

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



In the Matter of: :
:
Appalachian Power Company : **U.S. EPA Docket No. RCRA-03-2024-0096**
1 Riverside Plaza :
Columbus, OH 43215 : **Proceeding under Section 9006 of the Resource**
: **Conservation and Recovery Act, 42 U.S.C.**
Respondent. : **Section 6991e**
:
Huntington Service Building :
1122 7th Avenue :
Huntington, WV 25701 :
:
Facility. :

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 Appalachian Power Company (“Respondent”) (collectively the “Parties”), pursuant to Section 9006 of the Resource Conservation and Recovery Act (“RCRA” or the “Act”), 42 U.S.C. § 6991e, 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. Section 9006 of RCRA, 42 U.S.C. § 6991e, 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 Respondent under RCRA Subtitle I, 42 U.S.C. §§ 6991-6991m, for the violations alleged herein.

2. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant hereby simultaneously commences and resolves this administrative proceeding.

JURISDICTION

3. The U.S. Environmental Protection Agency (“EPA”) has jurisdiction over the above-captioned matter, as described in Paragraph 1, above.
4. The Consolidated Rules of Practice govern this administrative adjudicatory proceeding pursuant to 40 C.F.R. § 22.1(a)(4).
5. EPA has given the West Virginia Department of Environmental Protection (“WVDEP”) notice of the issuance of this Consent Agreement and Final Order in accordance with Section 9006(a)(2) of RCRA, 42 U.S.C. § 6991e(a)(2).

GENERAL PROVISIONS

6. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this Consent Agreement and Final Order.
7. Except as provided in Paragraph 6, above, Respondent neither admits nor denies the specific factual allegations set forth in this Consent Agreement.
8. Respondent agrees 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.
9. For purposes of this proceeding only, Respondent hereby expressly waives its right to contest the allegations set forth in this Consent Agreement and Final Order and waives its right to appeal the accompanying Final Order.
10. Respondent consents to the assessment of the civil penalty stated herein, to the issuance of any specified compliance order herein, and to any conditions specified herein.
11. Respondent shall bear its own costs and attorney’s fees in connection with this proceeding.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

12. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant alleges and adopts the Findings of Fact and Conclusions of Law set forth immediately below.

13. West Virginia is approved to administer and enforce an underground storage tank program in lieu of the Federal program under Subtitle I of the Act, 42 U.S.C. §§ 6991-6991m. The program, as administered by WVDEP, was approved by EPA, pursuant to 42 U.S.C. 6991c and 40 C.F.R. Part 281. EPA approved the West Virginia underground storage tank (“UST”) program, set forth in the West Virginia Administrative Code of State Rules (“W. Va. Code R.”), Title 33, Series 30, “Underground Storage Tanks,” on September 23, 1997, and approval of the West Virginia UST program became effective on February 10, 1998. A subsequent UST program revision application was approved by EPA on September 11, 2020 and became effective on November 10, 2020.
14. The federally approved West Virginia UST program is enforceable by EPA pursuant to Section 9006(a) of RCRA, 42 U.S.C. § 6991e(a).
15. Section 9006(d) of RCRA, 42 U.S.C. § 6991e(d), authorizes the assessment of civil penalties against any owner or operator of an UST who fails to comply with, among other things, any requirement or standard of a state program that has been approved pursuant to Section 9004 of RCRA, 42 U.S.C. § 6991c, for the violations alleged herein.
16. The West Virginia UST program regulates USTs used to contain “regulated substances,” as that term is defined in Section 9001(7) of RCRA, 42 U.S.C. § 6991(7), and 40 C.F.R. § 280.12, which W. Va. Code R. § 33-30-2 incorporates by reference.
17. At all times relevant to this Consent Agreement, Respondent is, and has been, a “person,” as defined by Section 9001(5) of RCRA, 42 U.S.C. § 6991(5), and 40 C.F.R. § 280.12, which W. Va. Code R. § 33-30-2 incorporates by reference.
18. At all times relevant to this Consent Agreement, Respondent is, and has been, the “operator” and/or “owner” of “USTs,” as those terms are defined by Section 9001(3), (4), and (10) of RCRA, 42 U.S.C. § 6991(3), (4), and (10), and 40 C.F.R. § 280.12, which W. Va. Code R. § 33-30-2 incorporates by reference, at Respondent’s UST facility located at 1122 7th Avenue, Huntington, WV 25701 (“Huntington Service Building” or the “Facility”).
19. At all times relevant to this Consent Agreement, there are, and there have been, the following two USTs at the Facility, each of which contains a regulated substance.
 - a. A 10,000-gallon tank that contains regular gasoline (“Tank 1”) and was installed in December 1990. Tank 1 is constructed with double-walled, fiberglass-reinforced plastic. Tank 1 uses an automatic tank gauge (“ATG”) system for tank release detection. A Veeder-Root TLS-300 performs 0.2 gallon per hour tightness testing of Tank 1 during a two-hour window on a weekly basis.

