

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF:

Delta Sonic Car Wash, Inc.
7920 Niagara Falls Blvd.
Niagara Falls, New York

Respondent.

Proceeding Pursuant to Section 311(b)(6) of
the Clean Water Act, 33 U.S.C. §1321(b)(6).

**CONSENT AGREEMENT
AND FINAL ORDER**

Docket No. CWA-02-2018-3801

U.S. Environmental
Protection Agency-Region 2
2018 AUG -1 AM 11:36
REGIONAL HEARING
OFFICE

I. PRELIMINARY STATEMENT

Complainant, the United States Environmental Protection Agency (“EPA”), and Respondent, Delta Sonic Car Wash, Inc. (“Delta Sonic” or “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”) without 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 BACKGROUND

1. This administrative proceeding for the assessment of a civil penalty is initiated pursuant to Section 311(b)(6) of the Clean Water Act (“Act” or “CWA”), 33 U.S.C. § 1321(b)(6).
2. The following Findings of Fact are made and Final Order issued pursuant to the authority vested in the Administrator of the EPA by the Act, 33 U.S.C. § 1251 et seq., and in particular by Section 311(b)(6) of the Act, 33 U.S.C. § 1319(g). This authority has been duly delegated by the Administrator to the Regional Administrator of Region 2 of EPA, which authority has been duly re-delegated to the undersigned Director of the Emergency and Remedial Response Division, Region 2, EPA.

3. EPA is initiating and concluding this administrative proceeding for the assessment of a civil penalty pursuant to Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6), and 40 C.F.R. § 22.13(b) of the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits” (“CROP”), which sets forth procedures for simultaneous commencement and conclusion of administrative civil penalty assessment proceedings through issuance of a consent agreement and final order pursuant to 40 C.F.R. §§ 22.13(b)(2) and (3).
4. Respondent is a New York Corporation which owns and operates several car wash facilities in Western New York, including a Delta Sonic facility located at 7920 Niagara Falls Boulevard, Niagara Falls, New York (“the Facility”).
5. In or about July 2016, Respondent began a project to renovate the oil change and lube shop garage, which involved the removal of concrete floors, and hired a concrete and general contractor (“Contractor”) to conduct the work. During the project, wastewater from the concrete cutting operation mixed with waste oil located in the basement of the lube shop, which was initially sent to a sump pump tied to an oil/water separator. However, on or about July 13, 2016, after the sump pump was unable to pump any additional wastewater from the basement, Contractor used a submersible pump to pump the oily wastewater, a pollutant, directly to a storm sewer receiver located in the parking lot outside of the oil change garage, which ultimately flowed to Cayuga Creek, a water of the United States.
6. On or about July 14, 2016, an employee of Delta Sonic observed the oily wastewater being pumped to the storm sewer and notified Delta Sonic’s Environmental Compliance Officer. The Environmental Compliance Officer placed an absorbent boom in the storm sewer. The Contractor continued to pump the wastewater to the storm sewer on July 14 and 15, 2016.
7. On or about July 18, 2016, the New York State Department of Environmental Conservation (“NYS-DEC”) received a spill report regarding an oil spill in Cayuga Creek located in Niagara Falls, NY (“the Discharge”). The NYS-DEC Spills Unit responded to the alleged spill and found a petroleum product, believed to be waste oil, in the creek along Niagara Falls Boulevard near Tuscarora Road and in a large storm sewer water pipe along Niagara Falls Boulevard. The DEC concluded that the spill originated from the Facility.

III. FINDINGS OF VIOLATIONS- JURISDICTIONAL AND SPECIFIC CLAIMS

8. Respondent is a person within the meaning of Section 311(a)(7) of the Act, 33 U.S.C. § 1321(a)(7) and 40 C.F.R. § 122.2.
9. Respondent is the owner and operator within the meaning of Section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6), of the Facility.
10. “Discharge” as defined in Section 311(a)(2) of the Act, 33 U.S.C. § 1321(a)(2), includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying or dumping, but excludes: (A) discharges in compliance with a permit under 33 U.S.C. § 1342, (B) discharges resulting from circumstances identified and reviewed and made a part of the public record with respect to a permit issued or modified under 33 U.S.C. § 1342, and subject to a condition in such permit, (C) continuous or anticipated intermittent discharges from a point source, identified in a

permit or permit application under 33 U.S.C. § 1342, which are caused by events occurring within the scope of relevant operating or treatment systems, and (D) discharges incidental to mechanical removal authorized by the President under Section 311(c) of the Act, 33 U.S.C. § 1321(c).

