

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 3
Philadelphia, Pennsylvania 19103

FILED

May 10, 2024

9:43 am

U.S. EPA REGION 3
HEARING CLERK

In The Matter of:)	
)	
Mr. Gary Powers and Mrs. Angie Powers,)	Proceeding to Assess Class II Penalty
)	Under Section 309(g) of the Clean Water
)	Act, 33 U.S.C. § 1319(g)
Respondents.)	
)	Docket No.: CWA-03-2023-0104
)	
Property Located at:)	
Along Route 20, at approximately)	
38.401286° N, -80.56485° W,)	
Near Cowen, Webster County)	
West Virginia 26206)	

CONSENT AGREEMENT

PRELIMINARY STATEMENT

1. This Consent Agreement is entered into by the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region 3 ("Complainant") and Mr. Gary Powers and Mrs. Angie Powers ("Respondents") (collectively the "Parties"), pursuant to Section 309(g) of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act ("CWA" or "Act"), 33 U.S.C. § 1319(g), and 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. CWA Section 309 authorizes the Administrator of the U.S. Environmental Protection Agency to assess penalties and undertake other actions required by this Consent Agreement. The Administrator has delegated this authority to the Regional Administrator who, in turn, has delegated the authority to enter into agreements concerning administrative penalties to the Complainant. This Consent Agreement and the attached Final Order (hereinafter jointly referred to as the "Consent Agreement and Final Order") resolve Complainant's civil penalty claims against Respondents under the CWA for the violations alleged herein.
2. Pursuant to 40 C.F.R. § 22.13(a), this proceeding for the assessment of a civil penalty pursuant to Section 309(g) of the CWA was initiated on September 12, 2023, when the Complainant filed with the Regional Hearing Clerk a Complaint against Respondents, and Respondents were served with the Complaint on September 27, 2023.

3. The Complaint alleged that Respondents violated Sections 301 and 404 of the CWA, 33 U.S.C. §§ 1311 and 1344, and the regulations promulgated thereunder. The Parties entered into negotiations in an attempt to settle the allegations contained in the Complaint. This Consent Agreement and Final Order is the result of those negotiations.
4. Pursuant to 40 C.F.R. § 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant and Respondents hereby enter into this Consent Agreement to resolve this administrative proceeding.

JURISDICTION

5. The U.S. Environmental Protection Agency (“EPA”) has jurisdiction over the above-captioned matter, as described in Paragraph 1, above, and in the Complaint.
6. The Consolidated Rules of Practice govern this administrative adjudicatory proceeding pursuant to 40 C.F.R. § 22.1(a)(6).
7. Pursuant to Section 309(g)(1)(B), EPA has consulted with the state of West Virginia Department of Environmental Protection (“WVDEP”) regarding this action, and will transmit a copy of this document to the appropriate WVDEP official.

GENERAL PROVISIONS

8. For purposes of this proceeding only, Respondents admit the jurisdictional allegations, and factual and legal allegations set forth in Paragraphs 4-13 of the Complaint filed in this matter.
9. Respondents agree not to contest the jurisdiction of EPA with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of this Consent Agreement and Final Order.
10. For purposes of this proceeding only, Respondents hereby expressly waive their right to contest the allegations set forth in this Consent Agreement and Final Order and waive their right to appeal the accompanying Final Order.
11. Respondents consent to the assessment of the civil penalty stated herein, to the issuance of any specified compliance order herein, and to any conditions specified herein.
12. Respondents shall bear their own costs and attorney’s fees in connection with this proceeding.

13. Pursuant to section 309(g)(4)(A) of the CWA, 33 U.S.C. § 1319(g)(4)(A), and 40 C.F.R. § 22.45(b)(1), EPA has provided public notice and an opportunity to comment on a proposed administrative penalty in this matter on September 20, 2023. The public comment period closed October 25, 2023. No comments were received.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

14. In accordance with 40 C.F.R. § 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant alleges and adopts the Factual and Legal Allegations set forth in Paragraphs 4-13 of the Complaint.

