

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 3
Philadelphia, Pennsylvania 19103**



In the Matter of: :
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Felman Production, LLC : **U.S. EPA Docket No. CWA-03-2024-0077**
4442 Graham Station Road :
Letart, WV 25253 : **Proceeding under Section 309(g) of the Clean**
 : **Water Act, 33 U.S.C § 1319**
Respondent. :
 :

CONSENT AGREEMENT

PRELIMINARY STATEMENT

1. This Consent Agreement is entered into by the Division Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region 3 (“Complainant”) and Felman Production, LLC (“Respondent”) (collectively the “Parties”), pursuant to Section 309(g) of the Clean Water Act, 33 U.S.C. § 1319 (“CWA” or the “Act”), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits (“Consolidated Rules of Practice”), 40 C.F.R. Part 22. Section 309 of the CWA, 33 U.S.C § 1319, authorizes the Administrator of the U.S. Environmental Protection Agency to assess penalties and undertake other actions required by this Consent Agreement. The Administrator has delegated this authority to the Regional Administrator who, in turn, has delegated the authority to enter into agreements concerning administrative penalties to the Complainant. This Consent Agreement and the attached Final Order (hereinafter jointly referred to as the “Consent Agreement and Final Order”) resolve Complainant’s civil penalty claims against Respondent under Section 309 of the CWA, 33 U.S.C. § 1319, for the violations alleged herein.
2. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant hereby simultaneously commences and resolves this administrative proceeding.

JURISDICTION

3. The U.S. Environmental Protection Agency (“EPA”) has jurisdiction over the above-captioned matter, as described in Paragraph 1, above.
4. The Consolidated Rules of Practice govern this administrative adjudicatory proceeding pursuant to 40 C.F.R. § 22.1(a)(6).

5. In accordance with Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), EPA has consulted the West Virginia Department of Environmental Production (“WVDEP”) regarding this action, and, subsequent to the effective date of this Consent Agreement and Final Order, EPA will email a copy of this fully executed Consent Agreement and Final Order to the appropriate WVDEP official.

GENERAL PROVISIONS

6. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this Consent Agreement and Final Order.
7. Except as provided in Paragraph 6, above, Respondent neither admits nor denies the specific factual allegations set forth in this Consent Agreement.
8. Respondent agrees not to contest the jurisdiction of EPA with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of this Consent Agreement and Final Order.
9. For purposes of this proceeding only, Respondent hereby expressly waives its right to contest the allegations set forth in this Consent Agreement and Final Order and waives its right to appeal the accompanying Final Order.
10. Respondent consents to the assessment of the civil penalty stated herein, to the issuance of any specified compliance order herein, and to any conditions specified herein.
11. Respondent shall bear its own costs and attorney’s fees in connection with this proceeding.
12. Pursuant to Section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A), and 40 C.F.R. § 22.45(b), EPA is providing public notice and an opportunity to comment on the Consent Agreement prior to issuing the Final Order.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

13. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant alleges and adopts the Findings of Fact and Conclusions of Law set forth immediately below.
14. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the National Pollutant Discharge Elimination System (“NPDES”) program for the discharge of pollutants from point sources to waters of the United States. The discharges are subject to specific terms and conditions as prescribed in the