- b. A 10,000-gallon tank that contains on-road diesel (“Tank 2”) and was installed in December 1990. Tank 2 is constructed with double-walled, fiberglass-reinforced plastic. Tank 2 uses an ATG system for tank release detection. A Veeder-Root TLS-300 performs 0.2 gallon per hour tightness testing of Tank 2 during a two-hour window on a weekly basis.
20. Pursuant to Section 9005 of RCRA, 42 U.S.C. § 6991d, on May 16, 2023, EPA conducted an inspection of the Facility (the “Inspection”) to determine Respondent’s compliance with RCRA Subtitle I and W. Va. Code R. EPA received responses and documentation from Respondent on February 14, 2024, and March 19, 2024.

Count 1

Failure to Report a Suspected Release By Tank 2 to WVDEP Within 24 Hours

21. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
22. Section 280.50(c) of Title 40 of the C.F.R., which W. Va. Code R. § 33-30-2 incorporates by reference, requires owners and operators of USTs to “report to the implementing agency within 24 hours...and follow the procedures in [40 C.F.R.] § 280.52” when “monitoring results, including investigation of an alarm, from a release detection method required under [40 C.F.R.] §§ 280.41 and 280.42...indicate a release may have occurred” with exceptions not applicable here. Under W. Va. Code R. § 33-30-2.1.a, “implementing agency” refers to WVDEP.
23. Release detection methods required under 40 C.F.R. § 280.41 must use one of the methods listed in § 280.43(d) through (i), with exceptions that do not apply here. Under 40 C.F.R. § 280.43(d), one of the listed methods is ATG monitoring systems. The Facility’s Veeder-Root TLS-300 ATG system meets the qualifications specified in 40 C.F.R. § 280.43(d).
24. At the time of the Inspection, EPA inspectors discovered that Tank 2 failed leak test results for a 0.2 gallon per hour monthly test via the Veeder-Root TLS-300 ATG system on October 31, 2022, and again on February 20, 2023.
25. At the time of the Inspection, Facility personnel informed EPA inspectors that WVDEP was not notified about the failed monitoring results.
26. On November 1, 2022 and February 21, 2023, Respondent failed to report to WVDEP within 24 hours and follow the procedures in 40 C.F.R. § 280.52 when monitoring results from the Veeder-Root TLS-300 ATG system indicated a release may have occurred.

27. On November 1, 2022 and February 21, 2023, Respondent violated 40 C.F.R. § 280.50(c), which W. Va. Code R. § 33-30-2 incorporates by reference, by failing to report to WVDEP within 24 hours and follow the procedures in 40 C.F.R. § 280.52 when monitoring results from the Veeder-Root TLS-300 ATG system indicated a release may have occurred.
28. In failing to comply with 40 C.F.R. § 280.50(c), which W. Va. Code R. § 33-30-2 incorporates by reference, Respondent is subject to the assessment of penalties under 9006(d)(2) of RCRA, 42 U.S.C. § 6991e(d)(2).

Count 2

Failure to Immediately Investigate and Confirm a Suspected Release By Tank 2 Within 7 days

29. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
30. Section 280.52 of Title 40 of the C.F.R., which W. Va. Code R. § 33-30-2 incorporates by reference, requires owners and operators of USTs to “immediately investigate and confirm all suspected releases of regulated substances requiring reporting under [40 C.F.R.] § 280.50 within 7 days” using steps specified in § 280.52 or another procedure approved by the implementing agency unless corrective action has already been initiated in accordance with 40 C.F.R. Part 280, Subpart F. Under W. Va. Code R. § 33-30-2.1.a, “implementing agency” refers to WVDEP.
31. At the time of the Inspection, EPA inspectors discovered that Tank 2 failed leak test results for a 0.2 gallon per hour monthly test via the Veeder-Root TLS-300 ATG system on October 31, 2022, and again on February 20, 2023. Facility personnel did not provide EPA inspectors any documentation that investigation of these failed results occurred.
32. Tank 2 had passing leak test results for a 0.2 gallon per hour monthly test via the Veeder-Root TLS-300 ATG system on November 7, 2022, and on May 16, 2023.
33. Respondent failed to immediately investigate and confirm a suspected release of a regulated substance within 7 days using steps specified in § 280.52 when it did not investigate the failed leak test result for Tank 2 that occurred on October 31, 2022 within 7 days.
34. On November 7, 2022, Respondent violated 40 C.F.R. § 280.52, which W. Va. Code R. § 33-30-2 incorporates by reference, by failing to immediately investigate and confirm a suspected release of a regulated substance within 7 days using steps specified in § 280.52.

