

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

December 7, 2022 @ 4:56pm

USEPA – Region II
Regional Hearing Clerk

IN THE MATTER OF:

Erdner Brothers, Inc.
31 Davidson Road
Swedesboro, New Jersey 08085

Respondent.

Proceeding Pursuant to Section 311(b)(6) of
the Clean Water Act, 33 U.S.C. §1321(b)(6).

**CONSENT AGREEMENT
AND FINAL ORDER**

Docket No. CWA 02-2023-3801

I. PRELIMINARY STATEMENT

Complainant, the United States Environmental Protection Agency (“EPA”), and Respondent, Erdner Brothers Inc. (“Erdner” or “Respondent”) having agreed that settlement of this matter is in the public interest, and that entry of this Consent Agreement and Final Order (“CA/FO”) without further litigation is the most appropriate means of resolving this matter;

NOW, THEREFORE, before the taking of any testimony, upon the pleadings, without adjudication of any issue of fact or law, and upon consent and agreement of the Parties, it is hereby agreed, and ordered as follows:

II. PROCEDURAL AND FACTUAL BACKGROUND

1. The following Factual Findings are made pursuant to the authority vested in the Administrator of the EPA by the Clean Water Act, 33 U.S.C. § 1251 *et seq.* (“Act” or “CWA”), which authority has been duly delegated to the Regional Administrator of EPA Region 2 and re-delegated to the undersigned Superfund Emergency Management Division Director, EPA Region 2.
2. This administrative proceeding for the assessment of a civil penalty is initiated and concluded pursuant to Section 311(b)(6) of the Act, 33 U.S.C. § 1321(b)(6), and Sections 22.18(b)(2) and (3) of the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits” (“CROP”). 40 C.F.R. § 22.13(b).
3. Respondent is a New Jersey Corporation which provides freight trucking and other long-distance trucking services from several facilities along the East Coast, including a main terminal facility located at 31 Davidson Road, Swedesboro, New Jersey (“the Facility”). The

Facility contains several Aboveground Storage Tank (“AST”) units which hold diesel fuel, gasoline, heating oil, and waste oil in a total quantity of approximately 24,800 gallons. Respondent employs Ross Enterprises as a third-party contractor to fill the diesel fuel ASTs.

4. On August 17, 2021, an employee of Ross Enterprises entered the Facility to deliver diesel fuel. While filling an AST from the delivery truck, the employee allowed the tank to overflow, spilling an estimated 900 to 1,050 gallons of diesel fuel. The fuel spread from the AST across the asphalt parking lot to an onsite drainage basin that ultimately discharges into Lake Narraticon, also known as Swedesboro Lake. Respondent estimates approximately 225 to 265 gallons, or a quarter of the spilled fuel, flowed into the drainage basin.
5. On December 3, 2021, TRC, an environmental consulting company hired by Erdner, prepared a Spill Prevention, Control, and Countermeasure (“SPCC”) Plan for Erdner for the Facility. There was no SPCC Plan in place at the Facility prior to that date. The Facility began storing oil in 1972.
6. On March 10, 2022, EPA conducted a SPCC inspection of the Facility (“the Inspection”).
7. On May 12, 2022, EPA sent a letter to Erdner outlining the deficiencies identified by its review of the SPCC Plan and the Inspection. Erdner responded to EPA in a letter dated June 13, 2022, that addressed some deficiencies identified in EPA’s May 12, 2022, letter.

III. FINDINGS OF VIOLATIONS: JURISDICTIONAL AND SPECIFIC CLAIMS

1. Respondent is a person within the meaning of Section 311(a)(7) of the Act, 33 U.S.C. § 1321(a)(7) and 40 C.F.R. § 122.2.
2. The Facility is an “onshore facility” within the meaning of Section 311(a)(10) of the Act, 33 U.S.C. § 1321(a)(10) and 40 C.F.R. § 112.2, which, because of its location, could reasonably be expected to discharge oil to a tributary leading to Lake Narraticon, both navigable waters of the United States as defined by Section 502(7) of the Act, 33 U.S.C. § 1362(7).
3. Respondent is the owner and operator of the Facility within the meaning of Section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6).
4. Pursuant to Section 311(j) of the Act, 33 U.S.C. § 1321(j), the Facility is subject to the Oil Pollution Prevention requirements of 40 C.F.R. Part 112 including the SPCC regulations as set forth at 40 C.F.R. § 112.3. Respondent is required to prepare and maintain a SPCC Plan for its Facility as stipulated in 40 C.F.R. § 112.3. The lack of a SPCC Plan at the Facility prior to December 2021 constitutes a violation of Section 311(j) of the Act, 33 U.S.C. § 1321(j).
5. This CA/FO resolves the violation of Section 311 of the CWA, 33 U.S.C. § 1321, that is specifically alleged herein.
6. For the purpose of this Consent Agreement, Respondent admits that EPA has jurisdiction over the subject matter alleged herein and waives any defenses it might have as to jurisdiction and venue; admits the factual and legal allegations contained in the Consent Agreement; and waives the right to a hearing under Section 311(b)(6)(B)(i) of the Act and to appeal any Final Order in

