UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TEXAS 75202-2733

FILED
2012 SEP 20 AM 9:20
REGIONAL HEARING CLERK
EPA REGION VI

September 20, 2012

Lorena Vaughn
Regional Hearing Clerk
EPA Region 6
1445 Ross Avenue
Dallas, Texas 75202
Via hand-delivery

Re: MMHF Consent Agreement and Final Order
CWA-06-2012-1843

Dear Ms. Vaughn:

The Consent Agreement and Final Order was filed on September 19, 2012, and a typographical error on the docket number was inadvertently made on the first page. The correct docket number on the Consent Agreement and Final Order should be **CWA-06-2012-1843** instead of CWA-06-2012-1834. Please note the correction.

Sincerely,

Ellen Chang Vaughan

Ellen Chang Vaughan
Assistant Regional Counsel

Cc:

Daryl Jackson
MMHF, LLC
P.O. Box 568
Bokoshe, OK 74930

James Barnett
Doerver Saunders Daniel and Anderson
201 Robert S. Kerr, Suite 700
Oklahoma City, OK 73102

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REGIONAL HEARING CLERK
EPA REGION VI

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6

In the Matter of	§	
	§	
	§	
MMHF, LLC	§	
	§	DOCKET NO. CWA-06-2012-1834
	§	
Respondent	§	
	§	
Facility No. OKU000707	§	

CONSENT AGREEMENT AND FINAL ORDER

I. PRELIMINARY STATEMENT

1. This Consent Agreement and Final Order ("CAFO") is issued under the authority vested in the United States Environmental Protection Agency ("EPA") pursuant to Section 309(g) of the Clean Water Act ("the Act"), 33 U.S.C. § 1319(g). This CAFO is issued in accordance with 40 C.F.R. § 22.18, as described in the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits."

2. On August 8, 2012, EPA Region 6 issued to MMHF, LLC ("Respondent") an Administrative Complaint ("Complaint") under Section 309(g) of the Act, 33 U.S.C. § 1319(g), which proposed to assess a civil penalty against Respondent, and gave notice of Respondent's opportunity to request a hearing on the proposed administrative penalty assessment.

3. EPA and the Respondent (collectively, "Parties") agree that settlement of the relevant matters without litigation will save time and resources, that it is in the public's interest, and that the entry of this CAFO is the most appropriate means of resolving such matters. Compliance with all the terms and conditions of this CAFO resolves only those violations alleged in the Complaint.

4. Respondent admits the jurisdictional allegations of the Complaint; however, Respondent neither admits nor denies the specific factual allegations and conclusions of law contained in the Complaint or the Findings of Fact and Conclusions of Law contained in this CAFO and expressly waives any right to contest same and and waives its right to appeal the Final Order set forth herein.

5.. Before the taking of any testimony, and without adjudication of any issue of law or fact, the Parties agree to the terms of this CAFO and to its issuance. Respondent consents to the assessment and payment of a civil penalty in the amount and by the method stated below.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

6. Respondent is a limited liability company operating under the laws of the State of Oklahoma, and as such, Respondent is a "person," as that term is defined at Section 502(5) of the Clean Water Act, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.

7. At all times relevant, the Respondent owned or operated a mine reclamation facility located in Sections 16, 17, 20 and 21, Township 8N, Range 24E, Le Flore County, Bokoshe Oklahoma ("facility"), and was therefore an "owner or operator" within the meaning of 40 C.F.R. § 122.2.

8. The Complaint specified Findings of Fact and Conclusions of Law that are hereby incorporated by reference and alleged, among other things, that at the relevant times: Respondent was a "person" that "owned or operated" a facility that acted as a "point source" subject to a "discharge" of "pollutants" to identified "waters of the United States," within the meaning of Section 502 of the Act, 33 U.S.C. § 1362, and 40 C.F.R. § 122.2; Respondent and the facility were subject to the provisions of the Act, 33 U.S.C. § 1251 et seq., and the National Pollutant Discharge Elimination System ("NPDES") program; and Respondent violated

Section 301 of the Act, 33 U.S.C. § 1311, by discharging pollutants, specifically the toxicity of the seep, to waters of the United States, as specified in the Complaint, which allegations are neither admitted nor denied by the Respondent.

