



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

SEP 30 2014

CERTIFIED MAIL 7010 1060 0002 1705 9490  
RETURN RECEIPT REQUESTED

Mr. John G. Horne, II  
Legal Counsel  
Dinsmore & Shohl LLP  
314 West Main Street  
Frankfort, Kentucky 40601


Re: Consent Agreement and Final Order No.: CWA-04-2014-4514(b)  
National Pollutant Discharge Elimination System Permit No.: KY0023965  
Coal Operators 1, LLC, Coal Essence Branch Preparation Plant  
Pikeville, Kentucky

Dear Mr. Horne:

Enclosed please find a fully executed copy of the Consent Agreement and Final Order, finalized by the U.S. Environmental Protection Agency Region 4 and the Regional Administrator. Please make note of the provisions under Paragraph IV. Payment.

Should you have any questions or concerns regarding this matter, please contact Mr. Humberto Guzman at (404) 562-8942 or via email at [guzman.humberto@epa.gov](mailto:guzman.humberto@epa.gov).

Sincerely,

  
James D. Giattina  
Director  
Water Protection Division

Enclosure

cc: Mr. Jeff Cummins  
Kentucky Department of Environmental Protection

Mr. Wes Jones  
Kentucky Department for Natural Resources

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4

RECEIVED  
EPA REGION IV

2014 SEP 30 PM 2:44

HEARING CLERK

IN THE MATTER OF:

)  
) CONSENT AGREEMENT AND  
) FINAL ORDER

COAL OPERATORS 1, LLC  
COAL ESSENCE PREPARATION PLANT,  
PIKEVILLE, KENTUCKY

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)  
)  
)

RESPONDENT.

) DOCKET NO. CWA-04-2014-4514(b)

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CONSENT AGREEMENT

I. Statutory Authority

1. This is a civil penalty proceeding pursuant to Section 309(g)(2)(B) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(g)(2)(B), 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*, published at 64 Fed. Reg. 40176 (July 23, 1999) and codified at 40 Code of Federal Regulations ("C.F.R.") Part 22.

2. The authority to take action under Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), is vested in the Administrator of the United States Environmental Protection Agency ("EPA"). The Administrator has delegated this authority to the Regional Administrator for EPA Region 4, who in turn has delegated this authority to the Director of the Water Protection Division for EPA, Region 4 ("Complainant").

II. Allegations

3. Coal Operators 1, LLC ("Respondent") is a corporation existing under the laws of the Commonwealth of Kentucky and is a "person" within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

4. At all times relevant to this action, Respondent owned and/or operated a coal preparation plant, the Coal Essence Preparation Plant, formerly known as the Viking Preparation Plant ("Facility"), located at 710 Millard Lane in Pikeville, Kentucky.

5. To accomplish the objectives of the CWA, defined in Section 101(a) of the CWA, 33 U.S.C. § 1251(a), to restore and maintain the chemical, physical and biological integrity of the nation's waters, Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants by any person into waters of the United States except as in compliance with a National Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

6. The Kentucky Department for Environmental Protection Division issued Permit No. KY0023965 (the Permit) to the Respondent for the coal preparation plant on June 13, 2011, and it became effective July 1, 2011.

7. On May 5 and May 8, 2012, EPA performed a Compliance Sampling Inspection ("CSI") at the Respondent's coal preparation plant. A Compliance Evaluation Inspection ("CEI") was conducted on July 17-19, 2012. The inspections were performed pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

8. During the CSI and CEI, EPA observed the following:

- A. On July 18, 2012, EPA observed dark-brown to black stormwater runoff from the coal refuse pile area and the haul road directly flowing into Hopkins Creek.
- B. The Respondent's Best Management Practices Plan ("BMPP"), dated May 15, 2012, does not contain information about inspection records, inspection procedures and frequencies, or identify the location of where these records will be stored.
- C. The plant is permitted for 3 representative outfalls to Hopkins Creek in accordance with Section 1.1 of the Permit, but a 4<sup>th</sup> unpermitted outfall was observed in May 2012.
- D. The Respondent did not submit a Quality Assurance Project Plan ("QAPP") to KDEP Department of Water (DOW) until January 12, 2012. This was six (6) months after issuance of the NPDES permit.
- E. The Respondent did not report oil and grease analytical data on the Discharge Monitoring Reports ("DMRs") from July 2011 to May 2012.
- F. The Respondent did not report total dissolved solids and total hardness on the DMRs from July 2011 to December 2011.
- G. The permittee did not at all times properly operate and maintain all facilities and systems of treatment and control.

