



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

DEC 24 2009

James E. Grey  
Director Regulatory Affairs, Eastern Division  
Chesapeake Appalachia, L.L.C.  
414 Summers Street  
Charleston, West Virginia 25301

Re: Executed Consent Agreement and Final Order, Docket  
No. CWA-04-2010-5126(b)

Dear Mr. Grey:

Please find enclosed a copy of the fully executed Consent Agreement and Final Order (CAFO) for Chesapeake Appalachia, L.L.C. The CAFO was effective upon filing, and payment of the civil penalty of \$1,640.00 is due within thirty (30) days of the effective date of the CAFO.

Thank you for your assistance in this matter. Please do not hesitate to contact me at (404) 562-9539 with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Bon Sawyer".

Bonnie Sawyer  
Associate Regional Counsel

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4

IN THE MATTER OF )  
 )  
Chesapeake Appalachia, L.L.C. )  
P.O. Box 6070 )  
Charleston, West Virginia 25362-0070 )  
 )  
Respondent )  
\_\_\_\_\_ )

CWA SECTION 311 CLASS I  
CONSENT AGREEMENT AND  
FINAL ORDER  
UNDER 40 C.F.R. § 22.13(b)  
  
Docket No. CWA-04-2010-5126(b)

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This Consent Agreement is proposed and entered into under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 311(b)(6)(B)(i) of the Clean Water Act (“CWA”), 33 U.S.C. § 1321(b)(6)(B)(i), as amended by the Oil Pollution Act of 1990, and under the authority provided by 40 C.F.R. §§ 22.13(b) and 22.18(b)(2). The Administrator has delegated these authorities to the Regional Administrator of EPA, Region 4, who has in turn delegated these authorities through the Director, RCRA Division, to the Chief, RCRA and OPA Enforcement and Compliance Branch, RCRA Division (“Complainant”).

**CONSENT AGREEMENT**

**Stipulations**

The parties, in their own capacity or by their attorneys or other authorized representatives, hereby stipulate:

1. Respondent, Chesapeake Appalachia, L.L.C., is a limited liability company organized under the laws of Oklahoma and registered to do business in the State of Tennessee. Respondent is a person within the meaning of Sections 311(a)(7) and 502(5) of the CWA, 33 U.S.C. §§ 1321(a)(7) and 1362(5).

2. The Respondent is the owner and operator within the meaning of Section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6), of a crude oil transfer pipeline located in Claiborne County, Tennessee ("the facility").

3. The facility is an onshore facility within the meaning of Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10).

4. The unnamed tributary of Rock Creek flows into Rock Creek, which flows into Straight Creek. Straight Creek flows into Clear Fork River. The unnamed tributary of Rock Creek is a navigable water subject to the jurisdiction of Section 311 of the CWA as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and 40 C.F.R. § 110.1.

5. Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), prohibits the discharge of oil into or upon the navigable waters of the United States or adjoining shorelines in such quantities that have been determined may be harmful to the public health or welfare or environment of the United States.

6. For purposes of Section 311(b)(3) and (b)(4) of the CWA, 33 U.S.C. § 1321(b)(3) and (b)(4), discharges of oil into or upon the navigable waters of the United States in such quantities that have been determined may be harmful to the public health or welfare or environment of the United States are defined in 40 C.F.R. § 110.3 to include discharges of oil that (1) violate applicable water quality standards or (2) cause a film or a sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon the adjoining shorelines.

7. For the purposes of this Consent Agreement and Final Order, Respondent admits to EPA's jurisdiction over the matters set out above, but neither admits nor denies the factual allegations or other legal conclusions set forth in this Agreement.

### **Allegations**

Complainant alleges, and Respondent neither admits nor denies, that:

8. On or about April 25, 2008, Respondent discharged 4 barrels of oil as defined in Section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1), and 40 C.F.R. § 110.1, from its facility into or upon the unnamed tributary of Rock Creek and/or its adjoining shorelines.

9. Respondent's April 25, 2008, discharge of oil from its facility caused a sheen upon or discoloration of the surface of the unnamed tributary of Rock Creek and/or its adjoining shoreline, and, therefore, was in a quantity that has been determined may be harmful under 40 C.F.R. § 110.3, in violation of Section 311(b)(3) of the CWA.

