



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

JUL 23 2013

CERTIFIED MAIL 7012 1010 0001 8097 4342
RETURN RECEIPT REQUESTED

Mr. Charles Baird
Baird & Baird, P. S. C.
P.O. Box 351
Phyllis, Kentucky 41502

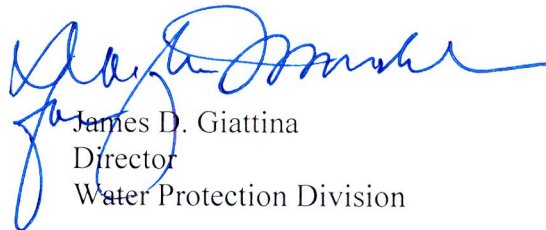
Re: Consent Agreement and Final Order No. CWA 04-2013-4501(b)
Clintwood Elkhorn Mining Company, Miller's Creek Mine
Pike County, Kentucky

Dear Mr. Baird:

Enclosed, please find a fully executed copy of the Consent Agreement and Final Order, finalized by the U.S. Environmental Protection Agency, Region 4 and the Regional Administrator. Please make note of the provisions under Paragraph IV. Payment.

Should you have any further questions, you may contact Ms. Laurie Lindquist at (404) 562-9249 or via email at lindquist.laurie@epa.gov. Legal inquiries should be directed to Ms. Kavita K. Batra, Associate Regional Counsel, at (404) 562-9697 or via email at batra.kavita@epa.gov.

Sincerely,



James D. Giattina
Director
Water Protection Division

Enclosure

cc: Mr. Jeff Cummins
Kentucky Department of Environmental Protection

Mr. Wes Jones
Kentucky Department for Natural Resources

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

RECEIVED
EPA REGION IV

2013 JUL 23 PM 1:06

HEARING CLERK

IN THE MATTER OF:)
) CONSENT AGREEMENT AND
) FINAL ORDER
)
CLINTWOOD ELKHORN MINING CO.)
MILLER'S CREEK MINE)
PHYLLIS, PIKE COUNTY, KENTUCKY,)
)
RESPONDENT.) DOCKET NO. CWA-04-2013-4501(b)
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CONSENT AGREEMENT

I. Statutory Authority

1. This is a civil penalty proceeding pursuant to Section 309(g)(2)(B) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(g)(2)(B), and the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits*, published at 64 Fed. Reg. 40176 (July 23, 1999) and codified at 40 Code of Federal Regulations ("C.F.R.") Part 22.

2. The authority to take action under Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), is vested in the Administrator of the United States Environmental Protection Agency ("EPA"). The Administrator has delegated this authority to the Regional Administrator for EPA Region 4, who in turn has delegated this authority to the Director of the Water Protection Division for EPA, Region 4 ("Complainant").

II. Allegations

3. Clintwood Elkhorn Mining Company ("Respondent") is a corporation existing under the laws of the Commonwealth of Kentucky and, therefore, is a "person" within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

4. At all times relevant to this action, Respondent owned and/or operated a coal mining facility/operation, known as the Miller's Creek Mine ("Facility"), located generally at Miller's Creek Road, Phyllis, Pike County, Kentucky, permitted under Surface Mining Control and Reclamation Act ("SMCRA") permit #898-0799.

5. To accomplish the objectives of the CWA, defined in Section 101(a) of the CWA, 33 U.S.C. § 1251(a), to restore and maintain the chemical, physical and biological integrity of the nation's waters, Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of

pollutants by any person into waters of the United States except as in compliance with a National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

6. Section 402 of the CWA, 33 U.S.C. § 1342, establishes an NPDES Permit Program authorizing the EPA or authorized states to administer the NPDES Permit Program, including the issuance of NPDES permits allowing for the discharge of pollutants into navigable waters subject to specific terms and conditions. The EPA has granted the Commonwealth of Kentucky through the Department for Environmental Protection (“KDEP”) authority to issue NPDES permits (referred to as Kentucky Pollutant Discharge Elimination System, or “KPDES” permits) pursuant to Section 402(b) of the CWA. KDEP is responsible for the enforcement of Kentucky Revised Statutes Chapter 224 and Kentucky Administrative Regulations, Title 401, Chapter 5:065, Ky. Rev. Stat. 224 and 401 Ky. Admin. Regs. 5:065.

