

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION III

In The Matter of: : **CONSENT AGREEMENT**

John R. Young & Company : **PROCEEDING UNDER SECTION 311**

751 Lumber Street : **OF THE CLEAN WATER ACT, AS**

Green Lane, PA 18054 : **AMENDED, TO ASSESS A CLASS II**

: **CIVIL PENALTY FOR FRP AND SPCC**

: **VIOLATIONS**

Respondent. : Docket No. CWA-03-2010-0126 DC

CONSENT AGREEMENT

1. This Consent Agreement (“CA”) 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, as amended, (“CWA”), 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 cause of action by issuance of this CA and Final Order (“FO”), which are collectively referred to as the “CA/FO”, as prescribed by the Consolidated Rules of Practice pursuant to 40 C.F.R. § 22.13(b), and having consented to the entry of this CA/FO, agree to comply with the terms of this CA/FO.
3. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CA/FO.
4. Respondent neither admits nor denies the specific factual allegations and conclusions of law set forth in this CA, except as provided in Paragraph 3, above.
5. Respondent agrees not to contest EPA’s jurisdiction with respect to the execution and issuance of this CA/FO, or the enforcement of the CA/FO.

6. For the purposes of this proceeding only, Respondent hereby expressly waives its right to contest the allegations set forth in this CA and any right to appeal the accompanying FO.
7. Respondent consents to the issuance of this CA/FO and agrees to comply with its terms.
8. Respondent shall bear its own costs and attorneys fees.

Findings of Fact and Conclusions of Law

9. Section 311(j)(5)(A) of the CWA, 33 U.S.C. §1321(j)(5)(A), provides that the President shall issue regulations requiring each owner or operator of certain facilities to “submit to the President a plan for responding, to the maximum extent practicable, to a worst case discharge, and to a substantial threat of such a discharge, of oil or a hazardous substance.”
10. By Section 2(d)(1) of Executive Order 12777 (October 18, 1991), the President delegated to the Administrator of EPA the authorities under Section 311(j)(5)(A) of the CWA.
11. The Administrator of EPA promulgated regulations, codified within Subparts A and D of 40 C.F.R. Part 112, regulating Facility Response Plans (“the FRP regulations”), which implement the delegated statutory authorities referred to in Paragraphs 9 and 10.
12. Section 311(j)(1)(C) of the CWA, 33 U.S.C. § 1321(j)(1)(C), provides that the President shall issue regulations “establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil... from onshore facilities...and to contain such discharges”
13. Initially by Executive Order 11548 (July 20, 1970), 35 Fed. Reg. 11677 (July 22, 1970), and most recently by Section 2(b)(1) of Executive Order 12777 (October 18, 1991), 56 Fed. Reg. 54757 (October 22, 1991), the President delegated to EPA his Section 311(j)(1)(C) authority to issue the regulations referenced in the preceding Paragraph for non-transportation-related onshore facilities.
14. EPA subsequently promulgated the Spill Prevention, Control and Countermeasure (“SPCC”) regulations (“SPCC regulations”) which are codified at 40 C.F.R. Part 112 Subparts A, B, and C, pursuant to the delegated statutory authorities referred to above, and pursuant to its authorities under the CWA, which established certain procedures, methods and requirements upon each owner and operator of a non-transportation-related onshore facility if such facility, due to its location, could reasonably be expected to discharge oil into or upon the navigable waters of the United States and their adjoining shorelines in such quantity as EPA has determined

in 40 C.F.R. § 110.3 may be harmful to the public health or welfare or the environment of the United States ("harmful quantity").

