



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2  
290 BROADWAY  
NEW YORK, NY 10007-1866

U.S. Environmental  
Protection Agency-Region 2  
2016 JUN 17 PM 12:10  
REGIONAL OFFICE  
CLERK

Certified Mail Return Receipt Requested  
No. 7005-3110-0000-5949-0433

Sive, Pagent & Riesel  
Dan Chorost, Esq.  
460 Park Avenue  
New York, N.Y. 10022

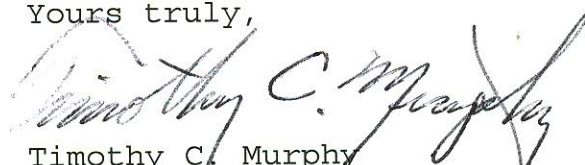
June 16, 2016

Subject: American Sugar, Inc., Docket No., CWA 02-2012-3307

Dear Mr. Chorost:

Enclosed herewith is the Consent Agreement/Final Order (CAFO) for the subject case. Payment of the penalty will be due thirty (30) days after receipt. Please contact me at (212) 637-3236 if you have any questions with respect to this document. Thank you.

Yours truly,



Timothy C. Murphy  
Assistant Regional Counsel

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY, REGION 2  
290 Broadway  
New York, New York 10007

U.S. Environmental  
Protection Agency-R

2016 JUN 17 PM 12:

REGIONAL HEARINGS  
CLERK

**IN THE MATTER OF:**  
American Sugar Refining Inc.  
1 Federal Street  
Yonkers, NY 10705

**Respondent**

Proceeding pursuant to Section 311(b)(6)  
of the Clean Water Act, 33 U.S.C. §  
1321(b)(6), for FRP & SPCC Violations

**CONSENT AGREEMENT  
AND  
FINAL ORDER**

**DOCKET NO.  
CWA-02-2008-3810**

**I. PRELIMINARY STATEMENT**

The Complainant in this proceeding, the Director of the Emergency and Remedial Response Division ("ERRD"), Region 2, United States Environmental Protection Agency ("EPA" or "Complainant"), filed, on September 26, 2008, a "Complaint, Findings of Violation, Notice of Proposed Assessment of a Civil Penalty, and Notice of Opportunity to Request a Hearing" ("Complaint") against American Sugar Refining Inc. ("Respondent").

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 any admission of liability or 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 agreed and ordered as follows:

**II. PROCEDURAL AND FACTUAL FINDINGS**

1. EPA initiated this proceeding with the Complaint seeking the assessment of a civil penalty, pursuant to Section 311(b)(6) of the Clean Water Act ("Act"), 33 U.S.C. § 1321(b)(6).
2. The Complaint alleged that Respondent violated the Act by failing or refusing to comply with regulations issued under Section 311(j) of the Act, 33 U.S.C. § 1321(j),

and found at 40 C.F.R. § 112.20, to which Respondent was subject at its facility located at 1 Federal Street, Yonkers, New York ("the Facility"). The Complaint proposed to assess a civil penalty of One Hundred and Fifty-two Thousand Two Hundred dollars (\$152,200).

3. The Complaint alleged that the Facility is an onshore facility within the meaning of 40 CFR § 112.2 that, because of its location, could reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters or adjoining shorelines of the United States, within the meaning of Section 311(j)(5)(B)(iii) of the Act, 33 U.S.C. § 1321(j)(5)(B)(iii), and Appendix C to 40 CFR Part 112, and is subject to the facility response plan ("FRP" or "response plan") submission requirements of 40 CFR § 112.20 ("an FRP facility").
4. The Complaint alleged that Respondent did not submit a response plan to EPA by August 30, 1994, in violation of 40 CFR §112.20(a)(1).
5. Under 40 CFR § 112.3(b), the owner or operator of an SPCC-regulated facility that began operations after January 10, 1974, shall have fully implemented an SPCC Plan not later than one year after the date the Facility began operations.
6. The Complaint alleged that as a result of SPCC inspections conducted by EPA on April 30, 2008, the Respondent had not fully implemented an SPCC Plan at the Facility, in violation of 40 CFR §112.3(b).
7. This action was public noticed. No public comment was received.

### **III. TERMS OF SETTLEMENT**

8. The Paragraphs above are re-alleged and incorporated herein by reference.
9. Respondent submitted to EPA an updated FRP, dated April 2016 ("April 2016 FRP"), which April 2016 FRP addresses the issues raised by EPA in the Complaint and in discussions between EPA and Respondent relating to the Complaint.
10. This Agreement shall apply to and be binding upon Respondent, its officers, directors, employees, successors and assigns, including, but not limited to, subsequent purchasers.
11. Respondent stipulates that EPA has jurisdiction over the subject matter alleged in the Complaint and that the Complaint states a claim upon which relief can be granted against Respondent.
12. Respondent waives any defenses it might have as to jurisdiction and venue, and, without admitting or denying the factual or legal allegations contained in the

Complaint, consents to the terms of this Agreement in the interest of settling this matter.

