

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103**

<b>In the Matter of:</b>	:	
	:	
<b>LEE HY PAVING CORPORATION</b>	:	<b>U.S. EPA Docket No. CWA-03-2019-0115</b>
<b>2100 QUARRY HILL ROAD</b>	:	
<b>P.O. BOX 5036</b>	:	<b>Proceeding under Sections 311(j) and</b>
<b>GLEN ALLEN, VA 23058,</b>	:	<b>311(b)(6)(B)(ii) of the Clean Water Act, 33</b>
	:	<b>U.S.C. §§ 1321(j) and 1321(b)(6)(B)(ii)</b>
<b>Respondent.</b>	:	
	:	
<b>LEE HY PAVING CORPORATION</b>	:	<b>U.S. EPA-REGION 3-RHC</b>
<b>2100 QUARRY HILL ROAD</b>	:	<b>FILED-26SEP2019am11:09</b>
<b>ROCKVILLE, VA 23146,</b>	:	
	:	
<b>Facility.</b>	:	

**CONSENT AGREEMENT**

**PRELIMINARY STATEMENT**

1. This Consent Agreement is entered into by the Director of the Region’s Enforcement and Compliance Assurance Division (“Complainant”), U.S. Environmental Protection Agency, Region III (“Complainant”) and Lee Hy Paving Corporation (“Respondent”) (collectively the “Parties”), pursuant to Section 311(b)(6)(B)(ii) of the Clean Water Act (“CWA”), as amended, 33 U.S.C. § 1321(b)(6)(B)(ii), and 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. Section 311(b)(6) of the Clean Water Act (“CWA”), as amended, 33 U.S.C. § 1321(b)(6), authorizes the Administrator of the U.S. Environmental Protection Agency to assess penalties and undertake other actions required by this Consent Agreement. The Administrator has delegated this authority to the Regional Administrator who, in turn, has delegated it to the Complainant. This Consent Agreement and the attached Final Order (hereinafter jointly referred to as the “CAFO”) resolve Complainant’s civil penalty claims against Respondent under the Clean Water Act (or the “Act”) for the violations alleged herein.
2. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant hereby simultaneously commences and resolves this administrative proceeding.

### **JURISDICTION**

3. The U.S. Environmental Protection Agency has jurisdiction over the above-captioned matter, as described in Paragraph 1, above.
4. The Consolidated Rules of Practice govern this administrative adjudicatory proceeding pursuant to 40 C.F.R. § 22.1(a)(6).

### **GENERAL PROVISIONS**

5. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CAFO.
6. Except as provided in Paragraph 5, above, Respondent neither admits nor denies the specific factual allegations set forth in this Consent Agreement.
7. Respondent agrees not to contest the jurisdiction of EPA with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of this CAFO.
8. For purposes of this proceeding only, Respondent hereby expressly waives its right to contest the allegations set forth in this CAFO and waives its right to appeal the accompanying Final Order.
9. Respondent consents to the assessment of the civil penalty stated herein, to the issuance of any specified compliance order herein, and to any conditions specified herein.
10. Respondent shall bear its own costs and attorney's fees in connection with this proceeding.
11. EPA will provide public notice and an opportunity to comment on the claims set forth in this CAFO in accordance with Section 311(b)(6)(C)(i) of the CWA, 33 U.S.C. § 1321(b)(6)(C)(i), and 40 C.F.R. § 22.45. In accordance with Section 311(b)(6)(D) of the CWA, 33 U.S.C. § 1321(b)(6)(D), the Final Order will become final thirty (30) days after its issuance and the CAFO will become effective on that same date. Those submitting comments to the CAFO, if any, shall have the rights afforded to them by 40 C.F.R. § 22.45(c)(4).

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

12. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant alleges and adopts the Findings of Fact and Conclusions of Law set forth immediately below.
13. Respondent is a corporation with a principal place of business located at 2100 Quarry Road, Rockville, Virginia 23058 ("Facility").



