

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III

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In the Matter of:	:	<b>CONSENT AGREEMENT</b>
	:	<b>Proceeding under Section 311</b>
C.L. Burchenal Oil Company, Inc.,	:	<b>of the Clean Water Act,</b>
146 Southern Boulevard	:	<b>to assess a Class I Administrative</b>
Wyoming, DE 19934	:	<b>Penalty for SPCC Violations</b>
	:	
Respondent.	:	<b>Docket No.: CWA-03-2011-0142</b>
	:	
Wyoming Facility	:	
146 Southern Boulevard	:	
Wyoming, DE 19934,	:	
	:	
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 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 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 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 the jurisdictional allegations set forth in this Consent Agreement.
4. Respondent neither admits nor denies the specific factual allegations, conclusions of law, and determinations 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. Respondent shall bear its own costs and attorneys fees.

#### Statutory Authority

8. Congress enacted the CWA, 33 U.S.C. §§ 1251 *et seq.*, in 1972. In Section 311(j)(1)(C) of the CWA, 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 Oil Pollution Prevention Regulations, 40 C.F.R. § 112, 38 Fed. Reg. 34165 (Dec. 11, 1973), effective January 10, 1974 (“1973 regulations”).
11. On July 17, 2002, EPA promulgated an amendment to the Regulations, 67 Fed. Reg. 47042 (“2002 Regulations”). The 2002 Regulations became effective on August 16, 2002. On December 26, 2006, EPA promulgated revisions to the 2002 Regulations, 71 Fed. Reg. 77266 (“2006 Regulations”). The 2006 Regulations became effective on February 27, 2007. On December 5, 2008, EPA promulgated additional revisions to the 2002 Regulations, 73 Fed. Reg. 74236 (“2008 Regulations”). The 2008 Regulations became effective on January 14, 2010. Furthermore, on November 13, 2009, EPA promulgated revisions to the 2008 Regulations, 74 Fed. Reg. 58784 (“2009 Regulations”). The effective date of the 2009 Regulations is January 14, 2010.
12. The deadlines for complying with the 2002, 2006, 2008, and 2009 Regulations have been extended several times. However, under the current provisions of 40 C.F.R. § 112.3(a), an owner or operator of a facility that was in operation on or before August 16, 2002, that could reasonably be expected to discharge oil in harmful quantities into or upon the navigable waters of the United States or adjoining shorelines must maintain and implement the facility’s Spill Prevention Countermeasure and Control (“SPCC”) Plan, as required by the 1973 Regulations. Accordingly, for purposes of this Consent Agreement, unless otherwise noted, regulatory requirements cited herein refer to the 1973 Regulations.
13. The 1973 Regulations at 40 C.F.R. § 112.1(b) state that “. . . this part applies to owners or operators of non-transportation-related onshore and offshore facilities engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing or consuming oil and oil products, and which, due to their location, could reasonably be expected to discharge oil in harmful quantities, as defined in Part 110 of this chapter, into or upon the navigable waters of the United States or adjoining shorelines.”

14. For violations of Section 311(j) of the CWA, 33 U.S.C. § 1321(j), EPA has authority, pursuant to Section 311(b)(6)(B)(i) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(i), to assess a Class I penalty in the amount of \$10,000 per violation, not to exceed a maximum penalty of \$25,000. Pursuant to the Debt Collection Improvement Act, and the subsequent Civil Monetary Penalty Inflation Adjustment Rule, codified at 40 C.F.R. Part 19, violations of Section 311(j) that occur after January 12, 2009, are subject to a statutory penalty of \$16,000 per violation, not to exceed a maximum penalty of \$37,500.

#### **Findings of Fact and Conclusions of Law**

15. Respondent is a corporation organized under the laws of Delaware, with a place of business located at 146 Southern Boulevard in Wyoming, Delaware.
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 engaged in storing, transferring, or distributing oil or oil products located at an onshore used oil processing facility located at 146 Southern Boulevard in Wyoming, Delaware (“Facility”).
18. Respondent is the owner 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 at least the year 1972.
20. The Facility has a total aboveground oil storage capacity of approximately 45,000 gallons.
21. The Facility is located less than a mile south of Wyoming Lake and less than half a mile east of an unnamed tributary of Wyoming Lake. Storm water and discharges from the Facility drain into the Isaac Branch, which is less than one mile away. The Isaac Branch is a tributary of the St. Jones River, which flows east and drains into the Delaware Bay.
22. The St. Jones River, the Delaware Bay, and Wyoming Lake 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.
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. 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.
25. 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.

