



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

In the Matter of )  
)  
Independence Coal Company, LLC )  
300 Running Right Way )  
P.O. Box 261 )  
Julian, West Virginia 25529, )  
)  
Respondent. )  
)  
Justice No. 1 Deep Mine Treatment Area )  
Route 85 )  
Madison, West Virginia 25130, )  
Latitude: 37.988217 )  
Longitude: -81.749583, )  
)  
Facility. )  
)

U.S. EPA Docket Nos.:  
CERC-03-2019-0015  
EPCRA-03-2019-0015

U.S. EPA-REGION 3-RHC  
FILED-31OCT2018AM10:58

Proceedings Pursuant to Sections 103 and  
109 of the Comprehensive Environmental  
Response, Compensation and Liability  
Act, 42 U.S.C. §§ 9603 and 9609, and  
Sections 304 and 325 of the Emergency  
Planning and Community Right-to-Know  
Act, 42 U.S.C. §§ 11004 and 11045

CONSENT AGREEMENT

STATUTORY AUTHORITY

This Consent Agreement is proposed and entered into under the authority vested in the President of the United States by Section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. § 9609, as re-delegated to the Administrator of the U.S. Environmental Protection Agency (“EPA”) and under the authority vested in the Administrator of EPA by Section 325 of the Emergency Planning and Community Right-to-Know Act (“EPCRA”), 42 U.S.C. § 11045, and under the authority provided by the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits” (“Consolidated Rules of Practice”), 40 C.F.R. Part 22 (“Part 22”). The Administrator has delegated these authorities to the Regional Administrator of EPA, Region III, who has in turn delegated them to the Director, Hazardous Site Cleanup Division, EPA Region III (“Complainant”).

The parties agree to the commencement and conclusion of this cause of action by issuance of this Consent Agreement and Final Order (referred to collectively herein as “CA/FO”) as prescribed by the Consolidated Rules of Practice pursuant to 40 C.F.R. § 22.13(b) and 22.18(b), and having consented to the entry of this CA/FO, agree to comply with the terms of this CA/FO.

### **JURISDICTION**

1. The Consolidated Rules of Practice govern this administrative adjudicatory proceeding pursuant to 40 C.F.R. § 22.1(a)(7) and (8).
2. The Regional Judicial Officer has the authority to approve this settlement and conclude this proceeding pursuant to 40 C.F.R. §§ 22.4(b) and 22.18(b)(3).
3. For the purpose of this proceeding, Respondent admits to the jurisdictional allegations in this Consent Agreement and agrees not to contest EPA's jurisdiction with respect to the execution of this Consent Agreement, the issuance of the attached Final Order and the enforcement of this CA/FO.
4. With the exception of Paragraph 3, above, for the purpose of this proceeding, Respondent neither admits nor denies the factual allegations or conclusions of law set forth in this Consent Agreement, but expressly waives its rights to contest said allegations.

### **FACTUAL ALLEGATIONS**

5. Independence Coal Company, LLC ("Respondent") is a West Virginia limited liability company with its principal place of business located at 300 Running Right Way in Julian, West Virginia
6. As a limited liability company, Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), Section 329(7) of EPCRA, 42 U.S.C. § 11049(7), and their respective regulations, 40 C.F.R. §§ 302.3 and 355.61.
7. At all times relevant to this CA/FO, Respondent was in charge of the Justice No. 1 Deep Mine Treatment Area located in a remote area off of Route 85 in Madison, West Virginia, at latitude 37.988217 and longitude -81.749583 ("Facility"), within the meaning of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and has been the owner or operator of the Facility, within the meaning of Section 304 of EPCRA, 42 U.S.C. § 11004.
8. The Facility is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and their respective regulations, 40 C.F.R. §§ 302.3, 355.30-355.61.
9. On July 20, 2017, EPA conducted an inspection of the Facility to determine Respondent's compliance with Section 103 of CERCLA and Sections 302-312 of EPCRA in response to a release of ferric chloride that was reported to have occurred on June 28, 2016. During the inspection, EPA gathered information relevant to Respondent's compliance with Section 103 of CERCLA and Sections 302-312 of EPCRA. During the inspection and in the aftermath of the inspection, Respondent submitted information to EPA regarding its compliance with CERCLA and EPCRA.