### **Waiver of Rights**

10. Solely for the purpose of this Consent Agreement, Respondent waives the right to contest the allegations contained herein, to a hearing under Section 311(b)(6)(B)(i) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(i), to appeal any Final Order in this matter under Section 311(b)(6)(G)(i) of the CWA, 33 U.S.C. § 1321(b)(6)(G)(i), and consents to the issuance of a Final Order without further adjudication.

11. Nothing in this Consent Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Consent Agreement. Except as otherwise provided herein, Complainant and Respondent each expressly reserves any and all rights, defenses, claims, demands, and causes of action which it may have with respect to any matter, transaction, or occurrence relating in any way to the facts alleged in the Consent Agreement against any person not a party hereto.

**Penalty**

12. Complainant proposes, and Respondent consents to, the assessment of a civil penalty of One Thousand Six Hundred Forty Dollars (\$1,640.00).

**Payment Terms**

Based on the foregoing, the parties, in their own capacity or by their attorneys or authorized representatives, hereby agree that:

13. No later than 30 days after the effective date of the Final Order, Respondent shall pay the amount of \$1,640 by means of a corporate cashier's or certified check, by electronic funds transfer (EFT), or on-line. If paying by check, Respondent shall submit a corporate cashier's or certified check, payable to "Environmental Protection Agency," and bearing the notation "OSLTF – 311."

If the Respondent sends payment by the U.S. Postal Service, the payment shall be sent to:

US Environmental Protection Agency  
**Fines and Penalties**  
Cincinnati Finance Center  
Post Office Box 979077  
St. Louis, Missouri 63197-9000

If the Respondent sends payment by an overnight commercial delivery service such as DHL, FedEx or UPS, the payment shall be sent to:

U.S. Bank  
Government Lockbox 979077  
**U.S. EPA Fines & Penalties**  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, Missouri 63101  
314-418-1028

If the Respondent sends payment by wire transfer, the wire transfer should be directed to the Federal Reserve Bank of New York:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, New York 10045  
Field Tag 4200 of the Fedwire message should read  
"D 68010727 Environmental Protection Agency."

Respondent may also elect the On Line Payment Option, available through the Department of Treasury. This payment option can be accessed at [www.pay.gov](http://www.pay.gov). Enter sfo 1.1 in the search field and then open the form and complete required fields.

14. If paying by check, the Respondent shall note on the penalty payment check the title and docket number of this case. The Respondent shall submit copies of the check (or, in the case of a wire transfer or on-line payment, a copy of the wire transfer or on-line confirmation) to the following people:

Patricia Bullock  
Regional Hearing Clerk  
U.S. EPA - Region 4  
Sam Nunn Atlanta Federal Center  
61 Forsyth Street, SW  
Atlanta, Georgia 30303-8960

and to:

Larry Lamberth, Chief  
South Enforcement and Compliance Section  
RCRA and OPA Enforcement and Compliance Branch  
RCRA Division  
U.S. EPA - Region 4  
Sam Nunn Atlanta Federal Center  
61 Forsyth Street, SW  
Atlanta, Georgia 30303-8960

### General Provisions

15. The Final Order shall be binding upon Respondent and Respondent's officers, directors, agents, servants, employees, and successors or assigns.

16. The Final Order does not constitute a waiver, suspension or modification of the requirements of Section 311 of the CWA, 33 U.S.C. § 1321, or any regulations promulgated thereunder, and does not affect the right of the Administrator or the United States to pursue any applicable injunctive or other equitable relief or criminal sanctions for any violation of law. Payment of the penalty pursuant to this Consent Agreement resolves only Respondent's liability for federal civil penalties for the violations and facts stipulated to and alleged herein. Except as otherwise set forth herein, compliance with this Consent Agreement shall resolve the allegations of violations contained herein.

17. The undersigned representative of Respondent hereby certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Agreement and to execute and legally bind Respondent to this Consent Agreement.

