

**FILED**

**Dec 09, 2024**

**6:44 am**

**U.S. EPA REGION 5  
HEARING CLERK**

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

**In the Matter of:**

**Hilltop Basic Resources, Inc.  
511 W. Water Street  
Cincinnati, Ohio**

**Respondent.**

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) **Docket No. CWA-05-2024-0017**  
)  
) **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 (“CWA” or “the Act”), 33 U.S.C. § 1319(g), and Sections 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 Enforcement and Compliance Assurance Division, EPA Region 5, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondent is Hilltop Basic Resources, Inc. (Hilltop), a corporation in Cincinnati, Ohio.

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.

8. Respondent waives any right to contest the allegations and its right to appeal the proposed final order accompanying the consent agreement.

### **Statutory and Regulatory Background**

9. Section 301(a) of the CWA, 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 CWA, 33 U.S.C. § 1342.

10. Section 402 of the CWA, 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. A violation of a NPDES permit is a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

11. Pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, the State of Ohio requested approval from EPA to administer its own permit program for discharges into navigable waters within Ohio, and such approval was granted by EPA on March 11, 1974, 39 Fed. Reg. 26,061 (July 16, 1974). Therefore, pursuant to the State's permit program, the Ohio Environmental Protection Agency ("OEPA") has issued OH NPDES permits.

12. 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, which prohibits unpermitted discharges of any pollutant to navigable waters and discharges of any pollutant to navigable waters not in compliance with a permit issued under Section 402 of the CWA, 33 U.S.C. § 1342, or when the Administrator finds that a person has violated a condition or limitation of a permit issued under 33 U.S.C. § 1342.

### **Factual Allegations**

13. Respondent is a corporation, and therefore a “person” under Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

14. At all times relevant to this Order, Respondent owned and operated the Hilltop Basic Resources, Inc. facility, a ready-mix concrete producer, located in Cincinnati, Ohio (“facility”) along the bank of the Ohio River.

15. Respondent was issued for the facility a Notice of Intent (NOI) to discharge under National Pollutant Discharge Elimination System (NPDES) General Permit No. OHR000007 (“Permit”) under Section 402 of the CWA, 33 U.S.C. § 1342, by Ohio. The NOI, which became effective on September 15, 2022 and has an expiration date of May 31, 2026, identifies one outfall at the facility, Outfall 001. The outfall discharges industrial stormwater runoff into the Ohio River.

16. Outfall 001 is a discernible, confined, and discrete conveyance, which constitutes a “point source,” as defined in Section 502(14) of the CWA, 33 U.S.C. § 1362(14), that serve as a discharge point from the facility.

17. Respondent's discharge of stormwater from industrial activity from Outfall 001, into the Ohio River constitutes a "discharge of a pollutant" as defined by Section 502(12) of the CWA, 33 U.S.C. § 1362(12).

18. The Ohio River are "navigable waters" under Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

19. Because Respondent operates a facility with an outfall that acts as a point source for the discharge of pollutants to navigable waters, Respondent and the facility have been subject to the CWA and the NPDES program at all times relevant to this CAFO. Thus, any such discharge has been and is subject to the CWA and its implementing regulations and the specific terms and conditions prescribed in the applicable permit.

**Count 1: Unlawful Discharge of Pollutants into the Ohio River**

20. The statements in paragraphs 1 through 19 are hereby incorporated by reference as if set forth in full.

21. Part 1.1.1. and Part 1.1.2. of the Permit describes the facilities eligible to discharge under this Permit and the allowable stormwater discharges.

22. Part 2.1.2.1. of the Permit states the discharge of vehicle and equipment washwater, including tank cleaning operations, is not authorized by this Permit. These wastewaters shall be covered under a separate NPDES permit, discharged to a sanitary sewer in accordance with applicable industrial pretreatment requirements, or disposed of otherwise in accordance with applicable law.

