

**UTAH DEPARTMENT OF ENVIRONMENTAL QUALITY
DIVISION OF WATER QUALITY**

<p>IN THE MATTER OF:</p> <p>Canyon Fuel Company, LLC Skyline Mine Permit No. UT0023540</p>	<p>STIPULATED COMPLIANCE ORDER</p> <p>Docket No. I23-02</p>
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This Stipulated Compliance Order (“Agreement”) is entered into voluntarily by and between the Director of the Utah Division of Water Quality (“Director”), under the Director’s legal authorities described below and Canyon Fuel Company, LLC (“CFC”) in its capacity as the owner or operator legally responsible for the operation of Skyline Mine, located at Eccles Canyon, Winter Quarters Canyon, and by Electric Lake along Utah Highway 264 near Scofield, Utah (“Facility”), jointly referred to hereafter as “the Parties.”

By entering into this Agreement, the parties wish, without further administrative or judicial proceedings, to establish compliance requirements and stipulate to civil penalties arising out of alleged violations of the Utah Water Quality Act, Utah Code §§ 19-5-101 *et. seq.* (the “Act”), and corresponding regulations in the Utah Admin. Code R317-1-1 *et. seq.* (“Water Quality Rules”) and R305-7-101 *et. seq.*

STATUTORY AND REGULATORY AUTHORITY

1. The Director has authority to administer the Act pursuant to Utah Code § 19-1-105(1)(e), and to enforce the Water Quality Rules in Utah Administrative Code R317 through the issuance of orders, as specified in Utah Code §§ 19-5-106(2)(d) and -111. The Director also has authority to settle any civil action initiated to compel compliance with the Act and implementing regulations pursuant to Utah Code § 19-5-106(2)(k).

FACTS AND FINDINGS

The Director relies upon the following Facts and Findings from the for purposes of this Agreement:

1. CFC is a “person” as that term is defined in Utah Code § 19-1-103(4).
2. For the purposes of this Agreement, with the exception of the facts described below, the Parties agree to and for the sole and exclusive purpose of settling this dispute, stipulate to the findings and violations identified in the April 27, 2023 Notice of Violation and Compliance Order (“NOV/CO”), Docket No. I23-02.

3. The NOV/CO ordered CFC to submit a report containing an evaluation of the cause of the cited violations, detail all actions taken to attain compliance, and any environmental mitigation for the affected area. CFC submitted to the Division of Water Quality (“Division”) a NOV Response Report on June 28, 2023 (“June Report”).
4. In the June Report, CFC disputes that Upper Huntington Creek was impacted by the July 2022 coal fines release based on the location of Outfall 005 being downstream of Upper Huntington Creek. After further review, the Division agrees that Upper Huntington Creek was not impacted by the July 1, 2022 coal fines release. The Parties agree that this is not a violation and to correct the record through this Agreement.
5. In the June Report, CFC disputes that they failed to provide the Director with a proposed procedure for cleanup and disposal. After further review, the Division agrees that this was communicated on October 26, 2022 via email. The Parties agree this is not a violation and to correct the record through this Agreement.
6. In the June Report, CFC disputes that discharges occurred at locations not authorized under Section I.A of the Permit. After further review, the Division agrees that this was addressed under another violation, i.e. violation 2 (violation of the Utah Water Quality Narrative Standard) and no additional penalty will be assessed.
7. The NOV/CO identified four effluent limitation exceedances on certified Discharge Monitoring Reports (“DMRs”) submitted by CFC. Since the NOV/CO issuance, the Division has identified the following nine additional effluent limit exceedances, violating Permit condition I.C.2., summarized in Table 1:

Table 1: CFC Effluent Limit Exceedances in 2022 and 2023

Monitoring Period (Month Ending)	Outfall	Parameter	Permit Limit mg/L	Result mg/L	Percent Exceedance
5/31/2022	Outfall 5	Total Iron Daily Max	0.45	<u>0.51</u>	13%
5/31/2022	Outfall 5	Total Suspended Solids Daily Max	31	<u>40.0</u>	29%
05/31/2022	Outfall 4	Total Dissolved Solids Daily Max	1,200	<u>1,440.0</u>	20%
06/30/2022	Outfall 5	Total Dissolved Solids Daily Max	235	<u>238.0</u>	1.3%
11/30/2022	Outfall 4	Total Suspended Solids Daily Max	70	<u>82.0</u>	19%
12/31/2022	Outfall 5	Total Dissolved Solids Daily Max	235	<u>242.0</u>	3%
09/11/2023	Outfall 5	Total Suspended Solids Daily Max	31	<u>112</u>	261%
09/13/2023	Outfall 5	Total Suspended Solids Daily Max	31	<u>52</u>	68%
9/27/2023	Outfall 4	Total Iron Daily Max	1.0	<u>1.69</u>	69%

Note. Values in bold, underlined, and italics indicate a violation of Permit condition I.C. effluent limitations.

