created shall be retained by Big River pursuant to Paragraph 63 (Information Collection and Retention) below, even if the document or its content have also been converted to electronic form.

21. Approval of deliverables. After review of any plan, report, or other item that is required to be submitted for approval pursuant to this Decree, EPA, after consultation with the State, shall in writing: a) approve the submission; b) approve the submission upon specified conditions; c) approve part of the submission and disapprove the remainder; or d) disapprove the submission. Approvals given by EPA before the Effective Date become effective and binding under the Consent Decree upon entry.

22. If the submission is approved pursuant to Paragraph 21.a, Big River shall take all actions required by the plan, report, or other document, in accordance with the schedules and requirements of the plan, report, or other document, as approved. If the submission is

conditionally approved or approved only in part, pursuant to Paragraph 21.b or 21.c, Big River shall, upon written direction from EPA, after consultation with the State, take all actions required by the approved plan, report, or other item that EPA, after consultation with the State, determines are technically severable from any disapproved portions.

23. If the submission is disapproved in whole or in part pursuant to Paragraph 21.c or 21.d, Big River shall, within 45 Days or such other time as the Parties agree to in writing, correct all deficiencies and resubmit the plan, report, or other item, or disapproved portion thereof, for approval, in accordance with the preceding Paragraphs. If the resubmission is approved in whole or in part, Big River shall proceed in accordance with the preceding Paragraphs.

24. If a resubmitted plan, report, or other item, or portion thereof, is disapproved in whole or in part, EPA, in consultation with the State, may again require Big River to correct any deficiencies, in accordance with the preceding Paragraphs, or may itself correct any deficiencies.

25. If Big River elects to invoke Dispute Resolution as set forth in Section IX (Dispute Resolution) concerning a decision by EPA to disapprove, approve on specified conditions, or modify a deliverable, Big River shall do so by sending a Notice of Dispute in accordance with Paragraph 54 within 30 Days (or such other time as the Parties agree to in writing) after receipt of the applicable decision.

26. Any stipulated penalties applicable to the original submission, as provided in Section VII, shall accrue during the 45-Day period to resubmit the plan or other specified period, but shall not be payable unless the resubmission is untimely or is disapproved in whole or in part; provided that, if the original submission was so deficient as to constitute a material breach of Big River's obligations under this Decree, the stipulated penalties applicable to the original submission shall be due and payable notwithstanding any subsequent resubmission.

VI. REPORTING REQUIREMENTS

27. Big River shall submit the following reports to EPA, DOJ, and the State at the addresses set forth Section XIII (Notices):

a. Beginning one month after the first Calendar Quarter following the Effective Date of this Consent Decree, until termination of this Decree pursuant to Section XVII, Big River shall submit, and upload to the Electronic Records Portal in a designated folder, a Quarterly Report for the preceding three months that includes the status of Big River's Construction Activity at the Site, including the completion of any milestones; problems related to stormwater that were encountered or are anticipated, together with implemented or proposed solutions, including problems with BMPs as described in Paragraph 19 (Response to Stormwater Issues); and any other relevant matters. The Quarterly Report may reference other reports and notifications required to be submitted by this Decree, such as an unauthorized discharge report under Paragraph 19.b.

b. The report shall also include a description of any non-compliance with the requirements of this Consent Decree and an explanation of the violation's likely cause and of the remedial steps taken, or to be taken, to prevent or minimize such violation. If the cause of a violation cannot be fully explained at the time the report is due, Big River shall so state in the report. Big River shall investigate the cause of the violation and shall then submit an amendment to the report, including a full explanation of the cause of the violation, within 30 Days of the Day Big River becomes aware of the cause of the violation. Nothing in this Paragraph or the following Paragraph relieves Big River of its obligation to provide the notice required by Section VIII (Force Majeure).

28. Whenever any violation of this Consent Decree or of the Illinois Permit or any other event affecting Big River's performance under this Decree may pose an immediate threat to the public health or welfare or the environment, Big River shall notify the EPA Region 5 Duty Officer by telephone at (312) 353-2318, and the State by telephoning Joe Stitely at 618-993-7200 or by email to Joe Stitely at Joe.Stitely@Illinois.gov as soon as possible, but no later than 24 hours after Big River first knew of the violation or event. This procedure is in addition to the requirements set forth in the preceding Paragraph.

