

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION III

In The Matter of:	:	CONSENT AGREEMENT
	:	
Oehlert Brothers, Inc.	:	PROCEEDING UNDER SECTION 311
1203 South Township Line Road	:	OF THE CLEAN WATER ACT, AS
Royersford, PA 19468,	:	AMENDED, TO ASSESS A CLASS II
	:	CIVIL PENALTY FOR FRP AND SPCC
	:	VIOLATIONS
	:	
Respondent.	:	Docket No. CWA-03-2008-0425

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, 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 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").

Findings of Fact and Conclusions of Law

For the purposes of this proceeding only, the parties, in their own capacity or by their attorneys or other authorized representatives, hereby stipulate to the following findings of fact and conclusions of law:

2. 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.”

3. 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 Act.

4. 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 2 and 3.

5. Section 311(j)(1)(C) of 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”

6. 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.

7. 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 in Paragraphs 5 and 6, 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”).

8. In promulgating 40 CFR § 110.3, which implements Section 311(b)(4) of the CWA, 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; (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.

9. Respondent is a corporation organized under the laws of Pennsylvania with a place of business located at 1203 South Township Line Road, Royersford, PA 19468. 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.

10. Respondent is engaged in storing, transferring, or distributing oil or oil products located at an onshore bulk oil storage facility located at 1203 South Township Line Road, Royersford, Pennsylvania (“the Facility”).

11. The Facility has a total oil storage capacity of greater than or equal to 1 million gallons.

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

13. On September 30, 2008, the Complainant issued an Administrative Complaint pursuant to Section 311(b)(6)(B)(ii) of the CWA, 33 U.S.C. §1321(b)(6)(B)(ii), Docket No. CWA-03-2008-0425, alleging that the Respondent was in violation of the FRP regulations and SPCC regulations and proposing a civil penalty of \$141,857.68 (“the Complaint”). Specifically, the Complainant alleged that Respondent: 1) failed to implement a facility response training and drills and exercises program in violation of 40 C.F.R. § 112.21; 2) failed to retain records of training, drainage events, and inspections in violation of 40 C.F.R. §§ 112.7(e)(2)(iii) and 112.7(e)(8); 3) failed to retain records of facility inspections in violation of 40 C.F.R. § 112.7(e)(8); and (4); and 4) failed to provide complete discussions pertaining to security and bulk storage containers in its SPCC Plan in violation of 40 C.F.R. § 112.3.

Complainant has made, and Respondent neither admits nor denies, the following findings of fact and conclusions of law:

14. Respondent is the operator within the meaning of Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6), and 40 CFR § 112.2, of the Facility, which is approximately 100 feet from Mingo Creek.

15. Mingo Creek is a tributary of the Schuylkill River, which is a navigable water of the United States, and therefore, both Mingo Creek and the Schuylkill River are navigable waters 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.

16. 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.

17. 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.

18. The Facility is a non-transportation-related, onshore facility within the meaning of 40 C.F.R. § 112.2 that, due to its oil storage capacity and because of its location, 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, within the meaning of Section 311(j)(5)(B)(iii) of the Act, 33 U.S.C. § 1321(j)(5)(B)(iii), and 40 CFR § 112.20(f)(1) (“an FRP-regulated facility”).

19. Respondent, as the operator of an FRP-regulated facility, is subject to the FRP regulations.

20. 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 SPCC-regulated facility”) within the meaning of 40 C.F.R. Part 112.

21. Pursuant to Section 311(j)(1)(C) of the CWA and 40 C.F.R. § 112.1 Respondent, as the operator of an SPCC-regulated facility, is subject to the SPCC regulations.

22. Complainant incorporates by reference, and Respondent neither admits nor denies, the allegations in Paragraphs 53 through 79 of the Complaint.

Waiver of Rights

23. The Respondent admits to the jurisdiction of EPA in this matter as set forth in the Complaint and waives the right to a hearing under Section 311(b)(6)(B)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(ii), and to appeal the Final Order in this matter (if issued in the form attached hereto) under 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 (in the form attached hereto) without further adjudication.

Penalty

24. On or about November 26, 2008, January 20, 2009, and February 2, 2009, Respondent provided information to EPA to support a claim that it is unable to pay a penalty.

25. On or about February 19, 2009, EPA conducted an ability-to-pay analysis of Respondent and determined that Respondent is unable to pay the full penalty proposed in the Complaint.

