

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)
)
Coal Field Development Company)
219 South Main Place)
Carol Stream, Illinois 60188,)
)
Respondent.)

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

Docket No. CWA-05-2007-0002
JBLW

CONSENT AGREEMENT AND FINAL ORDER

CONSENT AGREEMENT

Complainant, the Director of the Water Division, United States Environmental Protection Agency, Region 5 (U.S. EPA) and Respondent, Coal Field Development Company, 219 South Main Place, Carol Stream, Illinois 60188, agree to resolve this matter before filing a complaint. Therefore, this civil administrative action is simultaneously commenced and concluded by this Consent Agreement and Final Order (CAFO) pursuant to sections 22.13(b) and 22.18(b) of 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 ("the Consolidated Rules"), 40 C.F.R. §§ 22.13(b) and 22.18(b);

NOW, THEREFORE, before the taking of any testimony, without the adjudication of any issue of fact or law, and upon the consent and agreement of the Parties, it is hereby stated as follows:

1. U.S. EPA is authorized to initiate this proceeding for the assessment of a civil penalty by Section 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g).
2. Complainant alleges that on or before April 14, 2005, Respondent added fill material using earth moving equipment to 1.83 acres of wetland, adjacent to waters of Busseron Creek,

which flows into the waters of the Wabash River. Therefore, Respondent discharged pollutants from a point source into navigable waters of the United States in violation of section 301 of the Clean Water Act, 33 U.S.C. § 1311.

3. Complainant alleges that on or before February 6, 2006, Respondent added fill material using earth moving equipment to the waters of an additional 0.06 acres of wetland and installed a sediment basin in or near another 0.17 acre wetland. Respondent's actions affected a total of approximately 700 linear feet of stream, which flows into the waters of Sulphur Creek, which flows into the waters of Busseron Creek, which flows into the waters of the Wabash River. Therefore, Respondent discharged pollutants from a point source into navigable waters of the United States in violation of section 301 of the Clean Water Act, 33 U.S.C. § 1311.

4. Complainant alleges that Coal Field Development Company did not have a permit to discharge these pollutants from these point sources into this navigable water, pursuant to Section 404 of the Clean Water Act, 33 U.S.C. § 1344.

5. Complainant alleges that approximately 1.89 acres of wetlands have been filled and 700 linear feet of stream have been filled.

6. The discharge of any pollutant by a person is unlawful and a violation of Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), unless in compliance with, *inter alia*, Section 404 of the Clean Water Act, 33 U.S.C. § 1344.

7. The parties have agreed that this matter should be settled without resort to a hearing or further proceedings, upon the terms set forth in this CAFO. By entering into this CAFO, the Respondent does not admit to any of the facts or violations alleged by the Complainant herein.

8. Without trial or litigation of any fact or law, the Respondent admits that the U.S. EPA has jurisdiction over the subject matter set forth in this CAFO and consents to the stated civil

penalty and terms of this CAFO as set forth herein.

9. Upon execution of the final order attached hereto, the Respondent waives all rights to request a judicial or administrative hearing on any issue of law or fact set forth in this CAFO, as provided by Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), and 40 C.F.R.

§ 22.15(c), and waives all rights to appeal any term of this CAFO.

10. The parties to this action consent to the terms of the Final Order set forth below.

Based on the foregoing, and pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g), it is hereby **ORDERED** that:

11. In consideration of the alleged violations, the environmental and compliance significance of the matter, and based upon the nature, circumstances, extent and gravity of the violations alleged herein, as well as the Respondent's ability to pay, prior history of such violations, culpability, economic benefit or savings (if any) resulting from the violations, and such other matters as justice may require, Complainant has determined that an appropriate civil penalty to settle this action is in the amount of fifty thousand dollars (\$50,000). The Respondent shall pay the \$50,000 civil penalty as specified below.

12. Respondent shall pay the \$50,000 civil penalty in three installments, plus interest at a rate of 2% per annum, on the dates and in the amounts shown on the payment schedule attached as Exhibit A. Respondent may prepay the \$50,000 civil penalty plus accrued interest to date of such payment without being subject to a prepayment penalty.