- permit. Section 402(b) of the Act, 33 U.S.C. § 1342(b), provides for the authorization of state programs to issue NPDES permits.
15. Pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b), EPA authorized the State of West Virginia to administer the NPDES program in West Virginia on May 10, 1982. Pursuant to Section 402(b) of the Act, WVDEP is authorized to administer the NPDES program in West Virginia.
 16. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person into waters of the U.S. except in compliance with sections 301, 302, 306, 307, 318, 402, and 404 of the Act.
 17. “Discharge of a pollutant” means “[a]ny addition of any ‘pollutant’ or combination of pollutants to ‘waters of the United States’ from any ‘point source.’” 40 C.F.R. § 122.2. *See also* Section 502(12) of the Act, 33 U.S.C. § 1362(12).
 18. “Storm water” is defined as “storm water runoff, snow melt runoff, and surface runoff and drainage.” 40 C.F.R. § 122.26(b)(13).
 19. “Storm water discharge associated with industrial activity” means “the discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing, or raw materials storage areas at an industrial plant” and “includes, but is not limited to, storm water discharges from...material handling sites; refuse sites; sites used for the application or disposal of process waste waters...; sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate and final products.” 40 C.F.R. § 122.26(b)(14).
 20. Section 402(p) of the CWA, 33 U.S.C. § 1342(p) requires facilities discharging stormwater associated with industrial activity to obtain a permit.
 21. Felman Production, LLC is a limited liability company organized and existing under the laws of the State of West Virginia and is thus a “person” within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).
 22. Felman Production, LLC is, and at all times relevant to the violations alleged herein was, the owner and operator of a ferroalloy manufacturing facility located at 4442 Graham Station Road, Letart, West Virginia 25253 (the “Facility”).
 23. Respondent is, and at all times relevant to the violations alleged herein was, engaging in “industrial activity” at the Facility, within the meaning of 40 C.F.R. § 122.26(a)(1)(ii).

24. The Facility discharges, and at all times relevant to the violations alleged herein discharged, treated industrial wastewater and untreated stormwater through outfalls into the Ohio River which is a “water of the United States” within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7).
25. At all times relevant to the violations alleged herein, the operation of the Facility, including the discharge of treated industrial wastewater and untreated stormwater, has been subject to NPDES Permit No. WV0000426 (the “Permit”), issued by WVDEP, effective April 1, 2012, and which expired February 28, 2017. On August 29, 2017, WVDEP renewed the Permit. The renewed Permit became effective on October 1, 2017, and expired on August 28, 2022. On February 10, 2021, WVDEP issued a modification to the Permit. On October 24, 2022, the Permit was reissued by WVDEP and became effective on December 1, 2022. The Permit will expire on October 23, 2027. The renewed Permit incorporated nearly the same effluent limits as the previous permit except for Cadmium, which had a limit increase. Cadmium now has a monthly average limit of 0.0013 mg/L and a daily maximum limit of 0.0026 mg/L. The expired and the new NPDES permits are referred to herein as the Permit.
26. Respondent is, and at all times relevant to the violations alleged herein, authorized to discharge pollutants from the Facility, in the form of treated industrial wastewater (from cooling tower blowdown, well pump blowdown, compressor water, septic tank overflow, stormwater runoff and leachate, and stormwater runoff from the sedimentation pond) and untreated stormwater, into the Ohio River in accordance with the terms and conditions of the Permit.
27. At all times relevant to the violations alleged herein, the Facility discharged treated industrial wastewater and untreated stormwater into the Ohio River through a “point source” as that term is defined at Section 502(14) of the Act, 33 U.S.C. § 1362(14).
28. On July 22, 2020, EPA sent Respondent an information request letter (“IRL”), pursuant to Section 308 of the Act, 33 U.S.C. § 1318. On September 9, 2020, Respondent responded to EPA’s IRL with a letter.
29. On September 2, 2021, EPA sent Respondent another IRL, pursuant to Section 308 of the Act. On September 23, 2021, Respondent responded to the second IRL with a letter.
30. On January 31, 2023, EPA sent Respondent a Notice of Potential Violations and Opportunity to Confer with the list of violations.

**Count 1
Effluent Exceedances**

31. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
32. Parts A.001, A.002, A.003, A.004, and A.101 of the Permit define effluent limitations and monitoring requirements for Outlets 001, 002, 003, 004, and 101 discharges.
33. From March 31, 2019 to July 31, 2023, the Facility experienced 72 effluent limit exceedances from Outlets 001, 004, and 101, which it reported in its Discharge Monitoring Reports (“DMRs”). The effluent limits exceeded include nitrogen, aluminum, fecal coliform, cadmium, lead, pH, iron, zinc, chromium, and total suspended solids as indicated in *Table 1*.

