

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III

In The Matter of: : **PROCEEDING UNDER SECTION 311**  
: **OF THE CLEAN WATER ACT, AS**  
Southern States Smyrna-Clayton : **AMENDED, TO ASSESS A CLASS II**  
Cooperative, Inc. : **CIVIL PENALTY**  
227 School Lane :  
Clayton, Delaware 19938, : **Docket No. CWA-03-2012-0200**  
: :  
Respondent. :  
: :  
: :  
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REGIONAL HEARING CLERK  
EPA REGION III, PHILA. PA

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**CONSENT AGREEMENT**

1. This Consent Agreement is proposed and entered into under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 311(b)(6)(B)(ii) of the Clean Water Act ("CWA"), as amended, 33 U.S.C. § 1321(b)(6)(B)(ii), and under the authority provided by Section 22.18(b) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Part 22 Rules"), 40 C.F.R. Part 22. The Administrator has delegated this authority to the Regional Administrator of EPA, Region III, who in turn has delegated it to the Director of the Region's Hazardous Site Cleanup Division ("Complainant").
2. The parties agree to the commencement and conclusion of this matter by issuance of this Consent Agreement and Final Order (collectively "CAFO"), as prescribed by the Part 22 Rules pursuant to 40 C.F.R. § 22.13(b), and having consented to the entry of this CAFO, agree to comply with the terms of this CAFO.
3. For purposes of this proceeding only, Respondent admits to the jurisdictional allegations set forth in this Consent Agreement.
4. Respondent neither admits nor denies the specific factual allegations, conclusions of law, and determinations set forth in this Consent Agreement, except as provided in Paragraph 3, above.
5. Respondent agrees not to contest EPA's jurisdiction with respect to the execution, enforcement, and issuance of this CAFO.
6. For purposes of this proceeding only, Respondent hereby expressly waives its right to contest the allegations set forth in this Consent Agreement and any right to appeal the accompanying Final Order.
7. Respondent shall bear its own costs and attorneys fees.

**Statutory Authority**

8. Congress enacted the CWA, 33 U.S.C. §§ 1251 *et seq.*, in 1972. In Section 311(j)(1)(C) of the CWA, Congress required the President to promulgate regulations which would, among other things, establish procedures, methods, and other requirements for preventing discharges of oil from onshore facilities into navigable waters and for containing such discharges.
9. By Executive Order 12777, the President delegated the authority to promulgate regulations under Section 311(j) of the CWA to EPA for non-transportation-related onshore and offshore facilities.
10. Pursuant to its delegated authority under Section 311(j) of the CWA, EPA promulgated Oil Pollution Prevention Regulations, 40 C.F.R. § 112, 38 Fed. Reg. 34165 (Dec. 11, 1973), effective January 10, 1974 (“1973 regulations”).
11. On July 17, 2002, EPA promulgated an amendment to the Regulations, 67 Fed. Reg. 47042 (“2002 Regulations”). The 2002 Regulations became effective on August 16, 2002. On December 26, 2006, EPA promulgated revisions to the 2002 Regulations, 71 Fed. Reg. 77266 (“2006 Regulations”). The 2006 Regulations became effective on February 27, 2007. On December 5, 2008, EPA promulgated additional revisions to the 2002 Regulations, 73 Fed. Reg. 74236 (“2008 Regulations”). The 2008 Regulations became effective on January 14, 2010. Furthermore, on November 13, 2009, EPA promulgated revisions to the 2008 Regulations, 74 Fed. Reg. 58784 (“2009 Regulations”). The effective date of the 2009 Regulations is January 14, 2010. This series of amendments shall henceforth be referred to collectively as the “amended Regulations.”
12. The deadline for complying with the amended Regulations was ultimately extended to November 10, 2011. However, under the current provisions of 40 C.F.R. § 112.3(a), an owner or operator of a facility that was in operation on or before August 16, 2002, that could reasonably be expected to discharge oil in harmful quantities into or upon the navigable waters of the United States or adjoining shorelines must maintain and implement the facility’s SPCC Plan, as required by the 1973 Regulations. Accordingly, for purposes of this Consent Agreement, unless otherwise noted, regulatory requirements cited herein refer to the 1973 Regulations.
13. The 1973 Regulations at 40 C.F.R. § 112.1(b) state that “. . . this part applies to owners or operators of non-transportation-related onshore and offshore facilities engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing or consuming oil and oil products, and which, due to their location, could reasonably be expected to discharge oil in harmful quantities, as defined in Part 110 of this chapter, into or upon the navigable waters of the United States or adjoining shorelines.”

