

**BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III**

In the Matter of:	:	Proceeding under Section 311(j)
	:	and 311(b)(6)(B)(i) of the Clean
Eby's Oil, Inc.	:	Water Act, 33 U.S.C. §§ 1321(j) and
425 White Oak Road	:	1321(b)(6)(B)(i)
New Holland, PA 17557	:	
	:	U.S. EPA Docket Number:
Respondent	:	CWA-03-2018-0043
	:	
	:	
	:	
	:	
	:	CONSENT AGREEMENT AND
	:	FINAL ORDER
	:	
	:	

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" or "Act"), as amended, 33 U.S.C. § 1321(b)(6)(B)(i), and under the authority provided by 40 C.F.R. § 22.13(b), 22.18(b)(2) and (3), and 22.50(a)(1) and (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 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, 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. Each party 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.
9. Section 311(a)(1) of the Act, 33 U.S.C. § 1321(a)(1), defines "oil" as "oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil."
10. 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.
11. 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.
12. Pursuant to its delegated authority under Section 311(j) of the CWA, EPA promulgated the Oil Pollution Prevention Regulations, codified at 40 C.F.R. Part 112 (the "Regulations").
13. Pursuant to 40 C.F.R. § 112.1(b), the Regulations apply to any owner or operator of a non-transportation-related onshore or offshore facility 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. Pursuant to 40 C.F.R. § 112.1(d), the Regulations do not apply to any owner or operator of a facility with an aggregate aboveground oil storage capacity of 1,320 gallons or less.
14. According to 40 C.F.R. § 112.3, an owner or operator subject to the Regulations must prepare in writing and implement a Spill Prevention, Control, and Countermeasure ("SPCC") plan, in accordance with § 112.7 and any other applicable section.

15. 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 the Federal Civil Penalties Inflation Adjustment Act Improvement Act of 2015, and implemented by 40 C.F.R. Part 19, *Adjustment of Civil Monetary Penalties for Inflation*, to file an Administrative Complaint seeking a civil penalty of \$18,107 per violation, up to a maximum of \$45,268, or seeking \$18,107 per day for each day during which a violation continues, up to a maximum of \$226,338 for violations occurring after November 2, 2015.

Findings of Fact and Conclusions of Law

16. Respondent is a Pennsylvania corporation with corporate headquarters located at 425 White Oak Road, New Holland, Pennsylvania 17557.
17. 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.
18. Respondent is the owner and operator of a facility that stores and distributes heating oil, off-road diesel fuel, kerosene, and gasoline, and is located at 425 White Oak Road, New Holland, PA 17557 (the "Facility").
19. Respondent is, and has been at all times relevant to this CAFO, 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.
20. The Facility has a total above-ground oil storage capacity of approximately 71,220 gallons.
21. The Facility is located directly adjacent to the Conestoga River.
22. The Facility could reasonably be expected to discharge oil in harmful quantities into the Conestoga River.
23. The Conestoga 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).
24. 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.
25. 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.

26. 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 adjoining shorelines.
27. Pursuant to 40 C.F.R. § 112.1, Respondent, as the owner and operator of the Facility, is subject to the Regulations codified at 40 C.F.R. Part 112.
28. Pursuant to 40 C.F.R. § 112.3, Respondent was required to prepare in writing and implement an SPCC plan, in accordance with 40 C.F.R. § 112.7 and any other applicable section.

Count I

29. The findings of fact and conclusions of law contained in Paragraphs 16 through 28 of this CAFO are incorporated by reference herein as though fully set forth at length.
30. On February 2, 2017, EPA conducted an SPCC inspection (the "Inspection") of the Facility to determine the Facility's compliance with Section 311(j) of the CWA and its implementing regulations at 40 C.F.R. Part 112.
31. At the time of the Inspection, EPA inspectors observed that Respondent maintained at the Facility an "Oil Spill Prevention and Response Plan for Transportation of Oil by Motor Vehicles and Rolling Stock," which addressed U.S. Department of Transportation requirements for transporting oil by motor vehicle and rolling stock in 40 C.F.R. Part 130. Respondent's plan, however, failed to address any of the requirements for SPCC plans in 40 C.F.R. Part 112.7.
32. Based on EPA's Inspection and EPA's review of information gathered during the Inspection, EPA alleges that Respondent failed to prepare in writing an SPCC plan for the Facility, in accordance with 40 C.F.R. § 112.7, and any other applicable section, including but not limited to § 112.3, as required by 40 C.F.R. § 112.3 of the Regulations.
33. Failure to prepare in writing an SPCC plan in accordance with 40 C.F.R. § 112.7 and any other applicable section, including but not limited to § 112.3, is a violation of 40 C.F.R. § 112.3 of the Regulations, issued pursuant to Section 311(j) of the CWA, 33 U.S.C. § 1321(j), which is subject to the assessment of penalties pursuant to Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6).

