

**BEFORE THE UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION III**

In the matter of:

Roy Yoho  
RD1, Box 51  
Proctor, West Virginia 26055

Respondent

Property Located At:

Approximately 0.25 miles southeast of  
Route 2 and County Road 89  
Proctor, West Virginia 26055

U.S. EPA Docket No.:  
CWA-03-2012-0036

Proceeding to Assess Class I  
Administrative Penalty under Section  
309(g) of the Clean Water Act

**CONSENT AGREEMENT AND FINAL ORDER**

REGIONAL HEARING CLERK  
EPA REGION III, PHILA. PA

2013 JAN 28 PM 2: 27

RECEIVED

**I. PRELIMINARY STATEMENT AND STATUTORY AUTHORITY**

1. This Consent Agreement and Final Order (“CAFO”) is entered into by the Director, Environmental Assessment and Innovation Division, United States Environmental Protection Agency, Region III (“EPA” or “Complainant”), and Roy Yoho (“Respondent”), pursuant to Section 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g) (“CWA” or “Act”), 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* (“Consolidated Rules”), 40 C.F.R. Part 22. The parties have agreed that this CAFO resolves Complainant’s civil claims pertaining to violations of Section 301 of the CWA, 33 U.S.C. § 1311, arising out of inspections performed by EPA on December 16, 2010 and September 27, 2011 and/or alleged in an administrative Complaint filed on September 6, 2012 (the “Complaint”). The parties further agree that the payment of civil penalties by Respondent, as agreed in this CAFO, is the most appropriate resolution to this matter.
2. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and the Civil Monetary

Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, any person violating the CWA is liable for an administrative penalty under Section 309(g) of the Act. For penalties assessed under Section 309(g)(2)(B) of the Act, violations occurring after March 15, 2004 through January 12, 2009 subject the violator to civil penalties in an amount not to exceed \$11,000 per day per violation, up to a total penalty amount of \$157,500. Violations of the Act that occurred after January 12, 2009 subject the violator to civil penalties in an amount not to exceed \$16,000 per day per violation, up to a maximum of \$177,500.

## **II. FINDINGS OF FACT AND JURISDICTIONAL ALLEGATIONS**

3. The findings of fact alleged in the Complaint are incorporated herein.
4. For purposes of this proceeding, Respondent neither admits nor denies the specific factual allegations contained in the Complaint.
5. Respondent admits the jurisdictional allegations contained in the Complaint.

## **III. CONCLUSIONS OF LAW**

6. As alleged in the Complaint, EPA concludes that Respondent has violated Section 301 of the CWA, 33 U.S.C. § 1311, and is therefore liable to the United States for a civil penalty in accordance with Section 309(g) of the Act, 33 U.S.C. § 1319(g).

## **IV. CONSENT AGREEMENT AND FINAL ORDER**

7. Respondent agrees not to contest EPA's jurisdiction to issue and enforce this CAFO.
8. Respondent hereby expressly waives its right to a hearing on any issue of law or fact in this matter pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and consents to issuance of this CAFO without adjudication.
9. Each party to this action shall bear its own costs and attorney fees.
10. The provisions of this CAFO shall be binding upon the Respondent, its officers, principals, directors, successors and assigns.
11. The parties agree that settlement of this matter is in the public interest and that entry of this CAFO is the most appropriate means of resolving this matter.
12. Based upon the foregoing and having taken into account the nature, circumstances, extent and gravity of the violations alleged in the Complaint, Respondent's ability to pay, prior

history of compliance, degree of culpability, economic benefit or savings resulting from the violations, and such other matters as justice may require, pursuant to the authority of Section 309(g) of the Act, 33 U.S.C. § 1319(g), EPA HEREBY ORDERS AND Respondent CONSENTS to pay a civil penalty in the amount of nine thousand five hundred dollars (\$9,500) in full and final settlement of EPA's claims for civil penalties for the violations alleged herein.

13. Respondent shall pay the total administrative civil penalty of nine thousand five hundred dollars (\$9,500) within thirty (30) days of the effective date of this CAFO pursuant to 40 C.F.R. § 22.31(c). Payment shall be made by one of the following methods set forth below.

Payment by check to "United States Treasury"-

By regular mail:

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

Contact Eric Volck (513-487-2105)

By overnight delivery:

U.S. Bank  
Government Lock Box 979077  
US EPA, Fines and Penalties  
1005 Convention Plaza  
Mail Station SL-MO-C2-GL  
St. Louis, MO 63101

Contact: Eric Volck (513-487-2105)

By Wire Transfer:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT Address = FRNYUS33  
33 Liberty Street

*In Re: Roy Yoho*  
*EPA Docket No.: CWA-03-2012-0036*

New York, NY 10045  
(Field Tag 4200 of the wire transfer message should read:  
"D 68010727 Environmental Protection Agency")

By Automated Clearinghouse (ACH) Transfers for receiving U. S. currency (also known as REX or remittance express):

PNC Bank  
ABA = 051036706  
Environmental Protection Agency  
Account Number: 310006  
CTX Format  
Transaction Code 22 – checking  
808 17<sup>th</sup> Street, NW  
Washington, D.C. 20074

Contact for ACH: John Schmid (202-874-7026)

On Line Payments:

W WW.PAY.GOV  
Enter sfo 1.1 in the search field  
Open form and complete required fields.