14. For violations of Section 311(j) of the CWA, 33 U.S.C. § 1321(j), EPA has authority, pursuant to Section 311(b)(6)(B)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(ii), to assess a Class II penalty in the amount of \$10,000 per day for each day during which the violation continues, not to exceed a maximum penalty of \$125,000. Pursuant to the Debt Collection Improvement Act, and the subsequent Civil Monetary Penalty Inflation Adjustment Rule, codified at 40 C.F.R. Part 19, violations of Section 311(j) that occur after January 12, 2009, are subject to a statutory penalty of \$16,000 per day for each day during which the violation continues, not to exceed a maximum penalty of \$177,500.

**Findings of Fact and Conclusions of Law**

15. Respondent is a corporation organized under the laws of Virginia, with a place of business located at 227 School Lane in Clayton, Delaware.
16. Respondent is a person within the meaning of Sections 311(a)(7) and 502(5) of the CWA, 33 U.S.C. §§ 1321(a)(7) and 1362(5), and 40 C.F.R. § 112.2.
17. Respondent is engaged in storing, transferring, or distributing oil or oil products located at an onshore used oil processing facility located at 512 Bassett Street in Clayton, Delaware ("Facility").
18. Respondent is the owner or operator of the Facility within the meaning of Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6), and 40 C.F.R. § 112.2.
19. Respondent has owned or operated the Facility since at least the year 2004.
20. The Facility has a total aboveground oil storage capacity of approximately 104,250 gallons.
21. The Facility is located approximately 200 feet from the Greens Branch Creek, which flows into the Providence Creek, which flows into the Leipsic River.
22. The Greens Branch Creek is a navigable water of the United States within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and 40 C.F.R. § 112.2.
23. The Facility is an onshore facility within the meaning of Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10), and 40 C.F.R. § 112.2.
24. The Facility is a non-transportation-related facility within the meaning of 40 C.F.R. § 112.2 and Appendix A of 40 C.F.R. Part 112, as incorporated by reference within 40 C.F.R. § 112.2.

25. Due to its location, the Facility could reasonably be expected to discharge oil in harmful quantities, as defined by 40 C.F.R. § 110.3, into or upon navigable waters of the United States or its adjoining shoreline.
26. Pursuant to 40 C.F.R. § 112.1, Respondent, as the owner and operator of the Facility, is subject to the Oil Pollution Prevention Regulations codified at 40 C.F.R. Part 112.
27. Pursuant to Section 311(j) of the CWA, 33 U.S.C. § 1321(j), and 40 C.F.R. §§ 112.1 and 112.3, the Facility is subject to the SPCC requirements of 40 C.F.R. § 112.3 because the Facility's 104,250-gallon oil storage capacity exceeds the 1,320-gallon aboveground capacity threshold of the Oil Pollution Prevention Regulations and the Facility is an onshore non-transportation-related facility that due to its location could reasonably be expected to discharge oil in harmful quantities into or upon the navigable waters of the United States or adjoining shorelines.
28. EPA conducted a compliance inspection at the Facility on October 26, 2011.
29. EPA believes that, at the time of the inspection, Respondent failed to adequately implement the following Regulations:
  - a. **40 C.F.R. § 112.5(a):** failure to amend the SPCC plan in accordance with the general requirements of 40 C.F.R. § 112.7, when there was a change in the facility design, construction, operation, or maintenance that materially affected the facility's potential for a discharge of oil into or upon the navigable waters of the United States or adjoining shorelines.
  - b. **40 C.F.R. § 112.5(c):** failure to have a professional engineer certify all technical amendments to the SPCC plan in accordance with 40 C.F.R. § 112.3(d).
  - c. **40 C.F.R. § 112.7(e)(2)(vi):** failure to test each aboveground container for integrity on a regular schedule and whenever material repairs are made; failure to keep comparison records; failure to inspect container supports and foundations; and failure to frequently inspect the outside of containers for deterioration, discharges, or accumulations of oil inside diked areas.
  - d. **40 C.F.R. § 112.7(e)(4)(ii):** failure to design a containment system to hold at least the maximum capacity of any single compartment of a tank car or tank truck loaded or unloaded in the plant.