9. With the issuance of the Complaint, the Oklahoma Department of Mines was notified and given an opportunity to consult with EPA regarding the proposed assessment of an administrative penalty against Respondent.

10. EPA notified the public of the Complaint via the internet at www.epa.gov/region6/publicnotice, and afforded the public thirty (30) days to comment on the Complaint and proposed penalty. At the expiration of the notice period, EPA had received no comments from the public.

III. TERMS OF SETTLEMENT

A. GENERAL TERMS

11. Neither the fact that the Respondent and the EPA have agreed to this Order, nor the Findings of Fact and Conclusions of Law in it, shall be used for any purpose in any proceeding between Respondent and the EPA except the enforcement by Respondent and the EPA of this Order. As to others who are not parties to this Consent Order, nothing contained in this Order is an admission by Respondent of wrong doing or fault on the part of Respondent as to any of the Findings of Fact or Conclusions of Law.

12. As to others who are not parties to this Consent Order, this Order is not an admission by Respondent of liability for conditions at or near the Facility and is not a waiver of any right, cause of action or defense to which Respondent is otherwise entitled.

B. PENALTY PROVISIONS

13. Based on the foregoing Findings of Fact and Conclusions of Law, EPA Region 6, considering the relevant criteria pursuant to Section 309(g)(3) of the Act, 33 U.S.C. § 1319(g)(3), and acting pursuant to the authority of Section 309(g) of the Act, 33 U.S.C. § 1319(g), hereby orders that Respondent shall pay to the United States a civil penalty in the amount of twenty thousand dollars ($20,000.00) to settle the violations as alleged in the Complaint, in accordance with 40 C.F.R. § 22.18(c).

14. Payment shall be made by one of the following methods within thirty (30) days of the effective date of this CAFO to one of the following addresses:

a. By mailing a bank check, cashier's check or certified check, payable to "Treasurer of the United States," to the following address:

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

b. By wire transfer to:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 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"

c. By overnight mail (Express, FedEx, DHL, etc.):

U.S. Bank
Government Lockbox 979077
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
Phone: 314-418-1028

d. By credit card payments to: https://www.pay.gov/paygov

(Enter sfo1.1 in the search field)

"In the Matter of MMHF, LLC, Docket No. CWA-06-2012-1843" should be clearly marked on the check to ensure credit for payment.

15. Respondent shall send simultaneous notices of payment, including a copy of the check, or other remittance, to each of the following:

(a) Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

(b) Chief, NPDES Compliance Section (6EN-WC)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

(c) Chief, Water Enforcement Legal Branch (6RC-EW)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Respondent's adherence to these procedures will ensure proper credit when payment is received by EPA.

16. Respondent agrees not to claim or attempt to claim a federal income tax deduction or credit covering all or any part of the civil penalty paid to the United States Treasurer.

17. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States that are not paid by the due dates and a charge to cover the costs of processing and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue thirty (30) days after the effective date of the CAFO and will be recovered by EPA on any

amount of the civil penalty that is not paid by the respective due dates. 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). Moreover, the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. See 40 C.F.R. § 13.11(b).

18. EPA will also assess a fifteen dollar ($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 fifteen dollars ($15.00) for each subsequent thirty (30)-day period that the penalty remains unpaid. In addition, a penalty charge of up to six percent (6%) per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. See 40 C.F.R. § 13.11(c). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. See 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

19. Pursuant to Section 309(g)(9) of the Act, 33 U.S.C. § 1319(g)(9), any person who fails to pay on a timely basis a civil penalty ordered or assessed under this section shall be required to pay, in addition to such penalty and interest, the United States' enforcement expenses including, but not limited to, attorneys' fees and costs incurred by the United States for collection proceedings, and a quarterly non-payment penalty for each quarter during which such failure to pay persists. Such non-payment penalty shall be twenty percent (20%) of the aggregate amount of such person's outstanding penalties and non-payment penalties accrued as of the beginning of each quarter.

