BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

IN THE MATTER OF: **Amerikohl Mining, Inc.** 202 Sunset Drive Butler, PA 16001 Respondent	Proceeding to Assess Class II Administrative Penalty Under **Section 309(g) of the Clean Water Act** **Docket No. CWA-03-2014-0017** **CONSENT AGREEMENT** **AND FINAL ORDER**

CONSENT AGREEMENT AND FINAL ORDER

I. PRELIMINARY STATEMENT, JURISDICTIONAL AND STATUTORY AUTHORITY

1. This Consent Agreement and Final Order ("CAFO") is entered into by the Director, Water Protection Division, United States Environmental Protection Agency ("EPA"), Region III ("Complainant") and Amerikohl Mining, Inc. ("Amerikohl" or "Respondent") pursuant to Section 309(g) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(g), and the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits ("Consolidated Rules")*, 40 C.F.R. Part 22. The parties having agreed to settlement of violations of the Clean Water Act by Respondent, this CAFO simultaneously commences and concludes this action pursuant to 40 C.F.R. § 22.13(b) and 22.18(b)(2) & (3).

2. Respondent is an owner and operator of coal mines throughout the Commonwealth of Pennsylvania.

3. Respondent's permitted facilities subject to this Consent Agreement and Final Order ("CAFO"), including permit numbers, are identified in Exhibit 1 to this CAFO (individually referred to as "Facility" and collectively referred to as Facilities"), which is incorporated by reference.

4. Complainant alleges that Respondent has discharged pollutants into navigable waters of the United States in exceedance of discharge limits contained in the Clean Water Act ("CWA") National Pollutant Discharge Elimination System ("NPDES") permits identified in Exhibit 1.

5. Pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), as amended by the Debt Collection Improvement Act of 1996 (codified at 28 U.S.C. § 2461) and the subsequent Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, the Administrator of the EPA is authorized after March 15, 2004, to issue an order requiring compliance and/or assessing administrative penalties against any person who has violated Section 301(a) of the CWA by failing to obtain an NPDES permit or by discharging a pollutant into a water of the United States without an NPDES permit issued pursuant to Section 402 of the CWA in an amount not to exceed $ 16,000 per day for each violation, up to a total penalty amount of $177,500.

6. The Commonwealth of Pennsylvania Department of Environmental Protection ("PADEP") is authorized to issue NPDES permits within Pennsylvania, and issued the NPDES permits identified in Exhibit 1 (collectively the "NPDES Permits").

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

7. Section 402 of the CWA, 33 U.S.C. § 1342, establishes the NPDES program.

8. Under Section 402 of the Act, 33 U.S.C. § 1342, EPA and states with EPA-approved NPDES programs are authorized to issue permits governing the discharge of pollutants from regulated sources.

9. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant from any point source by a person into a water of the United States except in compliance with a permit issued under the NPDES program pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

10. Section 502(5) of the Act, 33 U.S.C. § 1362(5) defines the term "person" as "an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body."

11. Section 502(12) of the Act, 33 U.S.C. § 1362(12) defines the term "discharge of a pollutant" and the term "discharge of pollutants" as "any addition of any pollutant to navigable waters from any point source," or "any addition of any pollutant to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft."

12. Section 502(6) of the Act, 33 U.S.C. §1362(6) defines the term "pollutant" as "dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water."

13. Section 502(14) of the Act, 33 U.S.C. § 1362(14) defines the term "point source" as "any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged."

14. Section 502(7) of the Act, 33 U.S.C. §1362(7) defines the term the term "navigable waters" as "the waters of the United States, including the territorial seas." *See also* 40 C.F.R. § 122.2.

15. Pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b), EPA authorized PADEP to administer the NPDES program in the state of Pennsylvania.

16. An NPDES Permit is required for industrial discharges, including discharges related to past or current mining. *See* 33 U.S.C. § 1342, 40 C.F.R. § 122.21.

17. The Respondent is a "person" as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.

18. Pursuant to its NPDES Permits, Respondent discharges pollutants through point sources into navigable waters.

19. Over at least the past five years Respondent has violated effluent discharge limits in the NPDES Permits. Exhibit 1 to this CAFO, already incorporated by reference, identifies the violations resolved through this agreement.

20. Discharge of pollutants in violation of any effluent standard, prohibition or standard, including any standard contained in an NPDES permit issued under the CWA is a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a), which prohibits, among other things, the discharge of any pollutant in violation of an NPDES permit issued under Section 402 of the Act, 33 U.S.C. § 1342, and 40 C.F.R. Part 122.

21. On or about March 7, 2012, EPA issued an information request to Respondent ("Information Request") pursuant to Section 308 of the CWA, 33 U.S.C. § 1318, to which Respondent responded.

22. Responses to the Information Request confirmed Respondent's certain exceedances of Respondent's discharge limits in its NPDES Permits.

