

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BLVD.
LENEXA, KANSAS 66219

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)	
)	Docket No. CWA-07-2025-0195
U.S. Minerals, Inc.)	
)	
Respondent)	Consent Agreement and Final Order
)	
Proceedings under Section 309(g) of the)	
Clean Water Act, 33 U.S.C. § 1319(g))	
_____)	

COMPLAINT

Jurisdiction

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 309(g) of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act (“CWA”), 33 U.S.C. § 1319(g), and 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”), 40 C.F.R. Part 22.

2. Complainant, the U.S. Environmental Protection Agency Region 7 (“EPA”) and Respondent, U.S. Minerals, Inc., have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Consolidated Rules 22.13(b) and 22.18(b)(2) and (3), 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and (3).

3. This Complaint and Consent Agreement and Final Order serves as notice that the EPA has reason to believe that the Respondent has violated a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and regulations promulgated thereunder.

Parties

4. The authority to take action under Section 309(g) of the CWA, 33 U.S.C. §1319(g), is vested in the Administrator of the EPA. The Administrator has delegated this authority to the Regional Administrator, EPA Region 7, who in turn has delegated the authority under Section 309(g) to the Director of the Enforcement and Compliance Assurance Division of EPA Region 7 (collectively referred to as the “Complainant”) with concurrence of the Regional Counsel.

5. Respondent is and was at all relevant times a foreign for-profit corporation authorized to do business in the state of Kansas.

Statutory and Regulatory Framework

6. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants, except in compliance with, *inter alia*, Section 402 of the CWA, 33 U.S.C. § 1342. Section 402 of the CWA provides that pollutants may be discharged in accordance with the terms of a National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to that Section.

7. The CWA prohibits the discharge of “pollutants” from a “point source” to a “navigable water,” as these terms are defined by Section 502 of the CWA, 33 U.S.C. § 1362.

8. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines “navigable waters” as “the waters of the United States, including the territorial seas.”

9. To implement Section 402 of the CWA, the EPA promulgated regulations codified at 40 C.F.R. Part 122. Under 40 C.F.R. § 122.1, an NPDES permit is required for the discharge of pollutants from any point source into waters of the United States.

10. The Kansas Department of Health and Environment (“KDHE”) is the state agency within the state of Kansas that has been authorized by the EPA to administer the federal NPDES program pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and applicable implementing regulations.

11. Pursuant to Section 402(i) of the CWA, 33 U.S.C. § 1342(i), the EPA retains concurrent enforcement authority with authorized states for violations of the CWA.

EPA’s General Allegations

12. Respondent is a “person” as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

13. At all times relevant to this action, Respondent owned, operated, or otherwise controlled the Facility, which occupies approximately 11.2 acres. The Facility loads, unloads, stockpiles, crushes, sorts, bags, and applies chemicals to coal slag to produce roofing granules, abrasives, and fillers.

14. Stormwater, snow melt, surface drainage, and runoff water leave the Facility and discharge into the unnamed tributary via two outfalls located on the western perimeter of the Facility or stormwater inlets located on Linn County Drive north of the Facility.

The Facility has “stormwater discharges associated with industrial activity” as defined by 40 C.F.R. § 122.26(b)(14) and is a “point source” as defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14). Stormwater from the Facility contains “pollutants” as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

15. The unnamed tributary is located on the west perimeter of the Facility and is a perennial stream that flows into the Marais des Cygnes River.

16. The Marais des Cygnes River is a traditionally navigable water and is therefore a “navigable water” within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

17. The unnamed tributary is a relatively permanent water that connects to a traditionally navigable water and therefore is a water of the United States within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

18. Stormwater runoff from Respondent’s industrial activity at the Facility results in the addition of pollutants from a point source to navigable waters and thus is the “discharge of a pollutant” as defined by CWA Section 502(12), 33 U.S.C. § 1362(12).

19. Respondent’s discharge of pollutants associated with an industrial activity, as defined by 40 C.F.R. § 122.26(b)(14), requires a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

20. KDHE issues and implements the Kansas Water Pollution Control and National Pollutant Discharge Elimination System Stormwater Runoff from Industrial Activity via a General Permit (“Permit”) S-ISWA-2111-1 (Federal Permit # KSR000000) effective November 1, 2021, through October 31, 2026. KDHE assigned permit #KSR001083 to Respondent.

21. On November 22, 2024, EPA personnel, under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a), inspected the Facility to determine Respondent’s compliance with the Permit and the CWA (“Inspection”). During this inspection and upon a review of documents thereafter, EPA’s Inspector identified violations of the Respondent’s NPDES permit.