CIVIL PENALTY

15. In settlement of EPA's claims for civil penalties for the violations alleged in this Consent Agreement, Respondents consent to the assessment of a civil penalty in the amount of **Three-Hundred Dollars (\$300)**, which Respondents shall be liable to pay in accordance with the terms set forth below.
16. The civil penalty is based upon EPA's consideration of a number of factors, including the penalty criteria ("statutory factors") set forth in Section 309(g) of the CWA, 33 U.S.C. § 1319(g), including, the following: the nature, circumstances, extent and gravity of the violation(s), Respondents' ability to pay, prior history of compliance, degree of culpability, economic benefit or savings resulting from the violations, and such other matters as justice may require. These factors were applied to the particular facts and circumstances of this case with specific reference to EPA's *Clean Water Act Section 404 Settlement Penalty Policy* (2001) which reflects the statutory penalty criteria and factors set forth at Section 309(g) of the CWA, 33 U.S.C. § 1319(g), the appropriate *Adjustment of Civil Monetary Penalties for Inflation*, pursuant to 40 C.F.R. Part 19, and the applicable EPA memoranda addressing EPA's civil penalty policies to account for inflation. EPA also considered Respondents' agreement that they will complete compliance with Administrative Order for Compliance on Consent Docket No. CWA-03-2021-0028DW.
17. The civil penalty is also based upon an analysis of Respondents' ability to pay a civil penalty. This analysis was based upon information submitted to EPA by Respondents, including five years of individual tax returns (2018-2022), information provided on the Collection Information Statement for Wage Earners and Self-Employed Individuals, Individual Asset Report, and information available from the Webster (West Virginia) County Assessor.
18. Based upon this analysis, EPA has determined that the Respondents are unable to pay a civil penalty in excess of the dollar amount set forth in Paragraph 15 above, in settlement of the above-captioned action. Complainant has relied upon the financial information provided by Respondents and identified in the preceding Paragraph and, based upon that information, it is Complainant's conclusion that Respondents have

established that they are unable to pay the full amount of the civil penalty identified and set forth in Paragraph 15 above within thirty (30) days of the effective date of this Consent Agreement and that a payment plan of the nature and duration set forth below is necessary and appropriate.

19. Pursuant to the provisions of this Consent Agreement, Respondents will remit a total penalty (principal) of \$300 and Interest (calculated at the rate of 3% per annum on the outstanding principal balance) in the amount of \$9.00 (nine dollars), within 365 days from the effective date of this Consent Agreement and Final Order.
20. Respondents may, at any time after the effective date of this Consent Agreement and Final Order and before 365 days after the effective date of this Consent Agreement and Final Order, elect to pay the entire principal balance, together with accrued interest to the date of such full payment.
21. Payment of the civil penalty amount, and any associated interest, administrative fees, and late payment penalties owed, shall be made by either cashier's check, certified check or electronic wire transfer, in the following manner:
 - a. All payments by Respondents shall include reference to Respondents' names and address, and the Docket Number of this action, *i.e.*, CWA-03-2023-0104;
 - b. All checks shall be made payable to the "United States Treasury";
 - c. All payments made by check and sent by regular mail shall be addressed and mailed to:

U.S. Environmental Protection Agency
Cincinnati Finance Center
P.O. Box 979078
St. Louis, MO 63197-9000
 - d. For additional information concerning other acceptable methods of payment of the civil penalty amount see:

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

<https://www.epa.gov/financial/additional-instructions-making-payments-epa>
 - e. Concurrently with any payment or within 24 hours of any payment, Respondents shall serve Proof of Payment simultaneously **by email** to the following person(s):

Stefania D. Shamet
Senior Assistant Regional Counsel
Shamet.stefania@epa.gov,

U.S. Environmental Protection Agency
Cincinnati Finance Center
CINWD_AcctsReceivable@epa.gov,

and

U.S. EPA Region 3 Regional Hearing Clerk
R3_Hearing_Clerk@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 Respondents’ names.

22. 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, Respondents’ failure to make timely payment of the penalty as specified herein shall result in the assessment of late payment charges including interest, penalties and/or administrative costs of handling delinquent debts.
23. Payment of the civil penalty, in accordance with the above terms and provisions, is due and payable immediately upon receipt by Respondents of a true and correct copy of the fully executed and filed Consent Agreement and Final Order. Receipt by Respondents or Respondents’ legal counsel of such copy of the fully executed Consent Agreement and Final Order, with a date stamp indicating the date on which the Consent Agreement and Final Order was filed with the Regional Hearing Clerk, shall constitute receipt of written initial notice that a debt is owed as of the effective date of this Consent Agreement and Final Order by Respondents in accordance with 40 C.F.R. § 13.9(a).
24. INTEREST: Interest on the civil penalty assessed in this Consent Agreement and Final Order will begin to accrue on the effective date of this Consent Agreement and Final Order. 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 effective date of this Consent Agreement and Final Order. 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).