- e. **40 C.F.R. § 112.8:** failure to keep written procedures and a record of inspections and tests, signed by an appropriate supervisor or inspector, with the SPCC plan for a period of three years.
- 30. EPA determined, based on discussions with Facility personnel during and after the Inspection and its review of documentation provided by Respondent, that Respondent had not adequately implemented its SPCC Plan, and Respondent therefore violated the requirements of 40 C.F.R. § 112.7.

**Penalty**

- 31. In settlement of Complainant's claims for civil penalties for the violations alleged in this Consent Agreement, Respondent agrees to pay a civil penalty of **\$69,207**. The civil penalty amount shall become due and payable immediately upon Respondent's receipt of a true and correct copy of this CAFO. Respondent agrees to pay the above civil penalty in full in accordance with Paragraph 33, below.
- 32. The proposed penalty was calculated after consideration of the applicable statutory penalty factors in Section 311(b)(8) of the CWA, 33 U.S.C. § 1321(b)(8), including the seriousness of the violation; the economic benefit to the violator, if any; the degree of culpability; history of prior violations, if any; the nature, extent, and degree of success of the violator's mitigation efforts; the economic impact of the penalty on the violator; and other matters as justice may require.

**Payment Terms**

- 33. Payment shall be made by a cashier's or certified check, by an electronic funds transfer ("EFT"), or by on-line payment.
  - a. If paying by check, Respondent shall submit a cashier's or certified check, payable to "Environmental Protection Agency," and bearing the notation "OSLTF-311." If paying by check, Respondent shall note on the check the title and docket number (CWA-03-2012-0200) of this case.
  - b. If Respondent sends payment by the U.S. Postal Service, the payment shall be addressed to:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000
  - c. If Respondent sends payment by a private delivery service, the payment shall be addressed to:

U.S. Environmental Protection Agency  
U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, MO 63101

- d. If paying by EFT, the Respondent shall make the transfer to:

Federal Reserve Bank of New York  
ABA 021030004  
Account 68010727  
33 Liberty Street  
New York, NY 10045

- e. If paying by EFT, field tag 4200 of the Fedwire message shall read: “(D 68010727 Environmental Protection Agency).” In the case of an international transfer of funds, the Respondent shall use SWIFT address FRNYUS33.
- f. If paying through the Department of Treasury's Online Payment system, please access “www.pay.gov,” and enter sfo 1.1 in the search field. Open the form and complete the required fields and make payments. Note that the type of payment is “civil penalty,” the docket number “CWA-03-2012-0200” should be included in the “Court Order # or Bill #” field, and “3” should be included as the Region number.

34. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment or to comply with the conditions in this CAFO shall result in the assessment of late payment charges including additional interest, penalties, and/or administrative costs of handling delinquent debts.
35. Interest on the civil penalty should begin to accrue on the date that this CAFO is mailed or hand-delivered to the Respondent (“Interest Accrual Date”). EPA will not seek to recover interest on any amount of such civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest on the portion of a civil penalty not paid within such thirty (30) calendar day period will be assessed at the rate of the U.S. Treasury Tax and Loan Rate in accordance with 40 C.F.R. § 13.11(a).
36. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's Resources Management Directives - Cash Management, Chapter 9, EPA will assess a \$15.00

administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.

37. A penalty charge of six percent per year will be assessed monthly on any portion of an installment payment that remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

38. Respondent shall submit a copy of the check (or, in the case of an EFT transfer, a copy of the EFT confirmation) to the following persons:

Lydia Guy (3RC00)  
U.S. EPA, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

Alexandra Whittaker (3RC42)  
U.S. EPA, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

39. Failure by Respondent to pay the penalty assessed by the Final Order in full in accordance with this Consent Agreement may subject Respondent to a civil action to collect the assessed penalty, plus interest, attorney's fees, costs and an additional quarterly nonpayment penalty pursuant to Section 311(b)(6)(H) of the CWA, 33 U.S.C. § 1321(b)(6)(H). In any such collection action, the validity, amount and appropriateness of the penalty agreed to herein shall not be subject to review.

