

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

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EPA REGION III, PHILA. PA

In The Matter of: :
:
Tolino's Fuel Service, Inc. :
225 Flicksville Road : Proceedings Pursuant to Section 311(j) and
Bangor, PA 18013, : 311(b)(6)(B)(i) of the Clean Water Act,
:
Respondent. : 33 U.S.C. § 1321(j) and 1321(b)(6)(B)(i)
:
:
Tolino's Fuel Service, Inc. : Docket No. CWA-03-2015-0253
225 Flicksville Road :
Bangor, PA 18013, :
:
Facility. :
:
_____ :

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)(i) of the Clean Water Act ("CWA"), as amended, 33 U.S.C. § 1321(b)(6)(B)(i), and under the authority provided by 40 C.F.R. § 22.13(b), 22.18(b)(2) and (3), and 22.50(a)(1) and (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 matter by issuance of this Consent Agreement and Final Order (collectively "CAFO"), as prescribed by the Part 22 Rules pursuant to 40 C.F.R. § 22.13(b) and 22.18(b), and having consented to the entry of this CAFO, agree to comply with the terms of this CAFO.
3. For purposes of this proceeding only, Respondent admits to the jurisdictional allegations set forth in this Consent Agreement.
4. Respondent neither admits nor denies the specific factual allegations, findings of fact, and conclusions of law set forth in this Consent Agreement, except as provided in Paragraph 3, above.

5. Respondent agrees not to contest EPA's jurisdiction with respect to the execution, enforcement, and issuance of this CAFO.
6. For purposes of this proceeding only, Respondent hereby expressly waives its right to contest the allegations set forth in this Consent Agreement and any right to appeal the accompanying Final Order.
7. Each party shall bear its own costs and attorney's fees.

Statutory and Regulatory Authority

8. Congress enacted the CWA, 33 U.S.C. §§ 1251 *et seq.*, in 1972. In Section 311(j)(1)(C) of the CWA, 33 U.S.C. § 1321(j)(1)(C), Congress required the President to promulgate regulations which would, among other things, establish procedures, methods, and other requirements for preventing discharges of oil from onshore facilities into navigable waters and for containing such discharges.
9. By Executive Order 12777, the President delegated the authority to promulgate regulations under Section 311(j) of the CWA to EPA for non-transportation-related onshore and offshore facilities.
10. Pursuant to its delegated authority under Section 311(j) of the CWA, EPA promulgated the Oil Pollution Prevention Regulations, codified at 40 C.F.R. Part 112 (the "Regulations").
11. Pursuant to 40 C.F.R. § 112.1(b), the Regulations apply to any owner or operator of a non-transportation-related onshore or offshore facility engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using, or consuming oil or oil products, which due to its location, could reasonably be expected to discharge oil in quantities that may be harmful into or upon the navigable waters of the United States or adjoining shorelines. Pursuant to 40 C.F.R. § 112.1(d), the Regulations do not apply to any owner or operator of a facility with an aggregate aboveground oil storage capacity of 1,320 gallons or less.
12. Pursuant to 40 C.F.R. § 110.3, discharges of oil that may be harmful include discharges of oil that violate applicable water quality standards or cause a film or a sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon the adjoining shorelines.
13. According to 40 C.F.R. § 112.3, an owner or operator subject to the Regulations must prepare in writing and implement a Spill Prevention, Control, and Countermeasure (SPCC) plan, in accordance with § 112.7 and any other applicable section, including but not limited to § 112.3 and 112.8.

14. For violations of Section 311(j) of the CWA, 33 U.S.C. § 1321(j), EPA has authority, under Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6), as amended by the Debt Collection Improvement Act and implemented by 40 C.F.R. Part 19, *Adjustment of Civil Monetary Penalties for Inflation*, to file an Administrative Complaint seeking a civil penalty of \$16,000 per violation, up to a maximum of \$37,500, or seeking \$16,000 per day for each day during which a violation continues, up to a maximum of \$177,500, for violations occurring after January 12, 2009.

Findings of Fact and Conclusions of Law

15. Respondent is incorporated in the Commonwealth of Pennsylvania, and its corporate headquarters are located at 225 Flicksville Road, Bangor PA.
16. 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 C.F.R. § 112.2.
17. Respondent is the owner and operator of a #2 heating oil, kerosene and gasoline bulk storage plant and product distribution facility located at 225 Flicksville Road, Bangor, PA 18013 (the "Facility").
18. Respondent is the owner and/or operator of the Facility within the meaning of Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6), and 40 C.F.R. § 112.2.
19. Respondent has owned and operated the Facility since 1955, when the Facility started operations.
20. EPA conducted an inspection of the Facility on July 8, 2014 ("the Inspection").
21. During the Inspection, EPA observed that the Facility had a total aboveground oil storage capacity of approximately 126,000 gallons.
22. The Facility is located approximately 0.5 miles northwest of Little Martin's Creek. Little Martin's Creek flows into the Delaware River approximately six (6) miles downstream.
23. The Facility could reasonably be expected to discharge oil in harmful quantities into Little Martin's Creek and the Delaware River.
24. Little Martin's Creek and the Delaware River are navigable waters of the United States within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7).
25. 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 C.F.R. § 112.2.

