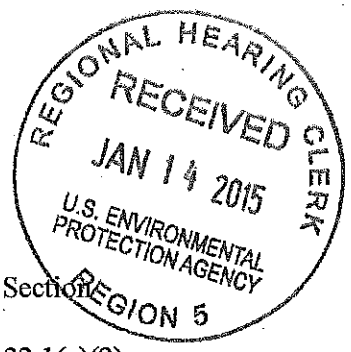
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:	)	**Docket No. CWA-05-2015-0006**
	)	
Skytanking USA, Inc.	)	**Proceeding to Assess a Class II Civil Penalty**
Fort Lauderdale, Florida,	)	**Under Section 311(b)(6) of the Clean Water**
	)	**Act, 33 U.S.C. § 1321(b)(6)**
Respondent.	)	
	)	



Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 311(b)(6) of the Clean Water Act (CWA), 33 U.S.C. § 1321(b)(6), and Sections 22.1(a)(2), 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified at 40 C.F.R. Part 22.

2. Complainant is the Director of the Superfund Division, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondent is Skytanking, USA, Inc., a corporation with a place of business in Fort Lauderdale, Florida.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, an administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Judicial Review and Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations and alleged violations in this CAFO.

8. Respondent waives its right to obtain judicial review of this CAFO under Section 311(b)(6)(G) of the CWA, 33 U.S.C. § 1321(b)(6)(G), its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

Statutory and Regulatory Background

Spill prevention, control and countermeasure plan requirements

9. Section 311(j)(1)(C) of the CWA, 33 U.S.C. § 1321(j)(1)(C), provides that the President shall issue regulations establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil and hazardous substances from vessels and from onshore and offshore facilities, and to contain such discharges. The authority to promulgate these regulations for non-transportation-related onshore facilities has been delegated to EPA by Executive Order 12777 (October 18, 1991).

10. The oil pollution prevention regulations at 40 C.F.R. Part 112 implement the requirements of Section 311(j)(1)(C) of the CWA, and set forth procedures, methods, equipment, and other requirements to prevent the discharge of oil from non-transportation-related onshore facilities into or upon the navigable waters of the United States and adjoining shorelines. 40 C.F.R § 112.1(a)(1).

11. The oil pollution prevention regulations at 40 C.F.R. Part 112 apply to, among other things, owners and operators of non-transportation-related onshore facilities engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using, or consuming oil and oil products, which due to their location, could reasonably be expected to discharge oil in quantities that may harmful, as described in 40 C.F.R. § 110.3, into or upon the navigable waters of the United States or adjoining shorelines, and have an aboveground oil storage capacity of more than 1,320 U.S. gallons or a completely buried oil storage capacity greater than 42,000 U.S. gallons. 40 C.F.R. § 112.1(b).

12. 40 C.F.R. § 112.3 requires the owner or operator of a subject facility to prepare in writing and implement a Spill Prevention Control and Countermeasure Plan ("SPCC Plan") in accordance with the requirements of 40 C.F.R. Part 112.

13. 40 C.F.R. § 112.5(b) requires the owner or operator of a subject facility to complete a review and evaluation of the SPCC Plan at least once every five years from the date the facility becomes subject to the oil pollution prevention regulations.

14. 40 C.F.R. § 112.7(e) requires the owner or operator of a subject facility to conduct inspections and tests required by 40 C.F.R. Part 112 in accordance with written procedures developed for the facility, and further requires that the written procedures and a record of the inspections and tests, signed by the appropriate supervisor or inspector, be kept with the SPCC Plan for a period of three years.

15. 40 C.F.R. § 112.7(f)(1) requires the owner or operator of a subject facility to, at a minimum, 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; and, the contents of the SPCC Plan.

16. 40 C.F.R. 112.7(f)(2) requires the owner or operator of a subject facility to schedule and conduct briefings for oil-handling personnel at least once per year to assure adequate understanding of the SPCC Plan for the facility. Such briefings must highlight and describe known discharges or failures, malfunctioning components, and any recently developed precautionary measures.