23. Part 5.5 of the Respondent's Storm Water Pollution Prevention Plan (SWPPP), developed and implemented by the Respondent, describes the facility's drainage, sediment and erosion control, and runoff management, which details the operational areas that slope northward

and eventually drain to inlets for the Cincinnati combined sewer system located along Water Street. Part 5.5. of the SWPPP also states that the water from the truck wash is not discharged to the combined sewer system.

24. On two occasions between May 23, 2023 and January 8, 2024, Respondent discharged truck wash water from the concrete truck loading station at the facility to a sanitary sewer drain and a storm water drains on Water Street, on the north side of the property, and to an additional storm drain located on Water Street, on the west side of the property.

25. At no time relevant to this discharge did Respondent have a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, for the discharge described in paragraph 24.

26. Each violation of the conditions of the Permit or regulations described above in Count 1 is a violation of Section 301 of the CWA, 33 U.S.C. § 1342.

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

### **Count 2: SWPPP Violations**

28. The statements in paragraphs 1 through 19 are hereby incorporated by reference as if set forth in full.

29. Part 2.1.2.9. of the Permit requires Respondent to train all employees who work in areas where industrial materials or activities are exposed to stormwater, or who are responsible for implementing activities necessary to meet the conditions of this Permit, including all members of Respondent's Pollution Prevention Team provided in Respondent's SWPPP. The

Permit requires this training be conducted at least annually (or more often if employee turnover is high).

30. Respondent did not conduct annual employee training at the facility, from 2019 – June 12, 2023, as required in the Permit, in violation of Part 2.1.2.9. of the Permit and Section 301 of the CWA, 33 U.S.C. § 1311.

31. Each violation of the conditions of the Permit or regulations described above in Count 2 is a violation of Section 301 of the CWA, 33 U.S.C. § 1342.

32. Therefore, Respondent is a person who failed to adequately train all required employees, in violation of its Permit and Section 301 of the CWA, 33 U.S.C. § 1311.

### **Count 3: Control Measure and BMP Violations**

33. The statements in paragraphs 1 through 19 are hereby incorporated by reference as if set forth in full.

34. Part 2.1 and 2.1.2 of the Permit requires Respondent to select, design, and implement control measures to minimize the exposure of manufacturing, processing, and material storage areas (including loading and unloading, storage, disposal, cleaning, maintenance, and fueling operations) to rain, snow, snowmelt, and runoff.

35. At various locations Respondent did not have sufficient stormwater controls in place, such as the southeast corner of the facility near the conveyor belt, the sloped area in the southern portion of the facility, along the edge of the Ohio River, or the northern portion of the facility near the stormwater outfall, as required in the Permit, in violation of Part 2.1. and Part 2.1.2. of the Permit and Section 301 of the CWA, 33 U.S.C. § 1311.

36. Each violation of the conditions of the Permit or regulations described above in Count 3 is a violation of Section 301 of the CWA, 33 U.S.C. § 1311.

37. Therefore, Respondent is a person who failed to adequately maintain sufficient stormwater controls when discharging pollutants from a point source into navigable waters, in violation of its permit, in violation of Section 301 of the CWA, 33 U.S.C. § 1311.

### **Civil Penalty**

38. Under Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), and 40 C.F.R. Part 19, the Administrator may assess a Class II civil penalty up to \$26,685 per day of violation up to a total of \$333,552, for violations of the CWA that occurred after November 2, 2015 and for which penalties are assessed on or after December 27, 2023, or other amounts as penalty levels may be later adjusted at 40 C.F.R. Part 19.

39. 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 has determined that an appropriate civil penalty to settle this action is \$48,025.65.

40. Respondent agrees to pay a civil penalty in the amount of \$48,025.65 ("Assessed Penalty") within thirty (30) days after the Final Order ratifying this Agreement is filed with Regional Hearing Clerk ("Filing Date").

41. Respondent shall pay the Assessed Penalty and any interest, fees, and any other charges due using any method, or combination of appropriate methods, as provided on the EPA website: <https://www.epa.gov/financial/makepayment>. For additional instructions, see: <https://www.epa.gov/financial/additional-instructions-making-payments-epa>.

