

**BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
 REGION III  
 1650 Arch Street  
 Philadelphia, Pennsylvania 19103-2029**

<b>IN THE MATTER OF:</b>	)	<b>DOCKET NO.: CWA-03-2021-0062</b>
	)	
<b>Vicinity Energy</b>	)	
	)	
<b>Respondent</b>	)	<b>EXPEDITED SETTLEMENT</b>
	)	<b>AGREEMENT AND FINAL ORDER</b>
<b>Vicinity Energy Schuylkill Generating Facility</b>	)	
<b>2600 Christian Street</b>	)	
<b>Philadelphia, PA 19146</b>	)	
<b>Site/Facility</b>		

**EXPEDITED SETTLEMENT AGREEMENT**

1. Vicinity Energy (“Respondent”) and the Director, Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region III (“Complainant”) enter into this Expedited Settlement Agreement (“the Agreement”) pursuant to Section 311(b)(6)(B)(i) of the Clean Water Act (“the Act”), 33 U.S.C. §1321(b)(6)(B)(i) and Sections 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Penalties and the Revocation/ Termination or Suspension of Permits (“Consolidated Rules of Practice”), 40 CFR §§ 22.13(b) and 22.18(b)(2), (3). The Administrator has delegated the authority to enter into this Agreement to the Regional Administrator who, in turn, has delegated it to the Complainant.
2. The U.S. Environmental Protection Agency, Region III (“EPA”) has jurisdiction over this matter pursuant to Section 311(b)(6)(B)(i) of the Act, 33 U.S.C. §1321(b)(6)(B)(i), and by 40 CFR § 22.13(b).
3. At all times relevant to the allegations described in this Agreement, Respondent was a “person” as defined in Section 502(5) of the CWA, 33 U.S.C. § 1362(5).
4. On March 5, 2020, an authorized representative of the United States Environmental Protection Agency (EPA) conducted an inspection of Respondent’s facility known as The Vicinity Energy Schuylkill Generating Facility at 2600 Christian Street in Philadelphia, Pennsylvania to determine compliance with the Oil Pollution Prevention Regulations promulgated at 40 CFR Part 112 (the “Regulations”) under Section 311(j) of the Clean Water Act, as amended, 33 U.S.C. §1321(j).

5. Complainant has identified the following violations:

- a. On November 14, 2018, Respondent failed to have the facility's SPCC Plan adequately certified by a Professional Engineer, as required by 40 C.F.R. § 112.3(d);
- b. On March 5, 2020, EPA observed that Respondent failed to amend the facility's SPCC Plan following the permanent closure of Tanks 1, 4, 5, and 7 and the installation of a new liner in the dike surrounding Tanks 3, 4, and 5, as required by 40 C.F.R. § 112.5(a);
- c. On March 5, 2020, EPA observed that Respondent failed to amend the facility's SPCC Plan and have technical amendments to the SPCC Plan certified by a Professional Engineer, as required by 40 C.F.R. § 112.5(c);
- d. On March 5, 2020, EPA observed that Respondent failed to prepare an adequate SPCC Plan for the facility with a diagram that marked the location and contents of each oil storage container and included all transfer stations and connecting pipes, as required by 40 C.F.R. § 112.7(a)(3);
- e. On March 5, 2020, EPA observed that Respondent failed to prepare an adequate SPCC Plan for the facility that addressed the type of oil in each container and its storage capacity, as required by 40 C.F.R. § 112.7(a)(3)(i);
- f. On March 5, 2020, EPA observed that Respondent failed to prepare an adequate SPCC Plan for the facility that addressed discharge prevention measures implemented at the facility, including procedures for routine handling of products, as required by 40 C.F.R. § 112.7(a)(3)(ii);
- g. On March 5, 2020, EPA observed that Respondent failed to prepare an adequate SPCC Plan for the facility that provided complete discussions pertaining to secondary containment and/or diversionary structures or equipment to prevent discharged oil from reaching a navigable water, as required by 40 C.F.R. § 112.7(c);
- h. On March 5, 2020, EPA observed that Respondent failed to prepare an adequate SPCC Plan for the facility that provided a complete discussion regarding the implementation of secondary containment for bulk storage tanks, as required by 40 C.F.R. § 112.8(c)(2);
- i. On March 5, 2020, EPA observed that Respondent failed to maintain records of dike drainage events at the facility, as required by 40 C.F.R. § 112.8(c)(3)(iv);
- j. On March 5, 2020, EPA observed that Respondent failed to prepare an adequate SPCC Plan for the facility that described the means through which each bulk storage tank is engineered in accordance with good engineering practices to avoid discharges, as required by 40 C.F.R. § 112.8(c)(8);