14. 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.
15. The Facility began operations around 1956, and since that time, Respondent has been 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.
16. EPA conducted a spill pollution, control and countermeasure (“SPCC”) compliance inspection (“Inspection”) of the Facility on June 21, 2017.
17. At the time of the Inspection, Respondent was the owner and operator of the Facility and was engaged in receiving, storing reclaimed oil, diesel fuel, lubricating oil, used oil and hydraulic oil, and receiving, storing and distributing liquid asphalt cement and aggregate products at this Facility.
18. According to Respondent’s July 15, 2019 SPCC plan for the Facility, the Facility has a total aboveground oil storage capacity of approximately 119,100 gallons.
19. The Facility is located approximately 700 feet from the Little Tuckahoe Creek, a tributary to Tuckahoe Creek, which in turn is a tributary to the James River.
20. At the time of the Inspection, EPA inspectors observed that the Facility did not have adequate secondary containment in place for the Facility’s largest tanks.
21. According to Respondent’s SPCC plan for the Facility, in the event of a release, overland flow would lead to an on-site retention pond, which EPA inspectors observed did not have a closure valve, and oil could reasonably be expected to discharge in harmful quantities due to the high elevation of the Facility relative to the location of navigable water connections and proximity of navigable water connections referenced in Paragraph 19.
22. Little Tuckahoe Creek, Tuckahoe Creek and the James River are navigable waters of the United States within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7).
23. 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.
24. 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.
25. Pursuant to 40 C.F.R. § 112.1, Respondent, as the owner and/or operator of the Facility, is subject to the Oil Pollution Prevention Regulations codified at 40 C.F.R. Part 112 (the “Regulations”).
26. EPA believes that, at the time of the Inspection, Respondent failed to adequately implement the Oil Pollution Prevention Regulations, as set forth in Paragraphs 27 through 61, below.

**Count I**  
**Failure to Prepare and Implement an SPCC Plan**

27. The allegations of Paragraphs 1 through 26 of this Consent Agreement are incorporated herein by reference.
28. The Regulations at 40 C.F.R. § 112.3 require that the owner or operator of a facility subject to 40 C.F.R. 112, Subpart A regulation prepare in writing and implement an SPCC plan that has been certified by a licensed Professional Engineer, in accordance with 40 C.F.R. § 112.7 and any other applicable section.
29. According to information gathered during the Inspection and according to statements made by Respondent's representatives, Respondent had not prepared in writing an SPCC plan for the Facility; an uncertified, four-page document provided by the Facility prior to the Inspection lacked most of the requirements of 40 C.F.R. §§ 112.7 and 112.8.
30. At the time of the Inspection, Respondent violated 40 C.F.R. § 112.3 by failing to prepare in writing and implement an SPCC plan for the Facility.
31. By failing to comply with 40 C.F.R. § 112.3, Respondent is subject to the assessment of penalties under Section 311(b)(6)(B)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(ii).

**Count II**  
**Failure to Conduct Inspections and Tests and Maintain Records**

32. The allegations of Paragraphs 1 through 31 of this Consent Agreement are incorporated herein by reference.
33. The Regulations at 40 C.F.R. § 112.7(e) require that the owner or operator of a facility subject to 40 C.F.R. 112, Subpart A regulation conduct inspections and tests in accordance with written procedures that the owner or operator or the certifying engineer develop for the facility and keep those written procedures and a record of the inspections and tests, signed by the appropriate supervisor or inspector, with the SPCC Plan for a period of three years.
34. At the time of the Inspection, the Facility was not able to provide three years of inspection records for all tanks subject to SPCC regulation at the Facility, and the records that were provided reported only basic testing and work, such as sound testing tanks and general maintenance; thus Respondent failed to conduct and record inspections and tests in accordance with the requirements of 40 C.F.R. § 112.7(e).
35. At the time of the Inspection, Respondent violated 40 C.F.R. § 112.7(e) by failing to conduct and record inspections and tests in accordance with the requirements of 40 C.F.R. § 112.7(e).
36. By failing to comply with 40 C.F.R. § 112.7(e), Respondent is subject to the assessment of penalties under Section 311(b)(6)(B)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(ii).



