



# **THREE RIVERS POLLUTION RESPONSE COUNCIL**

**AMENDED AND RESTATED BYLAWS**

**OF**

**THREE RIVERS POLLUTION RESPONSE COUNCIL, INC.**

**(a Non-Profit Corporation)**

Incorporated Under the Laws  
of The Commonwealth of Pennsylvania

Effective Date: \_\_\_\_\_, 2023

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**AMENDED AND RESTATED BYLAWS  
OF  
THREE RIVERS POLLUTION RESPONSE COUNCIL, INC.**

**ARTICLE I**

**NAME, OFFICES, AND PURPOSE**

1.1 Name. The name of the Corporation is **THREE RIVERS POLLUTION RESPONSE COUNCIL, INC.** (hereinafter referred to as the “Corporation”).

1.2 Offices. The registered office of the Corporation shall be 21 Janette Circle, Irwin, Westmoreland County, Pennsylvania 15642, until otherwise established by an amendment of the Articles or by the Board of Directors and a record of such change is filed with the Department of State of the Commonwealth of Pennsylvania in the manner provided by law. The Corporation may have such offices in such places as the Board of Directors may from time to time designate or the activities of the Corporation may require.

1.3 Purpose. Consistent with the Corporation’s purposes as set forth in its Articles of Incorporation, the purpose of the Corporation is to develop, maintain, and improve a procedure among the member companies for mutual assistance and cooperation in the control of spill emergencies occurring in or about the area of the Allegheny River, Monongahela River, and Ohio River. In addition, the Corporation shall have the power to transact any and all lawful business for which non-profit corporations may be incorporated in Pennsylvania. In furtherance of these purposes, except for the limitations set forth in the Articles of Incorporation, the Corporation shall be authorized to exercise all lawful corporate powers as provided by the Nonprofit Corporate Law of the Commonwealth of Pennsylvania, 15 Pa.C.S.A. §§5101 et seq., or corresponding Sections of any future Pennsylvania non-profit corporation code. The Corporation is intended to qualify at all times as a non-profit corporation under the Pennsylvania Nonprofit Corporation Law of 1988, 15 Pa.C.S.A. §§5101 et seq., and as an exempt organization under Section 501(c)(4) of the Internal Revenue Code, 26 U.S.C. §501(c)(4) or corresponding Sections of any future Pennsylvania non-profit corporation code and federal tax code. Accordingly, the provisions of these Bylaws shall be interpreted in such manner or be deemed reformed in such manner as is consistent with these objectives. Any provision hereof which cannot be interpreted or reformed in a manner which is consistent with the intent of this Section, and which is inconsistent with the intent manifested hereby, shall be void.

1.4 Purposes of Bylaws. These bylaws serve as the governing document of the Corporation and are intended to supplement but not replace applicable federal and state laws, including the Nonprofit Corporation Law of 1988, found at 15 Pa.C.S.A. § 5301 *et seq.*, as it and any other applicable statutes may hereafter be amended.

1.5 Term of Existence. The term of the Corporation shall commence as of the date of incorporation and shall continue until dissolution pursuant to the provisions hereof.

1.6 Fiscal Year. The fiscal year of the Corporation shall begin on the first (1<sup>st</sup>) day of October and end on the thirtieth (30<sup>th</sup>) of September of each year.

## **ARTICLE II**

### **MEMBERS**

2.1 Members. The Corporation shall have one class of members whose voting and other rights shall be equal.

2.2 Conditions and Approval of Membership.

(a) Membership shall consist of to companies that are operating or supporting refineries, terminals, pipelines, plants, or other facilities for the storing, handling, transporting, and manufacturing of petroleum products, chemicals, asphalt, or other products in or about the area of the Allegheny River, Monongahela River, and Ohio River and streams or waterways feeding into such rivers, any company that has a related interest in the Corporation and shall from time to time participate in the Corporation, and governmental and quasi-governmental agencies.

(b) The Board of Directors will review applications for membership. Upon approval of the application by vote of a majority of the Directors present at a meeting at which a quorum is present, as detailed below, the applicant shall become a member of this Corporation.

(c) As a condition of membership, all new and existing members of the Corporation are required to sign the Acknowledgement of Bylaws and Agreement for Three Rivers Pollution Response Council, Inc. in order to acknowledge acceptance of the provisions in the Agreement for Three Rivers Pollution Response Council, Inc., which shall set forth the Rules and Procedures for implementing the Purpose of the Corporation, which is set forth above. The Agreement for Three Rivers Pollution Response Council, Inc. is attached hereto as Exhibit "A".

2.3 Dues.

(a) The Board of Directors shall establish the annual dues of the Corporation from time to time by majority vote (greater than 50%) of a quorum then present at the meeting of the Board of Directors. After the Board of Directors have determined and assessed the amount of membership dues, dues shall be presented to all members through direct correspondence. Each member of the Corporation is required to pay annual membership dues by July 1<sup>st</sup> in each calendar year. Dues are non-refundable.

(b) New members of the Corporation must pay the full amount of dues regardless of the date their application for membership is approved during the calendar year.

(c) Should a member withdraw its membership from the Corporation in compliance with the procedure set forth in Paragraph 2.4, or be removed, dues paid for the current year shall not be refunded. In addition, the member shall also be responsible for payment of any outstanding past-due dues.