26. Pursuant to 40 C.F.R. § 112.1, Respondent, as the owner and operator of the Facility, is subject to the Oil Pollution Prevention Regulations codified at 40 C.F.R. Part 112.
27. Pursuant to Section 311(j) of the CWA, 33 U.S.C. § 1321(j), and 40 C.F.R. §§ 112.1 and 112.3, the Facility is subject to the SPCC requirements of 40 C.F.R. § 112.3 because the Facility's 45,000-gallon oil storage capacity exceeds the 1,320-gallon aboveground capacity threshold of the Oil Pollution Prevention Regulations and the Facility is an onshore non-transportation-related facility that could be reasonably expected to discharge oil in harmful quantities into or upon the navigable waters of the United States or adjoining shorelines.

### COUNT I

28. The 1973 Regulations at § 112.3(a) require that persons subject to the SPCC requirements must “. . . prepare a Spill Prevention Control and Countermeasure Plan (hereinafter ‘SPCC Plan’), in accordance with § 112.7.”
29. The 1973 Regulations at 40 C.F.R. § 112.7(b) require that an SPCC plan predict direction, rate of flow, and quantity of oil that could potentially be discharged due to major types of equipment failures.
30. The 1973 Regulations at 40 C.F.R. § 112.7(c) require that an SPCC plan discuss conformance with minimal spill prevention standards.
31. The 1973 Regulations at 40 C.F.R. § 112.7(c) require that an SPCC plan discuss conformance with applicable guidelines regarding, inter alia, (1) facility drainage (onshore); (2) bulk storage tanks (onshore); (3) facility transfer operations; (4) facility tank car and tank truck loading/unloading; (8) inspections and records; (9) security; and (10) personnel, training and spill prevention procedures.
32. EPA conducted a compliance inspection at the Facility on November 8, 2009 (“the inspection”).
33. The Facility's SPCC Plan available at the time of the inspection failed to predict direction, rate of flow, and quantity of oil that could potentially be discharged due to major types of equipment failures as required by 40 C.F.R. § 112.7(b).
34. The Facility's SPCC Plan available at the time of the inspection failed to discuss conformance with the minimal spill prevention standards of 40 C.F.R. § 112.7(c).
35. The Facility's SPCC Plan available at the time of the inspection failed to discuss conformance with applicable guidelines of the follow subsections of 40 C.F.R. § 112.7(e): (1) facility drainage (onshore); (2) bulk storage tanks (onshore); (3) facility transfer operations; (4) facility tank car and tank truck loading/unloading; (8) inspections and records; (9) security; and (10) personnel, training and spill prevention procedures.
36. Respondent's failure to prepare an SPCC plan in accordance with § 112.7 is a violation of § 112.3(a) of the 1973 Regulations, and, therefore, subjects Respondent to a civil penalty

of up to \$16,000 pursuant to Section 311(b)(6)(B)(i) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(i), and 40 C.F.R. § 19.4.

## COUNT II

37. The 1973 Regulations at § 112.3(a) require an SPCC Plan prepared in accordance with § 112.7 be “fully implemented as soon as possible, but not later than [January 10, 1975].”
38. The 1973 Regulations at § 112.7(e)(4)(ii) require a containment system for the tank truck loading and unloading area designed to hold at least the maximum capacity of any single compartment of a tank car or tank truck loaded or unloaded in the plant.
39. The 1973 Regulations at § 112.7(e)(8) require written procedures for all required inspections, record inspections in its SPCC Plan, ensure inspection records were signed by the appropriate supervisor or inspector, and maintain such records for three years.
40. The 1973 Regulations at § 112.7(e)(10) require proper instruction of personnel in the operation and maintenance of equipment to prevent the discharges of oil and applicable pollution control laws, rules, and regulations.
41. The review requirements of 40 C.F.R. § 112.5(b) state that a facility must complete a review and evaluation of the SPCC Plan at least once every three years from the date the Facility became subject to § 112.3(a).
42. During the November 8, 2009 compliance inspection of the Facility, the EPA inspector observed that the Facility’s tank truck loading and unloading area had no containment system.
43. EPA determined, based on discussions with Facility personnel during and after the inspection, that the Facility did not keep inspection records, did not instruct personnel in operating and maintaining oil discharge preventing equipment and in applicable pollution control laws, rules, and regulations, and had not reviewed or evaluated its SPCC Plan since 1981.
44. At the time of the inspection, Respondent had failed to implement an SPCC Plan in accordance with the requirements of 40 C.F.R. §§ 112.7(e)(4)(ii), 112.7(e)(8), 112.7(e)(10), and 112.5(b).
45. Respondent’s failure to implement an SPCC plan in accordance with 40 C.F.R. § 112.7 is a violation of § 112.3(a) of the 1973 Regulations, and, therefore, subjects Respondent to a civil penalty of up to \$16,000 pursuant to Section 311(b)(6)(B)(i) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(i), and 40 C.F.R. § 19.4.