**Count III**  
**Failure to Conduct Training and Briefings**

37. The allegations of Paragraphs 1 through 36 of this Consent Agreement are incorporated herein by reference.
38. The Regulations at 40 C.F.R. § 112.7(f)(1) require, in pertinent part, that the owner or operator of a facility subject to 40 C.F.R. 112, Subpart A regulation, at a minimum, 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; 40 C.F.R. §112.7(f)(3) requires the owner or operator of the facility to conduct discharge prevention briefings for oil-handling personnel at least once a year to assure adequate understanding of the SPCC facility.
39. At the time of the Inspection, Respondent provided documentation of SPCC trainings and discharge prevention briefings that had been given to employees; the documentation on various training events provided by Respondent for SPCC training covered primarily maintenance of on-site equipment; there was no evidence of specific SPCC information covered in any of the trainings and no evidence of discharge prevention briefings being conducted, and thus the Respondent did not satisfy spill prevention training requirements.
40. At the time of the Inspection, Respondent violated 40 C.F.R. § 112.7(f) by failing to, at a minimum, 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; and conduct discharge prevention briefings for oil-handling personnel at least once a year to assure adequate understanding of the SPCC facility.
41. By failing to comply with 40 C.F.R. § 112.7(f), Respondent is subject to the assessment of penalties under Section 311(b)(6)(B)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(ii).

**Count IV**  
**Inadequate Secondary Containment for Bulk Storage Tanks**

42. The allegations of Paragraphs 1 through 41 of this Consent Agreement are incorporated herein by reference.
43. The Regulations at 40 C.F.R. § 112.8(c)(2) require that the owner or operator of a facility subject to 40 C.F.R. 112, Subpart B regulation ensure that diked areas are sufficiently impervious to contain discharged oil and construct all bulk storage tanks installations so that they provide a secondary means of containment for the entire capacity of the largest single container and have sufficient freeboard to contain precipitation.
44. At the time of the Inspection, Respondent failed to meet the adequate secondary containment requirements of 40 C.F.R. § 112.8(c)(2) because secondary containment for all tanks, including the largest container, at the Facility was provided by an on-site retention pond that does not have a closure valve; the only barrier to release of spills to

the retention pond observed by the inspectors was an underflow dam that would not retain any spills of discharges of a heavy oil, such as asphalt.

45. At the time of the Inspection, Respondent violated 40 C.F.R. § 112.8(c)(2) by failing to ensure that diked areas are sufficiently impervious to contain discharged oil and construct all bulk storage tanks installations so that they provide a secondary means of containment for the entire capacity of the largest single container and sufficient freeboard to contain precipitation.
46. By failing to comply with 40 C.F.R. § 112.8(c)(2), Respondent is subject to the assessment of penalties under Section 311(b)(6)(B)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(ii).

**Count V**  
**Failure to Conduct and Record Integrity Tests and Inspections**

47. The allegations of Paragraphs 1 through 46 of this Consent Agreement are incorporated herein by reference.
48. The Regulations at 40 C.F.R. § 112.8(c)(6) require that the owner or operator of a facility subject to 40 C.F.R. 112, Subpart B regulation test or inspect each aboveground container for integrity regularly and whenever repairs are made, using industry standards; determine the appropriate qualifications for personnel performing tests and inspections, the frequency and type of testing and inspections; keep comparison records; inspect the container's supports and foundations; and frequently inspect the outside of the container for signs of deterioration, discharges, or accumulation of oil inside diked areas.
49. At the time of the Inspection, Respondent failed to provide integrity testing records and the Facility representatives stated that integrity testing is not conducted.
50. At the time of the Inspection, Respondent violated 40 C.F.R. § 112.8(c)(6) by failing to test or inspect each aboveground container for integrity regularly and whenever repairs are made, using industry standards; to determine the appropriate qualifications for personnel performing tests and inspections, the frequency and type of testing and inspections; to keep comparison records; to inspect the container's supports and foundations; and to frequently inspect the outside of the container for signs of deterioration, discharges, or accumulation of oil inside diked areas.
51. By failing to comply with 40 C.F.R. § 112.8(c)(6), Respondent is subject to the assessment of penalties under Section 311(b)(6)(B)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(ii).