15. Respondent is a corporation organized under the laws of Pennsylvania. 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 CFR § 112.2.
16. Respondent is engaged in storing, transferring, or distributing oil or oil products located at an onshore bulk oil storage facility located at 2459 Perkiomenville Road in Woxall, Pennsylvania ("the Facility").
17. The Facility is located approximately ½ to ¼ of a mile from Perkiomen Creek.
18. Perkiomen Creek is a tributary of the Schuylkill River, which is a navigable water of the United States, and therefore, Perkiomen 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.
19. The Facility has a total oil storage capacity of greater than or equal to 1 million gallons.
20. Respondent is the owner and operator of the Facility within the meaning of Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6), and 40 CFR § 112.2.
21. 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 CFR § 112.2.
22. The Facility is a non-transportation-related facility within the meaning of 40 CFR § 112.2 and Appendix A to 40 C.F.R. Part 112, as incorporated by reference within 40 CFR § 112.2.
23. Due to the Facility's oil storage capacity of greater than or equal to 1 million gallons, and because of its location of approximately ½ to ¼ mile from Perkiomen Creek, the Facility could reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters of the United States or adjoining shorelines because a discharge from the Facility could cause injury to fish and other wildlife and sensitive environments, within the meaning of Section 311(j)(5)(C)(iv) of the CWA, 33 U.S.C. § 1321(j)(5)(C)(iv), and 40 CFR § 112.20(f)(1)(ii)(B) ("an FRP-regulated facility").
24. The Facility is a non-transportation-related onshore facility which, due to its location, could reasonably be expected to discharge oil to a navigable water of the United States or its adjoining shorelines in a harmful quantity ("an SPC C-regulated facility") within the meaning of 40 C.F.R. Part 112.

25. Respondent, as the owner and operator of an FRP-regulated facility, is subject to the FRP regulations.
26. Pursuant to Section 311(j)(1)(C) of the CWA, 33 U.S.C. § 1321(j)(1)(C) and 40 C.F.R. § 112.1 Respondent, as the owner and operator of an SPCC-regulated facility, is subject to the SPCC regulations.
27. EPA conducted a compliance inspection at the Facility on September 16, 2008 ("the Inspection").

COUNT I

(Failure to Implement FRP Drill/Exercise Program)

28. 40 C.F.R. § 112.21(a) requires the owner or operator of any facility required to prepare a facility response plan under § 112.20 to develop and implement a facility response training program and a drill/exercise program that satisfy the requirements of this section.
29. Discussions with Facility personnel during and subsequent to the Inspection revealed that the Facility had not adequately implemented a drill/exercise program, and Respondent is therefore in violation of the requirements of 40 C.F.R. § 112.21(a).

COUNT II

(Failure to Maintain SPCC Plan at Facility or Nearest Field Office)

30. 40 C.F.R. § 112.3(e)(1) requires the owner or operator of a facility for which an SPCC Plan is required to maintain a complete copy of the SPCC Plan at the facility if the facility is normally attended at least four hours per day, or at the nearest field office if the facility is not so attended.
31. Respondent's Facility is not attended for at least four hours per day.
32. During the Inspection, Respondent was unable to produce a copy of Respondent's current SPCC Plan from either the Facility or the nearest field office, and Respondent is therefore in violation of the requirements of 40 C.F.R. § 112.3(e)(1).

Penalty

33. In settlement of Complainant's claims for civil penalties for the violations alleged in this CA, Respondent agrees to pay a civil penalty of \$40,000.00. The civil penalty amount shall become due and payable immediately upon Respondent's receipt of a true and correct copy of this CA/FO. Respondent must pay the civil penalty no later than THIRTY (30) CALENDAR DAYS after the date on which this CA/FO is mailed or hand-delivered to Respondent.

Payment Terms

34. Payment shall be made by a cashier's or certified check, or by an electronic funds transfer ("EFT"). 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 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

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
Attn: Natalie Pearson (314/418-4087)

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

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.

If paying through the Department of Treasury's Online Payment system, please access "www.pay.gov," 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-03-2010-0126 DC" should be included in the "Court Order # or Bill #" field and "3" should be included as the Region number.

35. If paying by check, Respondent shall note on the penalty payment check the title and docket number (CWA-03-2010-0126 DC) of this case. 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 person:

Lydia Guy
Regional Hearing Clerk (3RC00)
U.S. Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103-2029

Respondent must also provide a copy of its check to the attorney representing EPA in this matter at the following address:

Mark Bolender
Assistant Regional Counsel (3RC43)
U.S. Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103-2029

36. Failure by Respondent to pay the penalty assessed by the Final Order in full by due dates set forth herein 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.