EPA’s Allegations of Violation

Count 1

Failure to Comply with Standard Conditions

22. The paragraphs above are re-alleged and incorporated herein by reference.

23. Part 4 of the Permit states that in addition to the conditions specified in this general permit, the permittee shall comply with the following Standard Conditions.

24. Part 4.1 of the Permit requires that “the permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related

appurtenances) which are installed or used by the permittee to achieve compliance with the requirements of this permit and Kansas and Federal law.”

25. At the time of the inspection, the EPA observed and documented improperly operated and maintained BMPs, including:

- a. A gap in the concrete barrier on the western border.
- b. The presence of coal slag entering the storm sewer on Linnco Drive.
- c. The presence of coal slag located in the east driveway tracking out onto Ragains Road.
- d. The presence of coal slag covering the ground surface and overflowing the block barricade and railroad tracks into the stormwater retention area.

26. At the time of the inspection and after a review of other relevant information, Respondent failed to operate and maintain best management practices as required by Part 4.1 of the Permit.

27. Respondent’s failure to comply with standard conditions is a violation of the terms and conditions of Respondent’s NPDES permit and the CWA.

Count 2
Failure to Update SWPPP and/or Inadequate SWPPP

28. The paragraphs above are re-alleged and incorporated herein by reference.

29. Part 2.1 of the Permit states that “the permittee shall develop a stormwater pollution prevention (SWP2) plan that is specific to the industrial activity and site characteristics occurring at the permitted location described in the NOI. The permittee shall fully implement and periodically review, and update as necessary, the provisions of their SWP2 Plan, as required under this part, as a condition of this general permit.”

30. Part 2.2 of the Permit states that “the purpose of the SWP2 Plan is to ensure the design, implementation, management, and maintenance of Best Management Practices (BMPs) to reduce the amount of pollutants in stormwater discharge associated with industrial activities at the facility” and that “as guidance, in developing the SWP2 Plan, the permittee shall review, evaluate, select, install, utilize, operate and maintain the BMPs in accordance with the best professional judgement, generally accepted and scientifically defensible guidance and the concepts and methods as described in the Environmental Protection Agency (EPA) guidance documents.”

31. Part 2.4.2 of the Permit requires that the description of potential pollution sources includes, but are not limited to, a site map and inventory of exposed materials that contain the listed elements.

32. Part 2.4.3 of the Permit requires that the measures and controls listed in the SWPPP include “a listing and description of stormwater management controls,

managerial/administrative BMPs, structural control BMPs, and non-structural control BMPs appropriate for the facility that addresses the following minimum components, including a schedule, if necessary, for implementing such controls”.

33. Part 2.4.6 of the Permit states that “the SWP2 Plan shall be re-evaluated and modified in a timely manner, but in no case more than 90 days after” the listed events.

34. At the time of the inspection and after a review of other relevant information, Respondent’s SWPPP failed to include the following:

- a. A site map identifying all the requirements listed in the Permit.
- b. A narrative description of the inventory of exposed materials.
- c. An updated listing and description of the specific selection or design of stormwater management controls used at the Facility, including failing to describe the concrete barrier/retaining wall on the western border of the Facility; dust control measures used on stockpiles; and good housekeeping procedures.

35. Based on the Inspection, EPA’s review of the Facility’s SWPPP, and other relevant information, Respondent failed to update the SWPPP and/or maintain an adequate SWPPP as required by Part 2 of the Permit.

36. Respondent’s inadequate SWPPP is a violation of the terms and conditions of Respondent’s NPDES permit and the CWA.

Count 3

Failure to Conduct and/or Adequately Document Routine Facility Inspections

37. The paragraphs above are re-alleged and incorporated herein by reference.

38. Part 2.4.3.d of the Permit states trained personnel shall “inspect at appropriate intervals, (inspection frequency shall be stated in SWP2 Plan, but at a minimum quarterly inspection shall be performed), designated equipment and storage areas for raw material, finished product, chemicals, recycling, equipment, paint, fueling and maintenance; and loading, unloading, and waste management areas. A set of tracking or follow-up procedures shall be used to ensure that appropriate actions are taken in response to the inspections. The inspection report shall include completion dates for correction of all deficiencies. Records of inspections shall be maintained on-site or in a readily accessible location for at least three years after the date of the inspection.”

39. Part 2.4.4 of the Permit states that “a comprehensive site compliance evaluation shall be conducted and documented at least once a year”.

40. The EPA Inspection and corresponding records review confirmed that the Respondent failed to: conduct and/or adequately document routine facility inspections for all

quarters of 2022 and the first quarter of 2024; conduct and/or adequately document a comprehensive site compliance evaluation in 2022; and document corrective action of all deficiencies when appropriate.

