



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

MAR 29 2013

CERTIFIED MAIL 7012 1010 0001 8097 3697
RETURN RECEIPT REQUESTED

Mr. John A. Collins
President, Licking River Resources Inc.
P.O. Box 637
West Liberty, Kentucky 41472


Re: Consent Agreement and Final Order No. CWA 04-2013-4503(b)
National Pollutant Discharge Elimination System Permit No. KY0106518
Surface Mining Control Reclamation Act Permit 877-8011
Licking River Resources Inc., Mullins Branch Preparation Plant
Breathitt/Magoffin Counties, Kentucky

Dear Mr. Collins:

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.

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

IN THE MATTER OF:

LICKING RIVER RESOURCES, INC.
MULLINS BRANCH PREPARATION PLANT,
BREATHIT/MAGOFFIN COUNTIES,
KENTUCKY,

RESPONDENT.

)
) CONSENT AGREEMENT AND
) FINAL ORDER
)
)
)
)
)
)
) DOCKET NO. CWA-04-2013-4503(b)

RECEIVED
EPA REGION IV
2013 MAR 29 AM 10:40
HEARING CLERK

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. Licking River Resources, Inc. ("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, known as the Mullins Branch Preparation Plant ("Facility"), located generally at Route 1635, Magoffin/Breathitt Counties, 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. Section 402 of the CWA, 33 U.S.C. § 1342, establishes an NPDES Permit Program authorizing the EPA or authorized states to administer the NPDES Permit Program, including the issuance of NPDES permits allowing for the discharge of pollutants into navigable waters subject to specific terms and conditions. The EPA has granted the Commonwealth of Kentucky through the Department for Environmental Protection ("KDEP") authority to issue NPDES permits (referred to as Kentucky Pollutant Discharge Elimination System, or "KPDES" permits) pursuant to Section 402(b) of the CWA. KDEP is responsible for the enforcement of Ky. Rev. Stat. Ch. 224 and 401 Ky. Admin. Regs. 5:065.

7. Respondent submitted an application to KDEP for a KPDES Permit dated May 9, 2006 in accordance with the provisions of the Ky. Rev. Stat. Ch. 224 and the CWA.

8. Respondent began its operations, including construction of the Facility, in March 2008, prior to KDEP's issuance of a KPDES permit for the Facility.

9. Respondent operates the Facility under Surface Mining Control and Reclamation Act ("SMCRA") Permit No. 877-8011, issued by the Kentucky Department of Natural Resources ("KDNR") effective March 10, 2008. Respondent's SMCRA Permit No. 877-8011 requires Respondent to, *inter alia*, submit copies of its Discharge Monitoring Reports ("DMRs") to KDNR for any wastewater discharge from the Facility.

10. Respondent provided the Kentucky Department of Natural Resources ("KDNR"), Division of Mine Reclamation and Enforcement, copies of Discharge Monitoring Reports ("DMRs") for the periods covering December 2008 through December 2010, containing effluent monitoring data of wastewater discharges from the Facility into Mullins Branch of Betts Mann Branch of Hawes Fork of Quicksand Creek of the North Fork of the Kentucky River, which are all waters of the United States.

11. KDNR conducted an inspection of the Facility on April 27, 2010, and issued a Notice of Violation ("NOV") dated May 4, 2010, noting that the Facility initiated mining activities prior to obtaining a KPDES Permit. The NOV required Respondent to obtain its KPDES permit.

12. In or around April 2010, KDEP provided the EPA with a draft of the KPDES permit for Respondent for the EPA's review and comment. The EPA provided KDEP with comments on the draft permit in or around July 2010.

13. On October 26, 2010, the EPA issued Administrative Order ("AO") No. CWA-04-2011-4752 to Respondent, requiring Respondent to cease all wastewater discharges from the Facility within seven (7) days of the receipt of the AO.

14. The EPA held a show cause meeting with Respondent on November 9, 2010, at which time Respondent stated it would cease its discharges. Respondent requested an extension of time to comply with the AO, which the EPA granted via letter dated November 17, 2010.