Table 1: Outlets 001, 004, and 101 DMR Reported Effluent Exceedances (March 2019 to July 2023)

Monitoring Period Date	Outlet	Parameter Description	Limit Type	DMR Value	DMR Value Unit	Limit Value	Limit Value Unit
3/31/2019	001	Nitrogen, nitrite total (as N)	MO AVG	0.815	mg/L	0.4	mg/L
5/31/2019	001	Aluminum, total recoverable	MO AVG	0.57	mg/L	0.55	mg/L
5/31/2019	001	Coliform, fecal general	MO GEOMN	369	#/100 mL	200	#/100m L
5/31/2019	001	Coliform, fecal general	DAILY MX	411	#/100 mL	400	#/100m L
6/30/2019	001	Coliform, fecal general	MO GEOMN	209	#/100 mL	200	#/100m L
6/30/2019	001	Coliform, fecal general	DAILY MX	2180	#/100 mL	400	#/100m L
7/31/2019	001	Nitrogen, nitrite total (as N)	DAILY MX	1.37	mg/L	1.3	mg/L
7/31/2019	001	Nitrogen, nitrite total (as N)	MO AVG	1.37	mg/L	0.4	mg/L
7/31/2019	001	Cadmium, total recoverable	DAILY MX	0.0019	mg/L	0.0006	mg/L
7/31/2019	001	Cadmium, total	MO	0.001	mg/L	0.0002	mg/L

		recoverable	AVG	9			
7/31/2019	001	Coliform, fecal general	DAILY MX	1190	#/100 mL	400	#/100m L
7/31/2019	001	Coliform, fecal general	MO GEOMN	267	#/100 mL	200	#/100m L
8/31/2019	001	Nitrogen, nitrite total (as N)	MO AVG	1.23	mg/L	0.4	mg/L
8/31/2019	001	Lead, total recoverable	MO AVG	0.017	mg/L	0.016	mg/L
10/31/2019	001	Coliform, fecal general	MO GEOMN	336	#/100 mL	200	#/100m L
11/30/2019	001	pH	INST MAX	9.52	SU	9	SU
11/30/2019	001	Nitrogen, nitrite total (as N)	DAILY MX	2.4	mg/L	1.3	mg/L
11/30/2019	001	Nitrogen, nitrite total (as N)	MO AVG	2.4	mg/L	0.4	mg/L
12/31/2019	001	Iron, total recoverable	MO AVG	1.57	mg/L	1	mg/L
12/31/2019	001	Zinc, total recoverable	MO AVG	0.135	mg/L	0.12	mg/L
12/31/2019	001	Aluminum, total recoverable	MO AVG	1.26	mg/L	0.55	mg/L
12/31/2019	001	Cadmium, total recoverable	MO AVG	0.00099	mg/L	0.0002	mg/L
12/31/2019	001	Cadmium, total recoverable	DAILY MX	0.00099	mg/L	0.0006	mg/L
12/31/2019	001	Lead, total recoverable	MO AVG	0.0227	mg/L	0.016	mg/L
12/31/2019	001	Coliform, fecal general	MO GEOMN	1054	#/100 mL	200	#/100m L
12/31/2019	001	Coliform, fecal general	DAILY MX	1054	#/100 mL	400	#/100m L
1/31/2020	001	Aluminum, total recoverable	MO AVG	0.721	mg/L	0.55	mg/L
1/31/2020	001	Cadmium, total recoverable	MO AVG	0.0017	mg/L	0.0002	mg/L