26. The Facility is a non-transportation-related facility within the meaning of 40 C.F.R. § 112.2 and Appendix A of 40 C.F.R. Part 112, as incorporated by reference within 40 C.F.R. § 112.2.
27. Due to its location, the Facility could reasonably be expected to discharge oil in harmful quantities, as defined by 40 C.F.R. § 110.3, into or upon navigable waters of the United States or its adjoining shoreline.
28. Pursuant to 40 C.F.R. § 112.1, Respondent, as the owner and operator of the Facility, is subject to the Regulations codified at 40 C.F.R. Part 112.
29. Pursuant to 40 C.F.R. § 112.3, Respondent was required to prepare in writing and implement an SPCC plan, in accordance with 40 C.F.R. § 112.7 and any other applicable section including but not limited to 40 C.F.R. § 112.3 and 112.8.

Count I

30. The findings of fact and conclusions of law contained in Paragraphs 15 through 29 of this CAFO are incorporated by reference herein as though fully set forth at length.
31. At the time of the Inspection, EPA inspectors observed that Respondent failed to prepare in writing an SPCC plan, in accordance with 40 C.F.R. § 112.7 and any other applicable section, for the Facility, as follows:
 - a. Pursuant to 40 C.F.R. § 112.3(d), a Licensed Professional Engineer must review and certify the SPCC Plan. By the certification the Professional Engineer attests, *inter alia*, that procedures for required inspections and testing have been established. At the time of the Inspection, the SPCC Plan did not include a certification from a Licensed Professional Engineer stating that, "Procedures for required inspections and testing have been established."
 - b. Pursuant to 40 C.F.R. § 112.7(a)(3) and (a)(4), the SPCC Plan must provide information and a procedure for notifying the appropriate agencies in case of a discharge that may be harmful into or upon the navigable waters of the United States or adjoining shorelines. At the time of the Inspection, the SPCC plan did not include the phone number for the National Response Center or information and procedures that would enable a person reporting a discharge that may be harmful into or upon the navigable waters of the United States or adjoining shorelines to relate specific information about the Facility and oil sources to responders.
 - c. Pursuant to 40 C.F.R. § 112.7(g), the SPCC plan must describe how the facility will manage its security. At the time of the Inspection, Respondent's SPCC Plan did not address how to prevent unauthorized access to the storage areas and starter controls.

- d. Pursuant to 40 C.F.R. § 112.8(b), the SPCC plan must provide complete details pertaining to facility drainage. At the time of the Inspection, Respondent's SPCC Plan did not address the procedures implemented to drain accumulated water in the dike areas.
 - e. Pursuant to 40 C.F.R. § 112.8(c)(6), the SPCC plan must provide for integrity testing and inspections for oil containers. At the time of the Inspection, the SPCC Plan did not provide for any integrity testing program for aboveground containers.
32. Based on EPA's Inspection and EPA's review of information gathered during the Inspection, EPA alleges that Respondent failed to prepare in writing an SPCC plan for the Facility, in accordance with 40 C.F.R § 112.7 and any other applicable section, including but not limited to § 112.3 and 112.8 of the Regulations.
33. Failure to prepare in writing an SPCC plan in accordance with 40 C.F.R § 112.7 and any other applicable section, including but not limited to § 112.3 and 112.8, is a violation of 40 C.F.R § 112.3 of the Regulations, issued pursuant to Section 311(j) of the CWA, 33 U.S.C. § 1321(j), which is subject to the assessment of penalties pursuant to Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6).

