UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

In The Matter of:	:	
	:	
F.C. Haab Company, Incorporated	:	**CONSENT AGREEMENT**
2314 Market Street	:	
Philadelphia, Pennsylvania 19103,	:	
	:	
Respondent.	:	
	:	**PROCEEDING UNDER SECTION 311**
Schuylkill Terminal	:	**OF THE CLEAN WATER ACT, AS**
1701 Schuylkill Avenue	:	**AMENDED, TO ASSESS A CLASS II**
Philadelphia, Pennsylvania 196145,	:	**CIVIL PENALTY**
	:	
Facility.	:	**Docket No. CWA-03-2014-0091**
	:	

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EPA REGION III, PHILA, PA

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 Sections 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 ("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, conclusions of law, and determinations 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 attorneys fees.

Statutory Authority

8. Congress enacted the CWA, 33 U.S.C. §§ 1251 et seq., in 1972. In Section 311(j)(1)(C) of the CWA, 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 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, EPA promulgated the Oil Pollution Prevention Regulations, 40 C.F.R. Part 112, 38 Fed. Reg. 34165 (Dec. 11, 1973), effective January 10, 1974 ("1973 Regulations").

11. Congress amended Section 311 of the CWA 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.

12. Pursuant to Section 311(j)(5)(A) of the CWA, the EPA Administrator amended 40 C.F.R. Part 112 in 1994 by promulgating oil spill response regulations requiring 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 regulations are codified at 40 C.F.R. §§ 112.20 and 112.21, and became effective on August 30, 1994.

13. Pursuant to 40 C.F.R. § 112.20(h)(4), owners or operators of onshore storage and distribution facilities must determine whether, because of the facility's storage capacity and location, the facility could reasonably be expected to cause substantial harm to the environment by discharging oil into or on navigable waters

or adjoining shorelines pursuant to criteria established by EPA in 40 C.F.R. § 112.20(f)(1).

14. A facility is classified as a substantial harm facility 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).

15. 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).

16. To meet the requirements of 40 C.F.R. § 112.20, the FRP must identify areas within the facility where discharges could occur and identify the potential effects of the discharges pursuant to 40 C.F.R. § 112.20(h)(4). The FRP must address response planning, including the small discharge scenario (2,100 gallons or less) per 40 C.F.R. § 112.20(h)(5)(ii), and must identify response resources that meet the requirements of 40 C.F.R. Part 112, Appendix E. 40 C.F.R. § 112.20(h)(3)(i).

17. The oil spill response regulations require the owner or operator of a substantial harm facility to develop and implement a program of facility response drills and exercises for oil spill response. 40 C.F.R. § 112.21(a) and (c). A program of oil spill drills/exercises must follow either the National Preparedness for Response Exercise Program Guidelines ("PREP Guidelines") or an alternative program approved by the Administrator of the applicable EPA Region. 40 C.F.R. § 112.21(c).

18. The PREP Guidelines provide for owners and operators of substantial harm facilities to conduct various types of exercises on a specified basis, including: (1) quarterly Qualified Individual Notification Exercises; (2) annual Spill Management Team Tabletop Exercises; (3) semi-annual Equipment Deployment Exercises for facilities with facility-owned equipment or annual Equipment Deployment Exercises where the facility cites OSRO-owned equipment in its plan; and (4) Government-Initiated Unannounced Exercises not more than triennially, if successfully completed.

19. For violations of Section 311(j) of the CWA, 33 U.S.C. § 1321(j), EPA has authority, pursuant to Section 311(b)(6)(B)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(ii), to assess a Class II penalty in the amount of up to $10,000 per day of violation, not to exceed a maximum penalty of $125,000. Pursuant to the Debt Collection Improvement Act, and the subsequent Civil Monetary Penalty Inflation Adjustment Rule, codified at 40 C.F.R. Part 19, violations of Section 311(j) that occur after January 12, 2009 but before December 6, 2013, are subject to a statutory penalty of up to a Class II penalty of $16,000 per day of violation, not to exceed a maximum penalty of $177,500.

Findings of Fact and Conclusions of Law

20. Respondent is a corporation with a principal place of business located at 2314 Market Street, Philadelphia, Pennsylvania, 19103.

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. Respondent is engaged in the storage and distribution of petroleum at its facility located at 1701 Schuylkill Avenue, Philadelphia, Pennsylvania 19145 ("Facility").

23. Respondent is 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. Respondent has owned and operated the Facility since the year 1953, when the Facility started operations.

25. The Facility has a total aboveground oil storage capacity of approximately 6,170,781 gallons.

26. The Facility is adjacent to the Schuylkill River and spill flow direction would be southeast toward the river

27. The Schuylkill 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.

28. 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.

