



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

1595 WYNKOOP STREET

DENVER, CO 80202-1129

Phone 800-227-8917

http://www.epa.gov/region08

2015 MAR 10 AM 8:41

FILED
EPA REGION VIII
HEARING CLERK

DOCKET NO.: CWA-08-2014-0037

IN THE MATTER OF:

BP AMERICA PRODUCTION COMPANY

RESPONDENT

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)

FINAL ORDER

Pursuant to 40 C.F.R. § 22.18(b)(2), of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order. The Respondent is hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondent of this Consent Agreement and Final Order.

SO ORDERED THIS 10th DAY OF March, 2015.

Elyana R. Sutin
Regional Judicial Officer

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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

FILED
EPA REGION VIII
HEARING CLERK

In the Matter of:)	
)	
)	
BP America Production Company,)	CONSENT AGREEMENT
)	
)	Docket No. CWA-08-2014-0037
Respondent.)	

The United States Environmental Protection Agency, Region 8 (EPA) and BP America Production Company (Respondent), by their undersigned representatives, hereby consent and agree as follows:

1. On September 30, 2014, the EPA issued a Complaint and Notice of Opportunity for Hearing (Complaint) alleging that the Respondent violated section 301(a) of the Clean Water Act (CWA), 33 U.S.C. § 1311(a), by discharging produced water from a pipeline into waters of the United States without a CWA permit. The Complaint proposed that the Respondent pay an administrative penalty for its violations, pursuant to section 309(g) of the CWA, 33 U.S.C. § 1319(g).

2. For purposes of this proceeding, the Respondent admits the jurisdictional allegations in paragraphs 1 and 2 of the Complaint and neither admits nor denies the specific factual allegations in paragraphs 3 through 28 of the Complaint.

3. The Respondent waives only its rights to contest the allegations in the Complaint with the EPA and to appeal any final order (Final Order) that an EPA Regional Judicial Officer may issue to approve this consent agreement (Agreement).

4. This Agreement, upon incorporation into a Final Order, is binding upon the EPA, the Respondent, and the Respondent's successors and assigns. Any change in ownership or corporate status of the Respondent, including, but not limited to, any transfer of assets or real or personal property, shall not alter the Respondent's responsibilities under this Agreement.

5. The Respondent agrees to pay a civil penalty in the amount of forty thousand dollars (\$40,000) in the manner described below:

- a. Payment shall be in a single payment of forty thousand dollars (\$40,000), due no later than 30 calendar days from the date of the Final Order. If the due date for the payment falls on a weekend or federal holiday, then the due date is the next business day. The date the payment is made is considered to be the date processed by U.S. Bank, as described below. Payment must be received by 11:00 a.m. Eastern Standard Time to be considered as received that day.
- b. The payment shall be made by remitting a check or by making a wire transfer or on-line payment. The check or other payment shall designate the name and docket number of this case, be in the amount stated in the preceding paragraph, and be payable to "Treasurer, United States of America."

If remitted by regular U.S. mail:

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

If remitted by any overnight commercial carrier:

U.S. Bank / Government Lockbox No. 979077
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, Missouri 63101
Contact: Craig Steffen, 513-487-2091 or steffen.craig@epa.gov.

If remitted by wire transfer: Any wire transfer must be sent directly to the Federal Reserve Bank in New York City using the following information:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

If remitted through the Automated Clearing House (ACH) for receiving US currency:

U.S. Treasury REX / Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 -- checking

Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, Maryland 20737

Contacts: John Schmid (202-874-7026) and REX (Remittance Express)
1-866-234-5681

If remitted on-line with a debit card or credit card: No user name, password, or account number is necessary for this option. On-line payment can be accessed via WWW.PAY.GOV, entering sfo 1.1 in the form search box on the left side of the screen, opening the form, and following the directions on the screen.

For additional information on making payments to the EPA: Please see <http://www.2.epa.gov/financial/makepayment>.

- c. At the time of payment, a copy of the check (or notification of other type of payment) shall be sent to:

Natasha Davis, Life Scientist (8ENF-W-NP)
U.S. EPA Region 8
1595 Wynkoop Street
Denver, Colorado 80202-1129

and

Tina Artemis, Regional Hearing Clerk (8RC)
U.S. EPA Region 8
1595 Wynkoop Street
Denver, Colorado 80202-1129

