

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III**

In The Matter of:

Peninsula Oil Company, Inc.

Wilco Bulk Plant
901 Nanticoke Avenue
Seaford, DE 19973

Blades Bulk Plant
40 South Market Street
Seaford, DE 19973

Respondent.

CONSENT AGREEMENT

Proceeding to Assess Class II
Civil Penalties Under Section
311(b)(6)(B) of the Clean Water Act, as
amended, 33 U.S.C. § 1321(b)(6)(B).

Docket No. CWA-03-2009-0288

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" or "the Act"), 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 Region III's Hazardous Site Cleanup Division ("Complainant").

Statutory and Regulatory Basis

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 which are codified at 40 C.F.R. Part 112 Subparts A, B, and C,¹ (collectively referred to as “SPCC regulations”) 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 any of the following: (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.

¹ Pursuant to 40 C.F.R. § 112.3(a)(1) (2006), facilities in operation prior to August, 16, 2002 are required to maintain their Spill Prevention, Control and Countermeasure (“SPCC”) plans as required by the 1974 Regulations. Accordingly, for purposes of this Consent Agreement, unless otherwise noted, regulatory requirements cited herein refer to the 1974 Regulations.

Allegations

Complainant has made, and except as set forth in Paragraph 27, the Respondent neither admits nor denies, the following allegations:

9. Respondent is a corporation organized under the laws of the State of Delaware.

10. At all times relevant to this matter, Respondent operated a place of business operating under Standard Industrial Classification (SIC) code 5171 (Petroleum Bulk Storage and Terminals) located at 901 Nanticoke Avenue, Seaford, Delaware, which is known as the “Wilco Bulk Plant” (hereafter, referred to as the “Wilco Bulk Plant”).

11. At all times relevant to this matter, Respondent operated a place of business operating under Standard Industrial Classification (SIC) code 5171 (Petroleum Bulk Storage and Terminals) located at 40 S. Market Street, Seaford, Delaware, which is known as the “Blades Bulk Plant” (hereafter, referred to as “Blades Bulk Plant”).

12. 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.

13. Respondent has engaged in storing and distributing oil or oil products located at the Wilco Bulk Plant and the Blades Bulk Plant (collectively referred to as “the Facilities”), which are onshore bulk oil storage facilities.

14. At all times relevant to this matter, the Wilco Bulk Plant had a total oil storage capacity of greater than or equal to one million gallons.

15. At all times relevant to this matter, the Facilities each had an aggregate above-ground storage capacity greater than 1320 gallons of oil in containers each with a shell capacity of at least 55 gallons.

16. On April 26, 2007, the EPA inspected both the Wilco Bulk Plant (Inspection Number DE 07004) and the Blades Bulk Plant (Inspection Number DE 07005) to assess the FRP and SPCC compliance status of each Plant.

17. On September 30, 2009, 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-03-2009-0288, alleging that the Respondent was in violation of the FRP regulations and SPCC regulations at the Wilco Bulk Plant and in violation of the SPCC regulations at the Blades Bulk Plant, and proposing a civil penalty of \$140,332.00 (“the Complaint”). Specifically, the Complainant alleged that Respondent failed to : (1) implement a facility response drills and exercises program in violation of 40 C.F.R. § 112.21 at the Wilco Bulk Plant; (2) provide sufficiently impervious secondary containment in violation of 40 C.F.R. §§ 112.7(e)(2)(ii) at the Wilco Bulk Plant; (3) implement adequate facility transfer operations, pumping, and in-plant processes in violation of 40 C.F.R. §§ 112.7(e)(3)(iii) and 112.7(e)(3)(iv) at the Wilco Bulk Plant; (4) implement adequate facility transfer operations, pumping, and in-plant processes in violation of 40 C.F.R. §§ 112.7(e)(3)(iii) and 112.7(e)(3)(iv) at the Blades Bulk Plant; (5) create and retain records of required facility inspections in violation of 40 C.F.R. § 112.7(e)(8) at the Wilco Bulk Plant; and (6) create and retain records of required facility inspections in violation of 40 C.F.R. § 112.7(e)(8) at the Blades Bulk Plant.

18. Respondent is the owner and 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 Wilco Bulk Plant and the Blades Bulk Plant, both of which border the Nanticoke River.

19. The Nanticoke River is a “navigable water,” as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and 40 C.F.R. §§ 110.1 and 112.2.

20. The Facilities are onshore facilities within the meaning of Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10), and 40 CFR § 112.2.