10. Section 102(a) of CERCLA, 42 U.S.C. § 9602(a), requires the Administrator of the EPA to publish a list of substances designated as hazardous substances, which, when released into the environment may present substantial danger to public health or welfare or to the environment, and to promulgate regulations establishing that quantity of any hazardous substance, the release of which shall be required to be reported under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a) (“Reportable Quantity” or “RQ”). The list of hazardous substances is codified at 40 C.F.R. § 302.4.

11. Section 302(a) of EPCRA, 42 U.S.C. § 11002(a), requires the Administrator of EPA to publish a list of Extremely Hazardous Substances (“EHSs”) and to promulgate regulations establishing that quantity of any EHS the release of which shall be required to be reported under Section 304(a) through (c) of EPCRA, 42 U.S.C. § 11004(a) through (c), (“Reportable Quantity” or “RQ”). The list of EHSs and their respective RQs is codified at 40 C.F.R. Part 355, Appendices A and B.

12. The State Emergency Response Commission (“SERC”) for the Facility is, and at all times relevant to this CA/FO has been, the West Virginia Division of Homeland Security and Emergency Management, located at 1900 Kanawha Boulevard east, Building 1, room EB-80, in Charleston, West Virginia.

13. The Local Emergency Planning Committee (“LEPC”) for the Facility is, and at all times relevant to this CA/FO has been, the Boone County Local Emergency Planning Committee, located at 1267 Smoot Avenue in Danville, West Virginia.

14. At all times relevant to this CA/FO, the Facility was a facility at which a hazardous chemical was produced, used or stored.

15. Beginning at or around 3:30 p.m. on June 28, 2016, a water treatment solution containing ferric chloride, Chemical Abstracts Service Registry No. 7705-08-0, was released from a double-walled aboveground storage tank at the Facility (the “Release”). The amount of ferric chloride in the solution released is approximately 8,379 pounds. The release occurred when the solution flowed through a faulty valve in the tank’s primary containment and then flowed through a valve in the tank’s secondary containment that was either inadvertently left open by employees or opened by vandals. The solution spread into earthen sumps and a portion flowed from the sumps into a creek, Jack’s Branch.

**COUNT 1**  
**FINDINGS OF FACT RELATING TO THE**  
**VIOLATION OF SECTION 103 OF CERCLA**

16. The factual allegations contained in Paragraphs 5 through 15 of this CA/FO are incorporated by reference herein as though fully set forth at length.

17. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), as implemented by 40 C.F.R. Part 302, requires, in relevant part, a person in charge of a facility to immediately notify the National Response Center (“NRC”) established under Section 311(d)(2)(E) of the Clean Water Act, as amended, 33 U.S.C. § 1321(d)(2)(E), as soon as he/she has knowledge of a release (other than a federally permitted release) of a hazardous substance from such facility in a quantity equal to or greater than the RQ.

18. The chemical ferric chloride is a hazardous substance, as defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and 40 C.F.R. § 302.3, with an RQ of 1,000 pounds, as listed in 40 C.F.R. § 302.4.

19. The Release from the Facility constitutes a release of a hazardous substance in a quantity equal to or exceeding the RQ for that hazardous substance, requiring immediate notification of the NRC pursuant to Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

20. The Release was not a “federally permitted release” as that term is used in Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and 40 C.F.R. § 302.6, and defined in Section 101(10) of CERCLA, 42 U.S.C. § 9601(10).