Count II

34. The findings of fact and conclusions of law contained in Paragraphs 15 through 33 of this CAFO are incorporated by reference herein as though fully set forth at length.
35. At the time of the Inspection, EPA inspectors observed that Respondent failed to implement an SPCC plan for the Facility, as follows:
- a. Pursuant to 40 C.F.R. § 112.7(f), the owner or operator of a facility, subject to the Regulations, must train oil-handling personnel in the operation and maintenance of equipment to prevent discharges; discharge procedure protocols; applicable pollution control laws, rules, and regulations; general facility operations; and the contents of the facility SPCC plan. In addition, 40 C.F.R. § 112.7(f) requires the owner or operator to schedule and conduct discharge prevention briefings for oil-handling personnel at least once a year. At the time of the Inspection, EPA learned that Respondent failed to properly instruct oil handling personnel in oil pollution prevention equipment, discharge procedure protocols, pollution control laws and regulations and the SPCC Plan as required by 40 C.F.R. § 112.7(f)(1). Respondent failed to designate a person to be accountable for oil discharge prevention and who reports to facility management as required by 40 C.F.R. § 112.7(f)(2).

Respondent failed to schedule and conduct discharge prevention briefings annually as required by 40 C.F.R. § 112.7(f)(3). The SPCC Plan for the Facility states that training for facility and oil handling personnel will be completed annually and a record will be kept in the employee's personnel file. However, at the time of the Inspection, Respondent could not provide to EPA any training records.

- b. Pursuant to 40 C.F.R. § 112.7(h)(1), the owner or operator of a facility, subject to the Regulations, must provide containment for oil spills from the facility's tank car and tank truck loading/unloading rack by means of a catchment basin, treatment facility, or quick drainage system. At the time of the Inspection, EPA inspectors observed that the Facility did not have a containment system for the tank truck loading/unloading rack.
 - c. Pursuant to 40 C.F.R. § 112.8(c), the owner and operator of a facility, subject to the Regulations, must provide for an impervious secondary containment for the largest single container in all container installations plus sufficient freeboard to allow for precipitation. At the time of the Inspection, EPA observed a crack through the containment wall and vegetation growth in the containment area.
36. Based on EPA's Inspection and EPA's review of information gathered during the Inspection, EPA alleges that Respondent failed to implement an SPCC plan for the Facility, in accordance with 40 C.F.R § 112.7 and any other applicable section, including but not limited to § 112.3 and 112.8 of the Regulations.
37. Failure to implement an SPCC plan in accordance with 40 C.F.R § 112.7 and any other applicable section, including but not limited to § 112.3 and 112.8, is a violation of 40 C.F.R § 112.3 of the Regulations, issued pursuant to Section 311(j) of the CWA, 33 U.S.C. § 1321(j), which is subject to the assessment of penalties pursuant to Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6).

Penalty

38. The penalty was calculated after consideration of the applicable statutory penalty factors in Section 311(b)(8) of the CWA, 33 U.S.C. § 1321(b)(8), including the seriousness of the violation; the economic benefit to the violator, if any; the degree of culpability; any other penalty for the same incident; history of prior violations, if any; the nature, extent, and degree of success of the violator's mitigation efforts; the economic impact of the penalty on the violator; and other matters as justice may require.
39. Within thirty (30) days of the effective date of the Final Order, Respondent shall pay the amount of \$25,000. All payments shall be made by a cashier's or certified check, by an electronic funds transfer ("EFT"), or by on-line payment.

a. 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 paying by check, Respondent shall note on the check the title and docket number (CWA-03-2015-0253) of this case.

b. If Respondent sends payments by the U.S. Postal Service, the payments shall be addressed to:

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

c. If Respondent sends payments by a private delivery service, the payments 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: Heather Russell (513) 487-2044

d. If paying by EFT, the Respondent shall make the transfers to:

Federal Reserve Bank of New York
ABA 021030004
Account 68010727
33 Liberty Street
New York, NY 10045

e. 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.

f. 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-03-2015-0253" should be included in the "Court Order # or Bill #" field, and "3" should be included as the Region number.

40. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment or to comply with the conditions in this CAFO shall result in the assessment of late payment charges including additional interest, penalties, and/or administrative costs of handling delinquent debts.
41. Interest on the civil penalty will begin to accrue on the date that this CAFO, when fully executed, is mailed or hand-delivered to the Respondent. EPA will not seek to recover interest on any amount of such civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest on the portion of a civil penalty not paid within such thirty (30) calendar day period will be assessed at the rate of the U.S. Treasury Tax and Loan Rate in accordance with 40 C.F.R. § 13.11(a).
42. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's Resources Management Directives - Cash Management, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after a payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.
43. A penalty charge of six percent per year will be assessed monthly on any portion of a payment that remains delinquent more than ninety (90) calendar days from the date it was due. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).
44. In order to avoid the assessment of administrative costs for overdue debts, as described above, Respondent must remit payments for the civil penalty in accordance with the payment deadline set forth above.
45. 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 persons:

Lydia Guy (3RC00) Regional Hearing Clerk U.S. EPA, Region III 1650 Arch Street Philadelphia, PA 19103-2029	Jefferie E. Garcia (3RC42) Senior Assistant Regional Counsel U.S. EPA, Region III 1650 Arch Street Philadelphia, PA 19103-2029
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46. Failure by Respondent to pay the penalty assessed by the Final Order in full 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.