- k. On March 5, 2020, EPA observed that Respondent failed to prepare an adequate SPCC Plan for the facility that described the means through which buried piping installed or replaced after August 16, 2002 is protectively wrapped or cathodically protected against corrosion and, in the event of exposure, would be inspected for deterioration, as required by 40 C.F.R. § 112.8(d)(1);
  - l. On March 5, 2020, EPA observed that Respondent failed to prepare an adequate SPCC Plan for the facility that described how pipe supports have been designed to minimize abrasion and corrosion and allow for expansion and contraction, as required by 40 C.F.R. § 112.8(d)(4);
6. Complainant and Respondent agree that settlement of this matter for a penalty of **\$2,494.00 (TWO THOUSAND FOUR HUNDRED NINETY-FOUR DOLLARS)** is in the public interest. In calculating this amount, Complainant considered the statutory factors, including, but not limited to, the seriousness of the violations and the other factors provided in CWA Section 311(b)(8) and the Revised Spill Prevention, Control and Countermeasure Expedited Settlement Agreement Pilot, effective September 25, 2019.
  7. Respondent agrees that, within 30 days of the effective date of this Agreement, Respondent shall make a payment of **\$2,494.00** by one of four methods: 1) electronic funds transfer (“EFT”), 2) Automated Clearinghouse, 3) Pay.gov, or 4) a cashier’s check or certified check payable to the “Environmental Protection Agency”, with EPA Docket No. CWA-03-2021-0062 and “Oil Spill Liability Trust Fund - 311” referenced on the check.
    - a. Payment of the penalty amount by EFT to:  
  
Federal Reserve Bank of New York  
ABA 021030004  
Account 68010727  
SWIFT address FRNYUS33  
33 Liberty Street  
New York, NY 10045  
Beneficiary: Environmental Protection Agency
    - b. Payment of the penalty amount by Automated Clearinghouse (ACH) to EPA can be made through the U. S. Treasury using the following information:  
  
U.S. Treasury REX/Cashlink ACH Receiver  
ABA: 051036706  
Account Number: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22- Checking  
  
*Physical Location of the U.S. Treasury Facility*  
5700 Rivertech Court  
Riverdale, MD 20737

c. Payments made through Pay.gov:

Payers can use their credit or debit cards (Visa, MasterCard, American Express & Discover) as well as checking account information to make payments. Follow these steps to make a payment:

- i. You **DO NOT** need a user name and password or account.
- ii. Enter **SFO 1.1** in the form search box on the top left side of the screen.
- iii. Open the form and follow the on-screen instructions.
- iv. Select your method of payment from the "Type of Payment" drop down menu.
- v. Based on your selection, the corresponding line will open and no longer be shaded grey.
- vi. Enter the docket number of this Agreement into the field.

d. Payment by regular U.S. Postal Service shall be sent via **certified mail** to:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

Payment by overnight mail (FedEx or other non-U.S. Postal Service express mail) shall be sent to:

U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, MO 63101

A list of the payment methods is also provided on the website <https://www.epa.gov/financial/makepayment>.

8. Within 24 hours of payment, the Respondent shall also send proof of payment (a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer) by email to:

Mark Wejrowski (3ED12)  
U.S. EPA, Region III  
wejrowski.mark@epa.gov

and

Regional Hearing Clerk (3RC00)  
U.S. EPA, Region III  
R3\_Hearing\_Clerk@epa.gov

9. In signing this Agreement, the Respondent: admits the jurisdictional allegations in this Agreement; neither admits nor denies the specific factual allegations in this Agreement, except as provided in the jurisdictional admission above; agrees not to contest EPA's jurisdiction with respect to the execution of this Agreement, the issuance of the attached Final Order, or the enforcement the Agreement; expressly waives its right to a hearing on any issue of law or fact in this Agreement and any right to appeal the accompanying Final Order; consents to the issuance of the Agreement and agrees to comply with its terms; agrees to bear its own costs and attorney's fees; and agrees not to deduct for federal tax purposes the civil penalty assessed in this Agreement.