this matter under Section 311(b)(6)(G)(i) of the Act, 33 U.S.C. § 1321(b)(6)(G)(i), and consents to the issuance of a Final Order without further adjudication.

IV. TERMS OF SETTLEMENT

Pursuant to Section 311(b)(6) of the CWA, 33 U.S.C. §1321(b)(6), and the CROP, 40 C.F.R. § 22.18, it is hereby agreed by and between the parties, and Respondent voluntarily and knowingly agrees as follows:

1. Pursuant to Section 311(b)(6) of the CWA, 33 U.S.C. §1321(b)(6), the nature of the violation, and other relevant factors, EPA has determined that an appropriate civil penalty to settle this action is in the amount of \$17,956.
2. For purposes of settlement, Respondent consents to the issuance of this Consent Agreement and consents to the payment of the civil penalty cited in the foregoing Paragraph.

V. PAYMENT OF CIVIL PENALTY

1. No later than forty-five (45) days after the date of issuance of the executed Final Order signed by the Director of the Superfund and Emergency Management Division, Respondent shall pay a civil penalty in the amount of \$17,956 payable to the "Treasurer of the United States of America." The payment shall indicate "OSLTF-311" and "CWA-02-2023-3801."
2. Payment can be made by debit/credit card, check, or electronically. Electronic payments fall into two categories: wires and Automated Clearinghouse ("ACH"). Wires are same day and more costly. ACH is the next day or any future scheduled day and is less expensive. Please note that wires and ACH payments must be conducted through the sender's bank. The checks (cashier's or certified checks only) shall be identified with a notation of the name and docket number of this case, set forth in the caption on the first page of this document. Payment methods are described below:

Type of Payment	Payment Information		
Debit and Credit Card Payments	https://www.pay.gov/paygov/		
Checks from U.S. Banks Finance Center Contacts: Craig Steffen (513-487-2091)		U.S. Postal Service	UPS, Federal Express, or Overnight Mail
	Check Payments – Fines and Penalties	US Environmental Protection Agency Fines and Penalties Cincinnati Finance Center PO Box 979077 St. Louis, MO 63197-9000	U.S. Bank Government Lockbox 979077 US EPA Fines & Penalties 1005 Convention Plaza SL-MO-C2-GL St. Louis, MO 63101 314-418-1028 Contact: Natalie Pearson 314-418-4087

Checks drawn on foreign banks with no USA branches (any currency)	Cincinnati Finance US EPA, MS-NWD 26 W ML King Drive Cincinnati, OH 45268-0001
Wire Transfers (any currency)	Federal Reserve Bank of New York ABA: 021030004 Account Number: 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"
ACH - Automated Clearinghouse for receiving US currency Finance Center Contacts: John Schmid (202-874-7026) REX (Remittance Express) 1-866-234-5681	US Treasury REX / Cashlink ACH Receiver ABA: 051036706 Account Number: 310006, Environmental Protection Agency CTX Format Transaction Code 22 – checking Physical location of US Treasury facility: 5700 Rivertech Court Riverdale, MD 20737

ON LINE PAYMENT:

There is now an On Line Payment Option, available through the Department of Treasury. This payment option can be accessed from the information below: WWW.PAY.GOV. Enter "sfo 1.1" in the search field. Open form and complete required fields.

Respondent shall also send copies of this payment to each of the following:

Branch Chief
Response and Prevention Branch
Superfund Emergency Management Division
U.S. EPA, Region 2
2890 Woodbridge Avenue
Edison, New Jersey 08837

and

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, New York 10007.