7. Respondent operates the Facility under Surface Mining Control and Reclamation Act (“SMCRA”) Permit No. 898-0799, issued by the Kentucky Department of Natural Resources (“KDNR”), effective November 15, 2007. Respondent’s SMCRA Permit No. 898-0799 requires Respondent to, *inter alia*, obtain KPDES coverage for any wastewater discharge from the Facility into waters of the United States and to submit Discharge Monitoring Reports (“DMRs”) to KDNR for all permitted outfalls.

8. KDEP issued a KPDES Coal General Permit No. KYG040000, in accordance with the provisions of the Kentucky Revised Statutes Chapter 224 and pursuant to 401 KAR 5:055 and the CWA. The KPDES Coal General Permit went into effect on August 1, 2009, and shall expire at midnight on July 31, 2014. Those activities that are not eligible to receive coverage under the KPDES Coal General Permit must receive coverage under an Individual KPDES Permit.

9. Respondent commenced mining activities at the Facility in December 2007, without applying for Individual KPDES permit coverage in a timely manner pursuant to 401 Ky. Admin. Regs. 5:060 and 40 C.F.R. § 122.21(c).

10. On March 3, 2008, Respondent submitted an application to KDEP for an Individual KPDES Permit for Outfalls 3 and 4. Subsequently, on April 16, 2010, KDEP provided the EPA with a draft of the KPDES Individual Permit, for the EPA’s review and comment. The EPA reviewed the draft KPDES Individual Permit and sent KDEP a letter dated September 29, 2010, providing Notice of Specific Objection to the draft KPDES Individual Permit.

11. On December 20, 2010, the EPA issued Administrative Order (“AO”) No. CWA-04-2011-4753 to Respondent, requiring Respondent to cease all wastewater discharges from the Facility within seven (7) days of the receipt of the AO.

12. In response to receiving an Information Request from the EPA, Respondent provided the EPA with copies of Discharge Monitoring Reports (“DMRs”) that were submitted to KDNR, Division of Mine Reclamation and Enforcement, and the DMRs indicated that unpermitted discharges began in April 2008 from Outfall 3 and began in April 2009 from Outfall 4.

13. The EPA held a show cause meeting with Respondent on August 7, 2012, to discuss the unpermitted discharges and case resolution. Respondent stated that mining activities other than reclamation have stopped at the Facility and any current discharges are precipitation driven only.

14. As of the date of this Order, Respondent does not have an Individual KPDES Permit that allows discharges into waters of the United States from Respondent's Facility.

15. Respondent violated Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342, by discharging water associated with its coal mining activities into waters of the United States without required coverage under a KPDES permit.

III. Stipulations and Findings

16. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 C.F.R. § 22.13(b), this Consent Agreement and Final Order ("CA/FO") will simultaneously commence and conclude this matter.

17. For the purposes of this CA/FO, Respondent admits the jurisdictional allegations set out above and admits the factual allegations set out above.

18. Respondent hereby waives its right to contest the allegations set out above and its right to appeal the Final Order accompanying this Consent Agreement.

19. Respondent consents to the assessment of and agrees to pay the civil penalty as set forth in this CA/FO and consents to the other conditions set forth in this CA/FO.

20. By signing this CA/FO, Respondent certifies that the information it has supplied concerning this matter was at the time of submission, and is, truthful, accurate and complete for each such submission, response and statement. Respondent realizes that there are significant penalties for submitting false or misleading information, including the possibility of fines and/or imprisonment for knowing submission of such information.

21. The EPA reserves the right to assess and collect any and all civil penalties for any violation described herein to the extent that any information or certification provided by Respondent was materially false or inaccurate at the time such information or certification was provided to the EPA.

22. Complainant and Respondent agree to settle this matter by their execution of this CA/FO. The parties agree that the settlement of this matter is in the public interest and that this CA/FO is consistent with the applicable requirements of the CWA.

IV. Payment

23. Pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), and 40 C.F.R. Part 19, and considering the nature of the violations and other relevant factors, the EPA has determined that sixty-five thousand dollars (\$65,000.00) is an appropriate civil penalty to settle this action.

24. Respondent shall submit payment of the penalty specified in the preceding paragraph within thirty (30) days of the effective date of this CA/FO via a cashier's or certified check, payable to the order of "Treasurer, United States of America". The check shall reference on its face the name of Respondent and the Docket Number of this CA/FO. Such payment shall be tendered to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

25. At the time of payment, Respondent shall send a separate copy of the check, and a written statement that payment has been made in accordance with this CA/FO, to the following persons at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

and

Mary Mattox
U.S. Environmental Protection Agency, Region 4
Water Protection Division
Clean Water Enforcement Branch
Municipal and Industrial Enforcement Section
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

26. The penalty amount specified above shall represent civil penalties assessed by the EPA and shall not be deductible for purposes of federal taxes.

27. Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), failure by Respondent to pay the penalty assessed by the CA/FO in full by its due date may subject Respondent to a civil action to collect the assessed penalty plus interest (at currently prevailing rates from the effective date of this CA/FO), attorney's fees, costs for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to twenty percent (20%) of the aggregate

amount of such penalty and nonpayment penalty which are unpaid as of the beginning of such quarter. In any such collection action, the validity, amount and appropriateness of the penalty and of this CA/FO shall not be subject to review.

V. General Provisions

28. This CA/FO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit. Other than as expressed herein, compliance with this CA/FO shall not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by the EPA.

29. Nothing in this CA/FO shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions available by virtue of Respondent's violation of this CA/FO or of the statutes and regulations upon which this CA/FO is based, or for Respondent's violation of any federal or state statute, regulation or permit.

30. Except as otherwise set forth herein, this CA/FO constitutes a settlement by Complainant and Respondent of all claims for civil penalties pursuant to the CWA with respect to only those violations alleged in this CA/FO. Except as otherwise set forth herein, compliance with this CA/FO shall resolve the allegations of violations contained herein. Nothing in this CA/FO is intended to nor shall be construed to operate in any way to resolve criminal liability, if any, of Respondent, or other liability resulting from violations that were not alleged in this CA/FO. Other than as expressed herein, Complainant does not waive any right to bring an enforcement action against Respondent for violation of any federal or state statute, regulation or permit, to initiate an action for imminent and substantial endangerment or to pursue criminal enforcement.

31. Effective upon signature of this CA/FO by Respondent, Respondent agrees that the time period commencing on the date of its signature and ending on the date EPA receives from Respondent the payment EPA receives from Respondent the payment(s) required by this CA/FO shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by the United States related to the matters addressed in this CA/FO and that, in any action brought by the United States related to the matters addressed, Respondent will not assert, and may not maintain, any defense or claim based upon principles of statute of limitations, waiver, laches, estoppel, or other defense based on the passage of time during such period. If EPA gives notice to Respondent that it will not make this CA/FO effective, the statute of limitations shall begin to run again commencing ninety days after the date such notice is sent by EPA.

32. Each undersigned representative of the parties to this CA/FO certifies that he or she is fully authorized to enter into the terms and conditions of this CA/FO and to execute and legally bind that party to it.

33. This CA/FO applies to and is binding upon Respondent and its officers, directors, employees, agents, successors and assigns.

34. Any change in the legal status of Respondent, including but not limited to any transfer of assets of real or personal property, shall not alter Respondent's responsibilities under this CA/FO.

35. Each party shall bear its own costs and attorneys fees in connection with the action resolved by this CA/FO.

36. In accordance with 40 C.F.R. § 22.5, the individuals below are authorized to receive service relating to this proceeding.

For Complainant:

Kavita K. Batra
Associate Regional Counsel
Office of Environmental Accountability
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960
(404) 562-9697

For Respondent:

Charles J. Baird
P. O. Box 351
Pikeville, Kentucky 41502
(606) 437-6276

and

Clintwood Elkhorn Mining Company
Attention: Vice President of Operations
200 Allison Blvd.
Corbin, Kentucky 41701

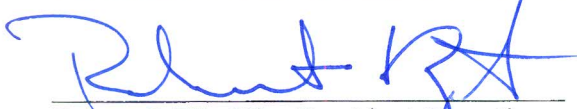
37. The parties acknowledge and agree that this CA/FO is subject to the requirements of 40 C.F.R. § 22.45(c)(4), which provides a right to petition to set aside a consent agreement and proposed final order based on comments received during the public comment period.

38. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and 40 C.F.R. § 22.38(b), Complainant represents that the Commonwealth of Kentucky was provided a prior opportunity to consult with Complainant regarding this matter.

