

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:

CENTRAL FUEL COMPANY
New Philadelphia, Ohio

Respondent.

) Docket No. CWA-05-2018-0001

) Proceeding to Assess a Class II Civil
) Penalty under Section 309(g) of the Clean
) Water Act, 33 U.S.C. § 1319(g)



Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 309(g) of the Clean Water Act (Act), 33 U.S.C. § 1319(g), and Section 22.13(b) and 22.18(b)(2)-(3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules) as codified at 40 C.F.R. § 22.13(b) and 22.18(b)(2)-(3).

2. The Complainant is, by lawful delegation, the Director of the Water Division, U.S. Environmental Protection Agency (EPA), Region 5.

3. The Respondent is the Central Fuel Company, a corporation in New Philadelphia, Ohio. Respondent is therefore a "person" under Section 502(5) of the Act, 33 U.S.C. § 1362(5).

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, an administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). See 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the terms of this CAFO, including the assessment of the civil penalty specified below.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO. Respondent reserves the right to contest liability in any subsequent action filed by U.S EPA or the United States for the violations that are the subject of this CAFO.

8. Respondent waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondent may have with respect to this CAFO, including its right to request a hearing under 40 C.F.R. § 22.15(c) and Section 309(g)(2)(B) and (4)(C) of the Act, 33 U.S.C. § 1319(g)(2)(B), and (4)(C), its right to appellate review under Section 309(g)(8)(B) of the Act, 33 U.S.C. § 1319(g)(8)(B), its right to seek federal judicial review of the CAFO pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-06, and its right to appeal this CAFO. Respondent also consents to the issuance of this CAFO without further adjudication.

Statutory and Regulatory Background

9. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants into navigable waters except in compliance with, *inter alia*, a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

10. Section 402 of the Act, 33 U.S.C. § 1342, establishes the NPDES program under which EPA and, upon receiving authorization from EPA, a state may permit discharges into navigable waters, subject to specific conditions.

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11. Section 502(12) of the Act defines "discharge of pollutants," as, *inter alia*, "any addition of any pollutant to navigable waters from any point source." 33 U.S.C. § 1362(12).
 12. Section 502(6) of the Act defines "pollutant," as "dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water." 33 U.S.C. § 1362(6).
 13. Section 502(14) of the Act defines "point source" as "any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged." 33 U.S.C. § 1362(14).
 14. Section 502(7) of the Act defines "navigable waters" as "the waters of the United States, including the territorial seas." 33 U.S.C. § 1362(7).
 15. 40 C.F.R. § 230.3(s) defines the term "waters of the United States" to include "all waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce . . . [including] intrastate lakes, rivers, streams (including intermittent streams) . . . wetlands . . . the use, degradation, or destruction of which could affect interstate or foreign commerce including any such waters . . . tributaries of [such] waters . . . [and] wetlands adjacent to [all such] waters."
 16. Section 309(g) of the CWA, 33 U.S.C. § 1319(g), authorizes the Administrator to assess a Class II civil penalty under Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), after consultation with the State in which the violation occurs, when the Administrator finds, on the basis of any information available, that a person has violated Section 301 of the CWA, 33 U.S.C. § 1311.

Factual Allegations and Alleged Violations

17. The statements in Paragraphs 1 through 16 are hereby incorporated by reference as if set forth in full.

18. At all relevant times, the Respondent discharged pollutants from one or more point sources to Oldtown Creek, Stone Creek, and a roadside ditch which flows into Stone Creek. The Creeks are "waters of the United States," within the meaning of Section 502 of the Act, 33 U.S.C. § 1362, and 40 C.F.R. § 122.2.

19. From April 25, 2013, through September 17, 2016, Respondent reported, in monthly report forms provided to EPA, 23 discharges from outfalls D-0264-1 (0IL00016005), and D-2271-1 (0IL00016001), of pH, total suspended solids, iron, and manganese into Stone Creek and a roadside ditch that flows to Stone Creek.

20. On May 4, 2016, an EPA inspector observed a discharge of pollutants from a pipe in the sump located east of Pond #2 into a roadside ditch that discharges to Stone Creek. An EPA inspector took field measurements of the discharge and recorded a pH of 3.07 Standard Units (S.U.). Although this discharge is from a seep on Respondent's property, the source of the pollutants, according to Respondent, is a former mining operation on adjacent property that has never been owned or operated by Respondent. Nevertheless, Respondent has implemented measures to direct the seep so that it will be treated prior to discharge to waters of the United States.

21. An EPA inspector observed a discharge of pollutants from Pond #1 through a black corrugated pipe to the same roadside ditch that discharges to Stone Creek. This discharge was caused by a malfunctioning valve, which has been repaired. An EPA inspector took field measurements of the water at the upstream end of the corrugated pipe discharge and recorded a

pH of 4.53 S.U. An EPA inspector observed discolored water in the roadside ditch leading into Stone Creek. The water flowing in the roadside ditch, downstream of the two discharge locations, was discolored and turbid. Accumulations of discolored deposits were visible immediately downstream of the Pond #1 discharge pipe. The discolored water and deposits continued downstream for a distance of approximately 2,000 feet. At no time relevant to the discharges did Respondent have a permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342, to discharge pollutants into Stone Creek, and the roadside ditch that flows to Stone Creek.