- i. Coal and coal dust were observed on the road adjacent to the loading/unloading area, and on the road entering the refuse pile area. At both locations, the road is adjacent to Hopkins Creek and a source of stormwater runoff.
- ii. Many of the berms adjacent to Hopkins Creek are not vegetated and are sources of sediment pollution from stormwater runoff. Soil erosion from the banks of Hopkins Creek, near the sediment pond at Outfall #4, was observed.

9. Respondent has discharged pollutants in violation of the effluent limitations established in its Permit in 4 instances during the period from October 2011 through May 2012. Effluent parameters violated include Manganese and Iron.

- A. DMR data for October 2011 at KPDES outfall 001 (possibly 002) shows the monthly average concentration of 35 milligrams per liter (mg/L) and the daily maximum of 70 mg/L for total suspended solids were exceeded at 41 mg/L and 81mg/L respectively.
- B. DMR data for November 2011 at KPDES outfall 004 (pond SS-B) shows the monthly average concentration of 2.0 milligrams per liter (mg/L) for total recoverable manganese was exceeded at 2.07 mg/L.
- C. DMR data for February 2012 at KPDES outfall 004 (pond SS-B) shows the daily maximum concentration of 4.0 mg/L for total recoverable iron was exceeded at 4.2 mg/L.
- D. DMR data for May 2012 at KPDES outfall 004 (pond SS-B) shows the monthly average concentration of 2.0 mg/L for total recoverable manganese was exceeded at 2.2 mg/L.

10. On January 22, 2014, the EPA and the Respondent agreed to an Administrative Order on Consent (“AOC”) No. CWA-04-2013-4759, requiring Respondent to comply with the Permit and the following corrective actions within certain specified timeframes.

- A. Revise the BMPP, so that it is specific to the Coal Operators facility and includes information about inspection records, inspection procedures and frequencies, or identify the location of where these records will be stored, as required by the KPDES permit Sections 3.1.1.5.4 and 3.1.1.5.7 of the Permit. Include in the BMPP the established protocols, procedures, and a schedule of review for the evaluation of the effectiveness of the selected BMPs, as required by Section 3.1.1.5.5 of the Permit. To date, Respondent has submitted a revised BMPP to the EPA, which appears to comply with the terms of the AOC.
- B. Implement the BMPP for the control of acid mine drainage, conductivity, total dissolved solids and sediment released from the operation, in accordance to Section 3.1 of the Permit. The BMPP shall address the use, storage, and disposal

of petroleum-based products, toxic or hazardous substances. Discharges of hazardous substances from the facility, which are not permitted, shall cease. Provide written documentation and photographs showing that the Respondent has implemented erosion prevention measures; sediment control measures; fill minimization and optimization measures; and other site specific management practices that are protective of the in-stream water quality and the receiving waters affected by the mining operation. To date, Respondent has submitted photographs and inspection reports to the EPA that seem to indicate that Respondent has implemented the above measures in accordance with the AOC.

### **III. Stipulations and Findings**

11. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 C.F.R. § 22.13(b), this Consent Agreement and Final Order ("CA/FO") will simultaneously commence and conclude this matter.

12. For the purposes of this CA/FO, Respondent neither admits or denies the jurisdictional allegations set out above, and neither admits or denies the factual allegations set out above.

13. Respondent hereby waives its right to contest the allegations set out above and its right to appeal the Final Order accompanying this Consent Agreement.

14. Respondent consents to the assessment of and agrees to pay the civil penalty as set forth in this CA/FO and consents to the other conditions set forth in this CA/FO.

