

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. CWA-05-2024-0014
)	
CCU Coal & Construction, LLC)	Proceeding to Assess a Class II Civil
5100 Guernsey Street)	Penalty under Section 309(g) of the Clean
Bellaire, Ohio,)	Water Act, 33 U.S.C. § 1319(g)
)	
Respondent.)	
)	

Consent Agreement and Final Order
Preliminary Statement

1. This is an administrative action commenced and concluded under Section 309(g) of the Clean Water Act (“CWA” or “the Act”), 33 U.S.C. § 1319(g), and Sections 22.13(b) and 22.18(b)(2)-(3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules) as codified at 40 C.F.R. §§ 22.13(b) and 22.18(b)(2)-(3).

2. The Complainant is, by lawful delegation, the Director of the Enforcement and Compliance Assurance Division, EPA Region 5, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondent is CCU Coal & Construction, LLC, a limited liability company, which operates a facility in Bellaire, Ohio (Bellaire CCU).

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, an administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). *See* 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the terms of this CAFO, including the assessment of the civil penalty specified below.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and admits the factual allegations in this CAFO.

8. Respondent waives any right to contest the allegations and its right to appeal the proposed final order accompanying the consent agreement.

Statutory and Regulatory Background

9. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants into navigable waters except in compliance with, *inter alia*, a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

10. Section 402 of the CWA, 33 U.S.C. § 1342, establishes the NPDES program under which EPA and, upon receiving authorization from EPA, a state may permit discharges into navigable waters, subject to specific conditions. A violation of a NPDES permit is a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

11. Pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, the State of Ohio requested approval from EPA to administer its own permit program for discharges into navigable waters within Ohio, and such approval was granted by EPA on March 11, 1974, 39 Fed. Reg. 26,061 (July 16, 1974). Therefore, pursuant to the State's permit program, the Ohio Environmental Protection Agency ("OEPA") has issued Ohio NPDES permits.

12. Section 309(g) of the CWA, 33 U.S.C. § 1319(g), authorizes the Administrator to assess a Class II civil penalty under Section 309(g)(2)(B) of the CWA, 33 U.S.C.

§ 1319(g)(2)(B), after consultation with the State in which the violation occurs, when the Administrator finds, on the basis of any information available, that a person has violated Section 301 of the CWA, 33 U.S.C. § 1311, which prohibits unpermitted discharges of any pollutant to navigable waters and discharges of any pollutant to navigable waters not in compliance with a permit issued under Section 402 of the CWA, 33 U.S.C. § 1342, or when the Administrator finds that a person has violated a condition or limitation of a permit issued under 33 U.S.C. § 1342.

Factual Allegations

13. Respondent is a “person” under Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

14. At all times relevant to this CAFO, Respondent operated Bellaire CCU, a coal managing facility, located in Bellaire, Ohio (“facility”) along the northern bank of the Ohio River.

15. Respondent was issued for the facility an NPDES permit No. OH0059889, state identifier 0IL00110*GD (“Permit”) under Section 402 of the CWA, 33 U.S.C. § 1342, by Ohio. The Permit, which became effective on November 1, 2021 and has an expiration date of October 31, 2026, identifies two outfalls at the facility, Outfall 0IL00110001 and Outfall 0IL001100003. The two outfalls discharge industrial stormwater runoff into the Ohio River.

16. At times relevant to this CAFO, the Respondent discharged from the facility copper and chloride into the Ohio River.

17. The copper discharged from the facility into the Ohio River is a “pollutant” as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

18. The chloride discharged from the facility into the Ohio River is a “pollutant” as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

19. Outfall 0IL00110001 and Outfall 0IL001100003 are discernible, confined, and discrete conveyances, each of which constitutes a “point source,” as defined in Section 502(14) of the CWA, 33.U.S.C. § 1362(14), that serve as a discharge point from the facility.

20. Respondent’s addition of pollutants from November 2021 through December 2022, from Outfall 0IL00110001 and Outfall 0IL001100003, into the Ohio River constitutes a “discharge of a pollutant” as defined by Section 502(12) of the CWA, 33 U.S.C. § 1362(12).