21. Respondent first became aware that the Release was occurring at approximately 3:30 p.m. on June 28, 2016. The Respondent immediately took efforts to stop and contain the Release. Respondent reported the Release to the West Virginia Department of Environmental Protection at approximately 6:30 p.m. that same day.

22. Respondent, however, did not notify the NRC of the Release until approximately 8:34 a.m. on June 29, 2016. Respondent knew or should have known that the Release from the Facility was in a quantity equal to or exceeding its RQ, no later than 7 p.m. on June 28, 2016.

23. Respondent failed to immediately notify the NRC of the Release as soon as Respondent knew or should have known that a release of a hazardous substance had occurred at the Facility in an amount equal to or exceeding the applicable RQ, as required by Section 103 of CERCLA, 42 U.S.C. § 9603, and 40 C.F.R. § 302.6.

**CONCLUSION OF LAW RELATED TO THE  
VIOLATION OF SECTION 103 OF CERCLA**

24. Respondent’s failure to immediately notify the NRC of the Release is a violation of Section 103 of CERCLA, 42 U.S.C. § 9603. Respondent is, therefore, subject to the assessment of penalties under Section 109 of CERCLA, 42 U.S.C. § 9609.

**COUNT 2**  
**FINDINGS OF FACT RELATING TO THE**  
**VIOLATION OF SECTION 304(a) AND (b) OF EPCRA – LEPC**

25. The factual allegations contained in Paragraphs 5 through 24 of this CA/FO are incorporated by reference herein as though fully set forth at length.

26. Section 304(a) and (b) of EPCRA, 42 U.S.C. § 11004(a) and (b), as implemented by 40 C.F.R. Part 355, Subpart C, requires, in relevant part, the owner or operator of a facility at which hazardous chemicals are produced, used, or stored to notify the SERC and LEPC immediately following a release of a hazardous substance or an EHS in a quantity equal to or exceeding the RQ for the hazardous substance or EHS. The list of EHSs and their respective RQs is codified at 40 C.F.R. Part 355, Appendices A and B.

27. The Release required immediate notification to the LEPC pursuant to Section 304(a)(1) and (b) of EPCRA, 42 U.S.C. § 11004(a)(1) and (b), and 40 C.F.R. Part 355, Subpart C.

28. Respondent did not notify the LEPC of the Release until 9:50 p.m. on June 28, 2016.

29. Respondent failed to notify the LEPC of the Release of ferric chloride as soon as Respondent knew that a release of a hazardous substance had occurred at the Facility in an amount equal to or exceeding its RQ, as required by Section 304(a) and (b) of EPCRA, 42 U.S.C. § 11004(a) and (b), and 40 C.F.R. Part 355, Subpart C.

**CONCLUSION OF LAW RELATED TO THE**  
**VIOLATION OF SECTION 304(a) AND (b) OF EPCRA – LEPC**

30. Respondent's failure to notify the LEPC immediately of the Release is a violation of Section 304(a) and (b) of EPCRA, 42 U.S.C. § 11004(a) and (b). Respondent is, therefore, subject to the assessment of penalties under Section 325(b) of EPCRA, 42 U.S.C. § 11045(b).

**COUNT 3**  
**FINDINGS OF FACT RELATING TO THE**  
**VIOLATION OF SECTION 304(c) OF EPCRA – SERC**

31. The factual allegations contained in Paragraphs 5 through 30 of this CA/FO are incorporated by reference herein as though fully set forth at length.

32. Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), as implemented by 40 C.F.R. Part 355, Subpart C, requires, in relevant part, that, when there has been a release of a hazardous substance or an EHS in a quantity equal to or greater than the RQ from a facility at which hazardous chemicals are produced, used, or stored, the owner or operator of that facility must provide a written follow-up report regarding the release to the SERC as soon as practicable.