15. Respondent ceased its wastewater discharge from the Facility on November 25, 2010 after installing piping to divert wastewaters from Pond No. 1.

16. KDEP issued KPDES Permit No. KY0106518 to Respondent with an effective date of December 1, 2010, and an expiration date of November 30, 2015.

17. Respondent violated Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342, by discharging water associated with its coal preparation and mining activities into waters of the United States without required coverage under a KPDES permit.

III. Stipulations and Findings

18. 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.

19. For the purposes of this CA/FO, Respondent admits the jurisdictional allegations set out above and admits the factual allegations set out above.

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

21. 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.

22. 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.

23. 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.

24. 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

25. 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 sixty thousand dollars (\$60,000.00) is an appropriate civil penalty to settle this action.

26. Respondent shall submit payment of the penalty specified in the preceding paragraph within sixty (60) days of the effective date of this CA/FO via a cashier's or certified check, payable to the order of "Treasurer, United States of America". The check shall reference on its face the name of Respondent and the Docket Number of this CA/FO. Such payment shall be tendered to:

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

27. At the time of 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

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

29. 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

V. General Provisions

30. 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.

31. 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.

32. 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.

33. 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.

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

35. 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.

36. Each party shall bear its own costs and attorneys fees in connection with the action resolved by this CA/FO.

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

For Complainant:

Suzanne K. Armor
Associate Regional Counsel
Office of Environmental Accountability
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960
(404) 562-9701

For Respondent:

Dean K. Hunt
520 West Short Street
Lexington, Kentucky 40507-1252
(859) 252-3476

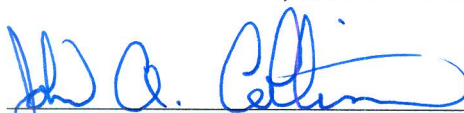
38. The parties acknowledge and agree that this CA/FO is subject to the requirements of 40 C.F.R. § 22.45(c)(4), which provides a right to petition to set aside a consent agreement and proposed final order based on comments received during the public comment period.

39. 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.

VI. Effective Date

40. 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, LICKING RIVER RESOURCES, INC.:

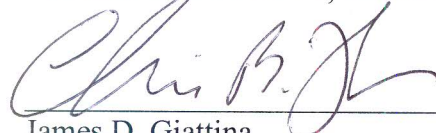


John A. Collins, President
Licking River Resources, Inc.

Date: 1/28/2013

AGREED AND CONSENTED TO:

For COMPLAINANT, U.S. ENVIRONMENTAL PROTECTION AGENCY:



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

Date: 3/22/2013

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

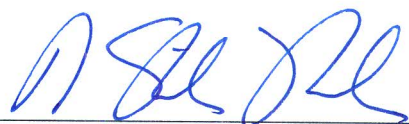
IN THE MATTER OF:)
) CONSENT AGREEMENT AND
) FINAL ORDER
)
LICKING RIVER RESOURCES, INC.)
MULLINS BRANCH PREPARATION PLANT,)
BREATHIT/MAGOFFIN COUNTIES,)
KENTUCKY,)
)
RESPONDENT.) DOCKET NO. CWA-04-2013-4503(b)
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FINAL ORDER

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: 3-28-2013



Gwendolyn Keyes Fleming
Regional Administrator

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the attached **CONSENT AGREEMENT AND FINAL ORDER** in the matter of **Licking River Resources Inc., Docket No. CWA-04-2013-4503(b)** (filed with the Regional Hearing Clerk on MAR 6 7 2013), was served on MAR 29 2013, in the manner specified to each of the persons listed below.

By hand-delivery:

Suzanne K. Armor
Associate Regional Counsel
Office of Environmental Accountability
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960
(404) 562-9701

By certified mail,
return receipt requested:

Dean K. Hunt
520 West Short Street
Lexington, Kentucky 40507-1252
(859) 252-3476

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