22. The pollutants discharged into Stone Creek, and the roadside ditch that flows to Stone Creek, are “pollutants” as defined by Section 502(6) of the Act, 33 U.S.C. § 1362(6).

23. The outfalls and pipes referenced in Paragraphs 20 and 21 are discernible, confined and discrete conveyances, and constitute “point sources” as defined by Section 502(14) of the Act, 33 U.S.C. § 1362(14).

24. The addition of pH, total suspended solids, iron, and manganese from outfalls and pipes into Stone Creek and a roadside ditch that flows to Stone Creek constitute a “discharge of a pollutant” as defined by Section 502(12) of the Act, 33 U.S.C. § 1362(12).

25. Therefore, Respondent is a person who discharged pollutants from a point source into waters of the United States, without a permit, in violation of Section 301 of the Act, 33 U.S.C. § 1311.

26. On or about May 21, 2014, Respondent submitted an NPDES permit application to Ohio EPA for the discharges that are the subject of this CAFO. However, Ohio EPA did not issue a permit until November 8, 2016.

Civil Penalty

27. Under Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), and 40 C.F.R. Part 19, the Administrator may assess a Class II civil penalty of up to \$16,000 per day of violation up to a total of \$187,500 for violations of Section 301 of the Act that occurred after December 6, 2013 through November 2, 2015; and up to \$20,965 per day of violation up to a total of \$262,066 for violations of Section 301 of the Act that occurred after November 2, 2015 and assessed on or after January 15, 2017.

28. Based upon the facts alleged in this CAFO, and upon the nature, circumstances, extent and gravity of the violations alleged, as well as Respondent's ability to pay, prior history of such violations, degree of culpability, economic benefit or savings (if any) resulting from the violations, and such other matters as justice may require, U.S. EPA agrees to accept a penalty of Fifty-four Thousand One Hundred Sixty-nine Dollars (\$54,169.00).

29. Within 30 days after the effective date of this CAFO, Respondent must pay the \$54,169.00 civil penalty by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

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

The check must note Respondent's name and the docket number of this CAFO.

30. A transmittal letter, stating Respondent's name, complete address, the case docket number, and the billing document number must accompany the payment. Respondent must write the case docket number and the billing document number on the face of the check and send copies of the check and transmittal letter to:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard (E-19J)
Chicago, Illinois 60604-3590

Dean Maraldo (WC-15J)
U.S. Environmental Protection Agency
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Jeffrey A. Cahn (C-14J)
Associate Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

31. This civil penalty is not deductible for federal tax purposes.

32. If Respondent does not timely pay the civil penalty, Complainant may request the United States Department of Justice to bring a civil action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties, and the United States' enforcement expenses for the collection action. Respondent acknowledges that the validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

33. Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date the payment was due at a rate established pursuant to 31 U.S.C. § 3717. Respondent must pay a \$15.00 handling charge each month that any portion of the penalty due is more than 30 days past due. Complainant will assess a 6.00% per year penalty on any principal amount not paid timely pursuant to this CAFO.

General Provisions

34. Respondent's full compliance with this CAFO shall only resolve Respondent's liability for federal civil penalties for the violations alleged in the CAFO that occurred between April 25, 2013 and November 8, 2016.

35. This CAFO does not affect the rights of the U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

36. This CAFO does not affect Respondent's responsibility to comply with the Clean Water Act and other applicable federal, state, or local laws and permits.

37. This CAFO is a "final order" for purposes of 40 C.F.R. § 22.31 and the EPA's Interim Clean Water Act Settlement Penalty Policy (Mar. 1995).

38. The terms of this CAFO bind the Respondent and its successors and assigns.

39. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to the terms of this CAFO.

40. Each party agrees to bear its own costs and attorney's fees in this action.

41. Pursuant to 40 C.F.R. § 22.38(b), Complainant provided the State of Ohio an opportunity to consult with Complainant about this action.


42. This CAFO constitutes the entire agreement between the parties.

43. Consistent with the "Standing Order Authorizing E-Mail Service of Order and Other Documents Issued by the Regional Administrator or Regional Judicial Officer Under the Consolidated Rules," dated March 27, 2015, the parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: cahn.jeff@epa.gov (for Complainant); kkimble@kimblecompanies.com and nvaughan@kimblecompanies.com (for Respondent).

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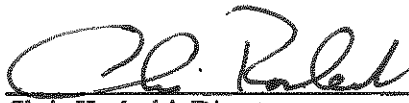
Central Fuel Company, Respondent



Keith B. Kimble
President
Central Fuel Company

11-29-17
Date

United States Environmental Protection Agency, Complainant



Chris Korjeski, Director
Water Division
United States Environmental Protection Agency
Region 5
Chicago, Illinois

12/7/17
Date

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Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. § 22.18 and 22.31. IT IS SO ORDERED.

By: _____ Date: _____
Ann L. Coyle
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 5