



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2  
290 BROADWAY  
NEW YORK, NY 10007-1866

Certified Mail Return Receipt Requested  
No. 7005-3110-0000-5932-4196

Saul Ewing  
Attn: Cristina Stummer, Esq.  
750 College Road East, Suite 100  
Princeton, New Jersey 07702

November 12, 2013

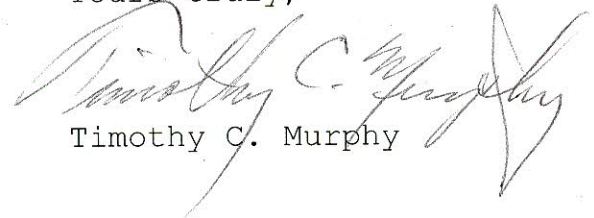
U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II  
2013 NOV 12 P 4: 17  
REGIONAL HEARING  
CLERK

Subject: Lawes Coal Company, Docket No., CWA 02-2009-3302

Dear Ms. Stummer:

Enclosed herewith is the Consent Agreement/Final Order (CAFO) for the subject case. The payment of the penalty will be due in accordance with the payment schedule contained within the CA/FO. Please contact me at (212) 637-3236 if you have any questions with respect to this document. Thank you.

Yours truly,



Timothy C. Murphy

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2

IN THE MATTER OF

**Lawes Coal Company  
499 Sycamore Avenue  
Shrewsbury, N. J. 07702**

Respondent.

**CWA SECTION 311 CLASS I  
CONSENT AGREEMENT & FINAL ORDER**

Docket No. CWA-02-2009-3802

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II  
2013 NOV 12 P 4:17  
REGIONAL HEARINGS  
CLERK

**CONSENT AGREEMENT**

**Stipulations**

The parties, in their own capacity or by their attorneys or other authorized representatives, hereby stipulate:

1. Section 311(j)(1)(C) of the Clean Water Act (the "Act"), 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."

2. 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.

3. EPA subsequently promulgated regulations, codified at 40 CFR Part 112 ("the SPCC regulations"), pursuant to these delegated statutory authorities, and pursuant to its authorities under the Clean Water Act, 33 U.S.C. 1251 *et seq.*, which established certain procedures, methods and requirements incumbent 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”).

4. In promulgating 40 CFR 110.3, which implements Section 311(b)(4) of the Act, 33 U.S.C. 1321(b)(4), EPA has determined that discharges of harmful quantities include oil discharges that cause either (1) a violation of applicable water quality standards or (2) a film, sheen upon, or discoloration of the surface of the water or adjoining shorelines, or (3) a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

5. Respondent is a corporation organized under the laws of the State of New Jersey with a place of business located at 499 Sycamore Avenue, Shrewsbury, New Jersey 07702. Respondent is a person within the meaning of Sections 311(a)(7) and 502(5) of the Act, 33 U.S.C. 1321(a)(7) and 1362(5), and 40 CFR 112.2.

6. Respondent is the owner and operator within the meaning of Section 311(a)(6) of the Act, 33 U.S.C. 1321(a)(6), and 40 CFR 112.2 of a bulk oil storage facility, located at 499 Sycamore Avenue, Shrewsbury, N.J. 07702, the Respondent’s premises (the “Facility”), located near the Shrewsbury River.

7. The Facility has an aggregate above-ground storage capacity of greater than 1320 gallons of oil in containers each with a shell capacity of at least 55 gallons.

8. The Shrewsbury River is a navigable water of the United States within the meaning of 40 C.F.R. 112.2 and Section 502(7) of the Act, 33 U.S.C. 1362.(7).

9. Respondent is engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using or consuming oil or oil products located at the Facility.

10. The Facility is a “non-transportation-related facility” within the meaning of 40 CFR 112.2 Appendix A, as incorporated by reference within 40 CFR 112.2.

11. The Facility is an “onshore facility” within the meaning of Section 311(a)(10) of the Act, 33 U.S.C. 1321(a)(10), and 40 CFR 112.2.

12. The Facility is therefore 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 (as defined by Section 502(7) of the Act, 33 U.S.C. § 1362(7) and 40 CFR §§ 110.1 and 112.2) or its adjoining shorelines in a harmful quantity (“an SPCC-regulated facility”).