11. For purposes of Section 311(b)(3) and (b)(4) of the Act, 33 U.S.C. § 1321(b)(3) and (b)(4), discharges of oil into or upon the navigable waters and adjoining shorelines of the United States in such quantities that have been determined may be harmful to the public health or welfare or environment of the United States are defined in 40 C.F.R. § 110.3 to 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.
12. The Discharge on or about July 18, 2016, from the Facility caused a sheen upon or discoloration of the surface of the Cayuga Creek, and, therefore, was in a quantity that has been determined may be harmful under 40 C.F.R. § 110.3, which implements Section 311(b)(3) and (b)(4) of the Act, 33 U.S.C. § 1321(b)(3) and (b)(4).
13. For purposes of Section 311(b)(5) of the Act, 33 U.S.C. § 1321(b)(5), any person in charge of a vessel or of an onshore facility or an offshore facility shall, as soon as he has knowledge of any discharge of oil or a hazardous substance from such vessel or facility in violation of Section 311(b)(3), immediately notify the appropriate agency of the United States Government of such discharge in accordance with 40 C.F.R. § 110.6.
14. On or about July 14, 2016, Respondent failed to notify the appropriate agency of the United States Government, the National Response Center, of the harmful discharge into Cayuga Creek, as defined in 40 C.F.R. § 110.3. The notification of the discharge into Cayuga Creek was required by 40 C.F.R. § 110.6, which implements Section 311(b)(5) of the Act, 33 U.S.C. § 1321(b)(5).
15. This Consent Agreement and Final Order (collectively "CA/FO") resolves violations of Section 311 of the CWA, 33 U.S.C. § 1321, as specifically alleged herein.
16. For the purpose of this Consent Agreement, Respondent admits that EPA has jurisdiction over the subject matter alleged herein and waives any defenses it might have as to jurisdiction and venue; admits the factual and legal allegations contained in the Consent Agreement; and waives the right to a hearing under Section 311(b)(6)(B)(i) of the Act and to appeal any Final Order in this matter under Section 311(b)(6)(G)(i) of the Act, 33 U.S.C. § 1321(b)(6)(G)(i), and consents to the issuance of a Final Order without further adjudication.

III. TERMS OF SETTLEMENT

Pursuant to Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits, 40 C.F.R. § 22.18, it is hereby agreed by and between the parties, and Respondent voluntarily and knowingly agrees as follows:

17. Pursuant to Section 311(b)(6) of the CWA, 33 U.S.C. §1321(b)(6), the nature of the violations, and other relevant factors including Respondent's commitment to pay a civil penalty of thirty thousand dollars to the NYS-DEC for State violations arising out of the same incident as well as its commitment to advanced employee training on environmental best practices as well as environmental conservation practices at its facilities, EPA has determined that an appropriate civil penalty to settle this action is in the amount of twenty-five thousand dollars (\$25,000).
18. For purposes of settlement, Respondent consents to the issuance of this Consent Agreement and consents to the payment of the civil penalty cited in the foregoing Paragraph.

IV. PAYMENT OF CIVIL PENALTY

19. No later than forty-five (45) days after the date of issuance of the executed Final Order signed by the Director of the Emergency and Remedial Response Division, Respondent shall pay a civil penalty in the amount of **Twenty-Five Thousand Dollars (\$25,000)**, payable to the "Treasurer of the United States of America." The payment shall indicate "OSLTF-311."
20. Payment can be made by debit/credit card, check, or electronically. Electronic payments fall into two categories: wires and Automated Clearinghouse ("ACH"). Wires are same day and more costly. ACH is the next day or any future scheduled day and is less expensive. Please note that wires and ACH payments must be conducted through the sender's bank. The checks (cashier's or certified checks only) shall be identified with a notation of the name and docket number of this case, set forth in the caption on the first page of this document. Payment methods are described below:

Type of Payment	Payment Information		
Debit and Credit Card Payments	https://www.pay.gov/paygov/		
Checks from U.S. Banks		U.S. Postal Service	UPS, Federal Express, or Overnight Mail
Finance Center Contacts: Craig Steffen (513-487-2091)	Check Payments – Fines and Penalties	US Environmental Protection Agency Fines and Penalties Cincinnati Finance Center PO Box 979077 St. Louis, MO 63197-9000	U.S. Bank Government Lockbox 979077 US EPA Fines & Penalties 1005 Convention Plaza SL-MO-C2-GL St. Louis, MO 63101 314-418-1028 Contact: Natalie Pearson 314-418-4087
Checks drawn on foreign banks with no USA branches (any currency)	Cincinnati Finance US EPA, MS-NWD 26 W ML King Drive Cincinnati, OH 45268-0001		
Wire Transfers (any currency)	Federal Reserve Bank of New York ABA: 021030004 Account Number: 68010727 SWIFT address: FRNYUS33		

	33 Liberty Street New York, NY 10045 Field Tag 4200 of the Fedwire message should read: "D 68010727 Environmental Protection Agency"
ACH - Automated Clearinghouse for receiving US currency Finance Center Contacts: John Schmid (202-874-7026) REX (Remittance Express) 1-866-234-5681	US Treasury REX / Cashlink ACH Receiver ABA: 051036706 Account Number: 310006, Environmental Protection Agency CTX Format Transaction Code 22 – checking Physical location of US Treasury facility: 5700 Rivertech Court Riverdale, MD 20737

ON LINE PAYMENT:

There is now an On Line Payment Option, available through the Department of Treasury. This payment option can be accessed from the information below: WWW.PAY.GOV. Enter sfo 1.1 in the search field. Open form and complete required fields.