#### **General Provisions**

40. The undersigned officer of Respondent represents and warrants that he or she has the authority to bind the Respondent, and its successors or assigns to the terms of this Consent Agreement.

41. The provisions of this Consent Agreement and the Final Order, if issued, shall be binding upon Respondent and Respondent's successors or assigns.

42. Payment of the penalty pursuant to this Consent Agreement shall resolve all liability of Respondent for federal civil penalties for the violations alleged based on the facts alleged in this Consent Agreement.

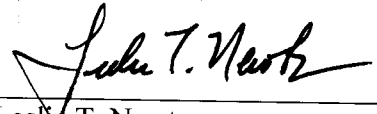
43. The Final Order does not constitute a waiver, suspension or modification of the requirements of Section 311 of the CWA, 33 U.S.C. § 1321, or any regulations promulgated thereunder, and does not affect the right of the Administrator or the United States to pursue any applicable injunctive or other equitable relief or criminal sanctions for any violation of law. Payment of the penalty pursuant to this Consent Agreement resolves only Respondent's liability for federal civil penalties for the violations and facts alleged in this Consent Agreement.

44. The Effective Date of this Consent Agreement is the date on which the Final Order is filed with the Regional Hearing Clerk.
45. Pursuant to Section 311(b)(6)(C) of the CWA, 33 U.S.C. § 1321(b)(6)(C), the Complainant has provided public notice of and reasonable opportunity to comment on the proposed issuance of an administrative penalty against the Respondent. The period for public comment has expired.




**For the Respondent, Southern States Smyrna-Clayton Cooperative, Inc.**

Date: 6/27/12

By:   
Leslie T. Newton  
Treasurer

**For the Complainant, U.S. Environmental Protection Agency, Region III**

Date: August 7, 2012

By: 

Ronald J. Borsellino, Director  
Hazardous Site Cleanup Division  
EPA Region III

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III

In The Matter of: : **PROCEEDING UNDER SECTION 311**  
: **OF THE CLEAN WATER ACT, AS**  
Southern States Smyrna-Clayton : **AMENDED, TO ASSESS A CLASS II**  
Cooperative, Inc. : **CIVIL PENALTY**  
227 School Lane :  
Clayton, Delaware 19938 : **Docket No. CWA-03-2012-0200**  
:   
Respondent. :  
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**FINAL ORDER**

Pursuant to Section 311(b)(6) of the CWA, 33 U.S.C. §1321(b)(6), and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits," codified at 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order.

Nothing in the foregoing Consent Agreement relieves Respondent from otherwise complying with the applicable requirements set forth in the CWA.

Respondent is ordered to comply with the terms of the foregoing Consent Agreement.

Date: 8/16/12

  
Renée Sarajian  
Regional Judicial Officer/Presiding Officer

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III

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EPA REGION III, PHILA. PA

In The Matter of:

Southern States Smyrna-Clayton  
Cooperative, Inc.  
15801 Lockwood Road  
Williamsport, Maryland 21795,

Respondent.

CONSENT AGREEMENT

PROCEEDING UNDER SECTION 3  
OF THE CLEAN WATER ACT, AS  
AMENDED, TO ASSESS A CLASS II  
CIVIL PENALTY

Docket No. CWA-03-2012-0200

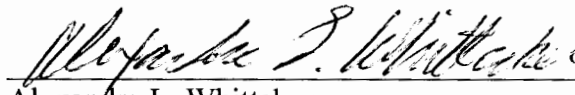
CERTIFICATE OF SERVICE

I hereby certify that the original and one copy of the foregoing Consent Agreement and Final Order ("CAFO") in the above-captioned matter have been filed with the EPA Region III Regional Hearing Clerk and that copies of the CAFO were sent via UPS to:

Southern States Smyrna-Clayton Cooperative, Inc.  
Attention: Vance Dann  
6606 West Broad Street  
Richmond, Virginia 23230

I further certify that I have sent a copy of the CAFO by electronic pdf to Respondent's representative Vance Dann on this day.

8/17/12  
Date

  
Alexandra L. Whittaker  
U.S. Environmental Protection Agency, Region III