Additional payment guidance is available at:

[http://www.epa.gov/ocfo/finservices/make\\_a\\_payment.htm](http://www.epa.gov/ocfo/finservices/make_a_payment.htm)

Respondent shall send notice of each payment, including a copy of the check if payment is made by check, to the Regional Hearing Clerk at the following address:

Regional Hearing Clerk (3RC00)  
U.S. EPA Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

-and-

Mark Bolender  
U.S. EPA Region III

Office of Regional Counsel (3RC20)  
1650 Arch Street  
Philadelphia, PA 19103-2029

14. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law and ordinance, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit. Nor does this CAFO constitute a waiver, suspension or modification of the requirements of the CWA, 33 U.S.C. §§ 1251, *et seq.*, or any regulations promulgated thereunder.

15. The following notice concerns interest and late penalty charges that will accrue in the event that any portion of the civil penalty is not paid as directed:

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 or to comply with the conditions in this CAFO shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.

Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of this CAFO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. 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).

16. This Consent Agreement and the accompanying Final Order resolve the civil penalty claims for the violations alleged in the Complaint. Compliance with the CAFO shall not be a defense to any actions subsequently commenced for any violations of any other Federal laws and regulations administered by EPA, and it is the responsibility of Respondent to comply with all such laws and regulations. Nothing herein shall be construed to limit the authority of the Complainant to undertake such action against any person, including the Respondent, in response to any condition which Complainant determines may present an imminent and substantial endangerment to the public health, public welfare or the environment. In addition, 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. Further, EPA reserves any rights and remedies available to it under the CWA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO, following its filing with the Regional Hearing Clerk.

17. Except as specifically stated herein, nothing in this CAFO shall be construed as prohibiting, altering or in any way eliminating the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violations of this CAFO or of the statutes and regulations upon which this CAFO is based or for Respondent's violation of any other applicable provision of law.
18. The penalty specified above shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.
19. Entry of this CAFO is a final settlement for penalties of all civil violations alleged in the Complaint. EPA shall have the right to institute a new and separate action to recover additional civil penalties for the claims made in the Complaint if the EPA obtains evidence that the information and/or representations of the Respondent are false, or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action, civil or criminal, the EPA may have under law or equity in such event.
20. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to execute and legally bind the Respondent.
21. All of the terms and conditions of this CAFO together comprise one agreement, and each of the terms and conditions is in consideration of all of the other terms and conditions. In the event that this CAFO, or one or more of its terms and conditions, is held invalid, or is not executed by all of the signatories in identical form, or is not approved in such identical form by the Regional Administrator or his designee, then the entire CAFO shall be null and void.
22. It is understood and agreed by the EPA and Respondent that this CAFO is a settlement of disputed claims and that neither this writing nor the fact of the CAFO constitute an admission of liability or wrongdoing or breach of any duty by Respondent. Respondent does not admit any acts which may be alleged in the Complaint.

**V. EFFECTIVE DATE**

23. This CAFO shall become final and effective, absent a petition for review, thirty (30) days after it is lodged with the Regional Hearing Clerk, pursuant to Section 309(g)(5), 33 U.S.C. § 1319(g)(5).

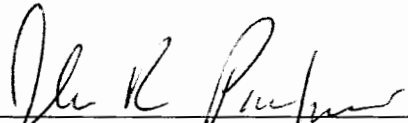
FOR RESPONDENT:

  
Roy Yoho

*In Re: Roy Yoho*  
*EPA Docket No.: CWA-03-2012-0036*

SO ORDERED, pursuant to 33 U.S.C. § 1319(g), and 40 C.F.R. Part 22,

this 28<sup>th</sup> day of January, 2013

  
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John K. Pomponio, Director  
Environmental Assessment and Innovation Division  
U.S. EPA Region III



### **CERTIFICATE OF SERVICE**

I hereby certify that on this day, I caused to be filed with the **Regional Hearing Clerk**, EPA Region III, the original Consent Agreement and Final Order, EPA Docket No. CWA-03-2012-0036 and that a copy of this document was sent to the following individual in the manner described below:

By UPS overnight delivery:

Eric Gordon, Esquire  
Berry, Kessler, Crutchfield, Taylor & Gordon  
514 7th Street  
Moundsville, WV 26041

Date: 1/28/13



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Mark J. Bolender  
Senior Assistant Regional Counsel  
US EPA Region III