13. Pursuant to Section 311(j)(1)(C) of the Act, E.O. 12777, and 40 C.F.R. 112.1, Respondent, as the owner and operator of an SPCC-regulated facility, is subject to the SPCC regulations.

14. On September 22, 2009, the Director of the Emergency and Remedial Response Division of EPA Region 2 (“Complainant”) issued an Administrative Complaint pursuant to Section 311(b)(6)(B)(ii) of the Clean Water Act (“Act”), 33 U.S.C. 1321(b)(6)(B)(ii), Docket No. CWA-02-2011-3811 alleging that the Respondent was in violation of the SPCC regulations and proposing a civil penalty of \$27,600. Complainant particularly alleged that:

- A) The Respondent’s failure to prepare an SPCC Plan for its facility according to 40 CFR 112.7, as required by 40 CFR 112.3(a), violated regulations issued under Section 311(j) of the Act. Pursuant to Section 311(b)(6)(B)(ii) of the Act and 40 C.F.R. 19.4, the Respondent is liable for civil penalties of up to \$16,000 per day for each day during which the violation continues, up to a maximum of \$177,500.

- B) The Respondent's failure to implement its SPCC plan for its facility, as required by 40 C.F.R. 112.3(a), violated regulations issued under Section 311(j) of the Act. Pursuant to Section 311(b)(6)(B)(ii) of the Act and 40 C.F.R. 19.4, the Respondent is liable for civil penalties of up to \$16,000 per day for each day during which the violation continues, up to a maximum of \$177,500.

#### **Waiver of Rights**

15. The Respondent waives the right to appeal any Final Order in this matter pursuant to Section 311(b)(6)(G)(ii) of the Act, 33 U.S.C. 1321(b)(6)(G)(ii), and consents to the issuance of a Final Order without further adjudication.

#### **Jurisdiction**

16. For the purpose of this proceeding, Respondent a) admits the jurisdictional allegations of the Complaint as applied to the facility; and b) neither admits nor denies the specific factual allegations or legal conclusions contained in the Complaint and Findings of Fact/Stipulation contained herein.

#### **Penalty**

17. Respondent consents to the assessment of a civil penalty of \$13,500 (Thirteen thousand and five hundred dollars).

#### **Payment Terms**

Respondent shall pay, by cashiers or certified check, a civil penalty in the amount of \$13,500.00. The first payment of two thousand dollars (\$2,000) must be received at the below address on or before 45 calendar days after the date of signature of the Final Order at the end of this document. The check shall be payable to the "Treasurer of the United States of America." The check shall be identified with a notation of the name and docket number [Lawes Coal

Company, CWA-02-2009-3802] of this case, set forth in the capitation on the first page of this document.

The check shall be mailed to:

U.S. Environmental Protection Agency  
PO Box 979077  
St Louis MO 63197-9000

The remaining penalty balance of \$11,500.00 will be paid in accordance with the following schedule, so that payment is received on or before the listed due date. Interest shall not accrue on any unpaid balance, so long as Respondent makes the payments per the schedule listed below. At Respondent's sole discretion, Respondent may accelerate payments on the unpaid balance without penalty.

January 1, 2014	\$1,000
March 1, 2014	\$1,000
June 1, 2014	\$1,000
September 1, 2014	\$1,000
January 1, 2015	\$1,000
March 1, 2015	\$1,000
June 1, 2015	\$1,000
September 1, 2015	\$1,000
January 1, 2016	\$1,000
March 1, 2016	\$1,000
June 1, 2016	\$1,500

18. The Respondent shall send copies of each check to the following recipients:

Timothy C. Murphy, Esq.  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 2  
290 Broadway - 16<sup>th</sup> Floor  
New York, New York 10007

19. Failure by the Respondent to pay the penalty assessed by the Final Order by the due dates in accordance with the payment schedule contained in Paragraph 17 may subject Respondent to a civil action to collect the total amount of the assessed unpaid penalty, plus interest, attorney's fees, costs and an additional quarterly nonpayment penalty pursuant to Section 311(b)(6)(H) of the Act, 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**

20. The provisions of the Final Order shall be binding upon Respondent and Respondent's officers, directors, agents, servants, employees, and successors or assigns.