17. Section 7.0 of Respondent's 2005 SPCC Plan provides that daily, monthly, quarterly, and annual inspections of the facility, tanks, and equipment are performed and recorded on the forms provided in Appendix C of the SPCC Plan. The Plan further provides that copies of the completed inspection forms are maintained in the same location as the SPCC Plan for at least three years.

18. 40 C.F.R. § 112.8(b)(3) requires the owner or operator of a subject facility to design facility drainage systems from undiked areas with a potential for a discharge (such as where piping is located outside containment walls or where tank truck discharges may occur outside the loading area) to flow into ponds, lagoons, or catchment basins designed to retain oil or return it to the facility, and prohibits catchment basins from being located in areas subject to periodic flooding.

Facility response plan requirements

19. Section 311(j)(5) of the CWA, 33 U.S.C. § 1321(j)(5), provides that the President shall issue regulations requiring the owner or operator of an onshore facility that, because of its location could reasonably be expected to cause substantial harm to the environment by discharging into or upon the navigable waters or adjoining shorelines, to submit a plan for

responding, to the maximum extent practicable, to a worst case discharge and to a substantial threat of such a discharge of oil or a hazardous substance. The authority to promulgate these regulations for non-transportation-related onshore facilities has been delegated to EPA by Executive Order 12777 (October 18, 1991).

20. The oil pollution prevention regulations at 40 C.F.R. Part 112, Subparts A and D, implement the requirements of Section 311(j)(5) of the CWA, 33 U.S.C. § 1321(j)(5), and require owners and operators of subject facilities to prepare and submit a facility response plan ("FRP") to EPA in accordance with the requirements of 40 C.F.R. §§ 112.20 and 112.21.

21. Appendix C to Part 112, Substantial Harm Criteria, provides criteria to identify whether a facility could reasonably be expected to cause substantial harm to the environment by discharging into or on the navigable waters or adjoining shorelines. Sections 2.3 and 2.4 of Appendix C include facilities with proximity to fish and wildlife and sensitive environments and public drinking water intakes with a total oil storage capacity greater than or equal to one million gallons.

22. 40 C.F.R. § 112.20(h) provides that a response plan shall follow the format of the model facility-specific response plan included in Appendix F, with an exception not relevant here. To meet the applicable regulatory requirements, a FRP must address the elements included in 40 C.F.R. § 112.20(h), as further described in Appendix F.

23. 40 C.F.R. § 112.20(h)(8) provides that the response plan shall include: (i) a checklist and record of inspections for tanks, secondary containment, and response equipment; (ii) a description of the drill/exercise program to be carried out under the response plan as described in 40 C.F.R. § 112.21; and (iii) logs of discharge prevention meetings, training

sessions, and drills/exercises. These logs may be maintained as an annex to the response plan.

24. Section 1.1.8 of Appendix F provides that the owner and operator of a subject facility must keep FRP records for five years.

25. Section 1.8.1 of Respondent's 2005 FRP provides that all documentation of training, exercises and inspections are maintained for a minimum of five years in the same location as the FRP.

26. Section 1.8.1 of Respondent's 2011 FRP provides that inspection records are signed by the inspector and are maintained for a minimum of five years and are kept in the same location as the FRP.

27. Section 1.8.2.1 of Respondent's 2011 FRP provides that drill exercise logs must be maintained for a minimum of five years.

28. 40 C.F.R. § 112.21(a) and (c) provide that the owner or operator of a subject facility shall develop and implement a facility response drill/exercise program that satisfies the requirements of 40 C.F.R. § 112.21 and shall describe the program in the response plan as provided in 40 C.F.R. § 112.21(h)(8).

29. Section 1.8 of Appendix F provides that the owner or operator must develop programs for facility response training and for drills/exercises according to the requirements of 40 C.F.R. § 112.21, and further provides that logs must be kept for facility drills/exercises, personnel response training, and spill prevention meetings. These logs may be included in the FRP or kept as an annex to the FRP.