18. A copy of any documents that Respondent files in this action shall be sent to the following attorney who represents EPA in this matter and who is authorized to receive service for EPA in the proceeding:

Bonnie Sawyer  
Associate Regional Counsel  
Office of Environmental Accountability  
USEPA - Region 4  
Sam Nunn Atlanta Federal Center,  
61 Forsyth Street, SW  
Atlanta, Georgia 30303-8960  
404-562-9539  
[sawyer.bonnie@epa.gov](mailto:sawyer.bonnie@epa.gov)

19. A copy of any documents that Complainant files in this action shall be sent to the following individual who represents the Respondent in this matter and who is to receive service for the Respondent in this proceeding:

James E. Grey  
Director Regulatory Affairs, Eastern Division  
Chesapeake Appalachia, L.L.C.  
P.O. Box 6070  
Charleston, West Virginia 25362-0070  
304-353-5120  
[eddy.grey@chk.com](mailto:eddy.grey@chk.com)

**Effective Date**

20. This Consent Agreement and Final Order is effective upon the filing of the Final Order with the Regional Hearing Clerk.

**CONSENTED AND AGREED TO:**

CHESAPEAKE APPALACHIA, L.L.C.

Date: 11/12/09

Name: James E. Grey  
Title: DIRECTOR - Regulatory Affairs

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 12/7/09

Caroline Y. F. Robinson  
Caroline Y. F. Robinson, Chief  
RCRA and OPA Enforcement and Compliance Branch  
RCRA Division

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4**

|                                      |   |                                |
|--------------------------------------|---|--------------------------------|
| IN THE MATTER OF                     | ) | CWA SECTION 311 CLASS 1        |
|                                      | ) | CONSENT AGREEMENT AND          |
| Chesapeake Appalachia, L.L.C.        | ) | FINAL ORDER                    |
| P.O. Box 6070                        | ) | UNDER 40 C.F.R. § 22.13(b)     |
| Charleston, West Virginia 25362-0070 | ) |                                |
|                                      | ) |                                |
| Respondent                           | ) | Docket No. CWA-04-2010-5126(b) |
| _____                                |   | )                              |

**FINAL ORDER**

The foregoing Consent Agreement is hereby approved, ratified and incorporated by reference into this Final Order in accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, 40 C.F.R. Part 22. The Respondent is hereby ORDERED to comply with all of the terms of the foregoing Consent Agreement effective immediately upon filing of this Consent Agreement and Final Order with the Regional Hearing Clerk. This Order disposes of this matter pursuant to 40 C.F.R. §§ 22.18 and 22.31.

**BEING AGREED, IT IS SO ORDERED** this 22<sup>nd</sup> day of December, 2009.

BY: Susan B. Schub  
Susan Schub  
Regional Judicial Officer

In the Matter of Chesapeake Appalachia, L.L.C.  
Docket No.: CWA-04-2010-5126(b)

**CERTIFICATE OF SERVICE**

I hereby certify that on this day I filed the foregoing Consent Agreement and the attached Final Order (CA/FO), in the Matter of Chesapeake Appalachia, L.L.C., Docket No.: CWA-04-2010-5126(b) and that on this day I served a true and correct copy of the CA/FO on the parties listed below in the manner indicated:

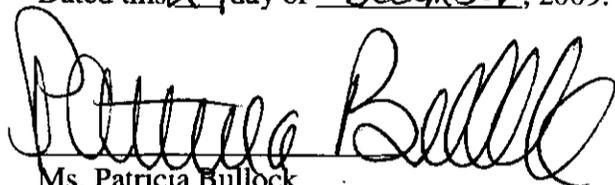
Via Certified Mail - Return Receipt Requested

James E. Grey  
Director Regulatory Affairs, Eastern Division  
Chesapeake Appalachia, L.L.C.  
414 Summers Street  
Charleston, West Virginia 25301

Via EPA's internal mail

Bonnie Sawyer  
Associate Regional Counsel  
Office of Environmental Accountability  
U.S. EPA - Region 4  
61 Forsyth Street, SW  
Atlanta, Georgia 30303-8960

Dated this 24 day of December, 2009.



Ms. Patricia Bullock  
Regional Hearing Clerk  
U.S. EPA - Region 4  
Sam Nunn Atlanta Federal Center  
61 Forsyth Street, SW  
Atlanta, Georgia 30303-8960