(d) Any member not remitting such dues within sixty (60) days after July 1st shall no longer be a member in good standing and shall not be entitled to vote or exercise any other powers or privileges of being a member until all dues have been paid in full.

2.4 Withdrawal of Membership. Any member of the Corporation may withdraw from membership in the Corporation by providing a fifteen (15) day written notice to the current Chairperson of the Corporation. A withdrawing member shall pay any outstanding past-due dues prior to withdrawing.

2.5 List of Current Members. The Secretary of the Corporation shall at all times maintain a list, both in paper and electronic format, of current member companies and amend the list from time to time as required to reflect the admission or withdrawal of members.

2.6 Representative of Member. Each member shall appoint only one (1) representative to represent the member at all meetings. Each member shall also designate one (1) alternate representative to represent the member at all meetings in which the member's representative is unable to attend. The member shall provide written notification to the Secretary of the Corporation as to the name of its representative and alternate representative. Members are permitted to change their representative and/or alternate representative at any time and shall provide written notification to the Secretary of the Corporation within fifteen (15) days of the effective date of the change. The Secretary of the Corporation shall at all times maintain a list, both in paper and electronic format, of the current representative and alternate representative of each member.

2.7 Meetings of the Members. An annual meeting of the members for the election of officers shall be held in each calendar year at such time and place as the members shall determine. At the annual meeting, the members shall elect Directors and Officers, as set forth in Article IV, and transact such other business as may properly be brought before the meeting. The Corporation shall also hold one (1) meeting per quarter at such time and place as the Officers shall determine. At the discretion of the Chairperson, a special meeting of the members may be called. Written, electronic, or personal notice of every meeting shall be served to the members by the Chairperson, or in the absence of the Chairperson, the Vice-Chairperson, at least five (5) days prior to the day named for the meeting. If the annual or other regular meeting shall not be called and held within six (6) months after the designated time, any member may call such meeting at any time thereafter.

2.8 Matters for Members to Decide. The members shall vote on decisions regarding election of officers, the Corporation's annual budget, the Corporation's quarterly reports, the Corporation's budget reports, and expenditures of the Corporation greater than \$2,500.00. The voting shall be in accordance with Section 2.9 of this Article. The members shall also hold exclusive authority to approve amendments to the Agreement for Three Rivers Pollution Response Council, Inc., which shall set forth the Rules and Procedures for implementing the Purpose of the Corporation, which is set forth above.

2.9 Quorum; Voting. The presence of ten (10) members entitled to cast a vote on the matters to be acted upon at a meeting shall constitute a quorum, and the acts of a majority (greater than 50%) of the members present at a meeting at which a quorum is present shall be the

act of all the members except as may be otherwise specifically provided by statute. The members present at a duly organized meeting at which a quorum is present can continue to do business until adjournment, notwithstanding the withdrawal of enough members to leave less than a quorum. Except as otherwise provided by statute or in the Articles of Incorporation, every member shall be entitled to one (1) vote. Members may vote either orally or by ballot.

2.10 Members in Good Standing. The following is required in order to qualify as a member in good standing: (1) the member shall attend two meetings of the members each fiscal year; (2) the member shall attend one exercise, event, or activity approved by the Board of Directors each fiscal year; (3) the member shall have equipment or services available to the Corporation, which will be determined on a case by case basis; (4) the member shall have facilities that contribute to the goals and objectives of the Corporation; and (5) the member shall have remitted its dues within sixty (60) days after July 1<sup>st</sup>, as detailed in Section 2.3(d) of Article II. The Secretary of the Corporation shall document each member's attendance at meetings of the membership and any exercise, event, or activity and shall publish each member's attendance at the end of the fiscal year. A member who is not in good standing shall not be entitled to vote or exercise any other powers or privileges of being a member.

## **ARTICLE III**

### **DIRECTORS**

3.1 Number and Qualifications. The business and affairs of the Corporation shall be managed by its Board of Directors. The Board of Directors shall consist of such numbers of directors as may be fixed from time to time by the Board of Directors, but in no event shall the Board of Directors consist of fewer than five (5) persons or more than twenty-seven (27) persons who shall be natural persons at least eighteen (18) years of age, and who may, but need not, be a resident of the Commonwealth of Pennsylvania. Only an Officer may serve as a Director. Therefore, the Board of Directors shall solely consist of all elected and/or appointed Officers (Chairperson, Vice-Chairperson, Secretary, and Treasurer).

3.2 Term of Office. Each Director shall hold office until the expiration of the term for which he or she was elected, or if no such term is so stipulated then for a term of one (1) year, and until a successor has been selected and qualified or until his or her earlier death, resignation or removal. A decrease in the number of Directors shall not have the effect of shortening the term of any incumbent Director.

3.3 Removal. Any director may be removed with or without cause at any time by the decision of a majority (greater than 50%) of the members present at a meeting at which a quorum is present. The Board of Directors by majority vote of the non-affected Directors may declare vacant the office of a Director if he or she is declared of unsound mind by an order of a court or is convicted of a felony, or for any other proper cause which these Bylaws may specify, or if within sixty (60) days after notice of his or her election, the Director does not accept such office either in writing or by attending a meeting of the Board of Directors, and fulfill such other requirements or qualifications as these Bylaws may specify. Unexcused absences by a Director



for more than fifty percent (50%) of the regular Board meetings during any twelve (12) month period shall constitute "proper cause" for such Director's removal.