29. 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.

30. 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.

31. 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.

32. The Facility is a "substantial harm" facility pursuant to 40 C.F.R. § 112.20(f)(1) because the Facility has a total oil storage capacity greater than 1,000,000 gallons and 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.

33. Pursuant to Section 311(j) of the CWA, 33 U.S.C. § 1321(j) and 40 C.F.R. § 112.20(f)(1), the Facility is subject to the oil spill response regulations in 40 C.F.R. §§ 112.20 and 112.21.

34. Pursuant to 40 C.F.R. § 112.21(c), Respondent was required to follow a program of facility response drills and exercises, including evaluation procedures, conducted in accordance with the PREP Guidelines or another approved program.

35. EPA conducted a compliance inspection at the Facility on February 7, 2013 ("the Inspection").

36. EPA believes that, at the time of the Inspection, Respondent failed to adequately implement 40 C.F.R § 112.21(c) of the Oil Pollution Prevention Regulations, as set forth in Paragraphs 37 through 39, below.

37. Respondent allegedly failed to adequately implement Section 112.21(c) as follows:

    During the Inspection, the Operations Manager was unable to provide personnel training records or documentation of implementation of the drills and exercises program pursuant to Respondent's FRP. The FRP requires facility drills and exercises to be conducted annually or semi-annually and documentation of Facility Personnel and the Spill Management Team drills to be kept on file for 3 years.

38. Because the Facility could not provide any records of the implementation of the drills and exercises program prior to the February 7, 2013 inspection, the duration of the violation is at least 5 years, which is the statutory ceiling for enforcement.

39. EPA determined, based on its Inspection, discussions with Facility personnel during and after the Inspection, and its review of documentation provided by Respondent that Respondent failed to adequately implement and document

implementation of its FRP in accordance with the PREP Guidelines or another approved program, which is a violation of 40 C.F.R. § 112.21(c).

Penalty

40. 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 **$56,000.00.** The civil penalty amount is due and payable within thirty (30) days of Respondent's receipt of a true and correct copy of this CAFO.

41. 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; 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.

42. 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-03-2014-0091) 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

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

U.S. Environmental Protection Agency
U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101
Attn: Heather Russell (513) 487-2044

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-03-2014-0091" should be included in the "Court Order # or Bill #" field, and "3" should be included as the Region number.

43. 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.

44. 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 ("Interest Accrual Date"). 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).

45. 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.

46. 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).

47. 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.

48. 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:

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

Jefferie E. Garcia (3RC42)
Senior Assistant Regional Counsel
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

49. 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

50. 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.

51. The provisions of this Consent Agreement and the Final Order, if issued, shall be binding upon Respondent and Respondent's successors or assigns.

52. Payment of the penalty pursuant to this Consent Agreement shall resolve all liability of Respondent for federal civil penalties for the violations alleged based on the facts alleged in this Consent Agreement.

53. 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. Payment of the penalty pursuant to this Consent Agreement resolves only Respondent's alleged liability for federal civil penalties for the violations and facts alleged in this Consent Agreement.

54. The Effective Date of this Consent Agreement is the date on which the Final Order is filed with the Regional Hearing Clerk.

For the Respondent, F.C. Haab Company, Incorporated

Date: March 31, 2014 By: [signature]

Name: Lawrence R. Gramlich

Title: COO

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

Date: 6/5/2014 By: _____

Jefferie E. Garcia
Senior Assistant Regional Counsel

After reviewing the foregoing Consent Agreement and other pertinent information, 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: 6/2/2014 By: _____

Cecil A. Rodrigues, Director
Hazardous Site Cleanup Division
EPA Region III

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	:	
Facility.	:	**Docket No. CWA-03-2014-0091**
	:	

FINAL ORDER

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 Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits," codified at 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order.

Nothing in the foregoing Consent Agreement relieves Respondent from otherwise complying with the applicable requirements set forth in the CWA.

Respondent is ordered to pay the **$56,000.00** penalty and otherwise comply with the terms of the foregoing Consent Agreement.

Date: 6-19-14

Heather Gray

Heather Gray
Regional Judicial Officer/Presiding Officer

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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 by first class mail to:

Mitchell E. Burack, Esquire
2 Bala Plaza, Suite 300
Bala Cynwyd, PA 19004

I further certify that I have sent a copy of the CAFO by electronic pdf to Respondent's representative Mitchell E. Barack on this day.

6/24/14
DATE

Jefferie E. Garcia (3RC42)
Assistant Regional Counsel
Counsel for Complainant
(215) 814-2697