25. ADMINISTRATIVE COSTS: The costs of the EPA's administrative handling of overdue debts will be charged and assessed monthly throughout the period a debt is overdue. 40 C.F.R. § 13.11(b). If payment is not received in accordance with the terms and conditions above, EPA will also assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.
26. LATE PAYMENT PENALTY: A late payment penalty of six percent per year will be assessed monthly on any portion of the civil penalty that remains delinquent more than ninety (90) calendar days. 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. 31 C.F.R. § 901.9(d).
27. Respondents agree not to deduct for federal tax purposes the civil penalty assessed in this Consent Agreement and Final Order.
28. The parties consent to service of the Final Order by e-mail at the following valid email addresses: shamet.stefania@epa.gov (for Complainant), and [REDACTED] (for Respondents).

GENERAL SETTLEMENT CONDITIONS

29. By signing this Consent Agreement, Respondents acknowledge that this Consent Agreement and Final Order will be available to the public and represent that, to the best of Respondents' knowledge and belief, this Consent Agreement and Final Order does not contain any confidential business information or personally identifiable information from Respondents.
30. Respondents certify that any information or representation they have supplied or made to EPA concerning this matter was, at the time of submission true, accurate, and complete and that there has been no material change regarding the truthfulness, accuracy or completeness of such information or representation. EPA shall have the right to institute further actions to recover appropriate relief if EPA obtains evidence that any information provided and/or representations made by Respondents to the EPA regarding matters relevant to this Consent Agreement and Final Order, **including information about Respondents' ability to pay a penalty**, are false or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action that EPA may have, civil or criminal, under law or equity in such event. Respondents and their agents are aware that the submission of false or misleading information to the United States government may subject a person to separate civil and/or criminal liability.

31. **Respondents certify to EPA, upon personal investigation and to the best of their knowledge and belief, that they currently are in compliance with the Administrative Order on Consent between Respondents and EPA, Docket No. CWA-03-2021-0028DW, which addresses the violations alleged herein.**

OTHER APPLICABLE LAWS

32. Nothing in this Consent Agreement and Final Order shall relieve Respondents of their obligation to comply with all applicable federal, state, and local laws and regulations, nor shall it restrict EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on the validity of any federal, state or local permit. This Consent Agreement and Final Order does not constitute a waiver, suspension or modification of the requirements of the CWA, or any regulations promulgated thereunder.

RESERVATION OF RIGHTS

33. This Consent Agreement and Final Order resolves only EPA's claims for civil penalties for the specific violations alleged against Respondents in the Complaint. EPA reserves the right to commence action against any person, including Respondents, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. This settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice, 40 C.F.R. § 22.18(c). EPA reserves any rights and remedies available to it under the CWA, the regulations promulgated thereunder and any other federal law or regulation to enforce the terms of this Consent Agreement and Final Order after its effective date. EPA reserves any rights and remedies available to it to take any action under the CWA, the regulations promulgated thereunder, and any other federal law or regulation, including but not limited to initiation of a new action, in the event Respondents fail to comply fully with Administrative Order for Compliance on Consent Docket No. CWA-03-2021-0028DW.

EXECUTION /PARTIES BOUND

34. This Consent Agreement and Final Order shall apply to and be binding upon the EPA, the Respondents and their employees, contractors, successors, agents and assigns of Respondents. By his or her signature below, the person who signs this Consent Agreement on behalf of Respondents is acknowledging that he or she is fully authorized by the Respondents to execute this Consent Agreement and to legally bind Respondents to the terms and conditions of this Consent Agreement and Final Order. This Consent Agreement may be signed in counterparts.

EFFECTIVE DATE

35. This CAFO shall become final and effective thirty (30) days after it is lodged with the Regional Hearing Clerk, pursuant to Section 309(g)(5) of the Act, 33 U.S.C. § 1319(g)(5).

ENTIRE AGREEMENT

36. This Consent Agreement and Final Order constitutes the entire agreement and understanding between the Parties regarding settlement of all claims for civil penalties pertaining to the specific violations alleged herein and there are no representations, warranties, covenants, terms, or conditions agreed upon between the Parties other than those expressed in this Consent Agreement and Final Order.

For Respondents: **Mr. Gary Powers and Mrs. Angie Powers**

Date: 4/15/24

By: 
Mr. Gary Powers

Date: 4/15/24

By: 
Mrs. Angie Powers

For the Complainant:

After reviewing the Consent Agreement and other pertinent matters, I, the undersigned Director of the Enforcement and Compliance Assurance Division of the United States Environmental Protection Agency, Region 3, agree to the terms and conditions of this Consent Agreement and recommend that the Regional Administrator, or his/her designee, the Regional Judicial Officer, issue the attached Final Order.