23. The total exceedances of Respondent's NPDES Permits are identified in Exhibit 1.

24. Respondent's violation of the NPDES Permits constitute violations of Section 301 of the CWA, 33 U.S.C. § 1311, and subject Respondent to penalties not to exceed $16,000 per day for each violation, up to a total penalty amount of $177,500.

III. CONSENT AGREEMENT AND FINAL ORDER

25. In order to resolve the violations described above, and to provide a legal framework for the payment of a penalty, EPA and Respondent enter into this CAFO. Respondent consents to issuance of this CAFO and agrees to undertake all actions required by its terms and conditions. Respondent consents to the assessment of the civil penalty herein and consents to issuance of the compliance order described herein.

26. Respondent neither admits nor denies the factual allegations, alleged violations or conclusions of law contained in Section II, Findings of Fact and Conclusions of Law. Respondent admits the jurisdictional allegations contained in Section I, Preliminary Statement, Jurisdictional and Statutory Authority, and elsewhere in this CAFO, and waives any defenses it might have as to jurisdiction and venue. Respondent agrees not to contest EPA's jurisdiction to issue this CAFO and not to contest EPA's jurisdiction to enforce the terms of this CAFO.

27. Respondent hereby expressly waives its right to a hearing, pursuant to Section 309(g)(2)(B), 33 U.S.C. § 1319(g)(2)(B), on any issue of law or fact in this matter and consents to issuance of this CAFO without adjudication, and waives its right to appeal this final order pursuant to Section 309(g)(8)(B), 33 U.S.C. § 1319(g)(8)(B).

28. This CAFO addresses and settles all civil and administrative claims for CWA violations identified in this CAFO.

29. Each party to this action shall pay its own costs and attorney fees.

30. The provisions of this CAFO shall be binding upon the Respondent, and its officers, principals, directors, successors and assigns.

31. The parties agree that settlement of this matter prior to the initiation of litigation is in the public interest and that entry of this CAFO is the most appropriate means of resolving this matter.

32. Pursuant to Section 309(g)(4) of the Act, 33 U.S.C. § 1319 (g)(4), and 40 C.F.R. § 22.45(b), EPA is providing public notice and an opportunity to comment on the CAFO before issuing the Final Order. In addition, EPA has consulted with the Commonwealth of Pennsylvania regarding this action, and will mail a copy of this document to the appropriate Pennsylvania official.

33. Based on the foregoing FINDINGS, and having taken into account the factors listed in Section 309(d) of the CWA, 33 U.S.C. § 1319(d), including but not limited to, the nature, circumstances, extent and gravity of the violation, the Respondent's knowledge, culpability and history of violations, the economic benefit to Respondent, the ability of Respondent to pay the penalty, and other such matters as justice may require, the administrative record; and under the authority of Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), EPA HEREBY ORDERS AND RESPONDENT HEREBY CONSENTS:

34. Within thirty (30) days of the effective date of this ORDER, Respondent shall pay a civil penalty of one hundred and forty thousand dollars ($140,000.00) for the violations cited herein. This does not constitute a demand as that term is defined in the Equal Access to Justice Act, 28 U.S.C. § 2412. Penalty payment shall be made according to the following specifications:

a. The payment shall reference Respondent's name, address and docket number, be made in U.S. dollars by money order, cashier's or certified check made payable to the "Treasurer, United States of America", wire transfer, ACH, or on line, and delivered as follows:

i. If by money order, cashier's or certified check sent by U.S. postal service mail:

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

Contact: Bryson Lehman 513-487-2123

ii. If by money order, cashier's or certified check sent by private commercial overnight delivery service:

U.S. Bank
Government Lockbox 979077
U.S. EPA, Fines & Penalties
1005 Convention Plaza
Mail Station SL MO C2 GL
St. Louis, MO 63101

Contact: 314-418-1028

iii. All payments made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

Cincinnati Finance
US EPA, MS NWD
26 W. M.L. King Drive
Cincinnati, OH 45268 0001

iv. If by electronic wire transfer:

Federal Reserve Bank of New York
ABA = 021030004
Account No. = 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"

v. If by ACH (also known as REX or remittance express):

US Treasury REX / Cashlink ACH Receiver
ABA = 051036706
Account No.: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 Checking

Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737
Contact: Jesse White 301 887 6548 or REX, 1 866 234 5681

vi. On Line Payment Option:

WWW.PAY.GOV/PAYGOV

Enter sfo 1.1 in the search field. Open and complete the form.

vii. Additional payment guidance is available at:

http://www.epa.gov/ocfo/finservices/make_a_payment.htm

b. A copy of the check or money order or other proof of payment submitted in fulfillment of the penalty payment requirements of this order shall be sent to the following:

U.S. Environmental Protection Agency
Regional Hearing Clerk (3RC00)
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

and

Mr. Douglas Frankenthaler (3RC20)
Assistant Regional Counsel
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

c. A transmittal message identifying the case name and docket number identified above shall accompany the remittance and copies of the check or transfer instrument.