3.4 Vacancies. Any vacancy which occurs on the Board, including vacancies resulting from an increase in the number of Directors, shall be filled by a vote of the majority of the Board of Directors, though less than a quorum, or by a sole remaining Director. Any such replacement Director shall serve for the balance of the unexpired term, and until a successor has been selected and qualified or until his or her earlier death, resignation or removal. If only one Director is serving, he or she may name one or more successor Directors by an instrument in writing signed by such Director. When one or more Directors resign from the Board effective at a future date, the Directors then in office, including those who have so resigned, shall have power by the applicable vote to fill the vacancies, the vote thereon to take effect when the resignations become effective.

3.5 Annual Meeting. . An annual meeting of the Board of Directors shall be held in each calendar year, at such time and place as the Board of Directors shall determine. Written, electronic, or personal notice of the annual meeting of the Board of Directors shall be served to each and every Director at least fourteen (14) days prior to the day named for the meeting. If the annual meeting shall not have been called and held within six (6) months after the designated time, any Director may call the meeting at any time thereafter. Any action required or permitted to be taken at a meeting of the Directors may be taken without a meeting if, prior or subsequent to the action, a written consent or consents thereto by all of the Directors in office is filed with the Secretary of the Corporation.

3.6 Regular Meetings. The Board of Directors shall hold regularly scheduled meetings at locations to be determined to conduct the business of the Corporation. The time and place of the meetings shall be publicized to Corporation members and shall be open to participation by all interested members.

3.7 Special Meetings. Special meetings of the Board of Directors may be called by the Chairperson or by a majority of the directors then in office and shall be held on notice, to all current members of the Board of Directors, by written or electronic means, not later than three (3) days immediately preceding the day of such meeting or by word of mouth or telephone received not later than the day immediately preceding the day of such meeting. No other action, except the action specified to be taken in the notice, shall be voted on at the meeting, unless all Directors present at the meeting give their unanimous consent to take such action.

3.8 Telephone Meeting. Directors may participate in meetings of the Board of Directors by telephone conference or similar communications equipment so long as all persons participating in the meetings can hear each other. All Directors so participating shall be deemed present at the meeting.

3.9 Quorum. Five (5) directors then in office (or a majority of directors, if the board consists of fewer than five (5) directors) shall be necessary to constitute a quorum for the transaction of business. The acts of a majority of the Directors at a meeting at which a quorum is present shall be the acts of the Board of Directors, except as may be otherwise specifically provided by statute or by the Articles of Incorporation or by these Bylaws. Once a quorum has

been established, a quorum must remain in order for business to be transacted. If a quorum does not remain at any meeting of the Directors, the meeting is automatically adjourned, and no business may be transacted thereafter. It shall not be necessary to give any notice of the adjourned meeting, or of the business to be transacted at the meeting, other than by announcement at the meeting at which such adjournment occurs.

3.10 Past Directors and Officers. Past directors and officers are invited to attend all meetings of the Board of Directors to offer their counsel and advice as to matters pending before the Board of Directors. However, the past directors and officers shall have no power to vote.

3.11 Unanimous Consent. Any action which may be taken at a meeting of the directors may be taken without a meeting if a consent or consents in writing, setting forth the action so taken, shall be signed by all of the directors, and shall be filed with the Secretary of the Corporation.

3.12 Compensation of Directors. Directors, as such, shall not receive any stated salary for their services, provided that nothing herein contained shall be construed to preclude any Director from serving the Corporation in any other capacity and receiving compensation therefor. Directors shall be entitled to reimbursement for all expenses reasonably incurred in the discharge of their duties.

3.13 Agreement for Three Rivers Pollution Response Council, Inc. The directors may from time to time make recommendations to the membership as to amendments to the Agreement for Three Rivers Pollution Response Council, Inc., which shall set forth the Rules and Procedures for implementing the Purpose of the Corporation, which is set forth above.

## ARTICLE IV

### **OFFICERS, ADMINISTRATIVE ASSISTANT, AND COMMITTEES**

4.1 Number and Qualifications. The Officers of the Corporation shall solely consist of a Chairperson, a Vice-Chairperson, a Secretary, and a Treasurer. Each Officer shall be a representative of, or an outside contractor to, a member company in good standing.

4.2 Election and Term of Office. The Chairperson shall serve a one (1) year term. The Chairperson cannot succeed himself/herself for a second one (1) year term. At the expiration of the Chairperson's one (1) year term, the existing Vice-Chairperson shall succeed to the office of Chairperson. Whereupon, a new Vice-Chairperson, Secretary, and Treasurer shall be elected by a majority (greater than 50%) of the members present at a meeting at which a quorum is present. The election of the Officers shall be held at the annual meeting of the members. The Officers shall hold office until their successors are elected and qualified or until their earlier death, disability, resignation, or removal by the Board of Directors. Any Officer may be removed, with or without stating cause, by the Board of Directors whenever, in its sole judgment, the best interests of the Corporation will be served thereby. The removal shall be without prejudice to the contract rights, if any, of any person so removed. Election or appointment of an Officer or agent shall not of itself create contract rights. Any Officer may resign at any time upon written notice

to the Corporation. The resignation shall be effective upon receipt thereof by the Corporation or at such subsequent time as may be specified in the notice of resignation.

