

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

In the Matter of:	:	
	:	
Fuchs Lubricants Co.	:	Proceeding under Section 311(j) and
17050 Lathrop Avenue	:	311(b)(6)(B)(ii) of the Clean Water Act,
Harvey, IL 60426	:	33 U.S.C. § 1321(j) and 1321(b)(6)(B)(ii)
	:	
Respondent,	:	
	:	
Fuchs Lubricants Co.	:	
120 W. 13 th St.	:	
Huntington, WV 25704	:	Docket No. CWA-03-2018-0074
	:	
Facility.	:	
	:	
_____	:	

U.S. EPA-REGION 3-RHC
FILED-27JUN2018PM12:36

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)(ii) of the Clean Water Act (“CWA”), as amended, 33 U.S.C. § 1321(b)(6)(B)(ii), and under the authority provided by Section 22.13(b) and 22.18(b) of 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. 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 Consolidated Rules of Practice pursuant to 40 C.F.R. § 22.13(b) and 22.18(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, Fuchs Lubricants Co. (“Respondent”) admits to the jurisdictional allegations set forth in this Consent Agreement.
4. Respondent neither admits nor denies the specific factual allegations, findings of fact, and conclusions of law 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 attorney's fees.

Statutory and Regulatory Authority

8. Congress enacted the CWA, 33 U.S.C. §§ 1251 *et seq.*, in 1972. In Section 311(j)(1)(C) of the CWA, 33 U.S.C. § 1321(j)(1)(C), 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 for preventing discharges of oil from onshore facilities into navigable waters and for containing such discharges 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, 33 U.S.C. § 1321(j), EPA promulgated the Oil Pollution Prevention Regulations, codified at 40 C.F.R. Part 112, Subparts A - C.
11. Pursuant to 40 C.F.R. § 112.1, an owner or operator of a non-transportation-related onshore or offshore facility with an above-ground oil storage capacity exceeding 1,320 gallons, engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using, or consuming oil or oil products, which due to its location, could reasonably be expected to discharge oil in quantities that may be harmful into or upon the navigable waters of the United States or adjoining shorelines is subject to Part 112.
12. According to 40 C.F.R. § 112.3, an owner or operator of an onshore or offshore facility subject to Part 112 must prepare in writing and implement a Spill Prevention, Control, and Countermeasure (SPCC) plan, in accordance with § 112.7 and any other applicable section, including, but not limited to, § 112.8.
13. Congress amended Section 311 of the CWA, 33 U.S.C. § 1321, by enacting the Oil Pollution Act of 1990 ("OPA"), which required, in part, that the President promulgate regulations which would mitigate potential harm caused by vessels, and onshore and offshore oil facilities that, because of their location, could reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters of the United States or adjoining shorelines ("substantial harm facilities"). 33 U.S.C. §§ 1321(j)(5)(A). Specifically, Congress directed the President to promulgate regulations requiring the owners or operators of substantial harm facilities to submit to

the President plans for responding to worst case oil discharges and substantial threats of such discharges.