General Provisions

47. The undersigned officer of Respondent represents and warrants that he or she has the authority to bind the Respondent and its successors or assigns to the terms of this Consent Agreement.
48. The provisions of this Consent Agreement and the Final Order shall be binding upon Respondent and Respondent's successors or assigns.
49. This Consent Agreement and the accompanying Final Order resolve only the civil penalty claims for the specific violations alleged in this Consent Agreement. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. Nor shall anything in this Consent Agreement and Final Order be construed to limit the United States authority to pursue criminal sanctions. In addition this settlement is subject to all limitations on the scope of resolution and the reservation of rights set forth in 40 C.F.R. § 22.18(c). Further, complainant reserves any rights and remedies available to it under the CWA, the regulations promulgated thereunder, and any other federal laws or regulations for which Complainant has jurisdiction, to enforce the provisions of this Consent Agreement and accompanying Final Order following its filing with the Regional Hearing Clerk.
50. The effective date of this Consent Agreement and the accompanying Final Order (which is signed by the Regional Administrator of EPA Region III, or his designee, the Regional Judicial Officer), shall be the date the CAFO is filed with the EPA Regional Hearing Clerk pursuant to the Consolidated Rules of Practice, and shall terminate upon Respondent's full compliance with its terms.
51. This Consent Agreement does not create any right in or grant any cause of action to any third party.

For the Respondent, Tolino's Fuel Service, Inc.


Date: 9-17-15

By: 

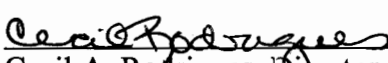
Name: CARL TOLINO

Title: PRES

For the Complainant, U.S. Environmental Protection Agency, Region III

Date: 9/22/15 By: 
Jefferie E. Garcia
Senior Assistant Regional Counsel

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

Date: 9/25/2015 By: 
Cecil A. Rodrigues, Director
Hazardous Site Cleanup Division
EPA Region III

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REGION III

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EPA REGION III, PHILA. PA

In The Matter of:	:	
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Tolino's Fuel Service, Inc.	:	
225 Flicksville Road	:	Proceedings Pursuant to Section 311(j) and
Bangor, PA 18013,	:	311(b)(6)(B)(i) of the Clean Water Act,
	:	33 U.S.C. § 1321(j) and 1321(b)(6)(B)(i)
Respondent.	:	
	:	
	:	
Tolino's Fuel Service, Inc.	:	Docket No. CWA-03-2015-0253
225 Flicksville Road	:	
Bangor, PA 18013,	:	
	:	
Facility.	:	
	:	

FINAL ORDER

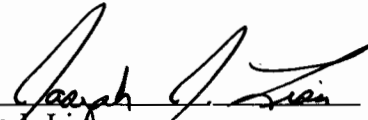
Complainant, the Director of the Hazardous Site Cleanup Division, U.S. Environmental Protection Agency, Region III, and Respondent, Tolino's Fuel Service, Inc., have executed a document entitled "Consent Agreement," which I hereby ratify as a Consent Agreement in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits," ("Consolidated Rules of Practice"), 40 C.F.R. Part 22, with specific references to Section 22.13(b), 22.18(b)(2) and (3), and 22.1(b) and 22.50(a)(1). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.

Based on the representations of the parties in the attached Consent Agreement, the penalty agreed to herein is based upon consideration of, *inter alia*, the statutory penalty factors in Section 311(b)(8) of the CWA, 33 U.S.C. § 1321(b)(8), which were applied in accordance with EPA's *Civil Penalty Policy for Section 311(b)(3) and Section 311(j) of the Clean Water Act* (August 1998).

NOW, THEREFORE, PURSUANT TO Section 311(b)(6)(B)(i) of the CWA, as amended, and the Consolidated Rules of Practice, IT IS HEREBY ORDERED that Respondent pay a civil penalty of TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00), plus any applicable interest, as specified in the Consent Agreement, and comply with the terms and conditions of the Consent Agreement.

The effective date of the foregoing Consent Agreement and this Final Order, signed by the Regional Administrator of the U.S. Environmental Protection Agency, Region III, or the Regional Judicial Officer, is the date on which this Final Order is filed with the Regional Hearing Clerk.

Date: Sept. 29, 2015



Joseph J. Lisa
Regional Judicial Officer
U.S. EPA, Region III