

# memorandum

DATE:

DEC 30 2011

CO JAN 5 2:12PM

REPLY TO

ATTN OF: EMCBC:MERRITT

EMCBC-00202-12

SUBJECT:

**SIGNED RECREATIONAL USE LICENSE AGREEMENT – REEMCBCDOE-03-12-0701 (PADUCAH)**

TO: Reinhard Knerr, Supervisory General Engineer, PPPO

Attached is a duplicate-original, executed Recreational Use License Agreement for the Commonwealth of Kentucky, Department of Fish and Wildlife Resources (KDFWR) to grant ingress and egress, wildlife habitat management, recreational horseback riding, nature walks, youth turkey hunting, dog training and field trials, controlled bow hunts, and small game and fur bearer hunting.

Please retain one copy for your records and distribute a copy to the KDFWR.

If further information is needed on this matter, please contact Joanne Merritt at 513-246-0594.



Joanne Merritt  
Realty Specialist  
Office of Logistics Management

Attachments: As Stated

DEPARTMENT OF ENERGY

LICENSE FOR NON-FEDERAL USE OF PROPERTY

**PROJECT:** PADUCAH GASEOUS DIFFUSION PLANT, KY

**PURPOSE:** RECREATIONAL USE

The United States of America, acting by and through the Department of Energy (LICENSOR) owns certain real property known as the Paducah Gaseous Diffusion Plant, which is situated near Paducah, Kentucky and shown on the drawing attached hereto and incorporated by reference herein as "Exhibit A." The LICENSOR hereby gives the Commonwealth of Kentucky, acting by and through the Department of Fish and Wildlife Resources (LICENSEE) a non-exclusive, revocable license to use that portion of the LICENSOR's land shown on Exhibit A as "Licensed to LICENSEE." This License includes the following uses by the LICENSEE and those members of the public the LICENSEE may authorize: ingress and egress; wildlife habitat management; and the following recreational horseback riding, nature walks, youth turkey hunting, dog training and field trials, controlled bow hunts, including cross-bows, and small game and fur bearer hunting.

THIS LICENSE is granted subject to the following terms and conditions:

1. **TERM/TERMINATION RIGHTS**—This License shall be effective for the period beginning January 1, 2012, and ending August 31, 2016, but is revocable at any time with written notice at the option and discretion of the LICENSOR and its duly authorized representative. The LICENSEE shall deliver to LICENSOR a written notice of the LICENSEE's decision to terminate this License.
2. **CONSIDERATION**— In consideration for LICENSOR renewing and increasing the scope of the license, LICENSEE shall allow Paducah Gaseous Diffusion Plant site personnel, having obtained the proper licenses and permits, to hunt in licensed areas during the 5 day quota hunt on the open WMA. Furthermore, the LICENSEE hereby agrees that in the event a claim is asserted by the Commonwealth of Kentucky for natural resources damages caused by releases of hazardous substances at or from the LICENSOR Paducah Site under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. §9601 et seq., the Commonwealth of Kentucky will give LICENSOR credit for any resulting environmental benefit arising from this License, and any previous license granted to the Kentucky Department of Fish and Wildlife Resources for similar activities, against any such alleged damages for the value of natural resources, as agreed upon by both parties.
3. **AUTHORIZED REPRESENTATIVES**—The LICENSOR's representative shall be the Realty Officer, U.S. Department of Energy, 250 East 5th St., Suite 500, Cincinnati, OH 45202 (513-2460595). The LICENSEE's representative shall be the Public Lands Biologist, West Kentucky Wildlife Management Area, 10535 Ogden Landing Road, Kevil, KY 42053. Any changes in designated representatives or in their respective addresses shall be provided in writing to the other.