1/31/2020	001	Cadmium, total recoverable	DAILY MX	0.0017	mg/L	0.0006	mg/L
1/31/2020	001	Chromium, hexavalent dissolved (as Cr)	MO AVG	0.032	mg/L	0.014	mg/L
2/29/2020	001	Iron, total recoverable	MO AVG	1.04	mg/L	1	mg/L
2/29/2020	001	Aluminum, total recoverable	MO AVG	1.02	mg/L	0.55	mg/L
2/29/2020	001	Cadmium, total recoverable	MO AVG	0.00049	mg/L	0.0002	mg/L
2/29/2020	001	Coliform, fecal general	MO GEOMN	350	#/100 mL	200	#/100m L
4/30/2020	001	Coliform, fecal general	MO GEOMN	1467.4	#/100 mL	200	#/100m L
4/30/2020	001	Coliform, fecal general	DAILY MX	1467.4	#/100 mL	400	#/100m L
7/31/2020	001	Coliform, fecal general	MO GEOMN	884.0	#/100 mL	200	#/100m L
7/31/2020	001	Coliform, fecal general	DAILY MX	884.0	#/100 mL	400	#/100m L
8/31/2020	001	pH	INST MAX	9.82	SU	9	SU
8/31/2020	001	Aluminum, total recoverable	MO AVG	0.8515	mg/L	0.55	mg/L
10/31/2020	001	Coliform, fecal general	MO GEOMN	14832.5	#/100 mL	200	#/100m L
10/31/2020	001	Coliform, fecal general	DAILY MX	24190	#/100 mL	400	#/100m L
1/31/2021	001	Cadmium, total recoverable	MO AVG	0.00088	mg/L	0.0002	mg/L
1/31/2021	001	Cadmium, total recoverable	DAILY MX	0.00088	mg/L	0.0006	mg/L
6/30/2021	001	Cadmium, total recoverable	MO AVG	0.00031	mg/L	0.0002	mg/L
6/30/2021	001	Coliform, fecal general	MO GEOMN	384	#/100 mL	200	#/100m L
7/31/2021	001	Iron, total recoverable	MO AVG	1.41	mg/L	1	mg/L

7/31/2021	001	Aluminum, total recoverable	MO AVG	1.28	mg/L	0.55	mg/L
7/31/2021	001	Coliform, fecal general	MO GEOMN	1624	#/100 mL	200	#/100m L
7/31/2021	001	Coliform, fecal general	DAILY MX	1624	#/100 mL	400	#/100m L
8/31/2021	001	Iron, total recoverable	MO AVG	1.32	mg/L	1	mg/L
8/31/2021	001	Aluminum, total recoverable	MO AVG	1.06	mg/L	0.55	mg/L
8/31/2021	001	Coliform, fecal general	MO GEOMN	987	#/100 mL	200	#/100m L
8/31/2021	001	Coliform, fecal general	DAILY MX	987	#/100 mL	400	#/100m L
9/30/2021	001	Solids, total suspended	MO AVG	64	mg/L	51	mg/L
9/30/2021	001	Coliform, fecal general	MO GEOMN	300	#/100 mL	200	#/100m L
12/31/2021	001	pH	INST MAX	9.33	SU	9	SU
1/31/2022	001	Nitrogen, nitrite total (as N)	DAILY MX	1.6	mg/L	1.3	mg/L
1/31/2022	001	Nitrogen, nitrite total (as N)	MO AVG	1.6	mg/L	0.4	mg/L
2/28/2022	001	Aluminum, total recoverable	MO AVG	0.86	mg/L	0.55	mg/L
3/31/2022	001	Coliform, fecal general	MO GEOMN	202	#/100 mL	200	#/100m L
3/31/2022	004	Iron, total recoverable	DAILY MX	26.8	mg/L	1.5	mg/L
3/31/2022	004	Aluminum, total recoverable	DAILY MX	10.1	mg/L	0.75	mg/L
5/31/2022	001	Coliform, fecal general	MO GEOMN	1130	#/100 mL	200	#/100m L
5/31/2022	001	Coliform, fecal general	DAILY MX	1130	#/100 mL	400	#/100m L

12/31/2022	101	Coliform, fecal general	DAILY MX	6000	#/100 mL	400	#/100m L
01/31/2023	001	Iron, total recoverable	MO AVG	1.27	mg/L	1	mg/L
01/31/2023	001	Aluminum, total recoverable	MO AVG	0.7700	mg/L	0.55	mg/L
02/28/2023	001	Iron, total recoverable	MO AVG	9.51	mg/L	1	mg/L
02/28/2023	001	Iron, total recoverable	DAILY MX	18.80	mg/L	2.77	mg/L
07/31/2023	001	Iron, total recoverable	MO AVG	2.04	mg/L	1	mg/L
07/31/2023	001	Iron, total recoverable	DAILY MX	3.75	mg/L	2.77	mg/L