13. The civil penalties payable hereunder shall be made by certified or cashier's checks, payable to "Treasurer, United States of America," and shall be sent to the U.S. Environmental Protection Agency - Region 5, P.O. Box 371531, Pittsburgh, Pennsylvania, 15251-7531. A transmittal letter, indicating Respondent's name, complete address, a Billing Docket number to

be supplied later, and this case docket number must accompany the payment. Respondent shall send a copy of the transmittal letter, including a copy of the check, to the Regional Hearing Clerk (E-19J); to Melissa Gebien, Watersheds and Wetlands Branch (WW-16J); and to counsel for Complainant, Mark Koller (C-14J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590.

14. Failure to pay any amounts due pursuant to this CAFO may result in the referral of this matter to the United States Department of Justice for collection.

15. Interest shall accrue on any amounts overdue under the terms of this CAFO at the rate established by the Secretary of the Treasury, pursuant to 31 U.S.C. § 3717. A late payment handling charge of \$15.00 will be imposed after 30 days, with an additional charge of \$15.00 for each subsequent 30-day period over which an unpaid balance remains. In addition, a six percent per annum penalty will be assessed on any principal amount not paid within ninety days of its due date as listed in Appendix A of the CAFO.

16. This CAFO fully and finally settles and otherwise resolves the Complainant's claims that have been or could be asserted arising out of the transactions or occurrences alleged in this CAFO. This CAFO does not constitute a permit or a license and does not relieve Respondent of its obligation to comply with all applicable Federal, State or local laws, regulations or requirements.

17. This CAFO constitutes the entire agreement between the Complainant and the Respondent.

18. Each of the undersigned representatives of the parties certifies that he or she is authorized by the party whom he or she represents to enter into the terms and conditions of this CAFO and to legally bind that party to it.

19. The penalty specified herein shall represent civil penalties assessed by U.S. EPA and shall not be deductible for purposes of Federal taxes.

20. Nothing in this CAFO shall be construed to be a ruling on, or determination of, any issue related to any Federal, State, or local permit.

21. This CAFO shall be binding upon U.S. EPA and upon the officers, directors, employees, successors, and assigns of the Respondent.


22. Each party shall bear its own costs, attorney fees, and disbursements in this action.

23. The parties hereby consent to the entry of this CAFO without further notice.

The foregoing Consent Agreement is hereby stipulated, agreed, and approved for entry:

COAL FIELD DEVELOPMENT COMPANY,
Respondent

Dated: 12/20/06


Signature

STEPHANIE CHODERA

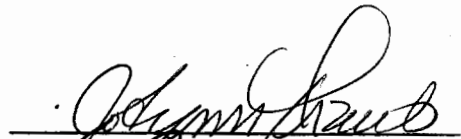
Name (print)

VICE-PRESIDENT

Title (print)

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 5,
Complainant

Dated: 11/4/07



Jo Lynn Traub
Director, Water Division
U.S. Environmental Protection
Agency, Region 5

Exhibit A

Principal Sum = \$50,000.00
Interest 2% per annum

<u>Payment Due Date</u>	<u>Amount Due</u>	<u>Interest</u>	<u>Principal</u>	<u>Balance</u>
30 days from the effective date ¹	\$20,000.00	\$0	\$20,000.00	\$30,000.00
6 months from the effective date	\$15,299.18	\$299.18	\$15,000.00	\$15,000.00
1 year from the effective date	\$15,150.47	\$150.41	\$15,000.00	\$0

¹ The effective date is the date upon which the Consent Agreement and Final Order is filed with the Regional Hearing Clerk.

Consent Agreement and Final Order
In the Matter of Coal Field Development Company
Docket No. CWA-05-2007-0002

FINAL ORDER

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. The Respondent is hereby ORDERED to comply with all the terms of the 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 the Consolidated Rules at 40 C.F.R. § 22.18(b)(3).

Dated: _____

Mary A. Gade
Regional Administrator