4.3 Vacancies. A vacancy caused by the death, disability, resignation, or removal of any Officer, or by the creation of a new office, may be filled by the Board of Directors, and such appointment shall be for the unexpired term remaining.

4.4 Standard of Care. An Officer shall perform his or her duties as an Officer in good faith, in a manner he or she reasonably believes to be in the best interests of the Corporation and with such care, including reasonable inquiry, skill and diligence, as a person of ordinary prudence would use under similar circumstances.

4.5 Chairperson. The Chairperson shall be the chief executive officer of the Corporation. The Chairperson shall generally do and perform all acts authorized or required by statute and/or these Bylaws to be performed by the Chairperson, and those usually performed by a president of a corporation. The Chairperson shall sign, execute, and acknowledge, in the name of the Corporation, deeds, mortgages, contracts or other instruments authorized by the Board of Directors, except in cases where the signing and execution thereof shall be expressly delegated by the Board of Directors, or by these Bylaws, to some other Officer or agent of the Corporation; and, in general, shall perform all duties incident to the office of Chairperson and such other duties as from time to time may be assigned by the Board of Directors. The Chairperson shall preside at all meetings of the members and Board of Directors. The Chairperson's responsibilities shall also include, but shall not be limited to, the following: being the main speaker at all meetings of the members; maintaining order at meetings of the members; and selecting topics for discussion and/or speakers for meetings of the members.

4.6 Vice-Chairperson. The Vice-Chairperson shall, in the absence or disability of the Chairperson, perform the duties and exercise the powers of the Chairperson; and shall perform such other duties and have such other powers as the Board of Directors may from time to time prescribe. The Vice-Chairperson's responsibilities shall also include, but shall not be limited to, the following: setting the location for meetings of the members; contacting contractors for training; and assisting the Chairperson.

4.7 Secretary. The Secretary shall be custodian of the books and records of the corporation; shall record the minutes of all meetings of the Board of Directors; and shall be responsible for the giving of all notices of such meetings in accordance with these Bylaws. The Secretary's responsibilities shall also include, but shall not be limited to, the following: reviewing and approving minutes from meetings of the members and Board of Directors, and, in general, shall perform all duties incident to the office of Secretary, and such other duties as may from time to time be assigned by the Board of Directors or the Chairperson.

4.8 Treasurer. The Treasurer shall be the financial officer of the Corporation; shall have charge and custody of, and be responsible for, all funds of the Corporation, and the books and records relating to the same, and shall deposit all such funds in the name of the Corporation in depositories selected by the Board of Directors; shall render to the Chairperson and to the Board of Directors, upon request, an account of all the Treasurer's transactions as Treasurer and of the financial condition of the Corporation; and shall, in general, perform such other duties as

are incident to the office of Treasurer and as may be assigned by the Board of Directors or by the Chairperson. The Treasurer's responsibilities shall also include, but shall not be limited to, the following: maintaining accurate banking records; paying invoices and bills; completing quarterly budget and treasurer reports; mailing all banking records to the Corporation's accountant or tax professional; and completing the yearly audit with the Corporation's accountant or tax professional.

4.9 Administrative Assistant. The Corporation may have an Administrative Assistant. The Administrative Assistant shall be affirmed by a majority (greater than 50%) of the members present at a meeting at which a quorum is present. The Administrative Assistant may be either a representative of a member company in good standing or an outside contractor. The Administrative Assistant's responsibilities shall include, but shall not be limited to, the following: recording minutes at meetings of the members or Board of Director meetings; sending minutes to the Secretary for final approval; completing the agenda and sending same to all members and/or Directors for all meetings of the members or Board of Director meetings; and generally performing administrative functions, such as picking up mail and answering the phone.

4.10 Committees. The Chairperson may, by resolution adopted by a majority (greater than 50%) of the directors then in office, appoint one or more committees to manage the business and affairs of the Corporation to the extent provided in the resolution by which the committee is established.

4.11 Appointment of Committee Members. The Board of Directors shall by resolution establish each committee, appoint a Chair and all members of the committees.

(a) Any committee, to the extent provided in the resolution of the Board of Directors, shall have and may exercise all of the powers and authority of the Board of Directors except that a committee shall not have any power or authority as to the following:

- (1) Any action requiring exclusive approval of the Board of Directors under the Pennsylvania Non-Profit Corporation Law.
- (2) The creation or filling of vacancies in the Board of Directors.
- (3) The adoption, amendment or repeal of these Bylaws.
- (4) The amendment or repeal of any resolution of the Board that by its terms is amendable or repealable only by the Board.
- (5) Action on matters committed by a resolution of the Board of Directors to another committee of the Board.
- (6) The entry into any Contracts or spend or disburse of any funds of the Corporation.

(b) The Board may designate one or more Directors or volunteers as alternate members of any committee who may replace any absent or disqualified member at any meeting of the committee or for the purposes of any written action by the committee. In the absence or

disqualification of a member and alternate member or members of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not constituting a quorum, may unanimously appoint another Director to act at the meeting in the place of the absent or disqualified member.

(c) The members of each committee shall serve at the pleasure of the Board.

4.12 Committee procedures .. The term "Board of Directors" or "Board," when used in any provision of these Bylaws relating to the organization or procedures of or the manner of taking action by the Board of Directors, shall be construed to include and refer to any executive or other committee of the Board. Minutes shall be kept at all committee meetings and a written or oral report of all committee meetings shall be given at all regular Board meetings.

