

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

REGIONAL HEARING CLERK
EPA REGION III, PHILA, PA

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In The Matter of: : **CONSENT AGREEMENT**
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: :
Spirit Services, Inc. : **PROCEEDING UNDER SECTION 311**
15801 Lockwood Road : **OF THE CLEAN WATER ACT, AS**
Williamsport, Maryland 21795, : **AMENDED, TO ASSESS A CLASS I**
: **CIVIL PENALTY**
Respondent. : :
: :
: **Docket No. CWA-03-2011-0289**
:

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 to 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. The current compliance date for the 2002, 2006, 2008, and 2009 Regulations is November 10, 2011. Thus, as of the Effective Date of this Consent Agreement, the 2002, 2006, 2008, and 2009 Regulations do not effect a compliance date applicable to the Facility. 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 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 up to \$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 up to \$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 Maryland, with a place of business located at 15801 Lockwood Road in Williamsport, Maryland.
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 15801 Lockwood Road in Williamsport, Maryland (“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 1997.
20. The Facility has a total aboveground oil storage capacity of approximately 339,000 gallons.
21. The Facility is located approximately 750 feet from the Potomac River.
22. The Potomac River is a navigable water 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 339,000-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 due to its location could reasonably be expected to discharge oil in harmful quantities into or upon the navigable waters of the United States or adjoining shorelines.
28. EPA conducted a compliance inspection at the Facility on December 8, 2010 ("the Inspection").
29. EPA believes that, at the time of the Inspection, Respondent failed to adequately implement the following Regulations, each of which constitutes a separate violation:
 - a. **40 C.F.R. § 112.7(e)(2)(ii)**: failure to provide sufficiently impervious secondary containment for the entire contents of the largest single tank plus sufficient freeboard to allow for precipitation.
 - b. **40 C.F.R. § 112.7(e)(2)(vi)**: failure to periodically test aboveground containers for integrity using hydrostatic testing, visual inspection, or a system of non-destructive shell thickness testing; keep comparison records; inspect container supports and foundations; and frequently observe the outside of containers for deterioration, leaks, or accumulation of oil inside diked areas.
 - c. **40 C.F.R. § 112.7(e)(8)**: failure to maintain a record of inspections, signed by the appropriate supervisor or inspector, for a period of three years.
 - d. **40 C.F.R. § 112.7(e)(10)(i)**: failure to properly instruct oil handling personnel in the operation and maintenance of equipment to prevent the discharge of oil and applicable pollution control laws, rules, and regulations.

- e. **40 C.F.R. § 112.7(e)(10)(iii)**: failure to schedule and conduct spill prevention briefings for operating personnel at intervals frequent enough to assure adequate understanding of the SPCC plan for the facility.
30. EPA determined, based on discussions with Facility personnel during and after the Inspection and its review of documentation provided by Respondent, that Respondent had not adequately implemented its SPCC Plan, and Respondent therefore violated the requirements of 40 C.F.R. § 112.7.

Penalty

31. In settlement of Complainant’s claims for civil penalties for the violations alleged in this Consent Agreement, Respondent agrees to pay a civil penalty of **\$36,000** plus **\$180** in interest for a total amount of **\$36,180**. The civil penalty amount shall become due and payable immediately upon Respondent’s receipt of a true and correct copy of this CAFO. Respondent agrees to pay the above civil penalty in full by remitting installment payments in accordance with Paragraph 33, below.
32. 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, if any; the degree of culpability; 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.

Payment Terms

33. Payment of the civil penalty assessed herein, which includes any accrued interest, shall be made in the manner and over the time period specified below:

<u>Schedule</u>	<u>Principal</u>	+	<u>1% Interest</u>	=	<u>Payment</u>
1 st payment due within 30 days of the Interest Accrual Date	\$18,000		\$0		\$18,000
2 nd payment due within 12 months of the Interest Accrual Date	\$18,000		\$180		\$18,180
					TOTAL: \$36,180

34. 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-03-2011-0289) of this case.