35. From February 27, 2023 to May 16, 2023, Respondent failed to immediately investigate and confirm failed leak test result for a 0.2 gallon per hour monthly test via the Veeder-Root TLS-300 ATG system on February 20, 2023 was not a suspected release of a regulated substance within 7 days using steps specified in § 280.52.
36. From February 27, 2023 to May 16, 2023, Respondent violated 40 C.F.R. § 280.52, which W. Va. Code R. § 33-30-2 incorporates by reference, by failing to immediately investigate and confirm failed leak test result for a 0.2 gallon per hour monthly test via the Veeder-Root TLS-300 ATG system on February 20, 2023 was not a suspected release of a regulated substance within 7 days using steps specified in § 280.52.
37. In failing to comply with 40 C.F.R. § 280.52, which W. Va. Code R. § 33-30-2 incorporates by reference, Respondent is subject to the assessment of penalties under 9006(d)(2) of RCRA, 42 U.S.C. § 6991e(d)(2).

Count 3

Failure to Monitor Tank 2 for Releases At Least Every 30 Days

38. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
39. Section 280.41(a)(1) of Title 40 of the C.F.R., which the WVUST program, W. Va. Code R. § 33-30-2, incorporates by reference, requires owners and operators of USTs to “provide release detection for tanks.” “Tanks installed on or before April 11, 2016 must be monitored for releases at least every 30 days using one of the methods listed in §280.43(d) through (i)” with exceptions that do not apply here. Under 40 C.F.R. § 280.43(d), one of the listed methods is an ATG monitoring system. The Facility’s Veeder-Root TLS-300 ATG system meets the qualifications specified in 40 C.F.R. § 280.43(d).
40. At the time of the Inspection, EPA inspectors discovered that Tank 2 did not have release detection data from May 3, 2022 to June 26, 2022, from December 13, 2022 to January 15, 2023, from January 17, 2023 to February 19, 2023, and from February 21, 2023 to May 15, 2023.
41. From June 2, 2022 to June 26, 2022, from January 12, 2023 to January 15, 2023, from February 14, 2023 to February 19, 2023, and from March 23, 2023 to May 15, 2023, Respondent failed to monitor Tank 2 for releases at least every 30 days using the Facility’s Veeder-Root TLS-300 ATG system.
42. From June 2, 2022 to June 26, 2022, from January 12, 2023 to January 15, 2023, from February 14, 2023 to February 19, 2023, and from March 23, 2023 to May 15, 2023, Respondent violated 40 C.F.R. § 280.41(a)(1), which W. Va. Code R. § 33-30-2

incorporates by reference, by failing to monitor Tank 2 for releases at least every 30 days using the Facility's Veeder-Root TLS-300 ATG system.

43. In failing to comply with 40 C.F.R. § 280.41(a)(1), which W. Va. Code R. § 33-30-2 incorporates by reference, Respondent is subject to the assessment of penalties under 9006(d)(2) of RCRA, 42 U.S.C. § 6991e(d)(2).