4. NOTICE—No notice, order direction, determination, requirement, consent, or approval under this License shall be of any effect within the restrictions of this License, unless provided in writing to the authorized representative.
5. CONDITIONS OF PRIVILEGES GRANTED—The exercise of the privileges granted shall be without cost or expense to the LICENSOR; shall be subject to the right of the LICENSOR to construct, use, and maintain the facilities on the premises without unreasonably interfering with the LICENSEE's privileges; shall be subject to other outgrants of the LICENSOR on the premises that do not unreasonably interfere with the LICENSEE's privileges; and shall be without liability of the LICENSOR for failure to supervise or inspect activities or facilities of the LICENSEE.
6. INSPECTION OF PROPERTY—The LICENSOR and LICENSEE have inspected and know the condition of the Licensed property. The LICENSEE expressly acknowledges that the LICENSOR makes no representation or warranty of any kind about the condition of the premises, and the LICENSOR has no obligation whatsoever to make any alterations, repairs, additions or improvements.
7. PROTECTION OF PROPERTY—Subject to the limitations contained herein with respect to the restoration of the property, all portions of the Licensed property shall at all times be protected and maintained in good order and condition by and at the expense of the LICENSEE.
8. TRANSFERS/ASSIGNMENTS—The LICENSEE shall neither transfer nor assign this License or any property on the premises. The LICENSEE may allow members of the public to use the premises upon the terms and conditions stated herein.
9. GOVERNMENT SUPERVISION AND ADMINISTRATION—The LICENSOR's representative shall have complete charge of the administration of this License and shall exercise full supervision and general direction insofar as the interests of the LICENSOR are affected. The LICENSEE and any members of the public the LICENSEE authorizes to use the premises shall comply with the LICENSOR's rules and regulations regarding security, ingress, egress, safety, sanitation, etc., as the LICENSOR may prescribe from time to time.
10. ALTERATIONS—No additions to or alterations of the premises shall be made without prior written consent of the LICENSOR. No alteration, addition or improvement, irrespective of the cost associated therewith and notwithstanding the LICENSOR's prior written consent, shall change the non-exclusive, revocable nature of the License granted herein.
11. OFFICIALS NOT TO BENEFIT—The LICENSEE represents and warrants that it has not and shall not offer or give, directly or indirectly, any gift, gratuity, favor, entertainment, loan or any other thing of monetary value to any of LICENSOR's employees, agents or employees of LICENSOR's contractors for purposes of obtaining the within License.
12. NONDISCRIMINATION—The LICENSEE shall ensure the premises or facilities are used in a nondiscriminatory manner such that the LICENSEE shall not prohibit any person from using the

premises or facilities because of the person's race, color, religion, sex, age, handicap, or national origin.

13. COVENANT AGAINST CONTINGENT FEES—The LICENSEE represents and warrants that no person or selling agency has been employed or retained to solicit or secure this License for a commission, percentage, brokerage, or contingent fee.
14. ENVIRONMENT—The LICENSEE shall not unlawfully pollute the air, ground or water or create a public nuisance. The LICENSEE shall use all reasonable means available to protect the environment and natural resources from damage arising from this License or activities incident to it and where damage nonetheless occurs, the LICENSEE shall be liable to restore the damaged resources. The LICENSEE shall at no cost to the LICENSOR promptly comply with present and future federal, state, and local laws, ordinances, regulations, or instructions controlling the quality of the environment within the scope of this license. This does not affect the LICENSEE's right to contest their validity or enjoin their applicability. The LICENSEE shall not be responsible for pollution caused by others. If the LICENSEE discovers contamination on the premises, the LICENSEE shall immediately cease activities and notify the LICENSOR's representative.
15. CULTURAL ITEMS—The LICENSEE shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archaeological, architectural, or other cultural artifacts, relics, vestiges, remains or objects of antiquity. In the event such items are discovered on the premises, the LICENSEE shall immediately notify the LICENSOR's representative and protect the site and the material from further disturbance until the LICENSOR gives clearance to proceed.
16. LAWS, ORDINANCES, REGULATIONS—The LICENSEE shall comply with all applicable laws, ordinances, and regulations with regard the construction, sanitation, licenses or permits, and all other matters.
17. INDEMNITY AND LICENSEE LIABILITY —The LICENSOR shall not be responsible for damages to property, injuries to persons, or the LICENSEE, its agents, contractors, subcontractors, employees, or representatives or others who may be on the premises at LICENSEE's invitation which may arise from or be incident to the use and occupation of the licensed area by the LICENSOR. Consistent with applicable law, regulation, including any sovereign, governmental or official immunity a Party may enjoy, LICENSEE agrees that in the event a claim is filed against LICENSOR for activities authorized under this License, LICENSEE will seek to substitute itself for LICENSOR and shall be responsible for the full resolution of the claim. The LICENSEE shall not be liable for loss of or damage to the premises arising from causes beyond the control of the LICENSEE.
18. INSURANCE COVERAGE—DELETED
19. VACATION/RESTORATION—Upon termination, expiration, revocation or relinquishment of this License, the LICENSEE shall vacate the premises, remove its equipment, fixtures, appurtenances, and other improvements furnished and installed on the premises in connection