**Count VI**  
**Failure to Correct Discharges and Remove Oil Accumulations**

52. The allegations of Paragraphs 1 through 51 of this Consent Agreement are incorporated herein by reference.



53. The Regulations at 40 C.F.R. § 112.8(c)(10) require that the owner or operator of a facility subject to 40 C.F.R. 112, Subpart B regulation promptly correct visible discharges which result in a loss of oil from the container and promptly remove any accumulations of oil in diked areas.
54. At the time of the Inspection, EPA inspectors observed that Respondent had failed to correct numerous visible leaks and asphalt discharges from containers and remove oil sheen from diked areas of the Facility.
55. At the time of the Inspection, Respondent violated 40 C.F.R. § 112.8(c)(10) by failing to promptly correct visible discharges which result in a loss of oil from the container and promptly remove any accumulations of oil in diked areas.
56. By failing to comply with 40 C.F.R. § 112.8(c)(10), Respondent is subject to the assessment of penalties under Section 311(b)(6)(B)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(ii).

### **Count VII**

#### **Inadequate Secondary Containment of Portable and Mobile Storage Containers**

57. The allegations of Paragraphs 1 through 56 of this Consent Agreement are incorporated herein by reference.
58. The Regulations at 40 C.F.R. § 112.8(c)(11) require that the owner or operator of a facility subject to 40 C.F.R. 112, Subpart B regulation position or locate mobile or portable oil storage containers to prevent discharges and provide secondary containment sufficient to contain the largest single compartment or container with sufficient freeboard to contain precipitation.
59. At the time of the Inspection, EPA inspectors observed that portable containers in the form of totes and drums throughout the Facility did not have secondary containment, and building doors at the Facility were open, allowing for any discharge to escape.
60. At the time of the Inspection, Respondent violated 40 C.F.R. § 112.8(c)(11) by failing to position or locate mobile or portable oil storage containers to prevent discharges and to provide secondary containment sufficient to contain the largest single compartment or container with sufficient freeboard to contain precipitation.
61. In failing to comply with 40 C.F.R. § 112.8(c)(11), Respondent is subject to the assessment of penalties under Section 311(b)(6)(B)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(ii).

#### **CIVIL PENALTY**

62. In settlement of EPA's claims for civil penalties for the violations alleged in this Consent Agreement, Respondent consents to the assessment of a civil penalty in the amount of **FIFTY-EIGHT THOUSAND NINE HUNDRED AND FIVE DOLLARS (\$58,905)**, which Respondent shall be liable to pay in accordance with the terms set forth below.

63. The civil penalty is based upon EPA's consideration of a number of factors, including the penalty criteria ("statutory factors") set forth in Section 311(b)(8) of the CWA, 33 U.S.C. § 1321(b)(8), including the following: the allegations regarding the seriousness of the violation; the economic benefit to the violator, if any; the degree of culpability; history of prior violations, if any; any other penalty for the same incident; 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. These factors were applied to the particular facts and circumstances of this case with specific reference to EPA's *Civil Penalty Policy for Section 311(b)(3) and Section 311(j) of the Clean Water Act* (August 1998), which reflects the statutory penalty criteria and factors set forth in Section 311(b)(8) of the CWA, 33 U.S.C. § 1321(b)(8), and the appropriate *Adjustment of Civil Monetary Penalties for Inflation*, pursuant to 40 C.F.R. Part 19, and the applicable EPA memoranda addressing EPA's civil penalty policies to account for inflation.

64. Payment of the civil penalty amount, and any associated interest, administrative fees, and late payment penalties owed, shall be made by either cashier's check, certified check or electronic wire transfer, in the following manner:

- a. All payments by Respondent shall include reference to Respondent's name and address, and the Docket Number of this action, *i.e.*, CWA-03-2019-0115
- b. All checks shall be made payable to the "Environmental Protection Agency," and bearing the notation "OSLTF-311";
- c. All payments made by check and sent by regular mail shall be addressed and mailed to:

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

- d. For additional information concerning other acceptable methods of payment of the civil penalty amount see:

<https://www.epa.gov/financial/makepayment>

- e. A copy of Respondent's check or other documentation of payment of the penalty using the method selected by Respondent for payment shall be sent simultaneously to:

Erin Grisby, Attorney-Advisor  
Water Enforcement Division  
Office of Civil Enforcement  
Office of Enforcement and Compliance Assurance (OECA)  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue NW (MC: 2243A)