## ARTICLE V

### CONFLICT OF INTEREST

5.1 Conflict of Interest. The Board of Directors shall adopt a comprehensive Conflicts of Interest Policy which shall govern all Directors and Officers of the Corporation as well as all Committees, Committee Members and volunteers. All Directors, Officers and Committee Members shall annually answer a conflict of interest questionnaire prepared and approved by the Board of Directors. The questionnaire shall require the Director, Officer or Committee Member to disclose the presence of any and all interest that he or she may have. Such interest includes but is not limited to a financial interest (including an ownership and/or investment interest or a compensation arrangement), a personal interest (wherein the possibility exists that the party directly or indirectly serves to benefit) or an organizational interest (wherein the possibility exists that the party will directly or indirectly benefit as a result of his or her relationship to an organization). The Director's, Officer's or Committee Member's interest shall include any interest to the individual Director, Officer or Committee Member and any member of his or her immediate family or household (including spouses of immediate family members or those of the party's household).

5.2 Disclosure of Interests. Prior to participating in the decision-making process on any matter in which he or she has any organizational, personal or financial interests as described in Section 5.1 above, any Director, Officer or Committee Member with such an interest shall disclose such interest and remove himself or herself from participating in discussions or voting on that matter. The Board of Directors shall thereupon follow the procedure set forth below:

(a) The Board of Directors shall gather comparability data regarding a possible conflict to make determinations regarding the fairness and reasonableness of the transaction. The Board or committee shall seek guidance from IRC Sec. 4958 and its regulations for guidance on what constitutes appropriate comparability data.

(b) The interested party may make a presentation to the Board of Directors concerning the transaction or arrangement and the interested party's interest in the transaction or arrangement. The Board of Directors shall then discuss the transaction or arrangement without

the interested party present, including the data gathered about possible more advantageous transactions or arrangements.

(c) If a more advantageous transaction or arrangement is not reasonably possible under circumstances not producing a conflict of interest, the Board of Directors shall determine by a majority vote of the disinterested directors whether the transaction or arrangement is in the Corporation's best interest, for its own benefit, and whether it is fair and reasonable. In conformity with this determination, the Board of Directors shall make its decision as to whether to enter into the transaction or arrangement.

(d) The Board of Directors shall keep written records of all disclosures and discussions pursuant to this Article V. At all meetings involving conflicts discussions, the Secretary shall keep separate, more detailed minutes of the discussions. In addition to the annual filing described above, the Corporation may engage from time to time outside experts to conduct a periodic review of this provision and to audit the minutes of discussions pursuant to this provision.

## ARTICLE VI

### LIMITATION OF LIABILITY; STANDARD OF CARE; INDEMNIFICATION

6.1 Limitation of Liability of Directors. A Director shall not be personally liable as such for monetary damages for any action taken unless the Director has breached or failed to perform the duties of his or her office under Subchapter B of Chapter 57 of Title 15 of the Pennsylvania Consolidated Statutes (relating to fiduciary duty), or the corresponding provision of any applicable future Pennsylvania corporation law, and the breach or failure to perform constitutes self-dealing, willful misconduct or recklessness. Notwithstanding the foregoing, the provisions of this Section shall not apply to the responsibility or liability of a Director pursuant to any criminal statute or for the payment of taxes pursuant to federal, state or local law.

6.2 Standard of Care and Justifiable Reliance.

(a) A Director of the Corporation shall stand in a fiduciary relationship to the Corporation, and shall perform his or her duties as a Director, including his or her duties as a member of any committee of the Board upon which he or she may serve, in good faith, in a manner he or she reasonably believes to be in the best interests of the Corporation, and with such care, including reasonable inquiry, skill and diligence, as a person of ordinary prudence would use under similar circumstances. In performing his or her duties, a Director shall be entitled to rely in good faith on information, opinions, reports or statements, including financial statements and other financial data, in each case prepared or presented by any of the following:

(1) one or more Officers or employees of the Corporation whom the Director reasonably believes to be reliable and competent in the matters presented;

(2) counsel, public accountants or other persons as to matters which the Director reasonably believes to be within the professional or expert competence of such persons;

(3) a committee of the Board upon which the Director does not serve as to any matter within its designated authority, which committee the Director reasonably believes to merit confidence.

A Director shall not be considered to be acting in good faith if such Director has knowledge concerning the matter in question that would cause such Director's reliance to be unwarranted.

(b) In discharging the duties of their respective positions, the committees of the Board and individual Directors may, in considering the best interests of the Corporation, consider the effects of any action upon employees, upon persons with whom the Corporation has business and other relations and upon the community in which the Corporation operates, and all other pertinent factors. The consideration of those factors shall not constitute a violation of subsection (a) of this Section 6.2.

6.3 Limitation of Liability of Officers. An Officer shall perform his or her duties in good faith, in a manner the Officer reasonably believes to be in the best interests of the Corporation and with such care, including reasonable inquiry, skill and diligence, as a person of ordinary prudence would use under similar circumstances. A person who so performs such duties shall not be liable by reason of having been an Officer of the Corporation.