with the LICENSEE's activities and shall restore the premises or facilities to the same or as good condition as existed on the date of entry under this License, excepting normal wear and tear. In the event that any item or part of the premises or facilities shall require repair, rebuilding, or replacement resulting from loss or damage, the LICENSEE shall promptly give notice to the LICENSOR and, to the extent of its liability shall, upon demand, either compensate the LICENSOR for such loss or damage the LICENSEE shall promptly give notice to the LICENSOR and, to the extent of its liability shall upon demand, either compensate the LICENSOR for such loss or damage or shall rebuild, replace or repair the item or items of the premises or facilities lost or damaged as the LICENSOR may elect.

20. RECOVERABLE COSTS—In the event this License is terminated by the LICENSOR for the LICENSEE's failure to perform any of the terms or conditions within this License, the LICENSOR shall be entitled to recover from the LICENSEE the cost incurred in regaining possession of the premises and the costs incurred in performing any obligation on the part of the LICENSEE to be performed under the terms of this License.
21. INTEREST PROVISIONS—Unless paid within thirty (30) days, all amounts that become payable by the LICENSEE to the LICENSOR under any term or condition of this License shall bear interest from the date due until paid. The interest rate per annum shall be the interest rate in effect which has been established by the Secretary of the Treasury pursuant to the Debt Collection Act of 1982 as amended, 31 USC § 3717, as of the date the amount becomes due. Amounts shall be due upon the earliest of (1) the date fixed pursuant to this License; (2) the date of the first written demand for payment consistent with this License, including demand consequent upon default termination; or (3) the date of transmittal by the LICENSOR to the LICENSEE of a proposed supplemental agreement to confirm completed negotiations fixing the amount.
22. LICENSEE PERFORMANCE—The failure of the LICENSOR to insist in any one or more instances upon strict performance of any of the terms, covenants, or conditions of this License shall not be construed as a waiver or relinquishment of the LICENSOR's right to the future performance of any such terms, covenants, or conditions and the LICENSEE's obligations with respect to such future performance shall continue in full force and effect.
23. AMENDMENT—This License may not be amended or superseded except by an agreement in writing executed by authorized representatives of the LICENSOR and LICENSEE.
24. SUPERSEDED LICENSE AGREEMENT(S)—Upon its effective date, this License supersedes and replaces in their entirety REORLICENSOR-3-93-0700 and REEMCBCLICENSOR-03-06-0710.
25. SAFETY AND RELATED REQUIREMENTS—In an effort to ensure the safety of recreational users and personnel at the Paducah Gaseous Diffusion Plant (PGDP) site, the following additional requirements apply to this license.

- a. The LICENSEE will not allow members of the public to use all-terrain vehicles on the licensed premises except when expressly authorized by and in compliance with the regulations of the LICENSEE and the Western Kentucky Wildlife Management Area ("WKWMA").
- b. The LICENSEE will limit horseback riding, mountain biking, and all-terrain vehicles, to designated trails only, unless the LICENSEE specifically issues the individual authorization to do otherwise.
- c. The LICENSEE shall annually, by no later than August 15, deliver to the LICENSOR a written schedule of the current year's hunting, scouting, and field trial dates.
- d. The LICENSEE shall post the boundaries of the LICENSOR's land, at points the parties shall agree upon, with appropriate signs to prevent vehicles beyond certain points and to prevent hunting within certain areas. The LICENSEE shall also provide written notice of all restrictions and requirements to those members of the public who use the licensed premises.
- e. LICENSEE and LICENSOR agree to develop a user check-in procedure that is acceptable to LICENSOR and LICENSEE.
- f. The LICENSEE shall not allow the possession or use of any firearms except shotguns within the licensed area.
- g. The LICENSEE will be responsible for ensuring recreational activities and individuals it allows to engage in such activities comply with the restrictions herein.
- h. Areas open for public use are indicated on the map Exhibit A, i.e., the Licensed Area. The area closed for public use is marked as follows: "CLOSED TO PUBLIC ACCESS."
- i. LICENSEE will ensure users adhere to all restrictions and posted signs and may not enter any areas posted "CLOSED TO PUBLIC ACCESS," by signage, bypass any locked gates or barricades, or climb or disturb any maintained boundary fences.
- j. LICENSEE will ensure that all recreational users are informed that if, for any reason, a recreational user needs to enter any area not identified as open for public use, the PGDP Protective Force must escort the user. Before proceeding into any such area, the user must contact a member of the PGDP Protective Force and not proceed until escorted by a member of the PGDP Protective Force.
- k. The LICENSOR will inform the PGDP Protective Force that it is to notify the LICENSEE of any vehicle parked on roadways that present or have the potential for presenting a traffic problem. Upon receipt of such notice, which may be verbal, the LICENSEE will have the responsibility to promptly have the vehicle moved or towed.
- l. The LICENSEE will ensure recreational users are informed that they may be approached by PGDP Protective Force at any time while in the Licensed Area and that the user must comply with all directions from the PGDP Protective Force, including requests to review personal photo identification.
- m. The LICENSEE will ensure recreational users are informed and acknowledge that PGDP Protective Force may "shadow" or otherwise observe users while they are in the Licensed Area.
- n. In the event LICENSOR determines there is a security threat sufficient to close the Licensed Area to all recreational activities, LICENSOR will promptly inform the LICENSEE. However, in the event LICENSOR determines that the area must be closed immediately, LICENSOR may close prior to providing notice to the LICENSEE and will provide notice as soon as practicable thereafter.
- o. The LICENSEE shall have responsibility for enforcing the laws and regulations of the Commonwealth of Kentucky applicable to fish and wildlife, including the hunting regulations.