34. From at least March 31, 2019 to at least July 31, 2023, Respondent failed to comply with Parts A.001, A.004, and A.101 of the Permit by discharging multiple parameters in excess of effluent limitations in violation of Section 301 of the CWA, 33 U.S.C. § 1311, and the Permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.
35. In failing to comply with Section 301 of the CWA, 33 U.S.C. § 1311, and the Permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, Respondent is subject to the assessment of penalties under Section 309 of the CWA, 33 U.S.C. § 1319.

CIVIL PENALTY

36. In settlement of EPA’s claims for civil penalties for the violations alleged in this Consent Agreement, Respondent consents to the assessment of a civil penalty in the amount of TWO HUNDRED NINETY THOUSAND, SEVEN HUNDRED SEVENTY-THREE dollars (\$290,773) plus interest, which Respondent shall be liable to pay in accordance with the terms set forth below.
37. The civil penalty is based upon EPA’s consideration of a number of factors, including the penalty criteria (“statutory factors”) set forth in Section 309(g) of the CWA, 33 U.S.C. § 1319(g), including the following: the nature, circumstances, extent and gravity of the violation(s), and the violator’s ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings resulting from the violation, and such other matters as justice may require. These factors were applied to the particular facts and circumstances of this case with specific reference to EPA’s Interim Clean Water Act Settlement Penalty Policy dated March 1, 1995 which reflects the statutory penalty criteria and factors set forth at Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3), and adjusted in accordance with the appropriate *Adjustment of Civil Monetary Penalties for*

Inflation, pursuant to 40 C.F.R. Part 19, and the applicable EPA memoranda addressing EPA’s civil penalty policies to account for inflation.

- 38. The civil penalty is also based upon an analysis of Respondent’s ability to pay a civil penalty. This analysis was based upon information submitted to EPA by Respondent, including a signed, certified statement of Respondent’s current financial condition articulating a basis for its contention that it cannot pay the penalty within thirty (30) days of the effective date of this Consent Agreement and Final Order without experiencing an undue financial hardship.
- 39. Based upon this analysis, EPA has determined that the Respondent is unable to pay a civil penalty in excess of the dollar amount set forth in Paragraph 36, above, in settlement of the above-captioned action. Complainant has relied upon the financial information provided by Respondent and identified in the preceding Paragraph and, based upon that information, it is Complainant’s conclusion that the Respondent has established that it is unable to pay the full amount of the civil penalty identified and set forth in Paragraph 36, above, within thirty (30) days of the effective date of this Consent Agreement and that a payment plan of the nature and duration set forth below is necessary and appropriate.
- 40. Pursuant to the provisions of this Consent Agreement, Respondent will remit a total civil penalty (principal) of two hundred ninety thousand, seven hundred seventy-three dollars (\$290,773.00) and interest (calculated at the rate of 3% per annum on the outstanding principal balance) in the amount of two thousand, four hundred twenty-three dollars and eleven cents (\$2,423.11), in accordance with the installment payment schedule set forth in the chart, immediately below:

Payment No.	Principal Amount	Interest	Date Payment Due (From Effective Date of Consent Agreement)	Payment Amount Due
1	\$ 48,866.01	\$ -	Within 30 Days	\$ 48,866.01
2	\$ 48,058.32	\$ 807.70	Within 60 Days	\$ 48,866.02
3	\$ 48,219.86	\$ 646.16	Within 90 Days	\$ 48,866.02
4	\$ 48,381.40	\$ 484.62	Within 120 Days	\$ 48,866.02
5	\$ 48,542.94	\$ 323.08	Within 150 Days	\$ 48,866.02
6	\$ 48,704.48	\$ 161.54	Within 180 Days	\$ 48,866.02
Total:	\$ 290,773.00	\$ 2,423.11		\$ 293,196.11