21. The waters of the Ohio River are “navigable waters” under Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

22. Because Respondent operates a facility with outfalls that act as point sources for the discharge of pollutants to navigable waters, Respondent and the facility have been subject to the CWA and the NPDES program at all times relevant to this CAFO. Thus, any such discharge has been and is subject to the CWA and its implementing regulations and the specific terms and conditions prescribed in the applicable permit.

Count 1: Unlawful Discharge of Pollutants into Ohio River

23. The statements in paragraphs 1 through 22 are hereby incorporated by reference as if set forth in full.

24. Part I.A.1. and Part I.A.2. of the Permit requires Respondent to discharge industrial stormwater runoff in accordance with the limitations and monitoring requirements set forth for Outfall 0IL00110001 and Outfall 0IL001100003.

25. Part I.A.1. of the Permit includes a requirement to sample and analyze on a quarterly basis the discharge from Outfall 0IL00110001 for copper with the analytical results expressed in micrograms per liter (“ug/l”).

26. Part I.A.2. of the Permit includes a requirement to sample and analyze on a monthly basis the discharge from Outfall 0IL001100003 for copper with analytical results expressed in ug/l.

27. Part I.A.2. of the Permit includes a requirement to sample and analyze on a yearly basis the discharge from Outfall 0IL001100003 for chloride with analytical results expressed in ug/l.

28. On 17 occasions between November 1, 2021 and December 31, 2022, Respondent did not sample discharged stormwater for copper and chloride as required in the Permit, in violation of Part I.A.1. and Part I.A.2. of the Permit and Section 301 of the CWA, 33 U.S.C. § 1311.

29. Each violation of the conditions of the Permit or regulations described above in Count 1 is a violation of Section 301 of the CWA, 33 U.S.C. § 1311.

30. Therefore, Respondent is a person who discharged pollutants from a point source into navigable waters, in violation of its permit, in violation of Section 301 of the CWA, 33 U.S.C. § 1311.

Count 2: Effluent Limit Violations of Discharge into Ohio River

31. The statements in paragraphs 1 through 22 are hereby incorporated by reference as if set forth in full.

32. Part I.A.2. of the Permit establishes effluent limitations for copper for the discharge from Outfall 0IL001100003. The analytical results of the effluent must be expressed in ug/l, with a daily maximum limit for copper of 29 ug/l.

33. Part III.4.D. of the Permit requires the Respondent to, if any pollutant is monitored more frequently than required by the Permit, report and include the results of the additional monitoring in the calculation of the values required in the reports specified.

34. Part III.12.A. of the Permit requires Respondent to report within twenty-four (24) hours of discovery by email or telephone any exceedance of a daily maximum discharge limit for any of the pollutants listed in the Permit.

35. On one occasion between November 1, 2021 and December 31, 2022, Respondent discharged a pollutant – copper – from Outfall 0IL001100003 with a concentration of 44 ug/l, which was in excess of 29 ug/l, the applicable effluent limit for copper specified in the Permit, in violation of Part I.A.2. of the Permit and Section 301 of the CWA, 33 U.S.C. § 1311.

36. On one occasion between November 1, 2021 and December 31, 2022, Respondent discharged a pollutant – copper – from Outfall 0IL001100003 that exceeded the applicable effluent limits in the Permit, and did not report the noncompliance and did not notify OEPA within twenty-four hours of discovery, in violation of Part III.4.D. and Part III.12.A. of the Permit, which requires Respondent to report noncompliance to OEPA within twenty-four hours of discovery, and Section 301 of the CWA, 33 U.S.C. § 1311.

37. Each violation of the conditions of the Permit or regulations described above in Count 2 is a violation of Section 301 of the CWA, 33 U.S.C. § 1311.

38. Therefore, Respondent is a person who discharged pollutants from a point source into navigable waters, in violation of its permit, in violation of Section 301 of the CWA, 33 U.S.C. § 1311.

Count 3: SWPPP Violations

39. The statements in paragraphs 1 through 22 are hereby incorporated by reference as if set forth in full.

40. Part II.L. and Part IV.F. of the Permit requires Respondent to develop a Stormwater Pollution Prevention Plan (SWPPP).