30. Section 1.8.2 of Respondent's 2005 FRP provides that Respondent conduct periodic employee drills and external area exercises to educate personnel and evaluate personnel preparedness, contains a description of the drills and external area exercises that Respondents' perform. Emergency response training exercises are documented on log sheets. Qualified Individual Drill Notification, Spill Management Team Tabletop Exercise, and Response Equipment Testing and Deployment Logs are included in Appendix H.

31. Section 1.8.2 of Respondent's 2011 FRP provides that Respondent must conduct quarterly Qualified Individual notification drills, semi-annual equipment deployment exercises and annual table–top exercises. Observations of the drill outcome are to be documented on the forms included in Appendix E, and must be maintained for a minimum of 5 years.

32. 40 C.F.R. § 112.21(a) and (b) provide that the owner or operator of a subject facility shall develop and implement a facility response training program to train those personnel involved in oil response activities that satisfies the requirements of 40 C.F.R. § 112.21 and shall describe the program in the response plan as provided in 40 C.F.R. § 112.21(h)(8). It is recommended that the training program be based on the U.S. Coast Guard's Training Elements for Oil Spill Response, as applicable to facility operations.

33. Section 1.8.3 of Respondent's 2005 FRP provides that Respondent perform response training using the response exercises described in the FRP and table top meetings, and obtain First Responder Training for all applicable employees. Emergency response training exercises and certifications are documented on log sheets. Personnel Response Training logs and Discharge Prevention Meeting logs are included in Appendix H.

34. Section 1.8.3 of Respondent's 2011 FRP provides that Respondent conduct response training annually, at a minimum. Training includes spill response drills, notification and table top drills. The 2011 FRP further provides that Respondent follow the PREP guidelines in conducting response training which includes Organizations Design, Operational Response, Response Support and a review of the FRP and SPCC Plan.

General provisions and enforcement of the CWA

35. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines "navigable waters" as waters of the United States. 40 C.F.R. § 112.2 further defines "navigable waters" to include: all navigable waters of the United States, as defined in judicial decisions prior to passage of the 1972 Amendments to the CWA and tributaries of such waters; interstate waters; intrastate lakes, rivers, and streams which are utilized by interstate travelers for recreational or other purposes; and intrastate lakes, rivers, and streams from which fish or shellfish are taken and sold in interstate commerce.

36. Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10) and 40 C.F.R. § 112.2, define "onshore facility" as any facility of any kind located in, on, or under any land within the United States, other than submerged land.

37. Section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1) and 40 C.F.R. § 112.2, define "oil" as oil of any kind and in any form, including but not limited to: petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil.

38. Section 311(a)(6)(B) of the CWA, 33 U.S.C. § 1321(a)(6)(B) and 40 C.F.R. § 112.2, define "owner or operator" in the case of an onshore facility as any person owning or operating such onshore facility.

39. Section 311(a)(7) of the CWA, 33 U.S.C. § 1321(a)(7), and 40 C.F.R. § 112.2, define "person" as including an individual, firm, corporation, association, and a partnership.

40. Appendix A to 40 C.F.R. § Part 112, Memorandum of Understanding between the Secretary of Transportation and EPA, defines "non-transportation-related" facility to include oil storage facilities, including all equipment and appurtenances related thereto, as well as fixed bulk plant storage and terminal oil storage facilities; and industrial, commercial, agricultural or public facilities which use and store oil. Appendix A to Part 112, (1)(F) and (G).

41. EPA may assess a class II civil penalty against any owner, operator, or person in charge of any onshore facility who fails or refuses to comply with any regulations issued under Section 311(j) of the CWA, 33 U.S.C. 1321(j), under Section 311(b)(6)(A)(ii) of the CWA, 33 U.S.C. § 3121(b)(6)(A)(ii).

42. EPA may assess a class II civil penalty of up to $16,000 per violation for each day of violation that occurred after January 12, 2009, up to a maximum of $177,500 under Section 311(b)(6)(B)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(ii), and 40 C.F.R. Part 19.

Factual Allegations and Alleged Violations

43. At all times relevant to this CAFO, Respondent operated a bulk oil storage and distribution facility located at 5401 Laramie Avenue, Chicago, Illinois ("the facility").