15. By signing this CA/FO, Respondent certifies that the information it has supplied concerning this matter was at the time of submission, and is, truthful, accurate and complete for each such submission, response and statement. Respondent realizes that there are significant penalties for submitting false or misleading information, including the possibility of fines and/or imprisonment for knowing submission of such information.

16. The EPA reserves the right to assess and collect any and all civil penalties for any violation described herein to the extent that any information or certification provided by Respondent was materially false or inaccurate at the time such information or certification was provided to the EPA.

17. Complainant and Respondent agree to settle this matter by their execution of this CA/FO. The parties agree that the settlement of this matter is in the public interest and that this CA/FO is consistent with the applicable requirements of the CWA.

#### **IV. Payment**

18. Pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), and 40 C.F.R. Part 19, and considering the nature of the violations and other relevant factors, the EPA has determined that one hundred and ten thousand dollars (\$110,000.00) is an appropriate civil penalty to settle this action. This payment may be made in installments, with interest accruing on installment payments at an interest rate of 1%, the current value of funds rate established by the U.S. Treasury. The total civil penalty amount (with interest added to the installment payments) is \$110,549.08, and shall be paid in accordance with Paragraph 19, below.

19. Respondent shall submit an initial payment of the penalty in the amount of \$36,849.69, within sixty (60) days of the effective date of this CA/FO, a first installment of the penalty in the amount of \$36,849.69 six months after the effective date of this CA/FO, and a second installment of the penalty in the amount of \$36,849.70 twelve months after the effective date of this CA/FO, all to be paid via wire transfer, in accordance with Attachment A of this CA/FO, or a cashier's or certified check, payable to the order of "Treasurer, United States of America". The checks shall reference on its face the name of Respondent and the Docket Number of this CA/FO. Such payments shall be tendered to:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, Missouri 63197-9000

20. At the time of each payment, Respondent shall send a separate copy of the check, and a written statement that payment has been made in accordance with this CA/FO, to the following persons at the following addresses:

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

and

Mary Mattox  
U.S. Environmental Protection Agency, Region 4  
Water Protection Division  
Clean Water Enforcement Branch  
Municipal and Industrial Enforcement Section  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

21. The penalty amount specified above shall represent civil penalties assessed by the EPA and shall not be deductible for purposes of federal taxes.

22. Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), failure by Respondent to pay the penalty assessed by the CA/FO in full by its due date may subject the Respondent to a civil action to collect the assessed penalty plus interest (at currently prevailing rates from the effective date of this CA/FO), attorney's fees, costs for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to twenty percent (20%) of the aggregate amount of such penalty and nonpayment penalty which are unpaid as of the beginning of such quarter. In any such collection action, the validity, amount and appropriateness of the penalty and of this CA/FO shall not be subject to review.

#### **V. General Provisions**

23. This CA/FO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit. Other than as expressed herein, compliance with this CA/FO shall not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by the EPA.

24. Nothing in this CA/FO shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions available by virtue of Respondent's violation of this CA/FO or of the statutes and regulations upon which this CA/FO is based, or for Respondent's violation of any federal or state statute, regulation or permit.

25. Except as otherwise set forth herein, this CA/FO constitutes a settlement by Complainant and Respondent of all claims for civil penalties pursuant to the CWA with respect to only those violations alleged in this CA/FO. Except as otherwise set forth herein, compliance with this CA/FO shall resolve the allegations of violations contained herein. Nothing in this CA/FO is intended to nor shall be construed to operate in any way to resolve any criminal liability of Respondent, or other liability resulting from violations that were not alleged in this CA/FO. Other than as expressed herein, Complainant does not waive any right to bring an enforcement action against Respondent for violation of any federal or state statute, regulation or permit, to initiate an action for imminent and substantial endangerment or to pursue criminal enforcement.

26. Each undersigned representative of the parties to this CA/FO certifies that he or she is fully authorized to enter into the terms and conditions of this CA/FO and to execute and legally bind that party to it.

