

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2**

IN THE MATTER OF:

Olein Recovery Corporation  
PMB 197 Box 5  
Yabucoa, PR 00767

Respondent

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

CONSENT AGREEMENT  
AND  
FINAL ORDER

Docket No.  
CWA-02-2010-3815

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II  
2013 NOV 18 P 3:13  
REGIONAL HEARING  
CLERK

**I. Preliminary Statement**

Complainant, the United States Environmental Protection Agency (“EPA”), having filed the Complaint referenced herein on September 29, 2010, against Respondent, Olein Recovery Corporation; and

Complainant and Respondent having agreed that settlement of this matter is in the public interest, and that entry of this Consent Agreement and Final Order (“CA/FO” or “Agreement”) without further litigation is the most appropriate means of resolving this matter;

NOW, THEREFORE, before the taking of any testimony, upon the pleadings, without adjudication of any issue of fact or law, and upon consent and agreement of the Parties, it is hereby Ordered and Adjudged as follows:

**II. Procedural and Factual Background**

1. EPA initiated this proceeding for the assessment of a civil penalty, pursuant to Section 311(b)(6) of the Clean Water Act (“CWA” or “Act”), 33 U.S.C. § 1321(b)(6).
2. The Complaint alleges that Respondent failed to prepare a Facility Response Plan (“FRP”) for its facility located at Carr. 901 Km. 2.7, Yabucoa, Puerto Rico 00767, as required by 40 C.F.R. § 112.20, in violation of Section 311(j) of the Act, 33 U.S.C. § 1321(j), and proposed to assess a civil penalty of one hundred thirty-six thousand six hundred dollars (\$136,600).
3. Respondent has not filed an Answer or requested a hearing pursuant to 40 C.F.R. Part 22.
4. Respondent stipulates that EPA has jurisdiction over the subject matter alleged in this Complaint, and that the Complaint states a claim upon which relief can be granted against Respondent. Respondent waives any defenses it might have as to jurisdiction and venue, and,

without admitting or denying the factual allegations contained in the Complaint, consents to the terms of this Agreement.

5. Respondent waives any and all claims for relief and otherwise available rights to administrative or judicial review of any issue of law or fact, or any other provision, set forth in this Order, including, but not limited to, any right of judicial review under the Administrative Procedure Act, 5 U.S.C. §§ 701–708.

### **III. Terms of Settlement**

6. Pursuant to Section 311(b)(6)(B)(i) of the Act, 33 U.S.C. § 1321(b)(6)(B)(i), the nature of the violations, Respondent's subsequent efforts to come into compliance with the Act and the SPCC regulations, and other relevant factors, EPA has determined that **thirty thousand dollars (\$30,000)** is an appropriate civil penalty to settle this action.
7. Respondent consents to the issuance of this CA/FO, and agrees, for the purposes of settlement, to pay the civil penalty cited in the foregoing paragraph, to maintain compliance with all applicable requirements of Section 311(j) of the Act and the regulations at 40 C.F.R. Part 112.
8. Respondent shall pay the penalty in three equal installments, according to the following schedule. No later than thirty (30) days after this Agreement is signed by Complainant, Respondent shall submit a cashier's or certified check, payable to the "Treasurer of the United States of America," for ten thousand dollars (\$10,000), no later than sixty (60) days after this Agreement is signed by Complainant, Respondent shall submit a second cashier's or certified check, payable to the "Treasurer of the United States of America," for ten thousand dollars (\$10,000), and no later than ninety (90) days after this Agreement is signed by Complainant, Respondent shall submit a third cashier's or certified check, payable to the "Treasurer of the United States of America," for ten thousand dollars (\$10,000). The entire penalty of thirty thousand dollars (\$30,000) must be paid in full no later than ninety (90) days after this Agreement is signed by Complainant. The checks submitted for payment shall be identified with a notation of the name and docket number of this case, set forth in the caption on the first page of this document. The checks shall be mailed to:

U.S. EPA  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

Respondent shall also timely mail copies of each payment to both of the following:

Christopher Saporita, Esq.  
Assistant Regional Counsel

U.S. Environmental Protection Agency  
290 Broadway, 16<sup>th</sup> floor  
New York, New York 10007

and

Karen Maples  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16<sup>th</sup> floor  
New York, New York 10007

9. Failure to pay the penalty in full according to the above provisions will result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection.
10. If any required payment is not received on or before the applicable due date, interest will be assessed at the annual rate established by the Secretary of Treasury pursuant to the Debt Collection Act, 31 U.S.C. § 3717, on the overdue amount from the due date through the date of payment. In addition, a late payment handling charge of fifteen dollars (\$15.00) will be assessed for each thirty (30) day period (or any portion thereof) following the due date in which the balance remains unpaid. A six percent (6%) per annum penalty also will be applied on any principal amount not paid within ninety (90) days of any applicable due date.

In addition, pursuant to Section 311(b)(6)(H) of the Clean Water Act, 33 U.S.C. § 1321(b)(6)(H), if any payment is not received by the applicable due date, a quarterly nonpayment penalty will be imposed for each calendar quarter during which such nonpayment persists. The quarterly nonpayment penalty is 20% of the aggregate amount of penalties and quarterly nonpayment penalties which are unpaid as of the beginning of such quarter. Respondent also may be required to pay attorneys fees and costs for collection proceedings in connection with nonpayment.

11. The penalty to be paid is a civil penalty assessed by the EPA and shall not be deductible from Respondent's federal or state taxes.
12. This CA/FO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state, or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.
13. This CA/FO constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 311(b)(6)(B)(i) of the Clean Water Act, 33 U.S.C. § 1321(b)(6)(B)(i), for the violations alleged in the Complaint. Nothing in this Agreement is intended to be, nor shall be, construed to operate in any way to resolve any criminal liability of Respondent. Compliance with this Agreement shall not be a defense to any actions subsequently

#### IV. Final Order

The Regional Judicial Officer of the U.S. Environmental Protection Agency, Region 2, ratifies the foregoing Consent Agreement. The Agreement entered into by the parties is hereby approved, incorporated herein, and issued as an Order. The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, U.S. EPA Region 2, New York, New York.

*Helen Ferrara*

HELEN FERRARA

Regional Judicial Officer

United States Environmental Protection Agency, Region 2

290 Broadway, 16<sup>th</sup> Floor

New York, NY 10007

*November 14, 20*

DATE

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Respondent

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

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**CERTIFICATE OF SERVICE**

I certify that, on the date noted below, I caused to be mailed, by certified mail, return-receipt-requested, a copy of this "CONSENT AGREEMENT AND FINAL ORDER" to the following person at the address listed below:

Charles Alvarado  
General Manager  
Olein Recovery Corporation  
PMB 197 Box 5  
Yabucoa, PR 00767

I further certify that, on the date noted below, I caused to be mailed, by EPA internal mail (pouch), the original and a copy of this "CONSENT AGREEMENT AND FINAL ORDER" to the following person at the address listed below:

Regional Hearing Clerk  
U.S. Environmental Protection Agency  
290 Broadway, 16<sup>th</sup> floor  
New York, New York 10007-1866

11.18.13  
Date

Jessalyn Lorenzo  
Signature  
Jessalyn Lorenzo  
Print Name  
Branch Secretary  
Title