21. The Facilities are non-transportation-related facilities within the meaning of 40 CFR § 112.2 and Appendix A to 40 CFR Part 112, as incorporated by reference within 40 CFR § 112.2.

22. At all times relevant to this matter, the Wilco Bulk Plant, due to its oil storage capacity and because of its location, could reasonably have been expected to cause substantial harm to the environment, according to the criteria in 40 C.F.R. § 112.20(f)(1)(ii)(B) and Appendix C to 40 C.F.R. Part 112.20, by discharging oil into or on the navigable waters of the United States or adjoining shorelines, within the meaning of Section 311(j)(5)(C)(iv) of the Act, 33 U.S.C. §1321(j)(5)(C)(iv), and 40 CFR § 112.20(f)(1) (“an FRP-regulated facility”).

23. Respondent, as the owner and operator of the Wilco Bulk Plant, an FRP-regulated facility, was subject to the FRP regulations at all times relevant to this matter.

24. The Wilco Bulk Plant and Blades Bulk Plant are both non-transportation-related onshore facilities which, due to their locations, both could reasonably be expected to discharge oil to a navigable water of the United States or its adjoining shorelines in a harmful quantity (“SPCC-regulated facilities”) within the meaning of 40 C.F.R. Part 112.

25. 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 SPCC-regulated facilities, was subject to the SPCC regulations at each facility.

26. Complainant incorporates by reference, and, except as set forth in Paragraph 27, Respondent neither admits nor denies, the allegations in Paragraphs 61 through 109 of the Complaint.

Waiver of Rights

27. For the purposes of this proceeding, the Respondent admits to the jurisdictional allegations 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

Based on the foregoing, the Respondent, in its own capacity or by its attorney or authorized representative, HEREBY CONSENTS that:

28. Respondent consents to the assessment of a civil penalty of \$66,000.00.

29. Respondent shall pay the penalty within thirty (30) days of the effective date of the Final Order, as full, final and complete settlement of Respondent's liability for all claims alleged in the Complaint.

Payment Terms

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

30. Payments required pursuant to Paragraphs 28 and 29 shall be made by a cashier's or certified check, or by an electronic funds transfer (EFT).

31. 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." The Respondent shall note on the penalty payment check the title and docket number ("CWA-03-2009-0288") of this case. 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)

32. 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.

33. 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-03-2009-0288" should be included in the "Court Order # or Bill #" field and "3" should be included as the Region number.

34. The Respondent shall submit a copy of the check (or, in the case of an EFT transfer, a copy of the EFT confirmation or, in the case of an online payment, a copy of the payment 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 or EFT confirmation 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

35. Failure by the Respondent to pay the penalty assessed by the Final Order 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.

General Provisions

36. 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.

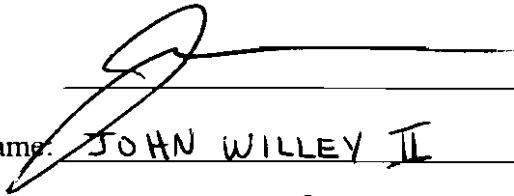
37. The provisions of the Final Order, if issued, shall be binding upon Respondent and Respondent's successors or assigns.

38. Payment of the penalty pursuant to this Consent Agreement fully resolves Respondent's liability for all claims alleged in the Complaint. 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 federal law not alleged in the Administrative Complaint.

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

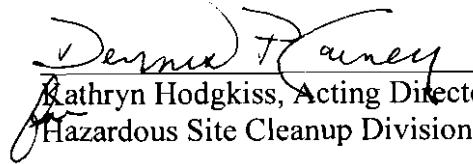
PENINSULA OIL COMPANY, INC.

Date: 4-15-10


Name: JOHN WILLEY II
Title: PRESIDENT

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 4/20/00


Kathryn Hodgkiss, Acting Director
Hazardous Site Cleanup Division

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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Peninsula Oil Company, Inc.

Wilco Bulk Plant
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Respondent.

FINAL ORDER

Proceeding to Assess Class II
Civil Penalties Under Section
311(b)(6)(B) of the Clean Water Act, as
amended, 33 U.S.C. § 1321(b)(6)(B).

Docket No. CWA-03-2009-0288

FINAL ORDER

Pursuant to Section 311(b)(6) of the Clean Water Act, 33 U.S.C. §1321(b)(6) (“CWA”) 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: 4/21/10



Renée Sarajian
Regional Judicial Officer/Presiding Officer