29. Each report submitted by Big River under this Section shall be signed by an official of Big River and include the following certification:

I certify under penalty of perjury that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I have no personal knowledge that the information submitted is other than true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

30. This certification requirement does not apply to emergency or similar notifications where compliance would be impractical.

31. The reporting requirements of this Consent Decree do not relieve Big River of any reporting obligations required by the Act or implementing regulations, the Illinois Environmental Protection Act or implementing regulations, or by any other federal, state, or local law, regulation, permit, or other requirement.

32. Any information provided pursuant to this Consent Decree may be used by the United States or the State in any proceeding to enforce the provisions of this Consent Decree and as otherwise permitted by law.

VII. STIPULATED PENALTIES

33. Big River shall be liable for stipulated penalties to the United States and the State for violations of this Consent Decree as specified below, unless excused under Section VIII (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Decree, including any work plan or schedule approved under this Decree pursuant to Paragraph 18 or 19(c), according to all applicable requirements of this Decree and within the specified time schedules established by or approved under this Decree.

34. Late Payment of Civil Penalty. If Big River fails to pay the civil penalty required to be paid under Section IV (Civil Penalty) when due, Big River shall pay a stipulated penalty of \$25,000 per Day for each Day that the payment is late.

35. Compliance Requirements.

a. For each discharge of a pollutant or pollutants, including sediment, from the Site that is not authorized by the Illinois Permit, Big River shall pay a stipulated penalty of \$25,000 per discharge.

b. For each failure to submit an Incidence of Noncompliance report required under Part IV.D.4.e. of the Illinois Permit, Big River shall pay a stipulated penalty of \$2500 per Day for each Day that the report is late.

c. The following stipulated penalties shall accrue per violation per Day for all other violations of the compliance requirements in Paragraphs 14 through 19 of Section V:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1000.....	1st through 14th Day
\$2000.....	15th through 30th Day
\$5000.....	31st Day and beyond

36. Portal and Reporting Requirements. The following stipulated penalties shall accrue per violation per Day for each violation of the portal requirements of Paragraph 20 and the reporting requirements of Section VI:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$500.....	1st through 14th Day
\$1000.....	15th through 30th Day
\$2000.....	31st Day and beyond

37. Transfer of Ownership. If Big River fails to: (a) provide a copy of this Consent Decree to any proposed transferee; (b) provide written notice to the United States at least 30 Days prior to any transfer of any portion of the Facility; or (c) provide a copy of the proposed written agreement with the transferee as required by Paragraph 4, Big River shall pay a stipulated penalty of \$2000 per occurrence.

38. For violation of any other Consent Decree term, condition or requirement that does not have a specific stipulated penalty set forth in Paragraphs 34-37 above, a stipulated penalty of \$250 shall accrue per violation per Day.

39. Stipulated penalties under this Section shall begin to accrue on the Day after performance is due or on the Day a violation occurs, whichever is applicable, and shall continue until performance is satisfactorily completed or until the violation ceases. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree.

40. Big River shall pay stipulated penalties to the United States and the State within 30 Days of a written demand by either Plaintiff. Big River shall pay 70 percent of the total

stipulated penalty amount due to the United States and 30 percent to the State. The Plaintiff making a demand for payment of a stipulated penalty shall simultaneously send a copy of the demand to the other Plaintiff.

41. Either Plaintiff may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due it under this Consent Decree.

42. Stipulated penalties shall continue to accrue as provided in Paragraph 39 during any Dispute Resolution, but need not be paid until the following:

a. If the dispute is resolved by agreement of the Parties or by a decision of EPA or the State that is not appealed to the Court, Big River shall pay accrued penalties determined to be owing, together with interest, to the United States or the State within 30 Days of the effective date of the agreement or the receipt of EPA's or the State's decision or order.

b. If the dispute is appealed to the Court and the United States or the State prevails in whole or in part, Big River shall pay all accrued penalties determined by the Court to be owing, together with interest, within 60 Days of receiving the Court's decision or order, except as provided in subparagraph c, below.

c. If any Party appeals the District Court's decision, Big River shall pay all accrued penalties determined to be owing, together with interest, within 15 Days of receiving the final appellate court decision.