- 41. If Respondent fails to make timely payment of any one of the required installment payments in accordance with the installment payment schedule set forth in Paragraph 40, immediately above, the entire unpaid balance of the penalty and all accrued interest

shall become due immediately upon such failure, and Respondent shall immediately pay the entire remaining principal balance of the civil penalty along with any interest that has accrued up to the time of such payment. In addition, Respondent shall be liable for, and shall pay, applicable interest, administrative handling charges and late payment penalty charges as described in Paragraphs 47 through 49, below, in the event of any such failure or default.

42. Respondent may, at any time after commencement of payments under the installment payment schedule, elect to pay the entire principal balance, together with accrued interest to the date of such full payment.
43. Respondent agrees that, within 30 days of the effective date of this Consent Agreement and Final Order, Respondent shall make a payment of \$48,866.01 to “**United States Treasury**” with the case name, address, and docket number of this Consent Agreement and Final Order (CWA-03-2024-0077), for the amount specified above. Respondent shall pay the assessed penalty and any interest, fees, and other charges due using any method, or combination of appropriate methods, as provided on the EPA website: <https://www.epa.gov/financial/makepayment>. For additional instructions see: <https://www.epa.gov/financial/additional-instructions-making-payments-epa>.
44. A copy of Respondent’s check or other documentation of payment of the penalty using the method selected by Respondent for payment shall be sent simultaneously **by email** to:

Promy Tabassum
Assistant Regional Counsel
tabassum.promy@epa.gov

and

U.S. EPA Region 3 Regional Hearing Clerk
R3_Hearing_Clerk@epa.gov
45. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent’s failure to make timely payment of the penalty as specified herein shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.
46. Payment of the civil penalty, in accordance with the above terms and provisions, is due and payable immediately upon Respondent’s receipt of a true and correct copy of the fully executed and filed Consent Agreement and Final Order. Receipt by Respondent or Respondent’s legal counsel of such copy of the fully executed Consent Agreement and

Final Order, with a date stamp indicating the date on which the Consent Agreement and Final Order was filed with the Regional Hearing Clerk, shall constitute receipt of written initial notice that a debt is owed EPA by Respondent in accordance with 40 C.F.R. § 13.9(a).

47. INTEREST: Interest on the civil penalty assessed in this Consent Agreement and Final Order will begin to accrue on the effective date of this Consent Agreement and Final Order. However, EPA will not seek to recover interest on any amount of the civil penalties that is paid within thirty (30) calendar days after the effective date of this Consent Agreement and Final Order. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R § 13.11(a).
48. ADMINISTRATIVE COSTS: The costs of the EPA's administrative handling of overdue debts will be charged and assessed monthly throughout the period a debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives – Case Management*, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.
49. LATE PAYMENT PENALTY: A late payment penalty of six percent per year will be assessed monthly on any portion of the civil penalty that remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).
50. Respondent agrees not to deduct for federal tax purposes the civil penalty assessed in this Consent Agreement and Final Order.
51. The Parties consent to service of the Consent Agreement and Final Order by e-mail at the following valid email addresses: tabassum.promy@epa.gov (for Complainant), and daniela@ualloys.com and rhanshaw@bowlesrice.com (for Respondent).
52. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, EPA is required to send to the Internal Revenue Service ("IRS") annually, a completed IRS Form 1098-F ("Fines, Penalties, and Other Amounts") with respect to any court order or settlement agreement (including administrative settlements), that require a payor to pay an aggregate amount that EPA reasonably believes will be equal to, or in excess of, \$50,000 for the payor's violation of any law or the investigation or inquiry into the payor's potential violation of any law, including amounts paid for "restitution or remediation of property" or to come "into compliance with a law." EPA is further required to furnish a written statement, which provides the same information provided to the IRS, to each payor (i.e., a copy of IRS Form 1098-F). Failure to comply with providing IRS Form W-9 or