Certification of Compliance

37. Within thirty (30) days of the Effective Date, Respondent shall submit to Mark Bolender, Assistant Regional Counsel (at the address listed in Paragraph 35), a Certification of Compliance stating that it is in compliance with the statutory requirements for each violation alleged in this CA. The Certification of Compliance must include the following language:

Except as provided below, I certify that the information contained in or accompanying this Certification of Compliance is true, accurate and complete. As to (the/those) portion(s) of this Certification of Compliance, for which I cannot personally verify (its/their) accuracy, I certify under the penalty of law that this Certification of Compliance and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, 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.

Signature: _____
Name(print): _____
Title: _____

General Provisions

38. Pursuant to Section 311(b)(6)(C) of the CWA, 33 U.S.C. § 1321(b)(6)(C), the Complainant is providing public notice of and reasonable opportunity to comment on this proposed issuance of a Final Order assessing administrative penalties against Respondent.
39. The provisions of the FO, if issued, shall be binding upon Respondent and Respondent's successors or assigns.
40. 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 CA.
41. This CA/FO shall become effective upon filing with the Regional Hearing Clerk.
42. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this CA and bind Respondent hereto.

For the Respondent:

John R. Young & Company

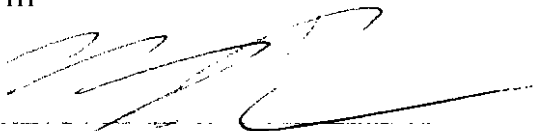
Date: March 31, 2010

By: Fred K. Kleinbach
Fred K. Kleinbach
Treasurer

For the Complainant:

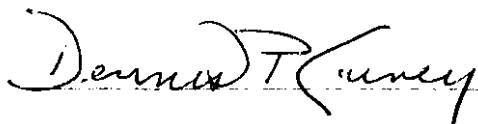

U.S. Environmental Protection Agency
Region III

Date: 4/16/2010

By: 
Mark Bolender
Assistant Regional Counsel

After reviewing the foregoing Consent Agreement and other pertinent information, Hazardous Site Cleanup Division, EPA Region III, recommends that the Regional Administrator or the Regional Judicial Officer issue the Final Order attached hereto.

Date: 4/20/10

By: 
 Kathryn Hodgkiss, Acting Director
Hazardous Site Cleanup Division
EPA Region III

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION III

In The Matter of:	:	FINAL ORDER
	:	
	:	
John R. Young & Company	:	PROCEEDING UNDER SECTION 311
751 Lumber Street	:	OF THE CLEAN WATER ACT, AS
Green Lane, PA 18054	:	AMENDED, TO ASSESS A CLASS II
	:	CIVIL PENALTY FOR FRP AND SPCC
	:	VIOLATIONS
	:	
Respondent.	:	Docket No. CWA-03-2010-0126 DC
_____	:	


FINAL ORDER

Pursuant to Section 311(b)(6) of the CWA, 33 U.S.C. §1321(b)(6) and the delegated authority of the undersigned, and in accordance with 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,” codified at 40 CFR Part 22, the foregoing Consent Agreement is hereby approved.

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

Respondent is ordered to pay the penalty amount of the foregoing Consent Agreement.

Date: 6/29/10


Renée Sarajian
Regional Judicial Officer/Presiding Officer

**BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III**

In the Matter of:

John R. Young & Company
751 Lumber Street
Green Lane, PA 18054

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U.S. EPA Docket Number:

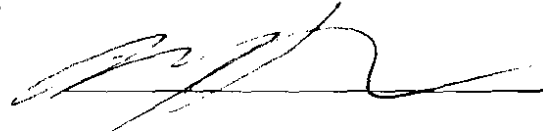
CWA-03-2010-0126 DC

Respondent

CERTIFICATE OF SERVICE

I certify that the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addresses listed below:

Date: 6/27/10



Mark J. Bolender
Assistant Regional Counsel

Original and One Copy
via Hand Delivery to:

Lydia Guy
Regional Hearing Clerk (3RC00)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103

Copy via e-mail and UPS to:

Seth v.d.H. Cooley, Esq.
Duane Morris LLP
30 S. 17th Street
Philadelphia, PA 19103