- d. If the payment is not received by the specified due date, interest accrues from the date of the Final Order, not the due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until payment in full is received (e.g., on the 1st late day, 30 days of interest will have accrued).
 - e. In addition, a handling charge of fifteen dollars (\$15) shall be assessed the 31st day from the date of the Final Order, and for each subsequent 30-day period that the debt, or any portion thereof, remains unpaid. In addition, a 6% per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 30 days of the due date. Payments are first applied to outstanding handling charges, 6% penalty interest, and late interest. The remainder is then applied to the outstanding principal amount.
 - f. The Respondent agrees that the penalty shall never be claimed as a federal or other tax deduction or credit.
6. In furtherance of the goals of the CWA, the Respondent shall complete a supplemental environmental project (SEP) as described below.
- a. The SEP will consist of creating a restoration plan for a target reach of the main stem of Spring Creek, as described in Exhibits A and B. The restoration plan will be completed by February 15, 2016.
 - b. The Respondent's total expenditure for the SEP shall be no less than fifty thousand dollars (\$50,000).
 - c. Within 30 days after submittal of the final restoration plan referenced in Exhibit A, the Respondent shall submit a SEP Completion Report to the EPA. The SEP Completion Report shall contain the following information:
 - (i) a description of any problems encountered in completing the SEP and the solutions thereto;
 - (ii) an itemized list with documentation (including invoices and/or purchase orders) of all of the Respondent's SEP expenditures; and

- (iii) a certification by the Respondent that the SEP has been fully implemented pursuant to the provisions of this Agreement.

- 7. The Respondent certifies that, as of the date of this Agreement,
 - a. the Respondent is not required to perform or develop the SEP by any federal, state, tribal, or local law or regulation, by any agreement or grant, or as injunctive relief awarded in any other action in any forum;
 - b. the SEP is not a project that the Respondent was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this Agreement;
 - c. the Respondent has not received, is not negotiating to receive, and will not receive credit for the SEP in any other enforcement action;
 - d. the Respondent will not receive any reimbursement for any portion of the SEP from any other person; and
 - e. the Respondent is not a party to any open federal financial assistance transaction that is funding or could be used to fund any activity included in the SEP, and to the best of Respondent's knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund any activity included the SEP, and this activity has not been described in an unsuccessful federal financial assistance transaction proposal submitted to the EPA within two years of the date of this settlement (unless the project was barred from funding as statutorily ineligible). For the purposes of this certification, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee or other mechanism for providing federal financial assistance whose performance period has not yet expired.

8. The Respondent shall maintain legible copies of documentation for SEP completion report and for any other information submitted to the EPA relating to this SEP for five years and shall provide the EPA and the SUIT with copies of such documentation within fourteen days of any request from the EPA or the SUIT as applicable, for this documentation.

9. The SEP Completion Report shall include the following certification, to be signed by an officer of the Respondent:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

10. After receiving the SEP Completion Report, the EPA shall notify the Respondent, in writing, (i) regarding any deficiencies in the SEP Completion Report itself, along with a grant of an additional 30 days for Respondent to correct any deficiencies; or (ii) indicate that the EPA concludes that the SEP has been completed satisfactorily, or (iii) determine that the SEP has not been completed satisfactorily.

11. If the EPA elects to exercise option (i) in the preceding paragraph, i.e., the SEP Completion Report is determined to be deficient but the EPA has not made a final determination about the adequacy of the SEP completion itself, the EPA shall permit the Respondent the opportunity to object in writing to the notification of deficiency from the EPA within 14 days of receipt of such notification. The EPA and the Respondent shall have an additional 30 days from the EPA's receipt of such notification of objection to reach agreement on changes necessary to the SEP Completion Report. If the EPA and the Respondent cannot reach agreement on any such issue within this 30-day period, the EPA shall provide a written statement of its decision on the adequacy of the SEP to the Respondent, which decision shall be final and binding upon the Respondent.

12. Any public statement, oral or written, in print, film, or other media, made by the Respondent making reference to the SEP shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action taken by the United States Environmental Protection Agency under the Clean Water Act."

13. For federal income tax purposes, the Respondent agrees that it will neither capitalize into inventory or basis nor deduct, or take a credit for, any costs or expenditures incurred in performing the SEP.

14. Nothing in this Agreement shall relieve the Respondent of the duty to comply with the CWA and any regulation, order, or permit issued pursuant to the CWA.

15. Any failure by the Respondent to comply with this Agreement shall constitute a breach of this Agreement and may result in referral of the matter to the United States Department of Justice for enforcement of this Agreement and such other relief as may be appropriate.

16. Nothing in this Agreement shall be construed as a waiver by the EPA or any other federal entity of its authority to seek costs or any appropriate penalty associated with any collection action instituted as any failure by the Respondent to comply with this Agreement.

17. The undersigned representative of the Respondent certifies that he or she is fully authorized to enter into and bind the Respondent to this Agreement.

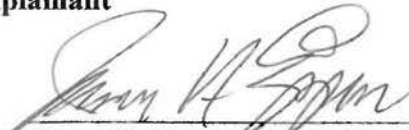
18. The parties agree to submit this Agreement to the appropriate EPA regional judicial officer, with a request that it be incorporated into a Final Order.