Tax Identification Number (“TIN”), as described below, may subject Respondent to a penalty, per 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and 26 C.F.R. § 301.6723-1. In order to provide EPA with sufficient information to enable it to fulfill these obligations, EPA herein requires, and Respondent herein agrees, that:

- a. Respondent shall complete an IRS Form W-9 (“Request for Taxpayer Identification Number and Certification”), which is available at <https://www.irs.gov/pub/irs-pdf/fw9.pdf>;
- b. Respondent shall therein certify that its completed IRS Form W-9 includes Respondent’s correct TIN or that Respondent has applied and is waiting for issuance of a TIN;
- c. Respondent shall email its completed Form W-9 to EPA’s Cincinnati Finance Center at henderson.jessica@epa.gov, within 30 days after the Final Order ratifying this Consent Agreement is filed, and EPA recommends encrypting IRS Form W-9 email correspondence; and
- d. In the event that Respondent has certified in its completed IRS Form W-9 that it has applied for a TIN and that TIN has not been issued to Respondent within 30 days after the effective date, then Respondent, using the same email address identified in the preceding sub-paragraph, shall further:
 - i. notify EPA’s Cincinnati Finance Center of this fact, via email, within 30 days after the 30 days after the effective date of the Final Order per Paragraph 59; and
 - ii. provide EPA’s Cincinnati Finance Center with Respondent’s TIN, via email, within five (5) days of Respondent’s issuance and receipt of the TIN.

GENERAL SETTLEMENT CONDITIONS

53. By signing this Consent Agreement, Respondent acknowledges that this Consent Agreement and Final Order will be available to the public and represents that, to the best of Respondent’s knowledge and belief, this Consent Agreement and Final Order does not contain any confidential business information or personally identifiable information from Respondent.
54. Respondent certifies that any information or representation it has supplied or made to EPA concerning this matter was, at the time of submission true, accurate, and complete and that there has been no material change regarding the truthfulness, accuracy, or completeness of such information or representation. EPA shall have the right to institute further actions to recover appropriate relief if EPA obtains evidence that any

information provided and/or representations made by Respondent to the EPA regarding matters relevant to this Consent Agreement and Final Order, including information about Respondent's ability to pay a penalty, are false or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action that EPA may have, civil or criminal, under law or equity in such event. Respondent and its officers, directors, and agents are aware that the submission of false or misleading information to the United States government may subject a person to separate civil and/or criminal liability.

CERTIFICATION OF COMPLIANCE

55. Respondent certifies to EPA, upon personal investigation and to the best of its knowledge and belief, that it currently is in compliance with the Administrative Order on Consent between Respondent and EPA, Docket No. CWA-03-2024-0037DN, which addresses the violations alleged herein.

OTHER APPLICABLE LAWS

56. Nothing in this Consent Agreement and Final Order shall relieve Respondent of its obligation to comply with all applicable federal, state, and local laws and regulations, nor shall it restrict EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on the validity of any federal, state, or local permit. This Consent Agreement and Final Order does not constitute a waiver, suspension, or modification of the requirements of the CWA, 33 U.S.C. § 1251 *et seq.*, or any regulations promulgated thereunder.

RESERVATION OF RIGHTS

57. This Consent Agreement and Final Order resolves only EPA's claims for civil penalties for the specific violations alleged against Respondent in this Consent Agreement and Final Order. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. This settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice, 40 C.F.R. § 22.18(c). EPA reserves any rights and remedies available to it under the CWA, the regulations promulgated thereunder and any other federal law or regulation to enforce the terms of this Consent Agreement and Final Order after its effective date. Respondent reserves whatever rights or defenses it may have to defend itself in any such action.

EXECUTION/PARTIES BOUND

58. This Consent Agreement and Final Order shall apply to and be binding upon the EPA, Respondent, and the officers, directors, employees, contractors, successors, agents, and assigns of Respondent. By their signature below, the people who sign this Consent Agreement on behalf of Respondent are acknowledging that they are fully authorized by Respondent to execute this Consent Agreement and to legally bind Respondent to the terms and conditions of this Consent Agreement and Final Order.