## Penalty

46. In settlement of Complainant’s claims for civil penalties for the violations alleged in this Consent Agreement, Respondent agrees to pay a civil penalty amount of seventeen

thousand six hundred thirty-three dollars (\$17,633) based upon the payment terms set forth below.

47. The civil penalty amount shall become due and payable immediately upon Respondent's receipt of a copy of this CAFO.
48. The proposed 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; the degree of culpability; the nature, extent, and degree of success of the Respondent's mitigation efforts; the economic impact of the penalty on the violator; and other matters as justice may require.

#### **Payment Terms**

49. Payment 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-03-2011-0142) of this case.
  - B. Payments sent by U.S. Postal Service must be addressed to:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000
  - C. Payments sent by a private delivery service must 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)
  - D. If paying by EFT, the Respondent must make the transfer to:

Federal Reserve Bank of New York  
ABA 021030004  
Account 68010727  
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-03-2011-0142” should be included in the “Court Order # or Bill #” field, and “3” should be included as the Region number.
- G. Payment by the Respondent shall reference Respondent’s name and address, and the EPA Docket Number of this CAFO (CWA-03-2011-0142). A copy of Respondent’s check or a copy of Respondent’s electronic fund transfer shall be sent simultaneously to:

Wojciech Jankowski  
 Assistant Regional Counsel  
 U.S. Environmental Protection Agency  
 Region III (Mail Code 3RC50)  
 1650 Arch Street  
 Philadelphia, PA 19103-2029

Ms. Lydia Guy  
 Regional Hearing Clerk  
 U.S. Environmental Protection Agency  
 Region III (Mail Code 3RC00)  
 1650 Arch Street  
 Philadelphia, PA 19103-2029

- 50. 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.
- 51. Interest on the civil penalty will begin to accrue on the date that this CAFO is mailed or hand-delivered to the Respondent (“Interest Accrual Date”). 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).
- 52. 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 the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.

53. A penalty charge of six percent per year will be assessed monthly on any portion of the 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).
54. Failure by Respondent to pay the penalty assessed by the Final Order in full by the Interest Accrual Date 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**

55. 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.
56. The provisions of this Consent Agreement and the Final Order, if issued, shall be binding upon Respondent and Respondent's successors or assigns.
57. 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 this Consent Agreement.
58. The Effective Date of this Consent Agreement is the date on which the Final Order is filed with the Regional Hearing Clerk.



For the Respondent, C.L. Burchenal Oil Company, Inc.

Date: 9/14/11

By: 

Name: TERRY BURCHENAL

Title: PRESIDENT

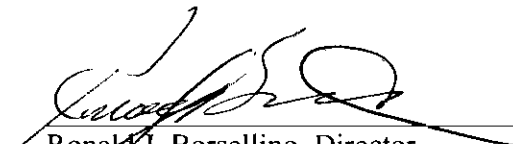
**For the Complainant, U.S. Environmental Protection Agency, Region III**

Date: 9/22/11

By:   
Wojciech Jankowski  
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: September 27, 2011

By:   
Ronald J. Borsellino, Director  
Hazardous Site Cleanup Division

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III

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	:	<b>Penalty for SPCC Violations</b>
Respondent.	:	
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Wyoming Facility	:	
146 Southern Boulevard	:	
Wyoming, DE 19934,	:	
Facility.	:	

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**FINAL ORDER**

Pursuant to Section 311(b)(6) of the CWA, 33 U.S.C. §1321(b)(6), and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits,” codified at 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order.

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

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

Date: 9/28/11

  
Renee Sarajian  
Regional Judicial Officer/Presiding Officer

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III

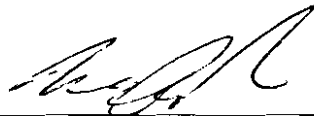
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Wyoming Facility	:	
146 Southern Boulevard	:	
Wyoming, DE 19934,	:	
Facility.	:	

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**CERTIFICATE OF SERVICE**

I certify that on the date provided below, I hand-delivered the original and one copy of the Consent Agreement and Final Order in the case captioned *In re C.L. Burchenal Oil Co., Inc.*, Docket No. CWA-03-2011-0142 to Lydia Guy, Regional Hearing Clerk, U.S. EPA, Region 3, 1650 Arch St, Philadelphia, PA 19134, and sent one copy of the signed original of the document by certified mail–return receipt requested to Terry Burchenal, President, 146 Southern Boulevard, Wyoming, DE 19934.

Dated: 9/28/11

  
\_\_\_\_\_  
Wojciech Jankowski  
Assistant Regional Counsel  
U.S. EPA Region 3