#### 6.4 Scope of Indemnification

(a) General rule. The Corporation shall indemnify an Indemnified Representative against any Liability incurred in connection with any Proceeding in which the Indemnified Representative may be involved as a party or otherwise by reason of the fact that such person is or was serving in an Indemnified Capacity, including, without limitation, Liabilities resulting from any actual or alleged breach or neglect of duty, error, misstatement or misleading statement, negligence, gross negligence or act giving rise to strict or products liability, except:

(1) where such indemnification is expressly prohibited by applicable law;

(2) where the conduct of the Indemnified Representative has been finally determined pursuant to Section 6.14 or otherwise:

(i) to constitute willful misconduct or recklessness; or

(ii) to be based upon or attributable to the receipt by the Indemnified Representative from the Corporation of a personal benefit to which the Indemnified Representative is not legally entitled; or

(3) to the extent such indemnification has been finally determined in a final adjudication pursuant to Section 6.14 to be otherwise unlawful.

(b) Partial payment. If an Indemnified Representative is entitled to indemnification in respect of a portion, but not all, of any Liabilities to which such person may be subject, the Corporation shall indemnify such Indemnified Representative to the maximum extent for such portion of the Liabilities.

(c) Presumption. The termination of a Proceeding by judgment, order, settlement or conviction or upon a plea of nolo contendere or its equivalent shall not of itself create a presumption that the Indemnified Representative is not entitled to indemnification.

(d) Definitions. For purposes of this Article:

(1) "Indemnified Capacity" means any and all past, present and future service by an Indemnified Representative in one or more capacities as a Director, Officer, employee or agent of the Corporation, or, at the request of the Corporation, as a director, officer, employee, agent, fiduciary or trustee of another corporation, partnership, joint venture, trust, employee benefit plan or other entity or enterprise;

(2) "Indemnified Representative" means any and all Directors and Officers of the Corporation, and in addition any other person designated as an Indemnified Representative by the Board of Directors of the Corporation (which may, but need not, include any person serving at the request of the Corporation, as a director, officer, employee, agent, fiduciary or trustee of another corporation, partnership, joint venture, trust, employee benefit plan or other entity or enterprise);

(3) "Liability" means any damage, judgment, amount paid in settlement, fine, penalty, punitive damages, excise tax assessed with respect to an employee benefit plan, or cost or expense, of any nature (including, without limitation, reasonable attorneys' fees and actual disbursements); and

(4) "Proceeding" means any threatened, pending or completed action, suit, appeal or other proceeding of any nature, whether civil, criminal, administrative or investigative, whether formal or informal, and whether brought by or in the right of the Corporation, a Director or group of Directors, or otherwise.

6.5 Proceedings Initiated by Indemnified Representatives. Notwithstanding any other provision of this Article, the Corporation shall not indemnify under this Article an Indemnified Representative for any Liability incurred in a Proceeding initiated (which shall not be deemed to include counter-claims or affirmative defenses) or participated in as an intervenor or amicus curiae by the person seeking indemnification unless such initiation of or participation in the Proceeding is authorized, either before or after its commencement, by the affirmative vote of a majority of the Directors in office. This Section does not apply to a reimbursement of expenses incurred in successfully prosecuting or defending an arbitration under Section 6.14 or otherwise successfully prosecuting or defending the rights of an Indemnified Representative granted by or pursuant to this Article.

6.6 Mandatory Indemnification. Notwithstanding any contrary provision of these Bylaws, to the extent that an Indemnified Representative has been successful on the merits or otherwise in defense of any Proceeding referred to in Section 6.4 of this Article, such



Indemnified Representative shall be indemnified by the Corporation against expenses (including attorneys' fees and disbursements) actually and reasonably incurred by such Indemnified Representative in connection therewith.

6.7 Determination of Entitlement to Indemnification. Unless ordered by a court, any indemnification under Section 6.4 above, shall be made by the Corporation only as authorized in the specific case upon determination that indemnification of the Indemnified Representative is proper in the circumstances because such Indemnified Representative has met the applicable standard of conduct set forth in such paragraph. Such determination shall be made:

(a) by the Board by a majority vote of a quorum consisting of Directors who were not parties to such action, suit or proceeding; or

(b) if such a quorum is not obtainable or, if obtainable and a majority vote of quorum of disinterested Directors so directs, by independent legal counsel in a written opinion.

An Indemnified Representative shall be entitled to a written determination of eligibility for indemnification within thirty (30) days after a written request for indemnification has been delivered to the Secretary of the Corporation.

6.8 Advance of Expenses. The Corporation shall pay the expenses (including attorneys' fees and disbursements) incurred in good faith by an Indemnified Representative in advance of the final disposition of a Proceeding described in Section 6.4 or a Proceeding the initiation of or participation in which is authorized pursuant to Section 6.5 upon receipt of an undertaking by or on behalf of the Indemnified Representative to repay the amount if it is ultimately determined pursuant to Section 6.14 that such person is not entitled to be indemnified by the Corporation pursuant to this Article. The financial ability of an Indemnified Representative to repay an advance shall not be a prerequisite to the making of such advance.

6.9 Indemnification of Former Indemnified Representative. Indemnity provided pursuant to this Article shall continue as to a person who has ceased to be an Indemnified Representative of the Corporation in respect of matters arising prior to such time and shall inure to the benefit of the heirs, executors and administrators of such person.

6.10 Contractual Obligations. The obligations of the Corporation to indemnify an Indemnified Representative of the Corporation under this Article, including the duty to advance expenses, shall be considered a contract between the Corporation and such Indemnified Representative, and no modification or repeal of any provision of this Article shall affect, to the detriment of the Indemnified Representative, such obligations of the Corporation in connection with a claim based on any act or failure to act occurring before such modification or repeal.