27. This CA/FO applies to and is binding upon Respondent and its officers, directors, employees, agents, successors and assigns.

28. Any change in the legal status of Respondent, including but not limited to any transfer of assets of real or personal property, shall not alter Respondent's responsibilities under this CA/FO.

29. Each party shall bear its own costs and attorney's fees in connection with the action resolved by this CA/FO.

30. In accordance with 40 C.F.R. § 22.5, the individuals below are authorized to receive service relating to this proceeding.

For Complainant:

Ms. Kavita K. Nagrani  
Associate Regional Counsel  
Office of Environmental Accountability  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960  
(404) 562-9697

For Respondent:

John G. Horne, II  
Legal Counsel  
Dinsmore & Shohl LLP  
314 West Main Street  
Frankfort, KY 40601

31. The parties acknowledge and agree that this CA/FO is subject to the requirements of 40 C.F.R. § 22.45(c)(4), which provides a right to petition to set aside a consent agreement and proposed final order based on comments received during the public comment period.

32. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and 40 C.F.R. § 22.38(b), Complainant represents that the Commonwealth of Kentucky was provided a prior opportunity to consult with Complainant regarding this matter.

33. Effective upon signature of this CA/FO by Respondent, Respondent agrees that the time period commencing on the date of its signature and ending on the date the EPA receives from Respondent the payment required by this CA/FO shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by the EPA related to the matters addressed in this CA/FO and that, in any action brought by the EPA related to the matters addressed, Respondent will not assert, and may not maintain, any defense or claim based upon principles of statute of limitations, waiver, laches, estoppel, or other defense based on the passage of time during such period. If EPA gives notice to Respondent that it will not make this CA/FO effective, the statute of limitations shall begin to run again commencing ninety days after the date such notice is sent by the EPA.

#### **VI. Effective Date**

34. The effective date of this CA/FO shall be the date on which the CA/FO is filed with the Regional Hearing Clerk



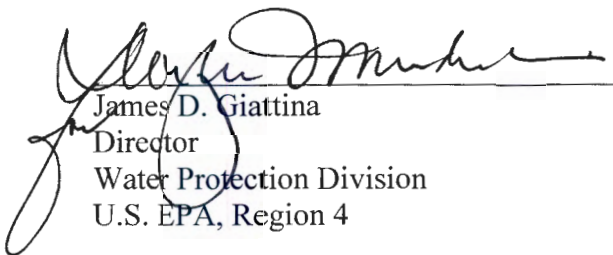
**For RESPONDENT, COAL OPERATORS 1, LLC:**

  
Richard Thacker, Manager  
Coal Operators 1, LLC

Date: 8-20-14

**AGREED AND CONSENTED TO:**

**For COMPLAINANT, U.S. ENVIRONMENTAL PROTECTION AGENCY:**

  
James D. Giattina  
Director  
Water Protection Division  
U.S. EPA, Region 4

Date: SEP 30 2014

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4

IN THE MATTER OF:

)  
) CONSENT AGREEMENT AND  
) FINAL ORDER

COAL OPERATORS 1, LLC  
COAL ESSENCE PREPARATION PLANT,  
PIKEVILLE, KENTUCKY

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RESPONDENT.

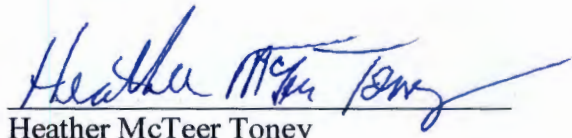
) DOCKET NO. CWA-04-2014-4514(b)  
)

FINAL ORDER

In accordance with 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*, 40 C.F.R. Part 22, and authorities delegated to me, the forgoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. Pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), Respondent is hereby ordered to comply with the terms of the foregoing Consent Agreement.

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: SEP 30 2014



Heather McTeer Toney  
Regional Administrator  
U.S. EPA Region 4

**CERTIFICATE OF SERVICE**

The undersigned certifies that a true and correct copy of the attached **CONSENT AGREEMENT AND FINAL ORDER** in the matter of **Coal Operators 1, LLC.**, Docket No. **CWA-04-2014-4514(b)** (filed with the Regional Hearing Clerk on 9-30, 2014), was served on 9-30, 2014, in the manner specified to each of the persons listed below.