Count II

34. The findings of fact and conclusions of law contained in Paragraphs 16 through 33 of this CAFO are incorporated by reference herein as though fully set forth at length.
35. At the time of the Inspection, EPA inspectors observed that Respondent failed to implement an SPCC plan for the Facility in accordance with the Regulations, as follows:
- a. Pursuant to 40 C.F.R. § 112.7(e), the owner or operator of a facility must conduct inspections and tests required by this part in accordance with written procedures that the owner or operator or the certifying engineer develop for the facility. The owner or operator must 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, Respondent was unable to produce any records of inspections and/or tests.
 - b. Pursuant to 40 C.F.R. § 112.8(c)(3), the owner or operator must not allow drainage of uncontaminated rainwater from diked areas into storm drains or an open watercourse, lake, or pond, bypassing the facility treatment system, unless the bypass valve is normally sealed closed, the retained rainwater is inspected to ensure that its presence will not cause a discharge as described in 112.1(b), the bypass valve is opened and resealed after drainage under responsible supervision, and adequate records of such discharged events are kept. At the time of the Inspection, Respondent was unable to produce any records related to dike drainage events.
 - c. Pursuant to 40 C.F.R. § 112.8(c)(6), the owner or operator of an onshore facility must test or inspect each aboveground container for integrity on a regular schedule and whenever material repairs are made and keep comparison records. At the time of the Inspection, Respondent was unable to produce any records related to oil storage container integrity tests.
36. Based on EPA's Inspection and EPA's review of information gathered during the Inspection, EPA alleges that Respondent failed to implement an SPCC plan for the Facility, in accordance with 40 C.F.R § 112.7 and any other applicable section, including but not limited to § 112.3 and 112.8, as required by 40 C.F.R § 112.3 of the Regulations.
37. Failure to implement an SPCC plan in accordance with 40 C.F.R § 112.7 and any other applicable section, including but not limited to § 112.3 and 112.8, is a violation of 40 C.F.R § 112.3 of the Regulations, issued pursuant to Section 311(j) of the CWA, 33 U.S.C. § 1321(j), which is subject to the assessment of penalties pursuant to Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6).

Penalty

38. In settlement of EPA's claims for civil monetary penalties assessable for the violations alleged in this CAFO, Respondent consents to the assessment of a civil penalty in the amount of **\$12,000.00**, which Respondent agrees to pay in accordance with the terms set forth below.
39. The penalty was calculated after consideration of the statutory penalty factors in Section 311(b)(8) of the CWA, 33 U.S.C. § 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), including the seriousness of the violation; the economic benefit to the violator, if any; the degree of culpability; any other penalty for the same incident; 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.
40. The penalty shall become due and payable immediately upon Respondent's receipt of a true and correct copy of this CAFO. All payments shall be made by a cashier's or certified check, by an electronic funds transfer ("EFT"), or by on-line payment. Payment of the civil penalty shall be made in the following manner:
- 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-03-2018-0043**) 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
 - Contacts: Craig Steffen (513) 487-2044;
 - Molly Williams (513) 487-2076
 - c. If Respondent sends payment by a private delivery service, the payment shall be addressed to:

U.S. Environmental Protection Agency
Government Lockbox 979077
1005 Convention Plaza

SL-MO-C2-GL
St. Louis, MO 63101

- d. All payments made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

U.S. EPA
Cincinnati Finance Center
26 W. Martin Luther King Drive, MS-002
Cincinnati, OH 45268-0001

- e. All payments made by electronic wire transfer shall be directed to:

Federal Reserve Bank of New York
ABA = 021030004
Account No. = 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

- f. All electronic payments made through the Automated Clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

US Treasury REX /Cashlink ACH Receiver
ABA = 051036706
Account No.: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 - Checking

Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737
Contact: Randolph Maxwell 202-874-3720
or REX, 1-866-234-5681

- g. On-Line Payment Option: WWW.PAY.GOV

Enter sfo 1.1 in the search field. Open and complete the form.
Additional payment guidance is available at:
http://www.epa.gov/ocfo/finservices/make_a_payment.htm

41. 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.