43. Obligations Prior to the Effective Date. Upon the Effective Date, the stipulated penalty provisions of this Decree shall be retroactively enforceable with regard to any and all violations of Paragraphs 14 (Permit Coverage and Compliance), 15 (Stormwater Pollution Prevention Plan), 16 (Stormwater Compliance Management Team), 17 (Stormwater Training), 19 (Response to Stormwater Issues), and 20 (Maintenance and Submission of Site Stormwater

Compliance Documents) that have occurred prior to the Effective Date, provided that stipulated penalties that may have accrued prior to the Effective Date may not be collected unless and until this Consent Decree is entered by the Court.

44. Big River shall pay stipulated penalties owing to the United States in the manner set forth in Paragraph 9 and with the confirmation notices required by Paragraph 10, except that the transmittal letter shall state that the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid. Big River shall pay stipulated penalties owing to the State in the manner set forth in Paragraph 12.

45. If Big River fails to pay stipulated penalties according to the terms of this Consent Decree, Big River shall be liable for interest on such penalties, as provided for in 28 U.S.C. § 1961, accruing as of the date payment became due. Nothing in this Paragraph shall be construed to limit the United States or the State from seeking any remedy otherwise provided by law for Big River's failure to pay any stipulated penalties.

46. The payment of penalties and interest, if any, shall not alter in any way Big River's obligation to complete the performance of the requirements of this Consent Decree.

47. Non-Exclusivity of Remedy. Stipulated penalties are not the United States' exclusive remedy for violations of this Consent Decree. Subject to the provisions of Section XI (Effect of Settlement/Reservation of Rights), the United States and the State expressly reserve the right to seek any other relief they deem appropriate for Big River's violation of this Decree or applicable law, including but not limited to an action against Big River for statutory penalties, additional injunctive relief, mitigation or offset measures, and/or contempt. However, the amount of any statutory penalty assessed for a violation of this Consent Decree shall be reduced

by an amount equal to the amount of any stipulated penalty assessed and paid pursuant to this Consent Decree.

VIII. FORCE MAJEURE

48. “Force majeure,” for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Big River, of any entity controlled by Big River, or of Big River’s Contractors, that delays or prevents the performance of any obligation under this Consent Decree despite Big River’s best efforts to fulfill the obligation. The requirement that Big River exercise “best efforts to fulfill the obligation” includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (a) as it is occurring and (b) following the potential force majeure, such that the delay and any adverse effects of the delay are minimized. “Force Majeure” does not include Big River’s financial inability to perform any obligation under this Consent Decree.

49. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, Big River shall provide notice to EPA pursuant to Section XIII and to the State by telephoning Joe Stitely at 618-993-7200 or by emailing Joe Stitely at Joe.Stitely@Illinois.gov, within 72 hours of when Big River first knew that the event might cause a delay. Within seven Days thereafter, Big River shall provide in writing to EPA and the State an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Big River’s rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of Big River, such event may cause or contribute to an endangerment to public health,

welfare or the environment. Big River shall include with any notice all available documentation supporting the claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Big River from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Big River shall be deemed to know of any circumstance of which Big River, any entity controlled by Big River, or Big River's contractors knew or should have known.

50. If EPA, after consultation with the State, agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA, after a reasonable opportunity for review and comment by the State, for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. EPA will notify Big River in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

51. If EPA, after consultation with the State, does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify Big River in writing of its decision.

52. If Big River elects to invoke the dispute resolution procedures set forth in Section IX (Dispute Resolution), it shall do so no later than 15 Days after receipt of EPA's notice. In any such proceeding, Big River shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the

effects of the delay, and that Big River complied with the requirements of Paragraphs 48 and 49, above. If Big River carries this burden, the delay at issue shall be deemed not to be a violation by Big River of the affected obligation of this Consent Decree identified to EPA, Illinois EPA, and the Court.

IX. DISPUTE RESOLUTION

53. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. Big River's failure to seek resolution of a dispute under this Section shall preclude Big River from raising any such issue as a defense to an action by the United States or the State to enforce any obligation of Big River arising under this Decree.

54. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when Big River sends the United States and the State a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 20 Days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States, after consultation with the State, shall be considered binding unless, within 30 Days after the conclusion of the informal negotiation period, Big River invokes formal dispute resolution procedures as set forth below.