- b. If Respondent sends payment by the U.S. Postal Service, the payment 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 payment by a private delivery service, the payment 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: Natalie Pearson (314/418-4087)
 - d. If paying by EFT, the Respondent shall make the transfer 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-03-2010-0289” should be included in the “Court Order # or Bill #” field, and “3” should be included as the Region number.
35. 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.

36. Interest on the civil penalty should 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).
37. 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.
38. A penalty charge of six percent per year will be assessed monthly on any portion of an installment payment 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).
39. In order to avoid the assessment of administrative costs for overdue debts, as described above, Respondent must remit installment payments for the civil penalty and accrued interest in accordance with the payment schedule set forth above. In order to avoid the assessment of late payment penalty charges, as described above, Respondent must remit all installment payments no later than 90 days after the date each such payment is due.
40. 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	Suzanne M. Parent (3RC42) Senior Assistant Regional Counsel U.S. EPA, Region III 1650 Arch Street Philadelphia, PA 19103-2029
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41. Failure by Respondent to pay the penalty assessed by the Final Order in full within 12 months of 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.

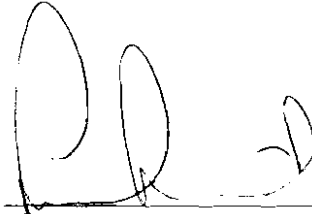
General Provisions

42. 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.
43. The provisions of this Consent Agreement and the Final Order, if issued, shall be binding upon Respondent and Respondent's successors or assigns.
44. Payment of the penalty pursuant to this Consent Agreement shall resolve all liability of Respondent for federal civil penalties for the violations alleged based on the facts alleged in this Consent Agreement.
45. 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.
46. 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, Spirit Services, Inc.

Date: 9/20/11

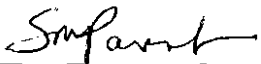
By:



Name: Timothy Mathews
Title: Chief Financial Officer

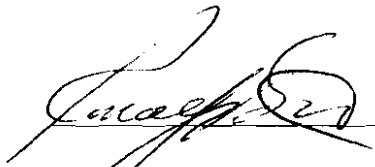
For the Complainant, U.S. Environmental Protection Agency, Region III

Date: 9/22/11

By: 
Suzanne M. Parent
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: September 27, 2011

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

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

In The Matter of:

Spirit Services, Inc.
15801 Lockwood Road
Williamsport, Maryland 21795,

Respondent.

: **FINAL ORDER**
:
:
: **PROCEEDING UNDER SECTION 311**
: **OF THE CLEAN WATER ACT, AS**
: **AMENDED, TO ASSESS A CLASS I**
: **CIVIL PENALTY**
:
: **Docket No. CWA-03-2011-0289**
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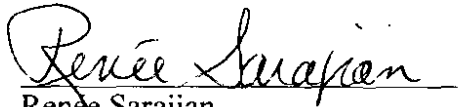
FINAL ORDER

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 CWA.

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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PHILA. PA

In The Matter of:	:	CONSENT AGREEMENT
	:	
Spirit Services, Inc.	:	PROCEEDING UNDER SECTION 303
15801 Lockwood Road	:	OF THE CLEAN WATER ACT, AS
Williamsport, Maryland 21795,	:	AMENDED, TO ASSESS A CLASS I
	:	CIVIL PENALTY
Respondent.	:	
	:	
	:	Docket No. CWA-03-2011-0289

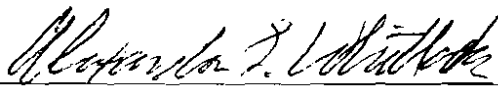
CERTIFICATE OF SERVICE

I hereby certify that the original and one copy of the foregoing Consent Agreement and Final Order ("CAFO") in the above-captioned matter have been filed with the EPA Region III Regional Hearing Clerk and that copies of the CAFO were sent via UPS to:

Gordon, Feinblatt, Rothman, Hoffberger & Hollander, LLC
Attention: Margaret Witherup
233 East Redwood Street
Baltimore, Maryland 21202

I further certify that I have sent a copy of the CAFO by electronic pdf to Respondent's Counsel Margaret Witherup on this day, September 28, 2011.

9-28-11
Date



Alexandra L. Whittaker
U.S. Environmental Protection
Agency, Region III