14. Pursuant to Section 311(j)(5)(A) of the CWA, 33 U.S.C. § 1321(j)(5)(A), the EPA Administrator amended 40 C.F.R. Part 112 in 1994 by promulgating oil spill response regulations requiring the owners or operators of non-transportation substantial harm facilities to, *inter alia*, develop and implement a facility response plan (“FRP”), an oil spill response training program, and a program of oil spill response drills and exercises (“Oil Spill Response Regulations”). These Oil Spill Response Regulations are codified at 40 C.F.R. Subpart D, § 112.20 and 112.21, and became effective on August 30, 1994.
15. Pursuant to 40 C.F.R. § 112.20(a), the owner or operator of a non-transportation-related onshore facility 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 shall prepare and submit to EPA an FRP.
16. A facility could, because of its location, reasonably be expected to cause substantial harm to the environment if: (1) the facility transfers oil over water to or from vessels and has a total oil storage capacity greater than or equal to 42,000 gallons; or (2) the facility’s total oil storage capacity is greater than or equal to 1,000,000 gallons and one of the following is true: (a) the facility does not have sufficient secondary containment to contain the capacity of the largest above-ground oil storage tank plus freeboard for precipitation within each storage area; (b) the facility is located at a distance (as calculated from the appropriate formula in 40 C.F.R. Part 112, Appendix C) such that a discharge from the facility could cause injury to fish and wildlife and sensitive environments; (c) the facility is located at a distance (as calculated from the appropriate formula in 40 C.F.R. Part 112, Appendix C) such that a discharge from the facility would shut down a public drinking water intake; or (d) the facility has had a reportable oil spill of at least 10,000 gallons within the last five years. 40 C.F.R. § 112.20(f)(1)(i-ii).
17. If a facility is determined to be a substantial harm facility under these criteria, the Oil Spill Response Regulations require the owner or operator of the facility to prepare and submit to EPA an FRP which details the facility’s emergency plans for responding to an oil spill. 40 C.F.R. § 112.20(a).
18. To meet the requirements of 40 C.F.R. § 112.20(h), an FRP shall follow the format of the model facility-specific response plan included in Appendix F to 40 C.F.R. Part 112, unless an equivalent response plan acceptable to the EPA Regional Administrator has been prepared to meet State or other Federal requirements.
19. For violations of Section 311(j) of the CWA, 33 U.S.C. § 1321(j), EPA has authority, under Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6), as amended by the Debt Collection Improvement Act and implemented by 40 C.F.R. Part 19, *Adjustment of Civil Monetary Penalties for Inflation*, to file a Class II Administrative Complaint seeking a civil penalty of \$18,477 per day for each day during which a violation continues, up to a maximum of \$230,958, for violations occurring after November 2, 2015.

Findings of Fact and Conclusions of Law

20. Respondent is a Delaware Corporation with its principal place of business located at 17050 Lathrop Avenue, Harvey IL.
21. 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.
22. On May 17, 2016, EPA conducted an SPCC and FRP compliance inspection (“Inspection”) of the facility located at 120 W. 13th St., Huntington, WV (“Facility”).
23. At the time of the Inspection, Respondent was 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.
24. The Facility has a total aboveground oil storage capacity of approximately 2,701,566 gallons.
25. The Facility is located approximately 500 feet from the Ohio River.
26. The Ohio 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.
27. 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.
28. 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.
29. 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.
30. Pursuant to 40 C.F.R. § 112.3, Respondent is required to prepare in writing and implement an SPCC plan, in accordance with 40 C.F.R. § 112.7 and any other applicable section.
31. The Facility is a “substantial harm” facility pursuant to 40 C.F.R. § 112.20(f)(1) because the Facility transfers oil over water to or from vessels and has a total oil storage capacity greater than or equal to 42,000 gallons.
32. Pursuant to 40 C.F.R. § 112.20(f)(1), the Facility is subject to the Oil Spill Response Regulations.