13. Respondent hereby waives its right to a judicial or administrative hearing or appeal on any issue of law or fact set forth in the Complaint.
14. Respondent has classified its oil as Non-Persistent in prior FRPs, which EPA had approved. After EPA questioned that classification in 2015, Respondent submitted oil sampling data to EPA in March 2016; that sampling data established that ASR's oil is properly classified as Non-Persistent. While Respondent's April 2016 FRP continues to classify Respondent's oil as Non-Persistent, to avoid controversy and in the spirit of cooperation, the April 2016 FRP conservatively assumes, for its Vulnerability Analysis and accompanying resource-planning calculations, that Respondent's oil is Persistent (see April 2016 FRP Sections 1.4.2, 1.5, and 1.7). Respondent therefore has undertaken the 15-mile Planning Distance required for Persistent oil and has planned for sufficient resources to be available in the event of a spill. Based on the foregoing, EPA hereby waives any claim, complaint or allegation of violation that EPA could assert against Respondent relating to Respondent's FRP oil classification as "Non-Persistent," from the beginning of time through the date of this Agreement.
15. Pursuant to Section 311(b)(8) of the Act, 33 U.S.C. § 1321(b)(8), given the seriousness of the alleged violations and other relevant factors, EPA has determined that an appropriate civil penalty to settle this action is in the amount of **twenty-three thousand eight hundred and twenty-seven dollars (\$23,827.00)**.
16. For purposes of settlement, Respondent, without admitting or denying the factual or legal allegations in the Complaint, consents to the issuance of this Agreement, and consents to the payment of the civil penalty cited in the foregoing Paragraph.

#### VI. PAYMENT OF CIVIL PENALTY

17. Respondent shall pay a civil penalty to EPA in the amount of **twenty-three thousand eight hundred and twenty-seven dollars (\$23,827.00)**. Such payment shall be made by cashier's or certified check, or by Electronic Fund Transfer ("EFT"). If the payment is made by check, then the check shall be payable to the "Treasurer, United States of America," and shall be mailed to:

United States Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
PO Box 979077  
St. Louis, MO 63197-9000

The check shall be identified with a notation thereon listing the following: **IN THE MATTER OF AMERICAN SUGAR REFINING INC.**, and shall bear thereon the **Docket Number CWA-02-2008-3810**. Payment of the penalty must be received at the above address on or before sixty (60) calendar days after the Effective Date of this Agreement.

If Respondent elects to make the payment by EFT, then Respondent shall provide the following information to its remitter bank:

- a. Amount of Payment: \$23,827.00.
- b. SWIFT address: FRNYUS33, 33 Liberty Street, New York, NY 10045
- c. Account Code for Federal Reserve Bank of New York receiving payment: 68010727
- d. Federal Reserve Bank of New York ABA routing number: 021030004
- e. Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

Name of Respondent: American Sugar Refining Inc.

- f. Case Number: CWA-02-2008-3810

Such EFT must be received on or before 60 calendar days after the Effective Date of this CA/FO. Whether the payment is made by check or by EFT, Respondent shall promptly thereafter furnish reasonable proof that such payment has been made, to both:


Tim Murphy, Esq.  
Assistant Regional Counsel  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16th floor  
New York, New York 10007-1866  
(212) 637-3236

and

Karen Maples, Regional Hearing Clerk  
U.S. Environmental Protection Agency – Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, NY 10007-1866

- g. Failure to pay the \$23,827 stipulated civil penalty in full within the time period set forth above may result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection.
- h. The civil penalty constitutes a penalty within the meaning of 26 U.S.C. § 162(f).


**FOR RESPONDENT, American Sugar Refining Inc.:**

BY:   
**Gregory Smith**  
**Senior Vice President**  
**American Sugar Refining Inc.**



DATE: June 6, 2016

**FOR COMPLAINANT U.S. EPA, REGION 2:**

BY:   
**Walter Mugdan, Director**  
**Emergency and Remedial Response Division**  
**U.S. EPA, Region 2**  
**290 Broadway**  
**New York, New York 10007-1866**

DATE: June 8, 2016

- i. Any requirement for the payment of funds established under the terms of this Agreement shall be subject to the availability of appropriated funds, and no provision herein shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341.

## V. GENERAL PROVISIONS

18. The Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during discussions with or to be served with and to reply to any memorandum or communication addressed to the Director or the Regional Administrator where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Agreement.
19. Nothing in this Agreement shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this Agreement or of the statutes and regulations upon which this Agreement is based, or for Respondent's violation of any applicable provision of law.
20. This Agreement shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law, nor shall this Agreement be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit.
21. This Agreement constitutes a settlement by EPA of all claims for civil penalties pursuant to the Clean Water Act for the violations alleged in the Complaint. Nothing in this Agreement is intended to, nor shall be construed to, operate in any way to resolve any criminal liability of the Respondent. Compliance with this Agreement shall not be a defense to any actions subsequently commenced pursuant to Federal laws and regulations administered by EPA, except to the extent such future actions involve the violations alleged in the Complaint. It is the responsibility of Respondent to comply with Federal laws and regulations administered by EPA.
22. Each undersigned representative of the parties to this Agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this Agreement and to execute and legally bind that party to it.
23. Each party shall bear its own costs and attorney's fees in connection with the action resolved by this Agreement and Final Order.

## V. 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, NY.

June 9, 2016

Date

Helen Ferrara

**Helen Ferrara**  
Regional Judicial Officer  
United States Environmental Protection  
Agency, Region 2  
290 Broadway  
New York, NY 10007



UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 2  
290 Broadway  
New York, New York 10007

IN THE MATTER OF:  
American Sugar Refining Inc.  
1 Federal Street  
Yonkers, NY 10705

**RESPONDENT**

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AND  
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CWA-02-2008-3810**

**CERTIFICATE OF SERVICE**

I certify that, on the date noted below, I served the foregoing fully executed Consent Agreement and Final Order, bearing the above-referenced docket number, in the following manner.

Copy by Certified Mail to Respondent's Counsel  
Return Receipt Requested:

Daniel Riesel & Dan Chorost  
Sive, Paget & Riesel P.C.  
460 Park Avenue  
New York, NY 10022  
Telephone (212) 421-1891  
Telefax (212) 421-1891  
driesel@sprlaw.com

Original and One Copy  
By Hand-Delivery to :

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

Date: 6/16/2016

  
NAME

In the matter of American Sugar Refining Inc.