33. The Release constitutes a release of a hazardous substance in a quantity equal to or exceeding its RQ requiring immediate notification of the SERC pursuant to Section 304(a) and (b) of EPCRA, 42 U.S.C. § 11004(a) and (b), and 40 C.F.R. Part 355, Subpart C, and, consequently, requiring submission of a written follow-up report to the SERC pursuant to Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), and 40 C.F.R. Part 355, Subpart C.

34. Respondent did not provide a written follow-up report regarding the Release to the SERC, as required by Section 304(c) of EPCRA, as implemented by 40 C.F.R. Part 355, Subpart C.

**CONCLUSION OF LAW RELATED TO THE  
VIOLATION OF SECTION 304(c) OF EPCRA – SERC**

35. Respondent's failure to submit a follow-up report to the SERC for the Release is a violation of Section 304(c) of EPCRA, 42 U.S.C. § 11004(c). Respondent is, therefore, subject to the assessment of penalties under Section 325(b) of EPCRA, 42 U.S.C. § 11045(b).

**COUNT 4**  
**FINDINGS OF FACT RELATING TO THE  
VIOLATION OF SECTION 304(c) OF EPCRA – LEPC**

36. The factual allegations contained in Paragraphs 5 through 35 of this CA/FO are incorporated by reference herein as though fully set forth at length.

37. Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), as implemented by 40 C.F.R. Part 355, Subpart C, requires, in relevant part, that, when there has been a release of a hazardous substance or an EHS in a quantity equal to or greater than the RQ from a facility at which hazardous chemicals are produced, used, or stored, the owner or operator of that facility must provide a written follow-up report regarding the release to the LEPC as soon as practicable.

38. The Release constitutes a release of a hazardous substance in a quantity equal to or exceeding its RQ requiring immediate notification of the LEPC pursuant to Section 304(a) and (b) of EPCRA, 42 U.S.C. § 11004(a) and (b), and 40 C.F.R. Part 355, Subpart C, and, consequently, requiring submission of a written follow-up report to the LEPC pursuant to Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), and 40 C.F.R. Part 355, Subpart C.

39. Respondent did not provide a written follow-up report regarding the Release to the LEPC, as required by Section 304(c) of EPCRA, as implemented by 40 C.F.R. Part 355, Subpart C.

**CONCLUSION OF LAW RELATED TO THE  
VIOLATION OF SECTION 304(c) OF EPCRA – LEPC**

40. Respondent's failure to submit a follow-up report to the LEPC is a violation of Section 304(c) of EPCRA, 42 U.S.C. § 11004(c). Respondent is, therefore, subject to the assessment of penalties under Section 325(b) of EPCRA, 42 U.S.C. § 11045(b).

**SETTLEMENT**

41. In full and final settlement and resolution of all allegations referenced in the foregoing findings of fact and conclusions of law, and in full satisfaction of all civil penalty claims pursuant thereto, for the purpose of this proceeding, the Respondent consents to the assessment of a civil penalty for the violations of Section 103 of CERCLA, 42 U.S.C. § 9603, in the amount of **\$11,091** ("CERCLA civil penalty"); and Section 304(a) and (b) of EPCRA, 42 U.S.C. § 11004(a) and (b), and Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), set forth above, in the amount of **\$33,274** ("EPCRA civil penalty"), for a total penalty of **\$44,365**.

**PAYMENT TERMS**

42. The CERCLA and EPCRA civil penalties shall become due and payable on the date on which a copy of the CAFO is mailed or hand-delivered to Respondent. In order to avoid the assessment of interest, administrative costs, and late payment penalties in connection with the civil penalties described in this CAFO, Respondent shall pay the CERCLA civil penalty of **\$11,091**, and the EPCRA civil penalty of **\$33,274** no later than thirty (30) days after the date on which a copy of the CAFO is mailed or hand-delivered to Respondent, by either cashier's check, certified check, or electronic wire transfer, as set forth in the following paragraphs.