Washington, D.C. 20460  
grisby.erin@epa.gov

65. 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 of the penalty as specified herein shall result in the assessment of late payment charges including interest, penalties and/or administrative costs of handling delinquent debts.
66. Payment of the civil penalty is due and payable immediately upon receipt by Respondent of a true and correct copy of the fully executed and filed CAFO. Receipt by Respondent or Respondent's legal counsel of such copy of the fully executed CAFO, with a date stamp indicating the date on which the CAFO was filed with the Regional Hearing Clerk, shall constitute receipt of written initial notice that a debt is owed to EPA by Respondent in accordance with 40 C.F.R. § 13.9(a).
67. INTEREST: In accordance with 40 C.F.R. § 13.11(a)(1), interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of the fully executed and filed CAFO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalties that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).
68. ADMINISTRATIVE COSTS: The costs of EPA's administrative handling of overdue debts will be charged and assessed monthly throughout the period a debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives – Case 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 the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.
69. LATE PAYMENT PENALTY: A late payment penalty of six percent per year will be assessed monthly on any portion of the civil penalty that remains delinquent more than ninety (90) calendar days. 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).
70. Respondent agrees not to deduct for federal tax purposes the civil penalty assessed in this CAFO.

#### **GENERAL SETTLEMENT CONDITIONS**

71. By signing this Consent Agreement, Respondent acknowledges that this CAFO will be available to the public and represents that, to the best of Respondent's knowledge and belief, this CAFO does not contain any confidential business information or personally identifiable information from Respondent.

72. Respondent certifies that any information or representation it has supplied or made to EPA concerning this matter was, at the time of submission true, accurate, and complete and that there has been no material change regarding the truthfulness, accuracy or completeness of such information or representation. EPA shall have the right to institute further actions to recover appropriate relief if EPA obtains evidence that any information provided and/or representations made by Respondent to EPA regarding matters relevant to this CAFO, including information about respondent's ability to pay a penalty, are false or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action that EPA may have, civil or criminal, under law or equity in such event. Respondent and its officers, directors and agents are aware that the submission of false or misleading information to the United States government may subject a person to separate civil and/or criminal liability.

### **CERTIFICATION OF COMPLIANCE**

73. Respondent certifies to EPA, upon personal investigation and to the best of its knowledge and belief, that it currently is in compliance with regard to the violations alleged in this Consent Agreement.

### **OTHER APPLICABLE LAWS**

74. Nothing in this CAFO shall relieve Respondent of its obligation to comply with all applicable federal, state, and local laws and regulations, nor shall it restrict EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on the validity of any federal, state or local permit. This CAFO does not constitute a waiver, suspension or modification of the requirements of the Clean Water Act or any regulations promulgated thereunder.

### **RESERVATION OF RIGHTS**

75. This CAFO resolves only EPA's claims for civil penalties for the specific violations alleged against Respondent in this CAFO. 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. This settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice, 40 C.F.R. § 22.18(c). EPA reserves any rights and remedies available to it under the Clean Water Act, the regulations promulgated thereunder and any other federal law or regulation to enforce the terms of this CAFO after its effective date.

### **EXECUTION /PARTIES BOUND**

76. This CAFO shall apply to and be binding upon EPA, the Respondent and the officers, directors, employees, contractors, successors, agents and assigns of Respondent. By his or her signature below, the person who signs this Consent Agreement on behalf of



Respondent is acknowledging that he or she is fully authorized by the Respondent to execute this Consent Agreement and to legally bind Respondent to the terms and conditions of this CAFO.

**EFFECTIVE DATE**

77. Pursuant to 40 C.F.R. § 22.45(b), this CAFO shall be issued only after a 40-day public notice and comment period is concluded. This CAFO will become final and effective thirty (30) days after having been signed by the Regional Administrator or his delegate, the Regional Judicial Officer, filed with the Regional Hearing Clerk, and served on Respondent by certified mail, or ten (10) days after conclusion of the public notice and comment period described in 40 C.F.R. § 22.45(b), whichever is later.