44. Respondent is a corporation, and is therefore a "person" as defined in Section 311(a)(7) of the CWA, 33 U.S.C. § 1321(a)(7) and 40 C.F.R. § 112.2.

45. Respondent was an "operator" of the facility within the meaning of Section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6), and 40 C.F.R. § 112.2.

46. Respondent engaged in drilling, producing, gathering, storing, processing, refining, transferring, using, distributing or consuming oil or oil products at the facility.

47. The facility is located on land within the United States and is therefore an "onshore facility" as defined in Section 311(a)(10) of the Act, 33 U.S.C. § 1321(a)(10), and 40 C.F.R. § 112.2.

48. The facility is a bulk oil storage and distribution facility and is therefore an onshore "non-transportation-related" facility within the meaning of 40 C.F.R. Part 112, Appendix A.

49. The facility has a total oil storage capacity of more than 1 million gallons.

50. Respondent's 2005 FRP provides that there are catch basins located on-site and in the immediate off-site vicinity that lead to the combined storm and sanitary sewer system operated by the City of Chicago Department of Water and the Metropolitan Water Reclamation District (MWRD). Oil that reaches the sewer will flow to the MWRD Stickney Plant for treatment. MWRD discharges to the Chicago Sanitary and Ship Canal which discharges to the Des Plaines River.

51. The oil that Respondent stored, handled, and consumed at the facility could reasonably be expected to discharge to the Des Plaines River.

52. The Des Plaines River is an interstate river that is used by interstate travelers for recreational or other purposes and is a navigable in fact water, and is therefore a "navigable water" of the United States within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 112.2.

53. The Chicago Sanitary and Ship Chanel is an intrastate water that is used by interstate travelers for recreational or other purposes and is a navigable in fact water, and is therefore a "navigable water" of the United States within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7) and 40 C.F.R. § 112.2.

54. The Des Plaines River contains fish and other wildlife, and is a "sensitive environment" within the meaning of Appendix C to 40 C.F.R. Part 112.

55. In the 2005 SPCC Plan, Respondent certified that the facility is located at a distance such that a discharge could shut down a public drinking water intake.

56. Respondent was an operator of a non-transportation-related onshore facility engaged in storing, processing, transferring, using or distributing oil and oil products, which, due to its location, could reasonably be expected to discharge oil in quantities that may cause substantial harm to the environment by discharging oil into or on the navigable waters or adjoining shorelines within the meaning of Section 311(j)(5) of the Act, 33 U.S.C. § 1321(j)(5), and 40 C.F.R. § 112.20(f)(1), and is therefore subject to the oil pollution prevention regulations at 40 C.F.R. Part 112.

57. Respondent is subject to the spill prevention, control and countermeasure plan regulations and is therefore required to prepare and implement a SPCC Plan in accordance with the requirements of 40 C.F.R. Part 112.

58. Respondent is subject to the facility response plan regulations and is therefore required to prepare, submit and maintain an FRP in accordance with the requirements of 40 C.F.R Part 112, Subparts A and D.

59. On January 6, 2011, Respondent notified the Illinois Emergency Management Agency that an oil spill had occurred at the truck loading area located at the facility.

60. On March 1, 2011, EPA received information indicating that strong fuel odors were emanating from the storm sewer located adjacent to the facility at 4953 W. 63rd Street.

61. On April 19, 2011, EPA conducted an inspection of the facility ("the inspection").

62. At all times relevant to this CAFO, Respondent's SPCC Plan for the facility was dated July of 2005 ("2005 SPCC Plan").

63. Prior to the inspection, Respondent submitted to EPA a FRP dated July 29, 2005 ("2005 FRP").

64. On July 28, 2011 and December 28, 2011, EPA issued Midway Airlines' Terminal Consortium ("MATCO") requests for information pursuant to Sections 308 and 311 of the CWA, 33 U.S.C. §§ 1318 and 1321, to evaluate MATCO's and Respondent's compliance with the CWA and oil pollution prevention regulations at 40 C.F.R Part 112.