41. Based on the Inspection, EPA's review of the Facility's SWPPP, and other relevant information, Respondent failed to conduct and/or adequately document routine facility inspections, and an annual comprehensive site compliance evaluation, as required by Parts 2.4.3.d, and 2.4.4 of the Permit.

42. Respondent's failure to conduct and document routine inspections is a violation of the terms and conditions of Respondent's NPDES permit and the CWA.

CONSENT AGREEMENT

43. Respondent and the EPA agree to the terms of this Consent Agreement and Final Order.

44. Respondent admits the jurisdictional allegations of this Consent Agreement and Final Order and agrees not to contest the EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of this Consent Agreement and Final Order.

45. Respondent neither admits nor denies the factual allegations asserted by the EPA in this Consent Agreement and Final Order.

46. By signing this consent agreement, respondent waives any rights or defenses that respondent has or may have for this matter to be resolved in federal court, including but not limited to any right to a jury trial, and waives any right to challenge the lawfulness of the final order accompanying the consent agreement.

47. Respondent and Complainant agree to conciliate the matters set forth in this Consent Agreement and Final Order without the necessity of a formal hearing and agree to bear their own costs and attorney's fees incurred as a result of this action.

48. The undersigned representative of Respondent certifies that they are fully authorized to enter the terms and conditions of this Consent Agreement and Final Order and to execute and legally bind Respondent to it.

49. Respondent understands and agrees that this Consent Agreement and Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.

50. Respondent certifies by the signing of this Consent Agreement and Final Order that Respondent's Facility have returned to compliance with Kansas General Permit #KSR001083, the CWA, and applicable regulations.

51. Pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), as adjusted pursuant to 40 C.F.R. § 19.4, Respondent is liable for civil penalties of up to \$27,378 per day for each day during which the violation continues, up to a maximum of \$342,218.

52. Based upon the facts alleged in this Consent Agreement and Final Order, 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 **\$35,593**.

53. Respondent agrees to pay a civil penalty in the amount of **\$35,593** ("Assessed Penalty") within thirty (30) days after the date the Final Order ratifying this Agreement is filed with the Regional Hearing Clerk ("Filing Date").

Penalty Payment

54. Respondent shall pay the Assessed Penalty of **\$35,593** 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>.

When making a payment, Respondent shall:

- a. Identify every payment with Respondent's name and the docket number of this Agreement, CWA-07-2025-0195,
- b. Concurrently with any payment or within 24 hours of any payment, Respondent shall serve proof of such payment to the following person(s):

Amy Gonzales
Regional Hearing Clerk
U.S. Environmental Protection Agency Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219
R7_Hearing_Clerk_Filings@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 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 33 U.S.C. § 1319(g)(9), 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to timely pay any portion of the Assessed Penalty, interest, or other charges and penalties per this Agreement, the entire unpaid balance of the Assessed Penalty and all accrued interest shall become immediately due and owing, and EPA is authorized to recover 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 the unpaid portion of the Assessed Penalty as well as any interest, penalties, and other charges are paid in full. Interest will be assessed at prevailing rates, per 33 U.S.C. § 1319(g)(9). The rate of interest is the IRS standard underpayment rate.
- b. Handling Charges. The United States’ enforcement expenses including, but not limited to, attorneys’ fees and costs of collection proceedings.
- c. Late Payment Penalty. A twenty percent (20%) quarterly non-payment penalty.

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. Request that the Attorney General bring a civil action in the appropriate district court to recover the full remaining balance of the Assessed Penalty, in addition to interest and the amounts described above, pursuant to 33 U.S.C.

§ 1319(g)(9). In any such action, the validity, amount, and appropriateness of the Assessed Penalty shall not be subject to review.

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

- a. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, EPA is required to send to the Internal Revenue Service (“IRS”) annually, a completed IRS Form 1098-F (“Fines, Penalties, and Other Amounts”) with respect to any court order or settlement agreement (including administrative settlements) that require a payor to pay an aggregate amount that EPA reasonably believes will be equal to, or in excess of, \$50,000 for the payor’s violation of any law or the investigation or inquiry into the payor’s potential violation of any law, including amounts paid for “restitution or remediation of property” or to come “into compliance with a law.” EPA is further required to furnish a written statement, which provides the same information provided to the IRS, to each payor (i.e., a copy of IRS Form 1098-F). Failure to comply with providing IRS Form W-9 or Tax Identification Number (“TIN”), as described below, may subject Respondent to a penalty, per 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and 26 C.F.R. § 301.6723-1. To provide EPA with sufficient information to enable it to fulfill these obligations, Respondent shall complete the following actions as applicable.