VI. Effective Date

39. The effective date of this CA/FO shall be the date on which the CA/FO is filed with the Regional Hearing Clerk.

For RESPONDENT, CLINTWOOD ELKHORN MINING COMPANY:

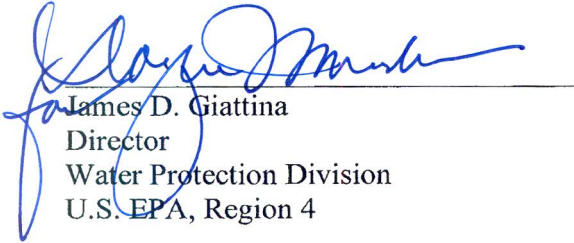


Robert J. Zik, Vice President Operations
Clintwood Elkhorn Mining Company

Date: 4-24-13

AGREED AND CONSENTED TO:

For COMPLAINANT, U.S. ENVIRONMENTAL PROTECTION AGENCY:



James D. Giattina
Director
Water Protection Division
U.S. EPA, Region 4

Date: 6-28-13

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:)
) CONSENT AGREEMENT AND
) FINAL ORDER
)
CLINTWOOD ELKHORN MINING CO.)
MILLER'S CREEK MINE)
PIKE COUNTY, KENTUCKY,)
)
RESPONDENT.) DOCKET NO. CWA-04-2013-4501(b)
_____)

FINAL ORDER

In accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits*, 40 C.F.R. Part 22, and authorities delegated to me, the forgoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. Pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), Respondent is hereby ordered to comply with the terms of the foregoing Consent Agreement.

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: JUL 16 2013



A. Stanley Meiburg
Acting Regional Administrator

Docket No. CWA 04-2013-4501(b)

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the attached **CONSENT AGREEMENT AND FINAL ORDER** in the matter of **Clintwood Elkhorn Mining Company, Docket No. CWA-04-2013-4501(b)** (filed with the Regional Hearing Clerk on 7,23, 2013), was served on 7-23, 2013, in the manner specified to each of the persons listed below.

By hand-delivery: Kavita K. Batra
Associate Regional Counsel
Office of Environmental Accountability
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960
(404) 562-9697

By certified mail,
return receipt requested: Charles J. Baird
P. O. Box 351
Pikeville, Kentucky 41502
(606) 437-6276

Clintwood Elkhorn Mining Company
Attention: Vice President of Operations
200 Allison Blvd.
Corbin, Kentucky 41701

Jeff Cummins, Director
Division of Enforcement
Kentucky Department for Environmental Protection
300 Fair Oaks Lane
Frankfort, Kentucky 40601

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 4
Sam Nunn Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960
(404) 562-9511

EPA ACCOUNTS RECEIVABLE CONTROL NUMBER FORM
=====

TO BE COMPLETE BY ORIGINATING OFFICE:

(attach a copy of the final order and transmittal letter to Defendant/Respondent)

This form was originated by: Mary Mattox 5/2/2013
[Name] [Date]
in the WPD/CWEB/Municipal and Industrial Section at 404-562-9733
[Office] [Telephone Number]

- Non-SF Judicial Order/Consent Decree. USAO COLLECTS.
 SF Judicial Order/Consent Decree. FMS COLLECTS.
 This is an original debt.
- Administrative Order/Consent Agreement. FMS COLLECTS PAYMENT.
 Other Receivables
 This is a modification.

PAYEE: Clintwood Elkhorn Mining Company, Miller's Creek Mine
[Name of person and/or Company/Municipality making the Payment]

The Total Dollar Amount of Receivable: \$ 65,000
[If in installments, attach schedule of amounts and respective due dates]

The Case Docket Number: CWA-04-2013-4501(b)

The Site-Specific Superfund (SF) Account Number: _____

The Designated Regional/Headquarters Program Office: Region 4 Water Protection Division

=====

TO BE COMPLETED BY LOCAL FINANCIAL MANAGEMENT SECTION:

The IFMS Accounts Receivable Control Number is: _____
If you have any questions call: _____ in the Financial Management Section,
Telephone Number: _____

=====

DISTRIBUTION:

A. JUDICIAL ORDERS: Copies of this form with an attached copy of the front page of the FINAL JUDICIAL ORDER should be mailed to:

- | | |
|--|---|
| 1. Debt Tracking Officer
Environmental Enforcement Section
Department of Justice/RH 1647
P.O. BOX 7611, Benjamin Franklin Station
Washington, DC 20044 | 2. Originating Office (ORC)
3. Designated Program Office |
|--|---|

B. ADMINISTRATIVE ORDERS: Copies of this form with an attached copy of the front page of the ADMINISTRATIVE ORDER should be sent to:

- | | |
|--|---|
| 1. Originating Office
3. Regional Hearing Clerk | 2. Designated Program Office
4. Regional Counsel |
|--|---|

Case Docket Control Number: CWA-04-2013-4501(b)

Total Amount Due: \$ 65,000

X Full payment due within 30 days of the effective date of the CAFO.

 Installment payments to be paid:

Amount Due:	Date Due:
\$ _____	_____
\$ _____	_____
\$ _____	_____
\$ _____	_____