43. Payment of the **CERCLA civil penalty** shall be made in the following manner:
- a. All payments by Respondent shall reference Respondent's name and address, and the Docket Number of this action, **CERC-03-2019-0015**;
  - b. All checks shall be made payable to **EPA-Hazardous Substances Superfund**;
  - c. All payments made by check and sent by regular mail shall be addressed to:

U.S. EPA  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979076  
St. Louis, MO 63197-9000  
Contact: Craig Steffen (513-487-2091)

- d. All payments made by check and sent by overnight delivery service shall be addressed for delivery to:

U.S. EPA  
Government Lockbox 979076  
1005 Convention Plaza  
SL-MO-C2GL  
St. Louis, MO 63101  
Contact: 314-418-1028

- e. All payments made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

Cincinnati Finance  
U.S. EPA, MS-NWD  
26 W. M.L. King Drive  
Cincinnati, OH 45268-0001

- f. All payments made by electronic wire transfer shall be directed to:

Federal Reserve Bank of New York  
ABA = 021030004  
Account No. = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, NY 10045  
Field Tag 4200 of the Fedwire message should read:  
D 68010727 Environmental Protection Agency

- g. All electronic payments made through the Automated Clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

US Treasury REX / Cashlink ACH Receiver  
ABA = 051036706  
Account No.: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22 - Checking

Physical location of U.S. Treasury facility:  
5700 Rivertech Court  
Riverdale, MD 20737  
Contact: Randolph Maxwell 202-874-3720  
or REX, 1-866-234-5681



- h. On-Line Payment Option:

WWW.PAY.GOV/PAYGOV

Enter sfo 1.1 in the search field. Open and complete the form.

- i. Additional payment guidance is available at:

<https://www.epa.gov/financial/makepayment>

44. Payment of the **EPCRA civil penalty** shall be made in the following manner:

- a. All payments by Respondent shall reference Respondent's name and address, and the Docket Number of this action, **EPCRA-03-2019-0015**;
- b. All checks shall be made payable to **United States Treasury**;
- c. All payments made by check and sent by regular mail shall be addressed to:

U.S. EPA  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000  
Contact: Craig Steffen (513-487-2091)

- d. All payments made by check and sent by overnight delivery service shall be addressed for delivery to:

U.S. EPA  
Government Lockbox 979077  
1005 Convention Plaza  
SL-MO-C2GL  
St. Louis, MO 63101  
Contact: 314-418-1028

- e. All payments made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

Cincinnati Finance  
U.S. EPA, MS-NWD  
26 W. Martin Luther King Drive, MS-002  
Cincinnati, OH 45268-0001

- f. All payments made by electronic wire transfer shall be directed to:

Federal Reserve Bank of New York  
ABA = 021030004  
Account No. = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, NY 10045

Field Tag 4200 of the Fedwire message should read:  
D 68010727 Environmental Protection Agency

- g. All electronic payments made through the Automated Clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

US Treasury REX /Cashlink ACH Receiver  
ABA = 051036706  
Account No.: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22 - Checking

Physical location of U.S. Treasury facility:  
5700 Rivertech Court  
Riverdale, MD 20737  
Contact: Randolph Maxwell 202-874-3720  
or REX, 1-866-234-5681

- h. On-Line Payment Option:

WWW.PAY.GOV/PAYGOV

Enter sfo 1.1 in the search field. Open and complete the form.

- i. Additional payment guidance is available at:

<https://www.epa.gov/financial/makepayment>

45. Respondent shall submit copies of the check, or verification of wire transfer or ACH, to the following persons:

Regional Hearing Clerk  
U.S. EPA, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029  
R3\_Hearing\_Clerk@epa.gov

and

Cynthia T. Weiss (3RC42)  
Assistant Regional Counsel  
U.S. EPA, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029  
weiss.cynthia@epa.gov

46. The CERCLA civil penalty and EPCRA civil penalty stated herein are based upon Complainant's consideration of a number of factors, including, but not limited to, the following: the nature, circumstances, extent and gravity of the violation, and with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit (if any) resulting from the violation, and such matters as justice may require. The penalty is consistent with 40 C.F.R. Part 19 and the *Enforcement Response Policy for Sections 304, 311 and 312 of the Emergency Planning and Community Right-to-Know Act and Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act* (September 30, 1999).