33. EPA believes that, at the time of the Inspection, Respondent failed to adequately implement the Oil Pollution Prevention Regulations and the Oil Spill Response Regulations, as set forth below.
34. At the time of the Inspection:
- A. Respondent failed to comply with 40 C.F.R. § 112.7(a)(3), which requires, *inter alia*, the owner or operator to include in its SPCC Plan a description of the physical layout of the facility and a facility diagram, marking the storage area of mobile or portable containers, the locations of all transfer stations and connecting pipes and, for mobile or portable containers, either the type of oil and storage capacity for each container or an estimate of the potential number of mobile or portable containers, the types of oil, and anticipated storage capacities. At the time of the Inspection, EPA Personnel observed mobile or portable containers (oil tanks, drums, and totes), a transfer station, and above ground and below ground connecting pipes, which were not included on the facility diagram. The type of oil and storage capacity was also not included for the double-walled tank located near the Facility parking lot and container tank A29. Moreover, an estimate of the potential number of mobile or portable containers was not included in the SPCC Plan; instead, the presence of “numerous containers” was noted.
 - B. Respondent failed to comply with 40 C.F.R. § 112.7(e), which requires the Respondent to conduct inspections and tests and keep these 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. At the time of the Inspection, inspections and tests had not been conducted in accordance with written procedures and a record of the inspections and tests, signed by the appropriate supervisor or inspector, had not been kept for a period of three years.
 - C. Respondent failed to comply with 40 C.F.R. § 112.7(f)(1) and (f)(3), which require the facility owner or operator to 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; the contents of the facility SPCC Plan; and schedule and conduct discharge prevention briefings at least once a year to assure adequate understanding of the SPCC Plan for that facility. At the time of the Inspection, EPA Personnel were informed that Facility oil-handling personnel did not attend discharge prevention briefings at least once a year and did not receive training 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.
 - D. Respondent failed to comply with 40 C.F.R. § 112.8(c)(6), which requires the testing or inspection of each aboveground container for integrity on a regular schedule and whenever material repairs are made. The frequency and type of testing and inspections must be in accordance with industry standards and comparison records must be kept. At the time of the Inspection, EPA personnel

were informed that Respondent failed to test each aboveground container for integrity on a regular schedule or whenever material repairs were made. Additionally, integrity testing records were only available for the facility's 475,000-gallon tanks.

- E. Respondent failed to comply with 40 C.F.R. § 112.8(c)(10), which requires the owner or operator to promptly correct visible discharges which result in a loss of oil from the container, including but not limited to seams, gaskets, piping, pumps, valves, rivets, and bolts and promptly remove any accumulations of oil in diked areas. At the time of Inspection, visible discharges were observed in the tank farm and in the vegetation and soil surrounding a tank pad. These discharges were not promptly corrected and accumulations were not promptly removed.
- F. Respondent failed to comply with 40 C.F.R. § 112.8(d)(3), which requires the facility owner or operator to properly design pipe supports to minimize abrasion and corrosion. At the time of Inspection, EPA personnel observed pipelines resting directly on the ground. Therefore, the pipe supports were not properly designed to minimize abrasion and corrosion.
- G. Respondent failed to comply with 40 C.F.R. § 112.21(a), which requires the owner or operator of a facility to implement a facility response training program and a drill/exercise program, including evaluation procedures. At the time of the Inspection, facility drills/exercises were not conducted in accordance with the FRP.

Penalty

- 35. 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 **\$85,000.00**.
- 36. The 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 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 any efforts of the violator to minimize or mitigate the effects of the discharge; the economic impact of the penalty on the violator; and other matters as justice may require. The applicable statutory factors were applied in accordance with EPA's *Civil Penalty Policy for Section 311(b)(3) and Section 311(j) of the Clean Water Act* (August 1998).

Payment Terms

- 37. In order to avoid the assessment of interest, administrative costs, and late payment penalties in connection with the civil penalty described in this CAFO, Respondent shall pay the civil penalty of **\$85,000.00**. The civil penalty amount shall become due and payable immediately upon the effective date of this CAFO.

38. 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-03-2018-0074) 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
Customer service contact: 513-487-2091

c. If Respondent sends payment by a private delivery service, the payment shall be addressed to:

U.S. Environmental Protection Agency
1005 Convention Plaza
SL-MO-C2GL
St. Louis, MO 63101
Contact: (314) 418-1028

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-03-2018-0074" should be included in the "Court Order # or Bill #" field, and "3"

should be included as the Region number.