**ENTIRE AGREEMENT**

78. This CAFO constitutes the entire agreement and understanding between the Parties regarding settlement of all claims for civil penalties pertaining to the specific violations alleged herein and there are no representations, warranties, covenants, terms, or conditions agreed upon between the Parties other than those expressed in this CAFO.

In Re: Lee Hy Paving Corporation  
EPA Docket No. CWA-03-2019-0115

For Respondent: Lee Hy Paving Corporation

Date: Aug 13, 2019

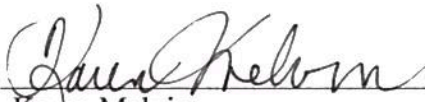
By: Joseph B. Kivil  
Pres.



For the Complainant:

After reviewing the Consent Agreement and other pertinent matters, I, the undersigned Director of the Enforcement and Compliance Assurance Division of the United States Environmental Protection Agency, Region III, agree to the terms and conditions of this Consent Agreement and recommend that the Regional Administrator, or his/her designee, the Regional Judicial Officer, issue the attached Final Order.

Date: SEP 26 2019

By:   
Karen Melvin  
Director, Enforcement and Compliance  
Assurance Division  
U.S. EPA – Region III  
Complainant

Attorney for Complainant:

Date: 9/5/19

By:   
Erin Grisby  
Attorney-Advisor

**BEFORE THE UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION III**

<b>In the Matter of:</b>	:	
	:	
<b>LEE HY PAVING CORPORATION</b>	:	<b>U.S. EPA Docket No. CWA-03-2019-0115</b>
<b>2100 QUARRY HILL ROAD</b>	:	
<b>P.O. BOX 5036</b>	:	<b>Proceeding under Sections 311(j) and</b>
<b>GLEN ALLEN, VA 23058,</b>	:	<b>311(b)(6)(B)(ii) of the Clean Water Act, 33</b>
	:	<b>U.S.C. §§ 1321(j) and 1321(b)(6)(B)(ii)</b>
<b>Respondent.</b>	:	
	:	<b>U.S. EPA-REGION 3-RHC</b>
<b>LEE HY PAVING CORPORATION</b>	:	<b>FILED-26SEP2019AM11:09</b>
<b>2100 QUARRY HILL ROAD</b>	:	
<b>ROCKVILLE, VA 23146,</b>	:	
	:	
<b>Facility.</b>	:	

**FINAL ORDER**

Complainant, the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region III, and Respondent, Lee Hy Paving Corporation, 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 reference to Sections 22.13(b) and 22.18(b)(2) and (3). 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 upon the representations of the parties in the attached Consent Agreement, the penalty agreed to therein is based upon consideration of, *inter alia*, EPA's *Civil Penalty Policy for Section 311(b)(3) and Section 311(j) of the Clean Water Act* (1998), and the statutory factors set forth in Section 311(b)(8) of the Clean Water Act ("CWA"), 33 U.S.C. § 1321(b)(8).


**NOW, THEREFORE, PURSUANT TO** Section 311(b) of the CWA, 33 U.S.C. § 1321(b), and Section 22.18(b)(3) of the Consolidated Rules of Practice, **IT IS HEREBY ORDERED** that Respondent pay a civil penalty in the amount of **FIFTY-EIGHT THOUSAND NINE HUNDRED AND FIVE DOLLARS (\$58,905)**, in accordance with the payment provisions set forth in the Consent Agreement, and comply with the terms and conditions of the Consent Agreement.



This Final Order constitutes the final Agency action in this proceeding. This Final Order shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief, or criminal sanctions for any violations of the law. This Final Order resolves only those causes of action alleged in the Consent Agreement and does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of the Clean Water Act and the regulations promulgated thereunder.

The effective date of the attached Consent Agreement and this Final Order is thirty (30) days after having been signed by the Regional Administrator or his delegate, the Regional Judicial Officer, and is filed with the Regional Hearing Clerk pursuant to Section 311(b)(6)(D) of the CWA, 33 U.S.C. § 1321(b)(6)(D).

Sept. 26, 2019  
Date

  
\_\_\_\_\_  
Joseph J. Lisa  
Regional Judicial and Presiding Officer  
U.S. EPA Region III