6.11 Indemnification Not Exclusive: Inuring of Benefit. The indemnification and advancement of expenses provided by this Article shall not be deemed exclusive of any other right to which one indemnified may be entitled under any agreement, vote of Directors or otherwise, both as to action in such person's official capacity and as to action in another capacity and as to action in another capacity while holding such office, and such indemnification and advancement shall inure to the benefit of the heirs, executors and administrators of any such person.

6.12 Insurance and Other Indemnification. The Corporation shall have the power to purchase and maintain insurance on behalf of any person (or on its own behalf respecting reimbursement) who is or was an Indemnified Representative of the Corporation, whether or not the Corporation would otherwise have the power to indemnify such person against such liability. To further effect, satisfy or secure the indemnification obligations provided herein or otherwise, the Corporation may obtain a letter of credit, act as self-insurer, create a reserve, trust, escrow, cash collateral or other fund or account, enter into indemnification agreements, pledge or grant a security interest in any assets or properties of the Corporation, or use any other mechanism or arrangement whatsoever in such amounts, at such costs, and upon such other terms and conditions as the Board of Directors shall deem appropriate. Absent fraud, the determination of the Board of Directors with respect to such amounts, costs, terms and conditions shall be conclusive against all Officers and Directors and shall not be subject to voidability.

6.13 Reliance. Each person who shall act as an authority representative of the Corporation shall be deemed to be doing so in reliance upon the right of indemnification provided by this Article.

6.14 Arbitration.

(a) General rule. Any dispute related to the right to indemnification, contribution or advancement of expenses as provided under this Article shall be decided only by arbitration in Pittsburgh, Pennsylvania, in accordance with the commercial arbitration rules then in effect of the American Arbitration Association, before a panel of three arbitrators, one of whom shall be selected by the Corporation, the second of whom shall be selected by the Indemnified Representative and third of whom shall be selected by the other two arbitrators. In the absence of the American Arbitration Association, or if for any reason arbitration under the arbitration rules of the American Arbitration Association cannot be initiated, or if one of the parties fails or refuses to select an arbitrator or if the arbitrators selected by the Corporation and the Indemnified Representative cannot agree on the selection of the third arbitrator within thirty (30) days after such time as the Corporation and the Indemnified Representative have each been notified of the selection of the other's arbitrator, the necessary arbitrator or arbitrators shall be selected by the presiding judge of the court of general jurisdiction in such metropolitan area.

(b) Burden of proof. The party or parties challenging the right of an Indemnified Representative to the benefits of this Article shall have the burden of proof.

(c) Expenses. The Corporation shall reimburse an Indemnified Representative for the expenses (including attorneys' fees and disbursements) incurred unsuccessfully prosecuting or defending such arbitration.

(d) Effect. Any award entered by the arbitrators shall be final, binding and nonappealable and judgment may be entered thereon by any party in accordance with applicable law in any court of competent jurisdiction, except that the Corporation shall be entitled to interpose as a defense in any such judicial enforcement Proceeding any prior final judicial determination adverse to the Indemnified Representative under Section 4.04(a)(2) in a Proceeding not directly involving indemnification under this Article. This arbitration provision shall be specifically enforceable.

6.15 Contribution. If the indemnification provided for in this Article or otherwise is unavailable for any reason in respect of any Liability or portion thereof, the Corporation shall contribute to the Liabilities to which the Indemnified Representative may be subject in such proportion as is appropriate to reflect the intent of this Article or otherwise.

## **ARTICLE VII**

### **ANNUAL REPORT; BOOKS AND RECORDS**

7.1 Annual Report. Within a reasonable time after the close of each fiscal year, the Board of Directors shall present to the members a report of the activities of the Corporation to be prepared annually and sent to such persons as the Board of Directors shall determine.

7.2 Books and Records. The Corporation shall keep an original or duplicate record of the proceedings of the members and the directors, the original or a copy of its Bylaws, including all amendments thereto to date and an original or a duplicate membership register, giving the names of the members, and showing their respective addresses and other details of the membership of each. The corporation shall also keep appropriate, complete, and accurate books and records of account, specifically including, but not limited to, tax records. The records provided for herein shall be kept at the registered office of the corporation and/or the corporation's certified public accountant.

7.3 Member Access. Every member shall, upon written demand under oath stating the purpose thereof, have a right to examine, in person or by agent or attorney, during the usual hours for business, for any proper purpose, the membership register, books, and records of account, and records of the proceedings of the members and the directors, and to make copies or extracts therefrom. A proper purpose shall mean a purpose reasonably related to the interest of such person as a member. In every instance where an attorney or other agent shall be the person who seeks the right of inspection, the demand under oath shall be accompanied by a power of attorney or such other writing which authorizes the attorney or other agent to so act on behalf of the member. The demand under oath shall be directed to the corporation at its registered office.

## **ARTICLE VIII**

### **DISSOLUTION**

8.1 Dissolution. The Corporation may be dissolved upon the vote of a majority of the Board of Directors.

8.2 Distributions Upon Liquidation. In the event that the Corporation is dissolved and/or liquidated, the Board of Directors shall, after paying or making provisions for the payment of all of the liabilities of the Corporation and complying with all applicable federal, state, local and grant funding and financial requirements, distribute the property and assets of the Corporation (i) to another tax-exempt organization with the same or similar purpose; or (ii) to the members of the Corporation that contributed such property and assets.