10. By its signature below, the Respondent certifies, subject to civil and criminal penalties for making a false submission to the United States Government, that (1) he or she has corrected the alleged violations, and (2) any documentation or information that he or she provided to EPA was true and accurate.
11. This Agreement and the attached Final Order constitute a settlement by EPA of its claims for civil penalties for the violations alleged in this Agreement.
12. 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. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Sections 22.18(c) and 22.31(a) of the Consolidated Rules of Practice. Further, EPA reserves any rights and remedies available to it under the CWA, the CWA regulations promulgated, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this Agreement, following its filing with the Regional Hearing Clerk.
13. As permitted under 40 CFR § 22.6, the Regional Hearing Clerk will serve copies of this Agreement and Final Order by e-mail to the parties at the following valid e-mail addresses: **wejrowski.mark@epa.gov** (for Complainant), and **jessica.hartley@vicinityenergy.us** (for Respondent).
14. Late payment of the agreed upon penalty may subject Respondent to interest, administrative costs and late payment penalties in accordance with 40 C.F.R. § 13.11.
15. This Agreement is binding on the parties signing below and is effective on the date on which it is filed, together with a final order, with the Regional Hearing Clerk, pursuant to 40 C.F.R. § 22.31(b).
16. The undersigned representative certifies that she/her is fully authorized to execute this Agreement and to legally bind Vicinity Energy.
17. As permitted under 40 CFR § 22.6, the Regional Hearing Clerk will serve copies of this Agreement and Final Order by e-mail to the parties at the following valid e-mail addresses: **wejrowski.mark@epa.gov** (for Complainant), and **jessica.hartley@vicinityenergy.us** (for Respondent).

**COST OF COMPLIANCE**

Respondent certifies that it has expended \$ 39,800 to correct the alleged violations and to come into compliance. Amount paid to come into compliance is an exception from the tax deduction prohibition for penalties under Section 162(f) of the Internal Revenue Code, 26 U.S.C. § 162(f).

**For Respondent:** Vicinity Energy

Date:  
5/25/21

By:   
\_\_\_\_\_

Name: Jim Carty

Title: General manager

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

After reviewing the Agreement and other pertinent matters, I, the undersigned Director of the Enforcement and Compliance Assurance Division of the United States Environmental Protection Agency, Region III, agree to the terms and conditions of this Agreement and recommend that the Regional Administrator, or his/her designee, the Regional Judicial Officer, issue the attached Final Order.

Date:

\_\_\_\_\_

By:

\_\_\_\_\_

Karen Melvin, Director  
Enforcement and Compliance  
Assurance Division

In the matter of: *Vicinity Energy* Docket No: *CWA-03-2021-0062*

**BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029**

**IN THE MATTER OF:**

**Vicinity Energy**

**Respondent**

**Vicinity Energy Schuylkill Generating  
Facility  
2600 Christian Street  
Philadelphia, PA 19146**

**Site/Facility**

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**DOCKET NO.: CWA-03-2021-0062**

**EXPEDITED SETTLEMENT  
AGREEMENT AND FINAL ORDER**

**FINAL ORDER**

Complainant, the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency - Region III, and Respondent, Vicinity Energy, have executed a document entitled “Expedited Settlement 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 reference to Sections 22.13(b) and 22.18(b)(2) and (3)). The terms of the foregoing Expedited Settlement Agreement are accepted by the undersigned and incorporated herein as if set forth at length.

Based upon the representations of the parties in the attached Expedited Settlement Agreement, the penalty agreed to therein took into account the factors set forth in Clean Water Act (“CWA”) Section 311(b)(8) and the Revised Spill Prevention, Control and Countermeasure Expedited Settlement Agreement Pilot, effective September 25, 2019.

**NOW, THEREFORE, 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, 40 CFR Part 22, and having relied upon the representations of the parties set forth in this Agreement, **IT IS HEREBY ORDERED** that Respondent pay a civil penalty in the amount of **\$2,494.00 (TWO THOUSAND FOUR HUNDRED NINETY-FOUR DOLLARS)**, in accordance with the payment provisions set forth in the Expedited Settlement Agreement, and comply with the terms and conditions of the Expedited Settlement Agreement.



This Final Order constitutes the final Agency action in this proceeding. This Final Order shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief, or criminal sanctions for any violations of the law. This Final Order resolves only those causes of action alleged in the Expedited Settlement Agreement and does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of the Clean Water Act, 33 U.S.C. §§ 1251 *et seq.*, and the regulations promulgated thereunder.

The effective date of the foregoing Expedited Settlement Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk, pursuant to Section 311(b)(6) of the CWA and 40 C.F.R. § 22.31(b).

\_\_\_\_\_  
Date

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Joseph J. Lisa  
Regional Judicial Officer  
U.S. EPA - Region III