19. Each party shall bear its own costs and attorney's fees in connection with this matter.

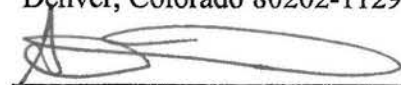
20. This Agreement, upon incorporation into a Final Order and full satisfaction by the parties, shall be a complete and full resolution of the Respondent's liability for federal civil penalties for the violations and facts alleged in the Complaint.

**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8,
Complainant**

Date: MAR 9 2015

By: 
James H. Eppers, Supervisory Attorney
Legal Enforcement Program
Office of Enforcement, Compliance,
and Environmental Justice
U.S. EPA Region 8
1595 Wynkoop St.
Denver, Colorado 80202-1129

Date: 03/06/15

By: 
Gwenette C. Campbell, Supervisor
Water Technical Enforcement Program
Office of Enforcement, Compliance,
and Environmental Justice
U.S. EPA Region 8
1595 Wynkoop St.
Denver, Colorado 80202-1129

**BP AMERICA PRODUCTION COMPANY,
Respondent**

Date: 3 MARCH 2015

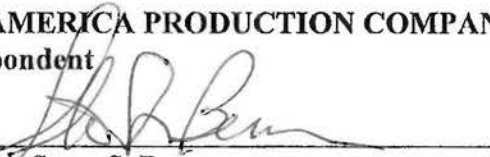
By: 
Steve S. Benson
Senior Vice President Health, Safety, Environment
and Technology
501 Westlake Park Blvd.
Houston, Texas 77079

Exhibit A to Consent Agreement
In the Matter of: BP America Production Company, Respondent
Docket No. CWA-08-2014-0037

As the Supplemental Environmental Project (SEP) for the above-referenced Consent Agreement, the Respondent shall retain a qualified contractor to develop a restoration plan for a sub-basin watershed located within the greater Spring Creek watershed on the Southern Ute Indian Reservation. The Respondent has selected Wright Water Engineers (WWE) to develop the restoration plan; the EPA has no objection to this selection.

1. Identify Project Area within the Spring Creek Watershed

- After seeking input from the Southern Ute Indian Tribe (SUIT) and the EPA, WWE has identified a target reach of the main stem of Spring Creek. See Exhibit B.

2. Watershed Mapping

- WWE will use existing available aerial, topographical and geographical data to provide watershed characteristics for the contributing watershed, including area, slopes, soils, streamflows, vegetative cover, and land information, etc.
- Using the mapping information and input from SUIT, WWE will identify locations most prone to erosion and producing sediment (e.g., roads, grazing areas, steep incised channels, etc.) focused on developed and accessible areas of the contributing watershed.¹

3. Field Assessment

- For the areas most prone to erosion identified in the Watershed mapping phase, WWE will perform a field assessment to evaluate and identify:
 - Hillslope/surface erosion sources;
 - Erosion from specific local sources (roads, trails, grazing areas, etc.); and
 - Channel sediment transport processes (identify areas of scour [degradation] and deposition [aggradation]).
- WWE will use methodology based on natural channel and watershed approaches for bedload and suspended sediment assessment that focuses on stream channel stability.