The LICENSEE shall promptly notify the PGDP Protective Force of any suspected violations of the Commonwealth of Kentucky laws/regulations. Any violation of the Commonwealth's laws and regulations applicable to fish and wildlife shall constitute a violation of these requirements and LICENSEE shall notify the LICENSOR of all violations cited on the property.

- p. In the event a recreational user is cited for a violation of the Commonwealth of Kentucky laws/regulations, the LICENSOR reserves the right to limit the users' access to the Licensed Area to include banning the recreational user for up to one-year following the issuance of the citation. Should the LICENSOR take any action against a recreational user, the LICENSOR will notify the LICENSEE. The LICENSEE agrees to enforce such action consistent with applicable laws/regulations and the terms of this License.
- q. The LICENSEE will ensure recreational users are informed that hunters shall not hunt within 100 yards of any roadway or facility.
- r. The LICENSEE will ensure recreational users are informed that when hunters are approached by any other person, including the PGDP Protective Force, the hunters will immediately place their weapons on safety and lower their weapons.
- s. In the event LICENSOR or the LICENSEE identify any issues or concerns with these requirements or that these requirements do not sufficiently address issues associated with the activities hereunder, the parties agree to work together to address the issue(s) within thirty days of a party receiving notice of the issue.

26. The LICENSOR AND LICENSEE have caused this License to be signed on their behalf by their duly authorized representatives.

LICENSEE: KY Dept of Fish and  
Wildlife Resources

LICENSOR: U.S. Department of Energy

By:

  
Jon Gassett

By:

  
DOE Real Estate Office CAS

Title:

Commissioner

Title:

Realty Officer

Date:

12/15/11

Date:

12/23/11

Commonwealth of Kentucky  
County of Franklin

Jonathan Gassett, personally appeared before me, a notary public, this 15<sup>th</sup> day of December, 2011, and after having verified his/her identity and sworn him/her upon his/her oath, he/she acknowledged to me that he/she has the necessary authority to execute the within License Agreement, and that he/she executed the within License Agreement as his/her own free, willing and voluntary act.

NOTARY PUBLIC

Nancy J. McIver  
Signature

Nancy J. McIver  
(print or type name)

My commission expires: 6/6, 2013.

THIS LICENSE AGREEMENT WAS PREPARED BY:

Bud Sokolovich  
Realty Officer CRS  
U. S. Department of Energy  
Environmental Management Consolidated Business Center  
250 E. 5<sup>th</sup> Street  
Suite 500  
Cincinnati, OH 45202

State of Ohio  
County of \_\_\_\_\_

\_\_\_\_\_, personally appeared before me, a notary public, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and after having verified his/her identity and sworn him/her upon his/her oath, he/she acknowledged to me that he/she has the necessary authority to execute the within License Agreement, and that he/she executed the within License Agreement of his/her own free, willing and voluntary act.

NOTARY PUBLIC

\_\_\_\_\_  
Signature

\_\_\_\_\_  
(print or type name)

My commission expires: \_\_\_\_\_, 20\_\_\_\_.

FINAL By 12/23/11