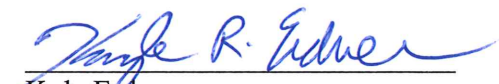
3. Payment must be received at the above address no later than forty-five (45) calendar days after the date of signature of the Final Order (at the end of this document). The date by which payment must be received shall hereafter be referred to as the "due date."
4. Failure to pay the penalty in full by the due date will result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for Collection.
5. Further, if the payment is not received on or before the due date, interest will be assessed at the annual rate established by the Secretary of Treasury pursuant to the Debt Collection Act, 31 U.S.C. § 3717, on the overdue amount from the due date through the date of payment. In addition, a late payment handling charge of \$15.00 will be assessed for each 30-day period (or any portion thereof) following the due date in which the balance remains unpaid. A 6% per annum penalty will also be applied on any principal amount not paid within 90 days of the due date.
6. In addition, pursuant to Section 311(b)(6)(H) of the Act, 33 U.S.C. § 1321(b)(6)(H), if payment is not received by the due date, a quarterly nonpayment penalty will be imposed for each calendar quarter during which such nonpayment persists. The quarterly nonpayment penalty is 20% of the aggregate amount of penalties and quarterly nonpayment penalties, which are unpaid as of the beginning of such quarter. You may also be required to pay attorney's fees and costs for collection proceedings in connection with nonpayment.
7. The penalty to be paid is a civil penalty assessed by the EPA and shall not be deductible from Respondent's federal or New Jersey State taxes.

VI. GENERAL PROVISIONS

1. The provisions of this CA/FO shall be binding upon Respondent, its officers, directors, agents, servants, authorized representatives and successors or assigns, including, but not limited to, subsequent purchasers. No transfer of ownership or operation shall relieve Respondent of its obligation to comply with this CA/FO.
2. The Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during discussions with or to be served with and to reply to any memorandum or communication addressed to the Director or the Regional Administrator where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the accompanying Final Order.
3. Except for the specific violations alleged herein, nothing in this agreement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this agreement or of the statutes and regulations upon which this agreement is based, or for Respondent's violation of any applicable provision of law.

4. This CA/FO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit.
5. This CA/FO constitutes a settlement by EPA of all claims for civil penalties pursuant to the CWA for the violations by the Respondent alleged herein. Nothing in this CA/FO is intended to, nor shall be construed to operate in any way to resolve any criminal liability of the Respondent. Compliance with this CA/FO shall not be a defense to any actions subsequently commenced pursuant to Federal laws and regulations administered by EPA, and it is the responsibility of Respondent to comply with such laws and regulations.
6. Each undersigned representative of the parties to this Consent Agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this Consent Agreement and to execute and legally bind that party to it.
7. Each party shall bear its own costs and attorney's fees in connection with the action resolved by this CA/FO.
8. EPA agrees that the provisions of this Consent Agreement shall not be used to modify, deny, suspend, condition, or revoke any permits, registrations, or approvals issued by EPA.

RESPONDENT:

BY: 
Kyle Erdner
Erdner Brothers, Inc., President

DATE: 11/18/22

COMPLAINANT:

BY: _____
Pat Evangelista, Division Director
Superfund Emergency Management Division
U.S. Environmental Protection Agency, Region 2

DATE: _____

VII. FINAL ORDER

The Regional Administrator of the United States Environmental Protection Agency, Region 2, vested by authority delegated by the Administrator of the United States Environmental Protection Agency (“EPA”) and having further re-delegated such authority to the Superfund Emergency Management Division Director, Region 2, EPA, ratifies the foregoing Consent Agreement. The Agreement entered into by the parties is hereby approved, incorporated herein, and issued as an Order. The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, United States Environmental Protection Agency, Region 2, New York, New York.

DATED: _____

Pat Evangelista, Division Director
Superfund Emergency Management Division
U.S. Environmental Protection Agency, Region 2
290 Broadway
New York, NY 10007-1866

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Docket No. CWA-02-2023-3801

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing Consent Agreement and Final Order, dated _____, and bearing the above referenced docket number, by electronic mail to the respective addressees below:

Kyle Erdner
Erdner Brothers, Inc
31 Davidson Rd
Swedesboro, New Jersey 08085
kyle@erdnerbros.com

Karen Maples, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, New York 10007-1866
maples.karen@epa.gov

Douglas Kodama, Chief
Response and Prevention Branch
U.S Environmental Protection Agency, Region 2
2890 Woodbridge Avenue
Edison, NJ 08837
Kodama.Doug@epa.gov

Date:

Print Name: _____
Edison, NJ

Erdner Brothers, Inc.
CWA Docket No. 02-2023-3801