41. The Permit requires the Respondent to keep the SWPPP current and modify the SWPPP whenever necessary to conform to changes within the facility. The SWPPP must address all discharges to surface waters of the United States that contain stormwater associated with industrial activity and contain a requirement to conduct and document Quarterly Visual Assessments. The SWPPP must include a site map showing the extent of significant structures and impervious structures; a diagram showing directions of stormwater flow; a diagram showing the locations of all existing structural control measures; a diagram showing the locations of all stormwater conveyances including ditches, pipes, and swales; a diagram showing the locations of potential pollutant sources; a diagram showing locations of all stormwater monitoring points; and a diagram showing the locations of activities exposed to precipitation.

42. Between November 1, 2021 and December 31, 2022, Respondent discharged pollutants from Outfall 0IL00110001 and Outfall 0IL001100003 but at the time of the discharges had not developed or maintained an up-to-date SWPPP, which contained all of the elements described in paragraph 41., above as required in the Permit, in violation of Part II.L. and Part IV.F. of the Permit and Section 301 of the CWA, 33 U.S.C. § 1311.

43. Each violation of the conditions of the Permit or regulations described above in Count 3 is a violation of Section 301 of the CWA, 33 U.S.C. § 1311.

44. Therefore, Respondent is a person who discharged pollutants from a point source into navigable waters, in violation of its permit, in violation of Section 301 of the CWA, 33 U.S.C. § 1311.

Count 4: Control Measure and BMP Violations

45. The statements in paragraphs 1 through 22 are hereby incorporated by reference as if set forth in full.

46. Part IV of the Permit requires Respondent to use storm water control measures and pollution prevention programs to manage storm water discharges and minimize the exposure of manufacturing, processing, and material storage areas to rain, snow, snowmelt, and runoff.

47. At two locations Respondent did not have sufficient stormwater controls in place in either the sloped area in the southern portion of the facility in the vicinity of the coal conveyor or the northern portion of the facility used for fuel tank storage, equipment maintenance, and waste oil storage as required in the Permit, in violation of Part II.L. and Part IV.F. of the Permit and Section 301 of the CWA, 33 U.S.C. § 1311.

48. Each violation of the conditions of the Permit or regulations described above in Count 4 is a violation of Section 301 of the CWA, 33 U.S.C. § 1311.

49. Therefore, Respondent is a person who discharged pollutants from a point source into navigable waters, in violation of its permit, in violation of Section 301 of the CWA, 33 U.S.C. § 1311.

Civil Penalty

50. Under Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), and 40 C.F.R. Part 19, the Administrator may assess a Class II civil penalty up to \$26,685 per day of violation up to a total of \$333,552, for violations of the CWA that occurred after November 2,

2015 and for which penalties are assessed on or after December 27, 2023, or other amounts as penalty levels may be later adjusted at 40 C.F.R. Part 19.

51. Based upon the facts alleged in this CAFO, and upon the nature, circumstances, extent, and gravity of the violations alleged, as well as Respondent's ability to pay, prior history of such violations, degree of culpability, economic benefit or savings (if any) resulting from the violations, and such other matters as justice may require, U.S. EPA has determined that an appropriate civil penalty to settle this action is \$60,541.42.

52. Respondent agrees to pay a civil penalty in the amount of \$60,541.52 ("Assessed Penalty") within thirty (30) days after the Final Order ratifying this Agreement is filed with Regional Hearing Clerk ("Filing Date").

53. Respondent shall pay the Assessed Penalty and any interest, fees, and any 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>.

54. When making a payment, Respondent shall:

- a. Identify every payment with Respondent's name and the docket number of this agreement:
- b. Concurrently with any payment or within 24 hours of any payment, Respondent shall serve proof of such payment to the following person(s):

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5
R5hearingclerk@epa.gov

Jennifer Bush (ECW-15J)
U.S. Environmental Protection Agency
Bush.Jennifer@epa.gov

Steven Kaiser (C-14J)
Associate Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency
Kaiser.Steven@epa.gov

and

U.S. Environmental Protection Agency
Cincinnati Finance Center
Via electronic mail to:
CINWD_AcctsReceivable@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.

55. 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 Agreement, EPA is authorized to recover, in addition to the unpaid amount of the Assessed Penalty, the following amounts.

- a. Interest. Interest begins to accrue from the Filing Date. 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 Agreement, EPA will assess a charge to cover the costs of handling any unpaid amounts for the first thirty (30) day period after the Filing Date. Additional handling charged 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 penalty payment 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 Filing Date.