26. Respondent consents to the assessment of a civil penalty of \$50,000.00.

Payment Terms

Based on the foregoing, the parties, in their own capacity or by their attorneys or authorized representatives, hereby agree that:

27. Payment of the civil penalty assessed herein, plus any accrued interest, shall be made in the manner and over the time period specified below:

- a. The first payment is due within 30 days of the Effective Date, in the amount of \$3,000.00.
- b. The second payment is due within 120 days of the Effective Date, in the amount of \$19,347.67 (consisting of \$19,000.00 principal and \$347.67 interest).
- c. The third payment is due within 210 days of the Effective Date, in the amount of \$3,207.12 (consisting of \$3,000.00 principal and \$207.12 interest).
- d. The fourth payment is due within 300 days of the Effective Date, in the amount of \$3,184.93 (consisting of \$3,000.00 principal and \$184.93 interest).
- e. The fifth payment is due within 390 days of the Effective Date, in the amount of \$3,162.74 (consisting of \$3,000.00 principal and \$162.74 interest).
- f. The sixth payment is due within 480 days of the Effective Date, in the amount of \$16,140.55 (consisting of \$16,000.00 principal and \$140.55 interest).
- g. The seventh payment is due within 570 days of the Effective Date, in the amount of \$3,022.19 (consisting of \$3,000.00 principal and \$22.19).

28. Pursuant to the above schedule, Respondent will remit total payments for the civil penalty in the amount of Fifty Thousand dollars and No Cents (\$50,000.00) principal, and interest payments in the amount of One Thousand Sixty-Five Dollars and Twenty Cents (\$1,065.20); provided, however, that on payment due dates, Respondent may pre-pay the total of future principal payments (and accrued interest) and thereby avoid paying future interest payments.

29. Payments required pursuant to Paragraph 27 shall be made by a cashier's or certified check, or by an electronic funds transfer ("EFT").

30. If paying by check, the Respondent shall submit a cashier's or certified check, payable to "Environmental Protection Agency," and bearing the notation "OSLTF – 311." If the 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 the 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)

31. 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-03-2008-0425" should be included in the "Court Order # or Bill #" field and "3" should be included as the Region number.

32. If paying by check, the Respondent shall note on the penalty payment check the title and docket number ("CWA-03-2008-0425") of this case. The 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

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

James F. Van Orden
Assistant Regional Counsel (3RC42)
U.S. Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103-2029

33. Failure by the Respondent to pay the penalty assessed by the Final Order in full by due dates set forth in Paragraph 27 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 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.

Certification of Compliance

34. Within thirty (30) days of the Effective Date, Respondent shall submit to James Van Orden, Assistant Regional Counsel (at the address in Paragraph 32), a Certification of Compliance stating that it is in compliance with each violation alleged in the Complaint. 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

34. 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 assessment of administrative penalties against the Respondent.

proposed issuance of a Final Order assessing administrative penalties against the Respondent.

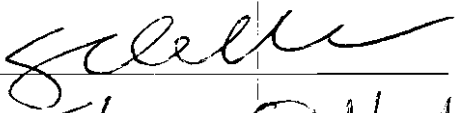
35. The provisions of the Final Order, if issued, shall be binding upon Respondent and Respondent's successors or assigns.

36. 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 the Administrative Complaint.

37. As used in this Consent Agreement, the term "Effective Date" shall mean the date on which the Final Order is served on Respondent.

OEHLERT BROTHERS, INC.

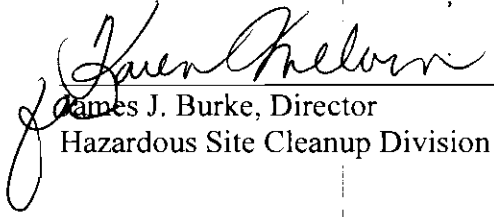
Date: 4/15/09


Name: Steve Oehlert

Title: Owner

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 04/17/09


James J. Burke, Director
Hazardous Site Cleanup Division

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION III

In The Matter of: : **FINAL ORDER**
: :
: :
Oehlert Brothers, Inc. : **PROCEEDING UNDER SECTION 311**
1203 South Township Line Road : **OF THE CLEAN WATER ACT, AS**
Royersford, PA 19468 : **AMENDED, TO ASSESS A CLASS II**
: **CIVIL PENALTY FOR FRP AND SPCC**
: **VIOLATIONS**
: :
Respondent. : **Docket No. CWA-03-2008-0425**
: :
_____ :

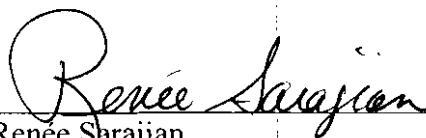
FINAL ORDER

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 foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order.

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

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

Date: 4/27/09


Renee Sarajian
Regional Judicial Officer/Presiding Officer