42. When making a payment, Respondent shall:

- a. Identify every payment with Respondent's name and the docket number of this agreement:
- b. Concurrently with any payment or within 24 hours of any payment, Respondent shall serve proof of such payment to the following person(s):

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 5  
[R5hearingclerk@epa.gov](mailto:R5hearingclerk@epa.gov)

Jennifer Bush (ECW-15J)  
U.S. Environmental Protection Agency  
[Bush.Jennifer@epa.gov](mailto:Bush.Jennifer@epa.gov)

David Duckett (C-14J)  
Attorney Advisor  
Office of Regional Counsel  
U.S. Environmental Protection Agency  
[Duckett.David@epa.gov](mailto:Duckett.David@epa.gov)

and

U.S. Environmental Protection Agency  
Cincinnati Finance Center  
Via electronic mail to:  
[CINWD\\_AcctsReceivable@epa.gov](mailto:CINWD_AcctsReceivable@epa.gov)

“Proof of payment” means, as applicable, a copy of the check, confirmation of credit card or debit card payment, or confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with the appropriate docket number and Respondent's name.

43. Interest, Charges, and Penalties on Late Payments. Pursuant to 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to timely pay the full amount of the Assessed Penalty per this Agreement, EPA is authorized to recover, in addition to the unpaid amount of the Assessed Penalty, the following amounts.



- a. Interest. Interest begins to accrue from the Filing Date. If the Assessed Penalty is paid in full within thirty (30) days, interest accrued is waived. If the Assessed Penalty is not paid in full within thirty (30) days, interest will continue to accrue until any unpaid portion of the Assessed Penalty as well as any interest, penalties, and other charges are paid in full. To protect the interests of the United States the rate of interest is set at the IRS standard underpayment rate, any lower rate would fail to provide Respondent adequate incentive for timely payment.
  - b. Handling Charges. Respondent will be assessed monthly a charge to cover EPA's costs of processing and handling overdue debts. If Respondent fails to pay the Assessed Penalty in accordance with this Agreement, EPA will assess a charge to cover the costs of handling any unpaid amounts for the first thirty (30) day period after the Filing Date. Additional handling charged will be assessed every thirty (30) days, or any portion thereof, until the unpaid portion of the Assessed Penalty as well as any accrued interest, penalties, and other charges are paid in full.
  - c. Late Payment Penalty. A late penalty payment of six percent (6%) per annum, will be assessed monthly on all debts, including any unpaid portion of the Assessed Penalty, interest, penalties, and other charges, that remain delinquent more than ninety (90) days. Any such amounts will accrue from the Filing Date.
44. Late Penalty Actions. In addition to the amounts described in the prior Paragraph, if Respondent fails to timely pay any portion of the Assessed Penalty, interest, or other charges and penalties per this Agreement, EPA may take additional actions. Such actions EPA may take include, but are not limited to, the following.

- a. Refer the debt to a credit reporting agency or a collection agency, per 40 C.F.R. § 13.13 and 13.14.
- b. Collect the debt by administrative offset (i.e., the withholding of money payable by the United States government to, or held by the United States government for, a person to satisfy the debt the person owes the United States government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, per 40 C.F.R. Part 13, Subparts C and H.
- c. Suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds, per 40 C.F.R. § 13.17.
- d. Refer this matter to the United States Department of Justice for litigation and collection, per 40 C.F.R. § 13.33.

45. Allocation of Payments. Pursuant to 31 C.F.R. § 901.9(f) and 40 C.F.R. § 13.11(d), a partial payment of debt will be applied first to outstanding handling charges, second to late penalty charges, third to accrued interest, and last to the principal that is the outstanding Assessed Penalty amount.

46. Tax Treatment of Penalties. Penalties, interest, and other charges paid pursuant to this Agreement shall not be deductible for purposes of federal taxes.