56. 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 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.

57. 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.

58. Tax Treatment of Penalties. Penalties, interest, and other charges paid pursuant to this Agreement shall not be deductible for purposes of federal taxes.

General Provisions

59. The parties consent to service of this CAFO by email at the following valid email addresses: kaiser.steven@epa.gov (for Complainant) and Mstemm@porterwright.com (for Respondent). Respondent understands that the CAFO will become publicly available upon proposal for public comment and upon filing.

60. Full payment of the penalty as described in paragraphs 54 and 55 and full compliance with this CAFO shall not in any case affect the right of the U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

61. As provided under 40 C.F.R. § 22.18(c), full payment of the penalty as described in paragraphs 54 and 55 and full compliance with this CAFO shall only resolve Respondent's

liability for federal civil penalties under Section 309(g) of the CWA, 33 U.S.C. § 1319(g), for the particular violations alleged in this CAFO.

62. This CAFO does not affect Respondent's responsibility to comply with the CWA and other applicable laws, regulations, or permits.

63. Respondent certifies that it is presently complying with Sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a), 1342.

64. The terms of this CAFO bind Respondent and its successors and assigns.

65. Each person signing this CAFO certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to the terms of this CAFO.

66. Each party agrees to bear its own costs and attorney's fees in this action.

67. This CAFO constitutes the entire agreement between the parties.

68. Pursuant to 40 C.F.R. § 22.18(b)(3), this Consent Agreement does not dispose of this proceeding without execution of the Final Order. The Final Order will not be issued until after completion of the requirements of Section 309(g)(4) of the CWA, 33 U.S.C. § 1319(g)(4), and 40 C.F.R. § 22.45(b), which require, among other things, public notice, and a reasonable opportunity to comment on any proposed penalty order. Further, under Section 309(g), 33 U.S.C. § 1319(g), and 40 C.F.R. § 22.45, this Consent Agreement may be withdrawn before execution of the Final Order. Please refer to Section 309(g) of the CWA, 33 U.S.C. 1319(g), 40 C.F.R. § 22.45, and 40 C.F.R. Part 22 (the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties) for detailed information on the procedures regarding Consent Agreement and Final Order as a penalty order under the CWA and settlement under Part 22.

69. When final and effective, this CAFO is a “final order” for purposes of 40 C.F.R. §§ 22.13, 22.18, 22.31, 22.45 and the EPA’s Interim Clean Water Act Settlement Penalty Policy (Mar. 1995).

70. In accordance with Section 309(g)(5) of the CWA, 33 U.S.C. § 1319(g)(5), and 40 C.F.R. § 22.45, this CAFO shall become effective 30 days after the date of issuance unless, if applicable, a commenter files a petition for judicial review pursuant to 33 U.S.C. § 1319(g)(8) or a request for hearing pursuant to 33 U.S.C. § 1319(g)(4)(C), or, if applicable, 30 days after the request or petition is denied. The date of issuance is the date the Final Order is signed by the Regional Judicial Officer or Regional Administrator.

**In the Matter of:
CCU Coal & Construction, LLC
Docket No. CWA-05-2024-0014**

CCU Coal & Construction, LLC, Respondent

Gregory J. Honish
Vice President
CCU Coal & Construction, LLC

Date

United States Environmental Protection Agency, Complainant

Michael D. Harris
Division Director
Enforcement and Compliance Assurance Division
U.S. EPA Region 5

Date

**In the Matter of:
CCU Coal & Construction, LLC
Docket No. CWA-05-2024-0014**

Final Order

In accordance with Section 309(g)(5) of the CWA, 33 U.S.C. § 1319(g)(5), and 40 C.F.R. § 22.45, this CAFO shall become effective 30 days after the date of issuance unless, if applicable, a commenter files a petition for judicial review pursuant to 33 U.S.C. § 1319(g)(8) or a request for hearing pursuant to 33 U.S.C. § 1319(g)(4)(C), or, if applicable, 30 days after the request or petition is denied. The date of issuance is the date the undersigned signed this Final Order. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18, 22.31, and 22.45. IT IS SO ORDERED.

By: _____ Date: _____
Ann L. Coyle
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 5