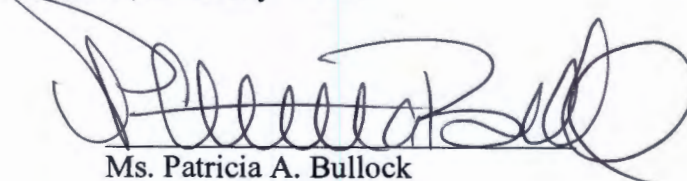
By hand-delivery:

Kavita K. Nagrani  
Associate Regional Counsel  
Office of Environmental Accountability  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960  
(404) 562-9697

By certified mail,  
return receipt requested:

John G. Horne, II  
Legal Counsel  
Dinsmore & Shohl LLP  
314 West Main Street  
Frankfort, KY 40601  
(502) 352-4615

Jeff Cummins, Director  
Division of Enforcement  
Kentucky Department for Environmental Protection  
300 Fair Oaks Lane  
Frankfort, Kentucky 40601



Ms. Patricia A. Bullock  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 4  
Sam Nunn Federal Center  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960  
(404) 562-9511

**ATTACHMENT A**  
**COLLECTION INFORMATION**

**WIRE TRANSFERS:**

Wire transfers 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 NY 10045

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

**EPA ACCOUNTS RECEIVABLE CONTROL NUMBER FORM**  
=====

**TO BE COMPLETE BY ORIGINATING OFFICE:**

(attach a copy of the final order and transmittal letter to Defendant/Respondent)

This form was originated by: Mary Mattox 9/2/14  
[Name] [Date]  
in the WPD/CWEB/Municipal and Industrial Section at 404-562-9733  
[Office] [Telephone Number]

- |  |  |
|--|--|
| <input type="checkbox"/> Non-SF Judicial Order/Consent Decree.<br>USAO COLLECTS. | <input checked="" type="checkbox"/> Administrative Order/Consent Agreement.<br>FMS COLLECTS PAYMENT. |
| <input type="checkbox"/> SF Judicial Order/Consent Decree.<br>FMS COLLECTS.      | <input type="checkbox"/> Other Receivables   |
| <input type="checkbox"/> This is an original debt.                               | <input type="checkbox"/> This is a modification.   |

PAYEE: Coal Operators 1, LLC, Coal Essence Preparation Plant, Pikeville, KY  
[Name of person and/or Company/Municipality making the Payment]

The Total Dollar Amount of Receivable: \$ 110,000  
[If in installments, attach schedule of amounts and respective due dates]

The Case Docket Number: CWA-04-2014-4514(b)

The Site-Specific Superfund (SF) Account Number: \_\_\_\_\_

The Designated Regional/Headquarters Program Office: Region 4 Water Protection Division

=====

**TO BE COMPLETED BY LOCAL FINANCIAL MANAGEMENT SECTION:**

The IFMS Accounts Receivable Control Number is: \_\_\_\_\_  
If you have any questions call: \_\_\_\_\_ in the Financial Management Section,  
Telephone Number: \_\_\_\_\_

=====

**DISTRIBUTION:**

A. JUDICIAL ORDERS: Copies of this form with an attached copy of the front page of the FINAL JUDICIAL ORDER should be mailed to:

- |  |   |
|--|---|
| 1. Debt Tracking Officer<br>Environmental Enforcement Section<br>Department of Justice/RH 1647<br>P.O. BOX 7611, Benjamin Franklin Station<br>Washington, DC 20044 | 2. Originating Office (ORC)<br>3. Designated Program Office |
|--|---|

B. ADMINISTRATIVE ORDERS: Copies of this form with an attached copy of the front page of the ADMINISTRATIVE ORDER should be sent to:

- |  |   |
|--|---|
| 1. Originating Office<br>3. Regional Hearing Clerk | 2. Designated Program Office<br>4. Regional Counsel |
|--|---|