65. MATCO is an association of entities and is therefore a "person" as defined in Section 311(a)(7) of the CWA, 33 U.S.C § 1321(a)(7), and 40 C.F.R. § 112.2.

66. On August 26, 2011 and February 3, 2012, MATCO submitted responses to EPA's information requests.

67. MATCO's February 3, 2012 response provided that MATCO oversees the operation and maintenance of the facility, and sub-contracts Respondent to manage, operate and maintain the facility, and identified Respondent as the "person in charge" of the facility.

68. MATCO's February 3, 2012 response stated that the information provided to EPA was obtained from Respondent.

69. MATCO's February 3, 2012 response included a revised FRP prepared by Respondent dated August 1, 2011 ("2011 FRP").

Count 1

70. Complainant incorporates by reference the allegations contained in paragraphs 1 through 69 of this CAFO.

71. At the time EPA's 2011 inspection, Respondent's 2005 SPCC Plan stated that the most recent SPCC Plan review and evaluation completed by Respondent occurred on July 29, 2005.

72. After July of 2005, Respondent failed to complete a review and evaluation of the SPCC Plan at least once every five years, in violation of 40 C.F.R. § 112.5(b).

Count 2

73. Complainant incorporates by reference the allegations contained in paragraphs 1 through 69 of this CAFO.

74. During the inspection, EPA inspectors requested all SPCC records of inspections, tests, discharge prevention briefings and training sessions, as required by 40 C.F.R. § 112.7(e) and (f).

75. During the inspection, Respondent did not provide complete records of inspections, tests, discharge prevention briefings or training sessions.

76. EPA's December 28, 2011 information request required MATCO to submit the following for the preceding three years: written procedures for inspections of oil-containing

equipment and the records of such inspections; and documentation of training, including lesson plans for each of the subject areas relevant to facility personnel involved in oil spill response and cleanup, as required by 40 C.F.R. § 112.7(e) and (f).

77. MATCO's February 3, 2012 response did not include the information described in paragraph 76, above, and stated that prior to the year 2011, records of inspections, tests, discharge prevention briefings and training sessions had not been completed and/or maintained.

78. From August of 2009 through August of 2011, Respondent failed to keep records of inspections, tests, discharge prevention briefings and training sessions with the SPCC Plan for a period of three years, in violation of 40 C.F.R. § 112.7(e) and (f).

Count 3

79. Complainant incorporates by reference the allegations contained in paragraphs 1 through 69 of this CAFO.

80. During the inspection, EPA inspectors observed that the topography of the area at the truck unloading rack would allow discharges to flow outside the truck loading area to the combined storm and sanitary sewer system located within the facility.

81. According to Respondent's 2005 FRP, fuel transfer operations at the unloading areas present a risk of release. Fuel is delivered to the truck loading rack through the hydrant system from the large storage tanks. This fuel is then pumped into tanker trucks which deliver fuel to aircraft. The maximum volume associated with truck fill operations at the unloading rack is approximately 8,000 gallons.

82. EPA's December 28, 2011 information request required MATCO to indicate whether secondary containment was in place to prevent the discharge of oil from the facility that occurred on January 3, 2011, and to explain why any such secondary containment failed to work properly.

83. MATCO's February 3, 2012 response stated that the spill occurred from a valve located outside the secondary containment structure for an 8,000 gallon above-ground storage tank (AST), and that as a result of the spill, emergency spill curbing was installed in July 2011 around the concrete pad to the adjacent north of the AST where the pump and fill vessel are located to direct spills to the drain that leads to the facility's oil water separator.

84. Respondent failed to design facility drainage systems from undiked areas with a potential for discharge to flow into ponds, lagoons or catchment basins designed to return it to the facility until July of 2011, in violation of 40 C.F.R. § 112.8(b)(3).

Count 4

85. Complainant incorporates by reference the allegations contained in paragraphs 1 through 69 of this CAFO.

86. EPA's December 28, 2011 information request required MATCO to submit the following for the preceding three years: copies of logs of discharge prevention meetings, training sessions, lesson plans, and drills/exercises, as required by 40 C.F.R § 112.20(h)(8)(iv) and Appendix F.