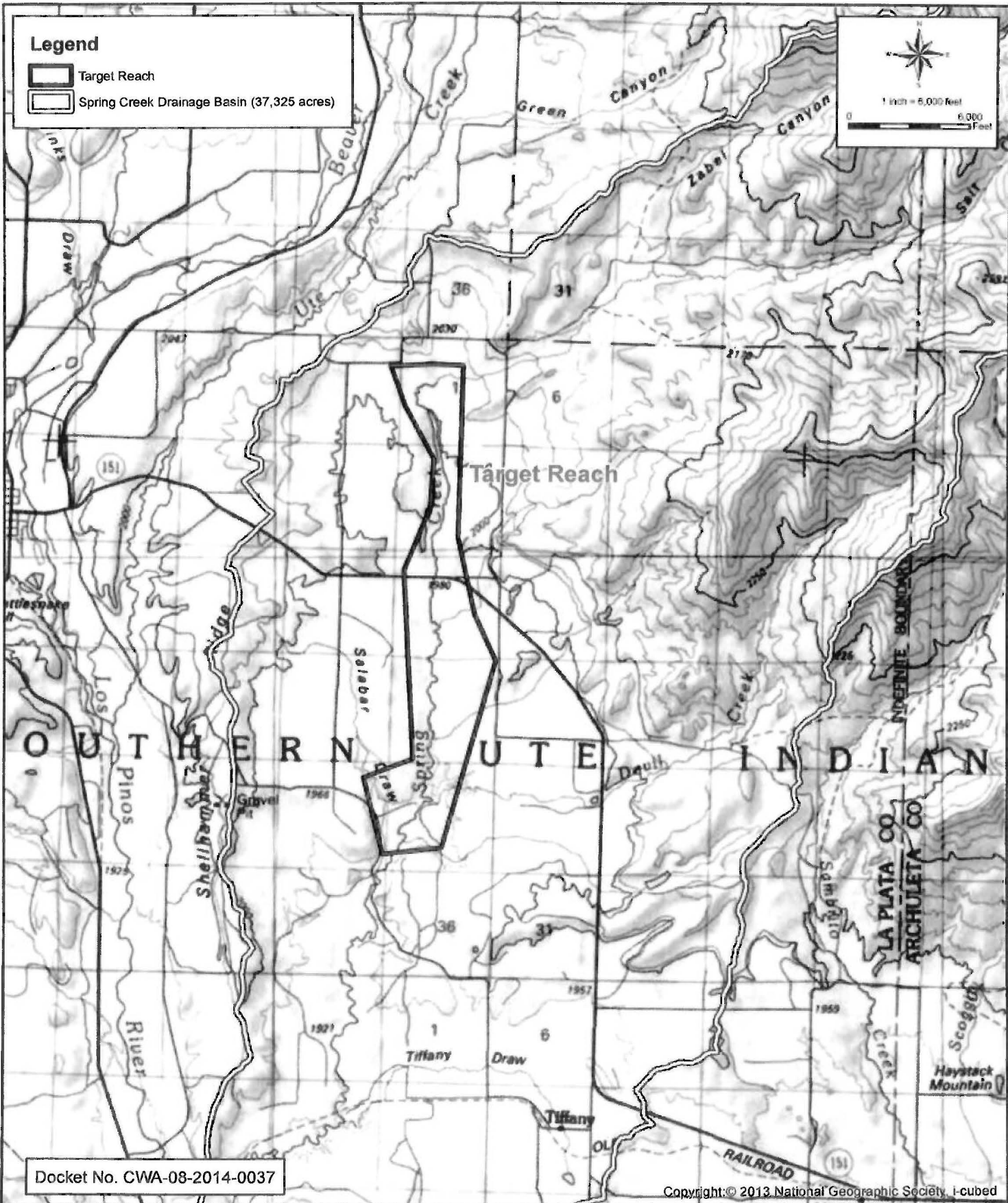
4. Restoration Plan

- WWE will prepare a draft restoration plan for BP, EPA and SUIT review, and then prepare a final restoration plan. Based on WWE's assessment, the restoration plan will identify conceptual level BMPs and BMP implementation locations to reduce sediment loading and transport within the project area. Both conceptual structural and non-structural BMPs, as appropriate, will be

¹ WWE will focus on areas that are accessible (i.e. with substantial trust land ownership), and developed (e.g. irrigated lands), as these areas are the most likely candidates for locating Best Management Practices (BMPs).

identified and located to enhance channel stability and reduce excess sediment transport and bedload conditions and sediment transport processes.

- Timeline: The draft restoration plan will be submitted in writing to the EPA and SUIIT by November 15, 2015. The final restoration plan, which will appropriately address any feedback that the EPA and SUIIT provide in writing to WWE by January 15, 2016, will be submitted to the EPA and SUIIT in writing by February 15, 2016.



Docket No. CWA-08-2014-0037

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Document Path: P:\001-016 BP\435 Spring Creek Bioassessment\Mapping\Spring Creek Drainage Figure 6.6x11.mxd

WWE
 Wight Water Engineers, Inc.
 1668 N. Main Ave., Ste. C
 Durango, CO 81301
 (970) 259-7411 ph 259-8758 fx

LA PLATA COUNTY, CO
SPRING CREEK TARGET REACH

PROJECT NO.
001-015.435

EXHIBIT
B

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT** in the matter of **BP AMERICA PRODUCTION COMPANY; DOCKET NO.: CWA-08-2014-0037** was filed with the Regional Hearing Clerk on March 9, 2015; the **FINAL ORDER** was filed on March 10, 2015.

Further, the undersigned certifies that a true and correct copy of the documents were delivered to, Margaret "Peggy" Livingston, Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned documents were resent and placed in the United States mail certified/return receipt on March 10, 2015 to:

Gabrielle Sitomer, Attorney
BP America Production Co.
501 Westlake Park Blvd.
Houston, TX 77079

And emailed to:

Andrea Wang
Nicole M. Abbott
Davis Graham and Stubbs LLP
1550 17th Street, Suite 500
Denver, CO 80202

And emailed to:

Kim White
U. S. Environmental Protection Agency
Cincinnati Finance Center
26 W. Martin Luther King Drive (MS-0002)
Cincinnati, Ohio 45268

Honorable Christine Coughlin
Administrative Law Judge
Office of Administrative Law Judges
U.S. Environmental Protection Agency (1900R)
1200 Pennsylvania Avenue, NW
Washington, DC 20460

March 10, 2015



Tina Artemis
Paralegal/Regional Hearing Clerk