8. On September 11, 2023 CFC notified the Division of coal fines in Electric Lake that were observed on September 8, 2023 by Utah Division of Wildlife Resources staff. This notification was logged in the Utah Department of Environmental Quality's Environmental Incident Database as Report No. 16646.
9. On September 11, 2023, the Utah Division of Oil, Gas, and Mining ("UDOGM") staff collected samples from Outfall 005. The results indicated a total suspended solids measurement of 112 mg/L. This Permit violation is included in Table 1.
10. On September 13, 2023 the Division collected samples from Outfall 005. The analytical results indicated a total suspended solids measurement of 52 mg/L. This Permit violation is included in Table 1.
11. On September 15, 2023, CFC submitted to the Division a written five-day non-compliance report via email ("September 5-Day Report"). The September 5-day Report stated that "[a] visual inspection of [Outfall 005] did not lead staff to suspect the water from the Outfall was out of compliance and a sample was taken by CFC from Outfall 005 at approximately 9:50am. After further investigation of pumping records, sampling, and interviews, CFC cannot find any indication that the presence of coal fines in the lake-bed channel were the result of an exceedance of UPDES Permit effluent limitations." Further, CFC also stated that "[s]ampling and lab data by Skyline Mine staff on September 11 at both 9:50am and 1:35pm also indicated that the TSS [total suspended solids] of Outfall 005 was below measurable limits (<5mg/L)." Regarding steps taken to mitigate adverse impacts on the environment and human health, CFC stated "[g]iven CFC's understanding that the coal fines observed in the lakebed channel were not the result of any permit exceedance, CFC does not plan to engage in additional mitigation efforts at this time."
12. On September 27, 2023 UDOGM staff collected samples from Outfall 004 at the Facility for total iron. The results indicated a total iron measurement of 1.69 mg/L. This Permit violation is included in Table 1.
13. On October 31, 2023 the Division collected samples from Outfall 005 at the Facility. The analytical results from samples collected from Outfall 005 demonstrate effluent met Permit limits.
14. In lieu of issuance of a subsequent NOV/CO, the parties agree to resolve the additional violations identified in Table 1 through this Agreement.

ORDER

Based upon the foregoing Facts and Findings, the Agreement of CFC, and good cause appearing, the Director orders as follows:

1. Based on the application of the Division’s penalty policy, contained in Utah Admin, Code R317-1-8, to the violations specified in the NOV/CO, CFC agrees to pay a civil penalty of **\$20,542.70**.
2. **Within thirty (30) calendar days** of the effective date of this Agreement, payment shall be made using one of the following options:
 - a. CHECK – Payable to the Division of Water Quality. The payment shall be sent to:

Division of Water Quality
PO Box 144870
Salt Lake City, Utah 84114-4870
 - b. OTHER – For other available payment options, please contact the Division of Water Quality Finance staff at eqwqfinance@utah.gov.
3. **Within thirty (30) calendar days** of the effective date of this Agreement, CFC shall submit to the Director photo documentation of the area where Outfall 5 discharges into Electric Lake to distinguish any future discharges of coal fines in exceedance of permit limitations into waters of the State.

GENERAL PROVISIONS

1. The Parties recognize that this Agreement has been negotiated in good faith and nothing herein constitutes an admission of any liability. CFC does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Agreement, the validity of the facts and violations alleged in the NOV/CO. CFC further agrees it will not contest the basis or validity of this Agreement or its terms.
2. The violations described herein will constitute part of CFC compliance history where such history is relevant, including any subsequent violations. CFC understands and agrees that this Agreement is not and cannot be raised as a defense to any other action to enforce any federal, state or local law.
3. CFC agrees to the terms, conditions and requirements of this Agreement. By signing this Order, CFC understands, acknowledges and agrees that it waives: (1) the opportunity for an administrative hearing pursuant to Utah Code § 19-1-301; (2) the right to contest the findings in the NOV/CO; and (3) the opportunity for judicial review.
4. This Agreement is subject to a thirty (30) day notice and comment period. The Parties each reserve the right to withdraw from this Agreement if comments received during the notice period result in a modification to the terms and conditions.
5. The “Effective Date” shall be the date this Agreement is executed by both CFC and the Director. The Director will not sign the Agreement until after the Division has provided

public notice, as required, of the proposed Agreement and has solicited and reviewed any public comments received, if necessary.

6. The dates set forth in the Order section of this Agreement may be extended in writing by the Director, in the Director's sole discretion, based on the CFC showing of good cause. Good cause for an extension generally means events outside of the reasonable control of the CFC, such as force majeure, inclement weather, contractor or supplier delays, and similar circumstances. However, the Director expects the CFC to employ reasonable means to limit foreseeable causes of delay. The timeliness of the CFC request for an extension shall constitute an important factor in the Director's evaluation.
7. Nothing in this Agreement shall preclude the Director from taking actions to include additional penalties against CFC for future violations of State or Federal law.
8. The Parties acknowledge that neither the Director nor the Board has jurisdiction regarding natural resource damage claims, causes of action, or demands. Therefore, such matters are outside the scope of this Agreement.
9. The person signing this Agreement on behalf of CFC represents to the Director that they have the full legal authorization to do so and agrees that the Director may rely on that representation.
10. This Agreement is binding upon each of the Parties and their respective heirs, successors, and assigns. Any change in ownership or corporate or legal status, including but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of the Parties under this Agreement.
11. This Agreement may be amended in writing if signed by both Parties.

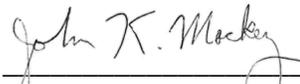
COMPLIANCE AND PENALTY NOTICE

As of the Effective Date, this Agreement shall constitute a final administrative order. Compliance with the provisions of this Agreement is mandatory. All violations of the Act, the Water Quality Rules, and this Order will be strictly enforced during the time that this Agreement remains in effect. The Act, Utah Code § 19-5-115, provides that any person who violates a rule or order made or issued pursuant to the Act may be subject, in a civil proceeding, to a state district judge imposing a civil penalty per day of violation.

[SIGNATURE PAGE FOLLOWS]

IT IS SO AGREED AND ORDERED:

FOR THE UTAH DIVISION OF WATER QUALITY

By: 
John K. Mackey, P.E.
Director, Utah Division of Water Quality

Date: March 6th, 2024 (Effective Date)

FOR CANYON FUEL COMPANY, LLC

By: 
Title: CEO
Date: Feb. 16, 2024