21. The Final Order does not constitute a waiver, suspension or modification of the requirements of Section 311 of the Act, 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 total penalty pursuant to this Consent Agreement resolves only Respondent's liability for federal civil penalties for violations and facts (1) alleged or could have been alleged in the Complaint, and Findings of Facts/Stipulations stated herein, and any amendments that could

have been made thereto; or (2) in any way arising out of the Complainant's June 26, 2007 or May 29, 2008 inspections of the Facility or CWA-02-2008-3803.

23. The Respondent has agreed to undertake certain remedial actions by dates certain in order to come into compliance with all applicable requirements of Section 311(j) of the Act and SPCC regulation at 40 C.F.R. Part 112.

24. By executing this Consent Agreement, the Petitioner waives all rights to assess, allege or seek any additional fines or penalties or natural resource damages (whether restoration or monetary) or costs (attorney's fees or otherwise) against Respondent and its officers, directors and employees for all matters that are alleged or could have been alleged by Petitioner in the Complaint and Findings of Fact stated therein and herein or any amendments that could have been made thereto, except as otherwise provided for in Paragraph 20 of this Consent Agreement.

25. By executing this Consent Agreement, Petitioner and Respondent agree that this Consent Agreement is not intended as, and does not constitute, an admission of any liability, in law or in fact on the part of Respondent. By executing this Consent Agreement, Respondent does not admit or deny any factual allegations or legal conclusions contained in the Complaint and Findings of Fact contained therein or herein.

26. This Consent Agreement, including all communications or exchanges of information between the parties or their representatives that took place during the negotiations relating to this Agreement, shall not be admissible or used in any manner in any litigation, claim or other proceeding, except by the parties in an action seeking to enforce the terms of this Agreement. This Agreement has been entered into, in reliance upon the provisions of the applicable Rules of




Evidence and similar rules in other jurisdictions, which preclude the introduction of evidence regarding settlement negotiations or agreements.

27. Except as so noted, this Consent Agreement is not in any way intended to restrict or bind any parties hereto with respect to positions they may choose to assert in any pending or future, proceeding in this or any other forum. This Consent Agreement is executed by the undersigned parties without prejudice to the positions asserted by each in this case and without prejudice to the positions which the parties may choose and assert in future proceedings. Respondent reserves its rights to challenge and defend itself against any pending or future actions by the Petitioner.

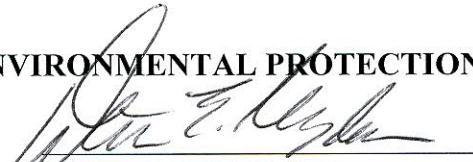
**Lawes Coal Co.**

Date: 10-1-13

  
Name: William D. Lawes  
Title: VP/owner

**U.S. ENVIRONMENTAL PROTECTION AGENCY**

Date: 10/29/2013


  
Walter E. Mugdan, Director  
Emergency and  
Remedial Response Division

**FINAL ORDER**

Pursuant to Section 311(b)(6) of the Act, 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 forgoing Consent Agreement is hereby approved and incorporated by reference into this Final Order, and the Stipulations by the parties are adopted as Findings in this Final Order.

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

Date: 11/5/2013

  
\_\_\_\_\_  
**Helen Ferrara**  
**Regional Hearing Officer**

**ENVIRONMENTAL PROTECTION AGENCY  
REGION 2**

Lawes Coal Company  
499 Sycamore Avenue  
Shrewsbury, New Jersey 07702  
Respondent

Proceeding Pursuant to Section 311(b)(6) of the  
Clean Water Act, 33 U.S.C. Section 1321(b)(6) for  
SPCC Violations

CONSENT AGREEMENT  
AND  
FINAL ORDER

DOCKET NO.  
CWA-02-2009-3802

**CERTIFICATE OF SERVICE**

I certify that I have this day caused to be sent the foregoing fully executed CONSENT AGREEMENT and FINAL ORDER, bearing the above-referenced docket-number, in the following manner to the respective addresses below:

Original and One Copy By Hand:

U.S. Environmental Protection Agency - Region II  
290 Broadway, 17<sup>th</sup> Floor, Office of Regional Hearing Clerk  
New York, N.Y. 10007-1866

Copy by Certified Mail, Return Receipt Requested:

Saul Ewing  
Attn: Cristina Stummer, Esq.  
750 College Road East, Suite 100  
Princeton, New Jersey 08540-6617

Date: 11/12/13

Katherine Crane  
(Signature)