### **General Provisions**

47. The parties consent to service of this CAFO by email at the following valid email addresses: [Duckett.David@epa.gov](mailto:Duckett.David@epa.gov) (for Complainant) and [Jkezele@kmklaw.com](mailto:Jkezele@kmklaw.com) (for Respondent). Respondent understands that the CAFO will become publicly available upon proposal for public comment and upon filing.

48. Full payment of the penalty as described in paragraphs 39 and 40 and full compliance with this CAFO shall not in any case affect the right 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.

49. As provided under 40 C.F.R. § 22.18(c), full payment of the penalty as described in paragraphs 42 and 43 and full compliance with this CAFO shall only resolve Respondent's liability for federal civil penalties under Section 309(g) of the CWA, 33 U.S.C. § 1319(g), for the particular violations alleged in this CAFO.

50. This CAFO does not affect Respondent's responsibility to comply with the CWA and other applicable laws, regulations, or permits.

51. Respondent certifies that it is complying with Sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a), 1342.

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

53. Each person signing this CAFO 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.

54. Each party agrees to bear its own costs and attorneys fees in this action.

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

56. Pursuant to 40 C.F.R. § 22.18(b)(3), this Consent Agreement does not dispose of this proceeding without execution of the Final Order. The Final Order will not be issued until after completion of the requirements of Section 309(g)(4) of the CWA, 33 U.S.C. § 1319(g)(4), and 40 C.F.R. § 22.45(b), which require, among other things, public notice and a reasonable opportunity to comment on any proposed penalty order. Further, under Section 309(g), 33 U.S.C. § 1319(g), and 40 C.F.R. § 22.45, this Consent Agreement may be withdrawn before execution

of the Final Order. Please refer to Section 309(g) of the CWA, 33 U.S.C. 1319(g), 40 C.F.R. § 22.45, and 40 C.F.R. Part 22 (the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties) for detailed information on the procedures regarding Consent Agreement and Final Order as a penalty order under the CWA and settlement under Part 22.

57. When final and effective, this CAFO is a “final order” for purposes of 40 C.F.R. §§ 22.13, 22.18, 22.31, 22.45 and the EPA’s Interim Clean Water Act Settlement Penalty Policy (Mar. 1995).

58. In accordance with Section 309(g)(5) of the CWA, 33 U.S.C. § 1319(g)(5), and 40 C.F.R. § 22.45, this CAFO shall become effective 30 days after the date of issuance unless, if applicable, a commenter files a petition for judicial review pursuant to 33 U.S.C. § 1319(g)(8) or a request for hearing pursuant to 33 U.S.C. § 1319(g)(4)(C), or, if applicable, 30 days after the request or petition is denied. The date of issuance is the date the Final Order is signed by the Regional Judicial Officer or Regional Administrator.

**In the Matter of:  
Hilltop Basic Resources, Inc.  
Docket No. CWA-05-2024-0017**

## Hilltop Basic Resources, Inc., Respondent

James M. Sheehan

07/24/2024  
Date

Hilltop Basic Resources, Inc.

**United States Environmental Protection Agency, Complainant**

MICHAEL  
HARRIS

Digitally signed by  
MICHAEL HARRIS  
Date: 2024.08.09  
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Michael D. Harris  
Division Director  
Enforcement and Compliance Assurance Division  
U.S. EPA Region 5

Date \_\_\_\_\_

**In the Matter of:**  
**Hilltop Basic Resources, Inc.**  
**Docket No. CWA-05-2024-0017**

**Final Order**

In accordance with Section 309(g)(5) of the CWA, 33 U.S.C. § 1319(g)(5), and 40 C.F.R. § 22.45, this CAFO shall become effective 30 days after the date of issuance unless, if applicable, a commenter files a petition for judicial review pursuant to 33 U.S.C. § 1319(g)(8) or a request for hearing pursuant to 33 U.S.C. § 1319(g)(4)(C), or, if applicable, 30 days after the request or petition is denied. The date of issuance is the date the undersigned signed this Final Order. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18, 22.31, and 22.45. IT IS SO ORDERED.

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