## **ARTICLE IX**

### **TRANSACTION OF BUSINESS**

9.1 Purchase or Disposition of Real Property. The Corporation shall make no purchase of real property nor sell, mortgage, lease away, or otherwise dispose of its real property, unless authorized by a vote of two-thirds (2/3) of the directors in office of the Board of Directors.

9.2 Charging Fees. Whenever the lawful activities of the Corporation involve among other things the charging of fees or prices for its services or products, it shall have the right to receive such income and, in so doing, may make an incidental profit. All such incidental profits shall be applied to the maintenance and operation of the lawful activities of the Corporation, and in no case shall be divided or distributed in any manner whatsoever among the members, directors, or officers of the Corporation.

9.3 Checks. All checks, notes, bills of exchange or other orders in writing of the Corporation shall be signed by such officer or officers as the Board of Directors may from time to time designate.

9.4 Deposits. All funds of the corporation shall be deposited from time to time to the credit of the Corporation in such banks, trust companies, or other depositories as the Board of Directors may approve or designate, and all such funds shall be withdrawn only upon checks signed by such one or more Officers or employees as the Board of Directors shall from time to time determine.

9.5 Contributions; Gifts. The Board of Directors may accept on behalf of the Corporation any contribution, gift, bequest, or devise for general purposes or for any special purpose of the Corporation.

## **ARTICLE X**

### **NOTICE; WAIVER OF NOTICE**

10.1 Notice. Notice of a regular meeting of the Members or the Board of Directors need not be given. Notice of every special meeting of the Members or the Board of Directors shall be given to each Member or Director either personally or by sending a copy thereof by first class or express mail, postage prepaid, or by documented telecommunication (e-mail) routinely used in commercial transactions, or courier service, charges prepaid, or by facsimile transmission, to his/her address (or to his/her telex or facsimile number) appearing on the books of the Corporation. If the notice is sent by mail, telegraph or courier service, it shall be deemed to have been given to the person entitled thereto when deposited in the U.S. Mail or with a telegraph, office or courier service for filing to that person or, in the case of documented telecommunication, when dispatched. A notice of meeting shall specify the place, day and hour of the meeting and any other information required by any other provision of the Pennsylvania Non-Profit Corporation Law, the Articles or these Bylaws. Before a meeting of the Members or the Board of Directors is adjourned, it shall not be necessary to give any notice of the adjourned

meeting or of the business to be transacted at an adjourned meeting, other than by announcement at the meeting at which the adjournment is taken, unless the Board fixes a new record date for the adjourned meeting. Whenever any notice or communication is required to be given to any person under the provisions of the Pennsylvania Non-Profit Corporation Law or by the Articles or these Bylaws or by the terms of any agreement or other instrument or as a condition precedent to taking any corporate action and communication with that person is then unlawful, the giving of the notice or communication to that person shall not be required.

10.2 Waiver of Notice. Whenever any written notice is required to be given by statute, the Articles or these Bylaws, a waiver thereof in writing, signed by the person or persons entitled to the notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of the notice. Except as required by statute, or the Articles, neither the business to be transacted at, nor the purpose of a meeting, need be specified in the waiver of notice of the meeting. Attendance of a person at any meeting shall constitute a waiver of notice of the meeting except where a person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting was unlawfully called or convened.

## **ARTICLE XI**

### **AMENDMENTS**

11.1 Amendments. These Bylaws may be altered, amended, suspended, or repealed and new Bylaws may be adopted by the affirmative vote of a majority (greater than 50%) of the members present at a regular or special meeting duly convened after notice to the members of that purpose at which a quorum is present. The Secretary of the Corporation shall submit a copy of the proposed alterations or amendments to each Member at least fifteen (15) days prior to the day of consideration and adoption by the Members. Any change in these Bylaws shall take effect when adopted unless otherwise provided in the resolution effecting the change.

11.2 Amended and Restated Bylaws Control. These Bylaws supersede any and all prior Bylaws.

I HEREBY CERTIFY that the foregoing Amended and Restated Bylaws of THREE RIVERS POLLUTION RESPONSE COUNCIL, INC. were adopted by Resolution of the Members on \_\_\_\_\_ day of \_\_\_\_\_, 2023.

WITNESS my hand and the seal of the Corporation.

DATED: \_\_\_\_\_

\_\_\_\_\_  
Secretary

**BYLAWS AMENDMENT LOG**

<i>Date</i>	<i>Section Amended</i>	<i>Specific Action Taken</i>



**ACKNOWLEDGEMENT OF BYLAWS AND AGREEMENT FOR THREE RIVERS POLLUTION RESPONSE COUNCIL, INC.**

I, \_\_\_\_\_, [printed name], acting on behalf of \_\_\_\_\_ [member company], have read the Amended and Restated Bylaws and the Agreement for Three Rivers Pollution Response Council, Inc., and hereby agree to abide by the Amended and Restated Bylaws and the Agreement for Three Rivers Pollution Response Council, Inc. that are in effect and will be amended from time to time.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2023

Member Company: \_\_\_\_\_

By [signature] : \_\_\_\_\_

Name [printed]: \_\_\_\_\_