EFFECTIVE DATE

59. Pursuant to 40 C.F.R. § 22.45(b), this Consent Agreement and Final Order shall be issued only after a 40-day public notice and comment period is concluded. This Consent Agreement and Final Order will become final and effective thirty (30) days after having been signed by the Regional Administrator or his delegate, the Regional Judicial Officer, and filed with the Regional Hearing Clerk.

ENTIRE AGREEMENT

60. This Consent Agreement and Final Order constitutes the entire agreement and understanding between the Parties regarding settlement of all claims for civil penalties pertaining to the specific violations alleged herein and there are no representations, warranties, covenants, terms, or conditions agreed upon between the Parties other than those expressed in this Consent Agreement and Final Order.


In the Matter of: Felman Production, LLC

U.S. EPA Docket No. CWA-03-2024-0077

For Respondent: Felman Production, LLC

Date: 04.04.2024

By: _____


Mordechai Korf
President and Chief Executive Officer
Felman Production, LLC

For the Complainant:

After reviewing the Consent Agreement and other pertinent matters, I, the undersigned Director of the Enforcement & Compliance Assurance Division of the United States Environmental Protection Agency, Region 3, agree to the terms and conditions of this Consent Agreement and recommend that the Regional Administrator, or his designee, the Regional Judicial Officer, issue the attached Final Order.

By: _____
[Digital Signature and Date]
Karen Melvin, Director
Enforcement and Compliance Assurance Division
U.S. EPA – Region 3
Complainant

Attorney for Complainant:

By: _____
[Digital Signature and Date]
Promy Tabassum
Assistant Regional Counsel
U.S. EPA – Region 3

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 3
Philadelphia, Pennsylvania 19103



In the Matter of: :
: :
Felman Production, LLC : U.S. EPA Docket No. CWA-03-2024-0077
4442 Graham Station Road : :
Letart, WV 25253 : Proceeding under Section 309(g) of the Clean
: Water Act, 33 U.S.C § 1319(g)
Respondent. :
:

FINAL ORDER

Complainant, the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region 3, and Respondent, Felman Production, LLC, have executed a document entitled “Consent Agreement,” which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules of Practice”), 40 C.F.R. Part 22 (with specific reference to Sections 22.13(b) and 22.18(b)(2) and (3)). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.

Based upon the representations of the parties in the attached Consent Agreement, the penalty agreed to therein is based upon consideration of, *inter alia*, EPA’s *Interim Clean Water Act Settlement Penalty Policy*, March 1, 1995, and the statutory factors set forth in Section 309(g)(3) of the Clean Water Act, 22 U.S.C. § 1319(g)(3).

NOW, THEREFORE, PURSUANT TO Section 309(a) of the Clean Water Act, 33 U.S.C. § 1319(a), and Section 22.18(b)(3) of the Consolidated Rules of Practice, **IT IS HEREBY ORDERED** that Respondent pays a civil penalty in the amount of ***TWO HUNDRED NINETY THOUSAND, SEVEN HUNDRED SEVENTY-THREE DOLLARS (\$290,773.00)*** plus interest, in accordance with the payment provisions set forth in the Consent Agreement and in 40 C.F.R. § 22.31(c), and complies with the terms and conditions of the Consent Agreement.

This Final Order constitutes the final Agency Action in this proceeding. This Final Order shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief, or criminal sanctions for any violations of the law. This Final Order resolves only those causes of action alleged in the Consent Agreement and does not waive, extinguish, or otherwise affect Respondent’s obligation to comply with all applicable provisions of the Clean Water Act and the regulations promulgated thereunder.

The effective date of the attached Consent Agreement and this Final Order is thirty (30) days after having been signed by the Regional Administrator or his delegate, the Regional

Judicial Officer, and filed with the Regional Hearing Clerk.

By:

_____ *[Digital Signature and Date]*

Joseph J. Lisa

Regional Judicial and Presiding Officer

U.S. EPA – Region 3