55. Formal Dispute Resolution. Big River shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by sending the United States and the State a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or

opinion supporting Big River's position and any supporting documentation relied upon by Big River.

56. After consultation with the State, the United States will send Big River its Statement of Position within 45 Days of receipt of Big River's Statement of Position. The United States' Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States. The United States' Statement of Position shall be binding on Big River, unless Big River files a motion for judicial review of the dispute in accordance with the following Paragraph.

57. Judicial Dispute Resolution. Big River may seek judicial review of the dispute by filing with the Court and serving on the United States and the State a motion requesting judicial resolution of the dispute. The motion (a) must be filed within 15 Days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph; (b) may not raise any issue not raised in informal dispute resolution pursuant to Paragraph 54, unless the Plaintiffs raise a new issue of law or fact in the Statement of Position; (c) shall contain a written statement of Big River's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and (d) shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

58. The United States, after consultation with the State, shall respond to Big River's motion within the time period allowed by the Local Rules of this Court. Big River may file a reply memorandum, to the extent permitted by the Local Rules.

59. Standard of Review.

a. Disputes Concerning Matters Accorded Record Review. Except as

otherwise provided in this Consent Decree, in any dispute brought under Paragraph 55 pertaining to the adequacy or appropriateness of plans, procedures to implement plans, schedules or any other items requiring approval by EPA under this Consent Decree; the adequacy of the performance of work undertaken pursuant to this Consent Decree; and all other disputes that are accorded review on the administrative record under applicable principles of administrative law, Big River shall have the burden of demonstrating, based on the administrative record, that the position of the United States is arbitrary and capricious or otherwise not in accordance with law.

b. Other Disputes. Except as otherwise provided in this Consent Decree, in any other dispute brought under Paragraph 55, Big River shall bear the burden of demonstrating that its position complies with this Consent Decree and better furthers the objectives of this Consent Decree.

60. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Big River under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 42. If Big River does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section VII (Stipulated Penalties).

X. INFORMATION COLLECTION AND RETENTION

61. Right of Entry. The United States, the State, and their representatives, including attorneys, contractors, and consultants, shall have the right of entry into the Site and any facility covered by this Consent Decree, at all reasonable times, upon presentation of credentials, to:

- a. monitor the progress of activities required under this Consent Decree;

b. verify any data or information submitted to the United States or the State in accordance with the terms of this Consent Decree;

c. obtain samples and, upon request, splits of any samples taken by Big River or its representatives, contractors, or consultants;

d. obtain documentary evidence, including photographs and similar data; and

e. assess Big River's compliance with this Consent Decree.

62. Upon request, Big River shall provide EPA and the State or their authorized representatives splits of any samples taken by Big River. Upon request, EPA and the State shall provide Big River splits of any samples taken by EPA or the State.

63. Until 5 years after the termination of this Consent Decree, Big River shall retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) in its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, and that relate in any manner to Big River's performance of its obligations under this Consent Decree. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, upon request by the United States or the State, Big River shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

64. At the conclusion of the information-retention period provided in the preceding Paragraph, Big River shall notify the United States and the State at least 90 Days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding Paragraph and, upon request by the United States or the State, Big River shall deliver

any such documents, records, or other information to EPA or the State. Big River may assert that certain documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by federal law. If Big River asserts such a privilege, it shall provide the following: (a) the title of the document, record, or information; (b) the date of the document, record, or information; (c) the name and title of each author of the document, record, or information; (d) the name and title of each addressee and recipient; (e) a description of the subject of the document, record, or information; and (f) the privilege asserted by Big River. However, no documents, records, or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on grounds of privilege.

65. Big River may also assert that information required to be provided under this Section is protected as Confidential Business Information (“CBI”) under 40 C.F.R. Part 2 or, as to the State, 35 Ill. Adm. Code Part 130 and 2 Ill. Adm. Code Part 1828. As to any information that Big River seeks to protect as CBI, Big River shall follow the procedures set forth in 40 C.F.R. Part 2 or 35 Ill. Adm. Code Part 130 and 2 Ill. Adm. Code Part 1828, as applicable.

66. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States or the State pursuant to applicable federal or state laws, regulations, or permits, nor does it limit or affect any duty or obligation of Big River to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

XI. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

67. This Consent Decree resolves the civil claims of the United States and the State for the violations alleged in the Complaint filed in this action through the Date of Lodging.