CIVIL PENALTY

44. In settlement of EPA's claims for civil penalties for the violations alleged in this Consent Agreement, Respondent consents to the assessment of a civil penalty in the amount of nine thousand, one hundred eighty-seven dollars (\$9,187), which Respondent shall be liable to pay in accordance with the terms set forth below.
45. The civil penalty is based upon EPA's consideration of a number of factors, including the penalty criteria ("statutory factors") set forth in Section 9006(c) and (e) of RCRA, 42 U.S.C. § 6991e(c) and (e), including, the following: the seriousness of the violation, any good faith efforts to comply with the applicable requirements, and any other factors considered appropriate, including Respondent's agreement to settle in order to resolve disputed facts and legal conclusions. These factors were applied to the particular facts and circumstances of this case with specific reference to EPA's October 5, 2023, *Revised Consolidated Enforcement Penalty Policy for Underground Storage Tank (UST) Regulations and Revised Field Citation Program and ESA Pilot* and November 1990 U.S. EPA *Penalty Guidance for Violations of UST Regulations* which reflect the statutory penalty criteria and factors set forth at Section 9006(c) and (e) of RCRA, 42 U.S.C. § 6991e(c) and (e); 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.
46. Respondent agrees to pay a civil penalty in the amount of \$9,187.00 ("Assessed Penalty") within thirty (30) days of the Effective Date of this Consent Agreement and Final Order.
47. Respondent shall pay the Assessed Penalty and any interest, fees, and other charges due using any method, or combination of appropriate methods, as provided on the EPA website: <https://www.epa.gov/financial/makepayment>. For additional instructions see: <https://www.epa.gov/financial/additional-instructions-making-payments-epa>.
48. When making a payment, Respondent shall:
 - a. Identify every payment with Respondent's name and the docket number of this Consent Agreement, RCRA-03-2024-0096,

- b. Concurrently with any payment or within 24 hours of any payment, Respondent shall serve Proof of Payment simultaneously **by email** to the following person(s):

Promy Tabassum
Assistant Regional Counsel
tabassum.promy@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 Respondent’s name.

49. Interest, Charges, and Penalties on Late Payments. Pursuant to 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to timely pay the full amount of the Assessed Penalty per this Consent Agreement, EPA is authorized to recover, in addition to the amount of the unpaid Assessed Penalty, the following amounts.
- a. Interest. Interest begins to accrue from the Effective Date of this Consent Agreement. If the Assessed Penalty is paid in full within thirty (30) days, interest accrued is waived. If the Assessed Penalty is not paid in full within thirty (30) days, interest will continue to accrue until any unpaid portion of the Assessed Penalty as well as any interest, penalties, and other charges are paid in full. To protect the interests of the United States, the rate of interest is set at the IRS standard underpayment rate, any lower rate would fail to provide Respondent adequate incentive for timely payment.
- b. Handling Charges. Respondent will be assessed monthly a charge to cover EPA’s costs of processing and handling overdue debts. If Respondent fails to pay the Assessed Penalty in accordance with this Consent Agreement, EPA will assess a charge to cover the costs of handling any unpaid amounts for the first thirty (30) day period after the Effective Date. Additional handling charges will be assessed

every thirty (30) days, or any portion thereof, until the unpaid portion of the Assessed Penalty as well as any accrued interest, penalties, and other charges are paid in full.

- c. Late Payment Penalty. A late payment penalty of six percent (6%) per annum, will be assessed monthly on all debts, including any unpaid portion of the Assessed Penalty, interest, penalties, and other charges, that remain delinquent more than ninety (90) days. Any such amounts will accrue from the Effective Date.

50. Late Penalty Actions. In addition to the amounts described in the prior Paragraph, if Respondent fails to timely pay any portion of the Assessed Penalty, interest, or other charges and penalties per this Consent Agreement, EPA may take additional actions. Such actions EPA may take include, but are not limited to, the following.
 - a. Refer the debt to a credit reporting agency or a collection agency, per 40 C.F.R. §§ 13.13 and 13.14.
 - b. Collect the debt by administrative offset (i.e., the withholding of money payable by the United States government to, or held by the United States government for, a person to satisfy the debt the person owes the United States government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, per 40 C.F.R. Part 13, Subparts C and H.
 - c. Suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds, per 40 C.F.R. § 13.17.
 - d. Refer this matter to the United States Department of Justice for litigation and collection, per 40 C.F.R. § 13.33.
51. Allocation of Payments. Pursuant to 31 C.F.R. § 901.9(f) and 40 C.F.R. § 13.11(d), a partial payment of debt will be applied first to outstanding handling charges, second to late penalty charges, third to accrued interest, and last to the principal that is the outstanding Assessed Penalty amount.
52. Tax Treatment of Penalties. Penalties, interest, and other charges paid pursuant to this Consent Agreement shall not be deductible for purposes of federal taxes.
53. Payment of the civil penalty is due and payable immediately upon receipt by Respondent of a true and correct copy of the fully executed and filed Consent Agreement and Final Order. Receipt by Respondent or Respondent's 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 EPA by Respondent in accordance with 40 C.F.R. § 13.9(a).

54. The Parties consent to service of the Final Order by e-mail at the following valid email addresses: tabassum.promy@epa.gov (for Complainant), and rjschmidt@aep.com (for Respondent).