35. Within sixty (60) days of the effective date of this ORDER, Respondent shall certify for each Facility, in writing to EPA whether each Facility is operating in full compliance with its NPDES Permit(s), and whether it is complying with all relevant provisions of the CWA for which violations are alleged in this CAFO. To the extent necessary, the certification shall identify with particularity each cause or event that requires certification that the Facility is operating in less than full compliance with its NPDES Permit(s) or relevant provisions of the CWA. Such certification shall be submitted to EPA pursuant to the notification provisions of this CAFO.

36. Following discussions between EPA and the Respondent, Respondent prepared a document entitled "Standard Operating Procedure for NPDES Permit Compliance, Monitoring and Reporting" or SOP, which is Exhibit 2 to and incorporated by reference into this CAFO. Respondent will implement the SOP at its current and future mining operations.

37. To the extent that the SOP is modified within three hundred and sixty five (365) days of the effective date of this CAFO, a copy of such modified SOP shall be provided to EPA along with a document noting the modifications made pursuant to the notification provisions of this CAFO.

38. Failure to pay the penalty assessed by this ORDER after its effective date subjects the Respondent to a collection action under Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9). The validity, amount and appropriateness of the penalty are not subject

to review in a collection proceeding. *See* 15 U.S.C. § 2615(a)(4)(A). Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest on unpaid penalties, and a charge to cover the cost of processing and handling a delinquent claim. Interest will begin to accrue on this civil penalty if it is not paid within fifteen days of the date due. Interest will be assessed at the rate of the United States Treasury tax and loan rate. 40 C.F.R. § 13.11. In addition, a quarterly nonpayment penalty charge may be assessed on any delinquent debt pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9). In addition, EPA will assess a $15.00 administrative handling charge for the administrative handling charge for administrative costs for the first 30 day period after the payment is due and an additional $15.00 for each subsequent 30 days the penalty remains due.

39. All notifications and approvals required by this CAFO, shall be made to:

Mr. Douglas Frankenthaler (3RC20)
Assistant Regional Counsel
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029
Telephone: (215) 814-2472

40. All submissions provided pursuant to this Order shall be signed by Respondents and shall include the following certification:

"I certify that, to the best of my knowledge, the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

V. GENERAL PROVISIONS

41. This CAFO shall not relieve Respondents of its obligation to comply with all applicable provisions of federal, state or local law and ordinance, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit. This CAFO does not constitute a waiver, suspension or modification of the requirements of the CWA.

42. Violations of the terms of this ORDER may subject Respondents to an administrative penalty of not more than $16,000 for each day of violation up to a maximum penalty of $177,500, and/or civil action in a United States district court with penalties up to $37,500 per day of violation as authorized in and the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19.

43. This CAFO resolves only the civil claims for the specific violations alleged herein. 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. In addition, 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. Further, EPA reserves any rights and remedies available to it under the Clean Water Act, 33 U.S.C. §§ 1251 *et seq.*, the regulations promulgated there under, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO, following its filing with the Regional Hearing Clerk.

44. Nothing in this CAFO shall be construed as prohibiting, altering or in any way eliminating the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violations of this CAFO or of the statutes and regulations upon which this CAFO is based or for Respondent's violation of any applicable provision of law.

45. The penalty described above, shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.

46. This CAFO is conditioned upon the accuracy of the Respondent's representations to EPA. EPA reserves the right to institute a new and/or separate action should Respondent fail to comply with the terms of this CAFO. This right shall be in addition to all other rights and causes of action, civil or criminal, the EPA may have under law or equity in such event.

47. The undersigned representative of Respondent certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this CAFO and to execute and legally bind that party to it.

48. All of the terms and conditions of this CAFO together comprise one agreement, and each of the terms and conditions is in consideration of all of the other terms and conditions. In the event that this CAFO, or one or more of its terms and conditions, is held invalid, or is not executed by all of the signatories in identical form, or is not approved in such identical form by the Regional Administrator or his designee, then the entire CAFO shall be null and void.

V. EFFECTIVE DATE

49. This CAFO will be issued after a forty (40) day comment period, execution by an authorized representative of the EPA and filing with the regional hearing clerk. It will become final and effective 30 days after issuance.

FOR RESPONDENT, Amerikohl Mining Inc.:

By: _____

Name: JOHN M STILLEY

Title: PRESIDENT

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY

_____ Date: _____

Jon Capacasa, Director
Water Protection Division

SO ORDERED in *Amerikohl Mining, Inc.,* Dkt. No. CWA-03-2014-0017, pursuant to 33 U.S.C. § 1319(g) and 40 C.F.R. Part 22,
this _____ day of _____, 2014.

_____
Shawn M. Garvin
Regional Administrator
U.S. Environmental Protection Agency, Region III