20. Failure by Respondent to pay the penalty assessed according to the terms of this CAFO, in full, by its due date, may subject Respondent to a civil action to collect the assessed penalty and any accrued interest and penalties.

21. In the event a collection action is necessary, Respondent shall pay–in addition to any applicable penalty, fees, and interest described herein–all reasonable costs and expenses, including legal expenses and court costs, incurred by the United States for enforcement and collection proceedings for non-payment of the amounts agreed hereunder, pursuant to Section 309(g)(9) of the Act, 33 U.S.C. § 1319(g)(9). In any such collection action, the validity, amount, and appropriateness of the penalty, and the terms of this CAFO shall not be subject to review.

IV. GENERAL PROVISIONS

22. To execute this Agreement, Respondent shall forward this copy of the CAFO, with original signature, to:

Ms. Ellen Chang-Vaughan (6RC-EW)
U.S. EPA, Region 6
1445 Ross Ave., Suite 1200
Dallas, TX 75202-2733

23. Issuance of this CAFO does not relieve Respondent from responsibility to comply with all requirements of the Act and the requirements of any permits issued thereunder, as described in Section 309(g)(7) of the Act, 33 U.S.C. § 1319(g)(7), nor does it constitute a waiver by EPA of its right to enforce compliance with the requirements of Respondent's permits or other requirements of the Act by actions pursuant to Section 309 of the Act, 33 U.S.C. § 1319.

24. The provisions of this CAFO shall be binding upon Respondent, its officers or officials, managers, employees, and their successors or assigns, in their capacity on behalf of Respondent.

25. Each party agrees to bear its own costs and attorneys' fees in this matter, except to the extent that Respondent may be responsible for reasonable costs and expenses of enforcement and collection proceedings for failure to comply with the terms of this CAFO.

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

In recognition and acceptance of the foregoing:

MMHF, LLC

8-20-12
Date

John Blevins
Director
Compliance Assurance and
Enforcement Division

SEP 17 2012
Date

FINAL ORDER

Pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified. This Final Order shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged in the Complaint. Nothing in this Final Order shall be construed to waive, extinguish, or otherwise affect Respondent's (or its officers', agents', servants', employees', successors', or assigns') obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. The Respondent is ordered to comply with the terms of settlement and the civil penalty payment instructions as set forth in the Consent Agreement. Pursuant to 40 C.F.R. § 22.31(b), this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Issuance Date: 9/19/12

Regional Judicial Officer
EPA, Region 6

CERTIFICATE OF SERVICE

I hereby certify that on the 19 day of September, 2012, the original of the foregoing Consent Agreement and Final Order was hand-delivered to the Regional Hearing Clerk, U.S. EPA, Region 6 (6RC-D), 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733, and that a true and correct copy was placed in the United States mail, by certified mail, return receipt requested, addressed to the following:

Copy by certified mail,
Return receipt requested:

Mr. Daryl Jackson, Manager
MMHF, LLC
P.O. Box 568
Bokoshe, OK 74930

Copy by mail:

Mr. Bret Sholar, Environmental Analyst/Ecologist
Oklahoma Department of Mines
2915 North Classen, Suite 213
Oklahoma City, OK 73106

Mr. James Barnett, Attorney
Doerver Saunders Daniel and Anderson
201 Robert S. Kerr, Suite 700
Oklahoma City, OK 730102-4267

Copy hand-delivered:

Ms. Ellen Chang-Vaughan (6RC-EW)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Dated: Jackie Allen