68. The United States and the State reserve all legal and equitable remedies available to enforce the provisions of this Consent Decree. This Consent Decree shall not be construed to limit the rights of the United States or the State to obtain penalties or injunctive relief under the Act or implementing regulations, or under other federal or state laws, regulations, or permit conditions, except as expressly specified in Paragraph 67. The United States and the State further reserve all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, Big River's Site, whether related to the violations addressed in this Consent Decree or otherwise.

69. In any subsequent administrative or judicial proceeding initiated by the United States or the State for injunctive relief, civil penalties, other appropriate relief relating to the Site or Big River's violations, Big River shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or the State in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraph 67.

70. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Big River is responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits; and Big River's compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States and the State do not, by their consent to the entry of this Consent Decree, warrant or aver in any manner that Big River's compliance with any aspect of this Consent

Decree will result in compliance with provisions of the Act, 33 U.S.C. § 1251 *et seq.*, or with any other provisions of federal, State, or local laws, regulations, or permits.

71. This Consent Decree does not limit or affect the rights of Big River or of the United States or the State against any third parties, not party to this Consent Decree, nor does it limit the rights of third parties, not party to this Consent Decree, against Big River, except as otherwise provided by law.

72. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

XII. COSTS

73. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States and the State shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to collect any portion of the civil penalty or any stipulated penalties due but not paid by Big River.

XIII. NOTICES

74. Unless otherwise specified in this Decree, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and sent by mail or email, addressed as follows:

As to DOJ by email (preferred): eescdcopy.enrd@usdoj.gov
Re: DJ # 90-5-1-1-12558

As to DOJ by mail: EES Case Management Unit
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ # 90-5-1-1-12558

As to EPA by email (exclusively): R5WECA@epa.gov *and*
Hewitt.Jason@epa.gov

As to the State: Rachel Medina
Christina Nannini
Assistant Attorneys General
Environmental Bureau
Illinois Attorney General's Office
500 South Second Street
Springfield, Illinois 62701
Rachel.Medina@ilag.gov
Christina.Nannini@ilag.gov

Grace McCarten
Assistant Counsel, Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
Grace.McCarten@illinois.gov

Joe Stitely
IEPA Bureau of Water, Marion & Collinsville
Regions
2309 West Main Street, Suite 116
Marion, Illinois 62959
Joe.Stitely@Illinois.gov

As to Big River: Big River Solar, LLC
575 5th Avenue, 35th Floor
New York, NY 10017
Attn: Chief Counsel
+1 (212) 478-0000
DESRI-notices@deshaw.com

Big River Solar, LLC
575 5th Avenue, 35th Floor
New York, NY 10017
Attn: Kathy Zhang
+1 (212) 403-8457
Kathy.Zhang@deshaw.com

Per Ramfjord
Stoel Rives LLP
760 SW Ninth Avenue, Suite 3000
Portland, OR 97205
(503) 294-9257
per.ramfjord@stoel.com

75. Whenever notifications, submissions, or communications to the United States are required by this Consent Decree, they shall be made to both EPA and DOJ at the addresses above. Whenever notifications, submissions, or communications to the State of Illinois are required by this Consent Decree, they shall be made to both Illinois EPA and the Attorney General's Office at the addresses above.

76. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above.

77. Notices submitted pursuant to this Section shall be deemed submitted upon mailing or transmission by email, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

XIV. EFFECTIVE DATE

78. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket; provided, however, that Big River hereby agrees that it shall be bound to perform duties scheduled to occur prior to the Effective Date. In the event the United States withdraws or withholds consent to this Consent Decree before entry, or the Court declines to enter the Consent Decree, then the preceding requirement to perform duties scheduled to occur before the Effective Date shall terminate.

XV. RETENTION OF JURISDICTION

79. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree or entering orders modifying this Decree, pursuant to Sections IX and XVI, or effectuating or enforcing compliance with the terms of this Decree.

XVI. MODIFICATION

80. The terms of this Consent Decree, including any attached appendices, may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to this Decree, it shall be effective only upon approval by the Court.