By: **KAREN MELVIN** Digitally signed by KAREN MELVIN
Date: 2024.05.08 09:31:46 -04'00'

[Digital Signature and Date]
Karen Melvin, Director
Enforcement and Compliance Assurance Division
U.S. EPA – Region 3
Complainant

Attorney for Complainant:

By: **STEFANIA SHAMET** Digitally signed by STEFANIA SHAMET
Date: 2024.05.03 12:22:40 -04'00'

[Digital Signature and Date]
Stefania D. Shamet
Senior Assistant Regional Counsel
U.S. EPA – Region 3

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 3
Philadelphia, Pennsylvania 19103**

FILED

May 10, 2024

9:44 am

U.S. EPA REGION 3
HEARING CLERK

In The Matter of)	
)	
Mr. Gary Powers and Mrs. Angie Powers,)	Proceeding to Assess Class II Penalty
)	Under Section 309(g) of the Clean Water
)	Act, 33 U.S.C. § 1319(g)
Respondents.)	
)	Docket No.: CWA-03-2023-0104
)	
Property Located at:)	
Along Route 20, at approximately)	
38.401286° N, -80.56485° W,)	
Near Cowen, Webster County)	
West Virginia 26206)	

FINAL ORDER

Complainant, the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region 3, and Respondents Mr. Gary Powers and Mrs. Angie Powers 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 22.18(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 *Clean Water Act Section 404 Settlement Penalty Policy* (2001) and the statutory factors set forth in Section 309(g) of the Clean Water Act (CWA), 33 U.S.C. § 1319(g).

NOW, THEREFORE, PURSUANT TO Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and Section 22.18(b)(3) of the Consolidated Rules of Practice, **IT IS HEREBY ORDERED** that Respondents pay a civil penalty in the amount of **THREE-HUNDRED DOLLARS (\$300) together with applicable interest (NINE DOLLARS (\$9))**, in accordance with the payment provisions set forth in the Consent Agreement and in 40 C.F.R. § 22.31(c), and comply with the terms and conditions of the Consent Agreement.

This Final Order constitutes the final Agency action in this proceeding. This Final Order shall not in any case affect the right of the Agency or the United States to pursue appropriate

injunctive or other equitable relief, or criminal sanctions for any violations of the law. This Final Order resolves only those causes of action alleged in the Consent Agreement and does not waive, extinguish or otherwise affect Respondents' obligation to comply with all applicable provisions of the CWA and the regulations promulgated thereunder.

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.

Date: _____

By:

JOSEPH
LISA

Digitally signed by
JOSEPH LISA
Date: 2024.05.10
09:30:06 -04'00'

Joseph J. Lisa
Regional Judicial and Presiding Officer
U.S. EPA Region 3

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 3
Philadelphia, Pennsylvania 19103**

In the Matter of:	:	
	:	
Mr. Gary Powers and	:	
Mrs. Angie Powers	:	
P.O. Box 285	:	
Cowen, West Virginia 26206	:	U.S. EPA Docket No. CWA-03-2023-0104
	:	
	:	Proceeding to assess a Class II Penalty,
Respondents.	:	Under Section 309(g) of the Clean Water Act,
	:	33 U.S.C. § 1319(g)
Property Located at:	:	
Along Route 20, at approximately	:	
38.401286° N, -80.56485° W,	:	
Near Cowen, Webster County	:	
West Virginia 26206	:	

CERTIFICATE OF SERVICE

I certify that the foregoing ***Consent Agreement and Final Order*** was filed with the EPA Region 3 Regional Hearing Clerk on the date that has been electronically stamped on the ***Consent Agreement and Final Order***. I further certify that on the date set forth below, I caused to be served a true and correct copy of the foregoing to each of the following persons, in the manner specified below, at the following addresses:

Copies served via email to:

Mrs. Angie Powers

[REDACTED]

Stefania D. Shamet
Senior Assistant Regional Counsel
U.S. EPA, Region 3
shamet.stefania@epa.gov

Katelyn Almeter
Life Scientist
U.S. EPA, Region 3
almeter.katelyn@epa.gov

BEVIN ESPOSITO Digitally signed by BEVIN
ESPOSITO
Date: 2024.05.10 09:45:57 -04'00'

[Digital Signature and Date]

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 3