47. 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 CA/FO shall result in the assessment of late payment charges, including interest, penalties, and/or administrative costs of handling delinquent debts.

48. Interest on the civil penalties assessed in this CA/FO will begin to accrue on the date that a copy of this fully executed CA/FO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalties 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).

49. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue in accordance with 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's Resources Management Directives - Cash Management, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period and an additional \$15.00 for each subsequent thirty (30) day period the penalties remain unpaid.

50. A penalty charge of six (6) percent per year will be assessed monthly on any portion of the civil penalties which remain delinquent more than ninety (90) calendar days in accordance with 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent, in accordance with 31 C.F.R. § 901.9(d).

51. Failure by the Respondent to pay the CERCLA civil penalty and the EPCRA civil penalty assessed by the Final Order in full in accordance with this CA/FO may subject Respondent to a civil action to collect the assessed penalties, plus interest, pursuant to Section 109 of CERCLA, 42 U.S.C. § 9609, and Section 325 of EPCRA, 42 U.S.C. § 11045. In any such collection action, the validity, amount and appropriateness of the penalty shall not be subject to review.

**GENERAL PROVISIONS**

52. For the purpose of this proceeding, Respondent expressly waives its right to a hearing and to appeal the Final Order under to Section 109 of CERCLA, 42 U.S.C. § 9609, and Section 325 of EPCRA, 42 U.S.C. § 11045.

53. The provisions of the CA/FO shall be binding upon Respondent, its officers, directors, agents, servants, employees, and successors or assigns. By his or her signature below, the person signing this Consent Agreement on behalf of the Respondent is acknowledging that he or she is fully authorized by the party represented to execute this Consent Agreement and to legally bind Respondent to the terms and conditions of the Consent Agreement and accompanying Final Order.

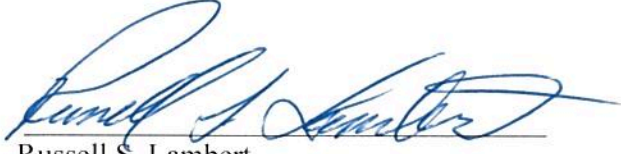
54. This CA/FO resolves only those civil claims which are alleged herein. Nothing herein shall be construed to limit the authority of the Complainant to undertake action against any person, including the Respondent, in response to any condition which Complainant determines may present an imminent and substantial endangerment to the public health, public welfare or the environment. Nothing in this CA/FO shall be construed to limit the United States' authority to pursue criminal sanctions.

55. Each party to this action shall bear its own costs and attorney's fees.

Independence Coal Company, LLC

EPA Docket Nos. CERC-03-2019-0015  
EPCRA-03-2019-0015

FOR INDEPENDENCE COAL COMPANY, LLC.



Russell S. Lambert  
President

10/19/18  
DATE

Independence Coal Company, LLC

EPA Docket Nos. CERC-03-2019-0015  
EPCRA-03-2019-0015

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY



\_\_\_\_\_  
Karen Melvin, Director  
Hazardous Site Cleanup Division

00T 30 2018

\_\_\_\_\_  
DATE



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
 REGION III  
 1650 Arch Street  
 Philadelphia, Pennsylvania 19103-2029

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Respondent.	)	
	)	Proceedings Pursuant to Sections 103 and
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Route 85	)	Response, Compensation and Liability
Madison, West Virginia 25130,	)	Act, 42 U.S.C. §§ 9603 and 9609, and
Latitude: 37.988217	)	Sections 304 and 325 of the Emergency
Longitude: -81.749583,	)	Planning and Community Right-to-Know
	)	Act, 42 U.S.C. §§ 11004 and 11045
Facility.	)	
	)	

**FINAL ORDER**


Complainant, the Director of the Hazardous Site Cleanup Division, U.S. Environmental Protection Agency, Region III, and Respondent, Independence Coal Company, LLC, have executed a document entitled "Consent Agreement," which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22 (with specific reference to Sections 22.13(b) and 22.18(b)(2) and (3)). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.