Respondent shall also send copies of this payment to each of the following:

Branch Chief
Response and Prevention Branch
Emergency & Remedial Response Division
U.S. EPA, Region 2
2890 Woodbridge Avenue
Edison, New Jersey 08837

and
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, New York 10007.

21. Payment must be received at the above address no later than forty-five (45) calendar days after the date of signature of the Final Order (at the end of this document). The date by which payment must be received shall hereafter be referred to as the "due date."
22. Failure to pay the penalty in full by the due date will result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for Collection.
23. Further, if the payment is not received on or before the due date, interest will be assessed at the annual rate established by the Secretary of Treasury pursuant to the Debt Collection Act, 31 U.S.C. §3717, on the overdue amount from the due date through the date of payment. In

addition, a late payment handling charge of \$15.00 will be assessed for each 30-day period (or any portion thereof) following the due date in which the balance remains unpaid. A 6% per annum penalty will also be applied on any principal amount not paid within 90 days of the due date.


24. In addition, pursuant to Section 309(g)(9) of the Act, 33 U.S.C. §1319(g)(9), if payment is not received by the due date, a quarterly nonpayment penalty will be imposed for each calendar quarter during which such nonpayment persists. The quarterly nonpayment penalty is 20% of the aggregate amount of penalties and quarterly nonpayment penalties, which are unpaid as of the beginning of such quarter. You may also be required to pay attorney's fees and costs for collection proceedings in connection with nonpayment.
25. The penalty to be paid is a civil penalty assessed by the EPA and shall not be deductible from Respondent's federal or New York State taxes.

V. GENERAL PROVISIONS

26. The provisions of this CA/FO shall be binding upon Respondent, its officers, directors, agents, servants, authorized representatives and successors or assigns, including, but not limited to, subsequent purchasers. No transfer of ownership or operation shall relieve Respondent of its obligation to comply with this CA/FO.
27. 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 Consent Agreement and issue the accompanying Final Order.
28. Except for the specific violations alleged herein, 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.
29. This CA/FO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit.
30. This CA/FO constitutes a settlement by EPA of all claims for civil penalties pursuant to the CWA for the violations by the Respondent alleged herein. Nothing in this CA/FO is intended to, nor shall be construed to operate in any way to resolve any criminal liability of the Respondent. Compliance with this CA/FO shall not be a defense to any actions subsequently commenced pursuant to Federal laws and regulations administered by EPA, and it is the responsibility of Respondent to comply with such laws and regulations.
31. Each undersigned representative of the parties to this Consent Agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this Consent Agreement and to execute and legally bind that party to it.

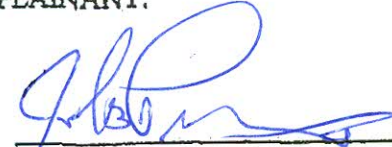
31. Each undersigned representative of the parties to this Consent Agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this Consent Agreement and to execute and legally bind that party to it.
32. Each party shall bear its own costs and attorney's fees in connection with the action resolved by this CA/FO.
33. EPA agrees that the provisions of this Consent Agreement shall not be used to modify, deny, suspend, condition, or revoke any permits, registrations, or approvals issued by EPA.

RESPONDENT:

BY: 
David H. Baldauf
Delta-Sonic Carwash Systems, Inc.
Secretary & General Counsel
7920 Niagara Falls Blvd.
Niagara Falls, New York

DATE: 7/26/18

COMPLAINANT:

BY: 
John Prince, Acting Director
Emergency and Remedial Response Division
U.S. Environmental Protection Agency, Region 2
290 Broadway
New York, New York, 10007

DATE: July 31, 2018

VIII. FINAL ORDER

The Regional Administrator of the United States Environmental Protection Agency, Region 2, vested by authority delegated by the Administrator of the United States Environmental Protection Agency ("EPA") and having further re-delegated such authority to the Emergency and Remedial Response Division Director, Region 2, EPA, 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, United States Environmental Protection Agency, Region 2, New York, New York.

DATED: July 31, 2018



John Prince, Acting Director
Emergency and Remedial Response Division
U.S. Environmental Protection Agency, Region 2
290 Broadway
New York, NY 10007-1866

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF:

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7920 Niagara Falls Blvd.
Niagara Falls, New York

Respondent.

Proceeding Pursuant to Section 311(b)(6) of
the Clean Water Act, 33 U.S.C. §1321(b)(6).

**CONSENT AGREEMENT
AND FINAL ORDER**

Docket No. CWA-02-2018-3801

CERTIFICATE OF SERVICE

I certify that, on the date noted below, I caused to be mailed, by certified mail, return receipt requested, a copy of the foregoing "CONSENT AGREEMENT AND FINAL ORDER" and a copy of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties," (40 C.F.R. Part 22) to the following person at the addresses listed below:

Terrence M. Connors
Connors LLP
1000 Liberty Building
Buffalo, New York 14020

I sent by inter-office mail the original and a copy of the foregoing Consent Agreement/Final Order to the office of the Regional Hearing Clerk, United States Environmental Protection Agency, Region 2.

Date: August 1, 2018

Print Name: Yolanda Majette
New York, NY