42. Interest on the civil penalty will begin to accrue on the date that this CAFO, when fully executed, is mailed or hand-delivered to the Respondent. 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).
43. 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 a payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.
44. 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 from the date it was due. 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).
45. In order to avoid the assessment of administrative costs for overdue debts, as described above, Respondent must pay the civil penalty in accordance with the payment deadline set forth above.
46. 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

Mark Bolender (3RC42)
Senior Assistant Regional Counsel
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029
bolender.mark@epa.gov

47. 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

48. 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.
49. The provisions of this Consent Agreement and the Final Order shall be binding upon Respondent and Respondent's successors or assigns.
50. 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 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.
51. The effective date of this Consent Agreement and the accompanying Final Order (which is signed by the Regional Administrator of EPA Region III, or his designee, the Regional Judicial Officer) shall be the date the CAFO is filed with the Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.
52. This Consent Agreement does not create any right in or grant any cause of action to any third party.

For Respondent, Eby's Oil, Inc.

Date: 3/15/2018

By:  (Seal)

Name: Everett Z. Eby

Title: Secretary/Treasurer/COO

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

Date: MAR 29 2018

By: 
Karen Melvin, Director
Hazardous Site Cleanup Division

BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III

In the Matter of:	:	Proceeding under Section 311(j)
	:	and 311(b)(6)(B)(i) of the Clean
Eby's Oil, Inc.	:	Water Act, 33 U.S.C. §§ 1321(j) and
425 White Oak Road	:	1321(b)(6)(B)(i)
New Holland, PA 17557	:	
	:	U.S. EPA Docket Number:
Respondent	:	
	:	CWA-03-2018-0043
	:	
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FINAL ORDER

Complainant, the Director of the Hazardous Site Cleanup Division, U.S. Environmental Protection Agency, Region III, and Respondent, Eby's Oil, Inc., 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), and 22.50(a)(1). 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 upon the representations of the parties in the attached Consent Agreement, the penalty agreed to therein is based upon consideration of, *inter alia*, EPA's *Civil Penalty Policy for Section 311(b)(3) and Section 311(j) of the Clean Water Act* (August 1998) and the statutory factors set forth in Section 311(b)(8) of the CWA, 33 U.S.C. § 1321(b)(8).

NOW, THEREFORE, PURSUANT TO Section 311(b)(6)(B)(i) of the CWA, as amended, and Section 22.18(b)(3) of the Consolidated Rules of Practice, **IT IS HEREBY ORDERED** that Respondent pay a civil penalty in the amount of **TWELVE THOUSAND DOLLARS (\$12,000)**, in accordance with the payment provisions set forth in the Consent Agreement, and comply with the terms and conditions of the Consent Agreement.

The effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

Date: Apr. 17, 2018



Joseph J. Lisa
Regional Judicial and Presiding Officer
U.S. EPA, Region III

CERTIFICATE OF SERVICE

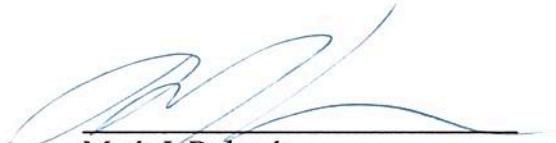
I hereby certify that on this day, I caused to be filed with the Regional Hearing Clerk, EPA Region III, the original Consent Agreement and Final Order, EPA Docket No. CWA-03-2018-0043 and that copies of this document were sent to the following individual in the manner described below:

By UPS overnight delivery:

Kenelm L. Shirk, III, Esquire
SHIRK LAW ASSOCIATES
115 South State Street
Ephrata, PA 17522

U.S. EPA-REGION 3-RHC
FILED-17APR2018pm5:44

Date: 4/17/18


Mark J. Bolender
Senior Assistant Regional Counsel
US EPA Region III