GENERAL SETTLEMENT CONDITIONS

55. By signing this Consent Agreement, Respondent acknowledges that this Consent Agreement and Final Order will be available to the public and represents that, to the best of Respondent's knowledge and belief, this Consent Agreement and Final Order does not contain any confidential business information or personally identifiable information from Respondent.
56. Respondent certifies that any information or representation it has 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 Respondent to the EPA regarding matters relevant to this Consent Agreement and Final Order, including information about respondent's 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. Respondent and its officers, directors and 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.

CERTIFICATION OF COMPLIANCE

57. Respondent certifies to EPA, upon personal investigation and to the best of its knowledge and belief, that it currently is in compliance with regard to the violations alleged in this Consent Agreement.

OTHER APPLICABLE LAWS

58. Nothing in this Consent Agreement and Final Order shall relieve Respondent of its 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 RCRA Subtitle I, or any regulations promulgated thereunder.

RESERVATION OF RIGHTS

59. This Consent Agreement and Final Order resolves only EPA's claims for civil penalties for the specific violations alleged against Respondent in this Consent Agreement and Final Order. EPA reserves the right to commence action against any person, including Respondent, 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 RCRA Subtitle I, 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. Respondent reserves whatever rights or defenses it may have to defend itself in any such action.

EXECUTION /PARTIES BOUND

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

EFFECTIVE DATE

61. The effective date of this Consent Agreement and Final Order is the date on which the Final Order, signed by the Regional Administrator of EPA, Region 3, or his designee, the Regional Judicial Officer, is filed along with the Consent Agreement with the Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.

ENTIRE AGREEMENT

62. 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 Respondent: APPALACHIAN POWER COMPANY

Date: 7/9/24

By: 

Craig T. Rhoades, Senior Vice President, Chief
Procurement Officer
American Electric Power Service Corporation as
agent for Appalachian Power Company

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 designee, the Regional Judicial Officer, issue the attached Final Order.

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

Attorney for Complainant:

By: _____
[*Digital Signature and Date*]
Promy Tabassum
Assistant Regional Counsel
U.S. EPA – Region 3

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 3
Philadelphia, Pennsylvania 19103



In the Matter of: :
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Appalachian Power Company : U.S. EPA Docket No. RCRA-03-2024-0096
1 Riverside Plaza : :
Columbus, OH 43215 : Proceeding under Section 9006 of the Resource
: Conservation and Recovery Act, 42 U.S.C.
Respondent. : Section 6991e
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Huntington Service Building : :
1122 7th Avenue : :
Huntington, WV 25701 : :
: :
Facility. : :

FINAL ORDER

Complainant, the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region 3, and Respondent, Appalachian Power Company 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 22.13(b) and 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 October 5, 2018, *Interim Consolidated Enforcement Penalty Policy for Underground Storage Tank (UST) Regulations and Revised Field Citation Program and ESA Pilot* and November 1990 *U.S. EPA Penalty Guidance for Violations of UST Regulations*; the statutory factors set forth in Section 9006(c) and (e) of the Resource Conservation and Recovery Act ("RCRA" or the "Act"), 42 U.S.C. § 6991e(c) and (e); 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.

NOW, THEREFORE, PURSUANT TO Section 9006(d) of RCRA. 42 U.S.C. § 6991e(d), and Section 22.18(b)(3) of the Consolidated Rules of Practice, **IT IS HEREBY ORDERED** that Respondent pay a civil penalty in the amount of *e.g., NINE THOUSAND, ONE HUNDRED EIGHTY-SEVEN DOLLARS (\$9,187)*, 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 Respondent's obligation to comply with all applicable provisions of RCRA Subtitle I 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.

By:

_____ *[Digital Signature and Date]*

Joseph J. Lisa

Regional Judicial and Presiding Officer

U.S. EPA – Region 3

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1122 7th Avenue	:
Huntington, WV 25701	:
	:
Facility.	:

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:

Robert J. Schmidt, Esq.
American Electric Power Service Corporation
1 Riverside Plaza
Columbus, OH 43215
rischmidt@aep.com

Promy Tabassum, Esq.
Assistant Regional Counsel
U.S. EPA, Region 3
tabassum.promy@epa.gov

Nicole Okino
Enforcement and Compliance Officer
U.S. EPA, Region 3
okino.nicole@epa.gov

By: _____
[Digital Signature and Date]
Regional Hearing Clerk
U.S. EPA – Region 3