87. MATCO's February 3, 2012 response stated that prior to 2011, checklists, inspection records, and logs of discharge prevention meetings, training sessions and drills/exercises were not completed or maintained.

88. Respondent failed to include with the FRP checklists, records of inspections, and logs of discharge prevention meetings, training sessions and drills/exercises until August of 2011, in violation of 40 C.F.R. § 112.20(h)(8)(i) and (iv), and Appendix F.

Count 5

89. Complainant incorporates by reference the allegations contained in paragraphs 1 through 69 of this CAFO.

90. EPA's December 28, 2011 information request required MATCO to provide the following for each response drill/exercise conducted for the preceding three years: (1) the date and time that the drill was conducted; (2) the type of drill/exercise; (3) a brief description of any scenarios used in conjunction with the drills/exercise; and (4) documentation of the cost of performing each drill/exercise, as required by 40 C.F.R. § 112.21(a) and (c).

91. MATCO's February 3, 2012 response only provided information for one drill/exercise conducted in the preceding three years, which was conducted in 2011 in conjunction with an EPA exercise event.

92. Respondent failed to implement a facility response drill/exercise program until July of 2011, in violation of 40 C.F.R. § 112.21(a) and (c).

Civil Penalty

93. Based on analysis of the factors specified in Section 311(b)(8) of the CWA, 33 U.S.C. § 1321(b)(8), the facts of this case, the *Civil Penalty Policy for Section 311(b)(3) and Section 311(j) of the Clean Water Act*, dated August 1998, Complainant has determined that an appropriate civil penalty to settle this action is $116,900.

94. Within 30 days after the effective date of this CAFO, Respondent must pay a $116,900 civil penalty by an electronic funds transfer, payable to "Treasurer, United States of America," and sent to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read:
"D68010727 Environmental Protection Agency"

The comment or description field of the electronic funds transfer must state Respondent's name and the docket number of this CAFO.

95. Respondent must send a notice of payment that states Respondent's name and the docket number of this CAFO to EPA at the following addresses when it pays the penalty:

Ellen Riley (SC-5J)
Enforcement Officer
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

Kasey Barton (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

Regional Hearing Clerk (E-19J)
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

96. This civil penalty is not deductible for federal tax purposes.

97. If Respondent does not pay timely the civil penalty, EPA may request the Attorney General of the United States to bring an action to collect any unpaid portion of the

penalty with interest, nonpayment penalties and the United States enforcement expenses for the collection action under Section 311(b)(6)(H) of the CWA, 33 U.S.C. § 1321(b)(6)(H). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

98. Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2). Respondent must pay the United States enforcement expenses, including but not limited to attorney fees and costs incurred by the United States for collection proceedings. In addition, Respondent must pay a nonpayment penalty each quarter during which the assessed penalty is overdue. This nonpayment penalty will be 20 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter. 33 U.S.C. § 1321(b)(6)(H).

General Provisions

99. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in this CAFO.

100. The CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

101. This CAFO does not affect Respondent's responsibility to comply with the CWA and other applicable federal, state and local laws. Except as set forth in paragraph 99 above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

102. This CAFO constitutes a "prior violation(s)" as that term is used in EPA's Civil Penalty Policy for Section 311(b)(3) and Section 311(j) of the Clean Water Act to determine

Respondent's "history of prior violations" under Section 311(b)(8) of the CWA 33 U.S.C. § 1321(b)(8).

103. The terms of this CAFO bind Respondent, its successors and assigns.

104. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

105. Each party agrees to bear its own costs and attorney fees in this action.

106. This CAFO constitutes the entire agreement between the parties.

107. Complainant has provided public notice of and reasonable opportunity to comment on the proposed issuance of 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(b).

Skytanking USA, Inc., Respondent

10/12/2014
Date

Paul Workman
Managing Director and Vice President
Skytanking USA, Inc.

United States Environmental Protection Agency, Complainant

1/14/2015
Date

Richard C. Karl
For Director
Superfund Division
U.S. Environmental Protection Agency, Region 5