Based upon the representations of the parties in the attached Consent Agreement, the penalty agreed to therein is based upon consideration of, *inter alia*, EPA's *Enforcement Response Policy for Sections 304, 311 and 312 of the Emergency Planning and Community Right-to-Know Act and Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act* (September 30, 1999), and the Section 325(c) of the Emergency Planning and Community Right-to-Know Act ("EPCRA"), 42 U.S.C. § 11045(c).

**NOW, THEREFORE, PURSUANT TO** Section 109 of CERCLA, 42 U.S.C. § 9609, Section 325 of EPCRA, 42 U.S.C. § 11045, and Section 22.18(b)(3) of the Consolidated Rules of Practice, **IT IS HEREBY ORDERED** that Respondent pay a civil penalty in the amount of **FORTY-FOUR THOUSAND THREE HUNDRED SIXTY-FIVE DOLLARS (\$44,365)** in accordance with the payment provisions set forth in the Consent Agreement, and comply with the terms and conditions of the Consent Agreement.

The effective date of the attached Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

Oct. 31, 2018  
Date

  
\_\_\_\_\_  
Joseph J. Lisa  
Regional Judicial and Presiding Officer  
U.S. EPA, Region III



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III**

<b>In the Matter of</b>	)	<b>U.S. EPA Docket Nos.:</b>
	)	<b>CERC-03-2019-0015</b>
<b>Independence Coal Company, LLC</b>	)	<b>EPCRA-03-2019-0015</b>
<b>782 Robinson Creek Road</b>	)	
<b>Madison, West Virginia 25130,</b>	)	
	)	
<b>Respondent.</b>	)	
	)	<b>Proceedings Pursuant to Sections 103 and</b>
<b>Justice No. 1 Deep Mine Treatment Area</b>	)	<b>109 of the Comprehensive Environmental</b>
<b>Route 85</b>	)	<b>Response, Compensation and Liability</b>
<b>Madison, West Virginia 25130,</b>	)	<b>Act, 42 U.S.C. §§ 9603 and 9609, and</b>
<b>Latitude: 37.988217</b>	)	<b>Sections 304 and 325 of the Emergency</b>
<b>Longitude: -81.749583,</b>	)	<b>Planning and Community Right-to-Know</b>
	)	<b>Act, 42 U.S.C. §§ 11004 and 11045</b>
<b>Facility.</b>	)	
	)	

**CERTIFICATE OF SERVICE**

I certify that on OCT 31 2018, the original and one (1) copy of the foregoing ***Consent Agreement and Final Order***, were filed with the EPA Region III Regional Hearing Clerk. I further certify that on the date set forth below, I served a true and correct copy of the foregoing to each of the following persons, in the manner specified below, at the following addresses:

Copy served via Overnight Mail, to:

M. Shane Harvey, Esq.  
Jackson Kelly PLLC  
500 Lee Street East, Suite 1600  
Charleston, WV 25301-3202

Copies served via Hand Delivery or Inter-Office Mail to:

Cynthia T. Weiss, Esquire  
Senior Assistant Regional Counsel  
ORC – 3RC42  
U.S. EPA, Region III  
1650 Arch Street  
Philadelphia, PA 19103

Perry Pandya  
EPCRA Coordinator  
Oil and Prevention Branch – 3HS61  
U.S. EPA, Region III  
1650 Arch Street  
Philadelphia, PA 19103

Dated: OCT 31 2018

Bevin Esposito  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region III

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