39. 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.
40. Interest on the civil penalty will begin to accrue on the effective date of this CAFO. 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).
41. 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.
42. A penalty charge of six percent per year will be assessed monthly on any portion of a 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).
43. In order to avoid the assessment of administrative costs for overdue debts, as described above, Respondent must remit payment for the civil penalty in accordance with the payment deadline set forth above.
44. 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:

Regional Hearing Clerk (3RC00)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

Alison M. Debes (3RC00)
Senior Assistant Regional Counsel
U.S. EPA, Region III
1650 Arch Street
Philadelphia PA, 19103

45. Failure by Respondent to pay the penalty assessed by the Final Order in full 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

46. 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.
47. The provisions of this Consent Agreement and the Final Order, if issued, shall be binding upon Respondent and Respondent's successors or assigns.
48. This Consent Agreement and the accompanying Final Order resolve only the civil penalty claims for the specific violations alleged in this Consent Agreement. 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. Nor shall anything in this Consent Agreement and the accompanying Final Order be construed to limit the United States authority to pursue criminal sanctions. In addition, this settlement is subject to all limitations on the scope of resolution and the reservation of rights set forth in 40 C.F.R. § 22.18(c). Further, Complainant reserves any rights and remedies available to it under the CWA, the regulations promulgated thereunder, and any other federal laws or regulations for which Complainant has jurisdiction, to enforce the provisions of this Consent Agreement and accompanying Final Order following its filing with the Regional Hearing Clerk. 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.

49. 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 CAFO becomes effective thirty (30) days after the filing of the Final Order with the Regional Hearing Clerk. Those submitting comments to the CAFO, if any, shall have the rights afforded to them by 40 C.F.R. § 22.45(c)(4).

For the Respondent Fuchs Lubricants Co.

Date: 07 May 2018 By: Christian D. Bigelow
Christian Bigelow
Vice President - Legal

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

Date: May 22, 2018 By: Alison M. Debes
Alison M. Debes
Senior Assistant Regional Counsel

After reviewing the foregoing Consent Agreement and other pertinent information, the Director of 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: MAY 31 2018 By: Karen Melvin
Karen Melvin, Director
Hazardous Site Cleanup Division
EPA Region III

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: :
Facility. :
: :
_____ :

FINAL ORDER

Complainant, the Director of the Hazardous Site Cleanup Division, U.S. Environmental Protection Agency, Region III, and Respondent, Fuchs Lubricants Company, 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 references to Section 22.13(b), 22.18(b)(2) and (3), 22.1(a)(6) and (b), and 22.45. 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 on the representations of the parties in the attached Consent Agreement, the penalty agreed to herein is based upon consideration of, *inter alia*, the statutory penalty factors in Section 311(b)(8) of the CWA § 1321(b)(8), which were applied in accordance with EPA’s *Civil Penalty Policy for Section 311(b)(3) and Section 311(j) of the Clean Water Act* (August 1998).

NOW, THEREFORE, PURSUANT TO Section 311(b)(6)(B)(ii) of the CWA, as amended, and the Consolidated Rules of Practice, IT IS HEREBY ORDERED that Respondent pay a civil penalty of \$85,000.00, plus any applicable interest, as specified in the Consent Agreement, and comply with the terms and conditions of the Consent Agreement.

In accordance with Sections 311(b)(6)(D) of the CWA, 33 U.S.C. § 1321(b)(6)(D), this Final Order will become final thirty (30) days after its issuance and the CAFO will become effective on that same date.

Date: June 27, 2018



Joseph J. Lisa
Regional Judicial Officer
U.S. Environmental Protection Agency, Region III

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the date provided below, I hand-delivered and filed the original of the signed Consent Agreement and Final Order with the Regional Hearing Clerk, U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029, and that true and correct copies of the Consent Agreement and Final Order were sent to:

Christian Bigelow
Vice President – Legal
FUCHS LUBRICANTS CO.
17050 Lathrop Avenue
Harvey, IL 60426

I further certify that I have sent a copy of the CAFO by electronic pdf to Respondent's representative Michael D. Flanagan on this day.

6/27/18
DATE



Alison M. Debes (3RC42)
Senior Assistant Regional Counsel
Counsel for Complainant
(215) 814-2679