- i. Respondent shall complete an IRS Form W-9 (“Request for Taxpayer Identification Number and Certification”), which is available at <https://www.irs.gov/pub/irs-pdf/fw9.pdf>
- ii. Respondent shall certify that its completed IRS Form W-9 includes Respondent’s correct TIN or that Respondent has applied and is waiting for issuance of a TIN;
- iii. Respondent shall email its completed Form W-9 to EPA’s Cincinnati Finance Center at sherrer.dana@epa.gov within 30 days after the Final Order ratifying this Agreement is filed, or within 7 days should the order become effective between December 15 and December 31 of the calendar year. The EPA recommends encrypting IRS Form W-9 email correspondence; and

- b. In the event that Respondent has certified in its completed IRS Form W-9 that it does not yet have a TIN but has applied for a TIN then Respondent shall provide the EPA's Cincinnati Finance Center with Respondent's TIN, via email with Respondent's TIN within 5 days of Respondent's receipt of a TIN issued by the IRS.

Effect of Settlement and Reservation of Rights

59. Respondent's payment of the entire penalty pursuant to this Consent Agreement and Final Order resolves all civil and administrative claims pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), for violations alleged in this Consent Agreement and Final Order. Complainant reserves the right to take any enforcement action with respect to any other violations of the CWA or any other applicable law.

60. The effect of settlement described above is conditioned upon the accuracy of the Respondent's representations to the EPA, as memorialized in this Consent Agreement and Final Order.

61. Nothing contained in this Consent Agreement and Final Order shall alter or otherwise affect Respondent's obligations to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit.

62. Notwithstanding any other provision of this Consent Agreement and Final Order, the EPA reserves the right to enforce the terms of this Consent Agreement and Final Order by initiating a judicial or administrative action pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), and to seek penalties against Respondent or to seek any other remedy allowed by law.

63. With respect to matters not addressed in this Consent Agreement and Final Order, the EPA reserves the right to take any enforcement action pursuant to the CWA and its implementing regulations, or any other available legal authority, including without limitation, the right to seek injunctive relief, penalties and damages.

General Provisions

64. The Parties acknowledge that this Consent Agreement and Final Order is subject to the public notice and comment required pursuant to Section 309(g)(4) of the CWA, 33 U.S.C. § 1319(g)(4), and 40 C.F.R. § 22.45.

65. Pursuant to 40 C.F.R. § 22.31(b), this Consent Agreement and Final Order shall be effective after signature by the authorized regional official and upon filing with the Regional Hearing Clerk, U.S. Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219. All time periods herein shall be calculated therefrom in calendar days unless otherwise provided in this Consent Agreement and Final Order.

66. The state of Kansas has been provided an opportunity to consult with Complainant regarding this matter in accordance with the requirements of 40 C.F.R. § 22.38(b) and Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1).

67. The headings in this Consent Agreement and Final Order are for convenience of reference only and shall not affect interpretation of this Consent Agreement and Final Order.

68. Respondent consents to service of this Consent Agreement and Final Order via electronic mail.

69. Respondent and Complainant agree that this Consent Agreement and Final Order may be signed in part and counterpart.

For the Complainant, United States Environmental Protection Agency Region 7:

Date

Alyse Stoy
Acting Director
Enforcement and Compliance Assurance Division

Date

Kristina Gonzales
Office of Regional Counsel

For the Respondent, U.S. Minerals, Inc.:


Signature _____ Date 11/18/20

James Opolony
Name

Director of EHS
Title

FINAL ORDER

Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and the Consolidated Rules of Practicing Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits, 40 C.F.R. Part 22, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

The Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.

Date

Karina Borromeo
Regional Judicial Officer

CERTIFICATE OF SERVICE

I certify that on the date noted below, a true and correct copy of this fully executed Consent Agreement and Final Order was served on each party by electronic mail to:

For Respondent:

Corey O'Neill
U.S. Minerals, Inc., Plant Manager
coneill@us-minerals.com

For Complainant:

Kristina Gonzales
EPA Region 7 Office of Regional Counsel
Gonzales.Kristina@epa.gov

Cynthia Sans
EPA Region 7 Enforcement and Compliance Assurance Division
Sans.Cynthia@epa.gov

Carrie Venerable | New Solutions
EPA Region 7 Office of Regional Counsel
Venerable.Carrie@epa.gov

Copy to KDHE:

Shelly Shores
Kansas Department of Health and Environment
shelly.shores@ks.gov

Date

Signature