81. Any disputes concerning modification of this Decree shall be resolved pursuant to Section IX (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph 59, the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

XVII. TERMINATION

82. After Big River has completed the requirements of Section V (Compliance Requirements), has thereafter maintained continuous satisfactory compliance with this Consent Decree and the Illinois Permit until submittal of a Notice of Termination for the Site, and has paid the civil penalty and any accrued stipulated penalties as required by this Consent Decree, Big River may serve upon the United States and the State a Request for Termination, stating that Big River has satisfied those requirements, together with all necessary supporting documentation.

83. Following receipt by the United States and the State of Big River's Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether Big River has satisfactorily complied with the requirements for termination of this Consent Decree. If the United States, after consultation with the State, agrees that the Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Decree.

84. If the United States, after consultation with the State, does not agree that the Decree may be terminated, Big River may invoke Dispute Resolution under Section IX. However, Big River shall not seek Dispute Resolution of any dispute regarding termination until 60 Days after service of its Request for Termination.

XVIII. PUBLIC PARTICIPATION

85. This Consent Decree shall be lodged with the Court for a period of not less than 30 Days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. Big River consents to entry of this Consent Decree without further notice and agrees not to withdraw from or oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree, unless the United States has notified Big River in writing that it no longer supports entry of the Decree.

XIX. SIGNATORIES/SERVICE

86. Each undersigned representative of Big River, the State, and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of

Justice certifies that they are fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party they represent to this document.

87. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. Big River agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons. Big River need not file an answer to the complaint in this action unless or until the Court expressly declines to enter this Consent Decree.

XX. INTEGRATION

88. This Consent Decree, including deliverables that are subsequently approved pursuant to this Decree, constitutes the entire agreement among the Parties regarding the subject matter of the Decree and supersedes all prior representations, agreements and understandings, whether oral or written, concerning the subject matter of the Decree herein.

XXI. 26 U.S.C. SECTION 162(f)(2)(A)(ii) IDENTIFICATION

89. 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. § 1.162-21(b)(2), performance of Section II (Applicability) Paragraph 5, Section V (Compliance Requirements) Paragraphs 14–22 and related Appendix B, Section VI (Reporting Requirements) Paragraphs 27 and 29, and Section X (Information Collection and Retention) Paragraphs 61–64, is restitution, remediation, or required to come into compliance with law.

XXII. HEADINGS

90. Headings to the Sections of this Consent Decree are provided for convenience and do not affect the meaning or interpretation of the provisions of this Consent Decree.

XXIII. FINAL JUDGMENT

91. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States, the State, and Big River.

XXIV. APPENDICES

92. The following Appendices are attached to and part of this Consent Decree:

“Appendix A” is the Site Map; and

“Appendix B” is the SWPPP.

Dated and entered this __ day of _____, 20__

UNITED STATES DISTRICT JUDGE

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States et al. v. Big River Solar, LLC:

FOR THE UNITED STATES OF AMERICA:


TODD KIM
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

s/ Sheila McAnaney
SHEILA McANANEY
DANICA ANDERSON GLASER
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Washington, DC 20044-7611

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States et al. v. Big River Solar, LLC:

FOR THE U.S. ENVIRONMENTAL PROTECTION
AGENCY:

**ROBERT
KAPLAN**

 Digitally signed by ROBERT
KAPLAN
Date: 2022.09.30 16:57:05
-05'00'

ROBERT A. KAPLAN
Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Blvd.
Chicago, Illinois 60604

OF COUNSEL:

CHARLES V. MIKALIAN
Associate Regional Counsel
U.S. Environmental Protection Agency, Region V
77 W. Jackson Blvd
Chicago, Illinois 60604

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States et al. v. Big River Solar, LLC:

FOR THE STATE OF ILLINOIS:

PEOPLE OF THE STATE OF ILLINOIS
ex rel. KWAME RAOUL
Attorney General of the
State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement/
Asbestos Litigation Division

BY: Andrew Armstrong
ANDREW ARMSTRONG, Chief
Assistant Attorney General
Environmental Bureau

DATE: 10/05/2022

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

JOHN J. KIM, Director
Illinois Environmental Protection Agency


BY: Charles W. Gunnarson
CHARLES W. GUNNARSON
Chief Legal Counsel

DATE: 9/30/22

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States et al. v. Big River Solar, LLC:

FOR BIG RIVER SOLAR, LLC:

9/15/22
Date



DAVID ZWILLINGER
Authorized Signatory