

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4**

IN THE MATTER OF	)	CWA SECTION 311 CLASS I
	)	CONSENT AGREEMENT AND
Volunteer Oil Service, LLC	)	FINAL ORDER
3342 Granite Springs	)	UNDER 40 C.F.R. § 22.13(b)
Murfreesboro, Tennessee 37129	)	
	)	
Respondent.	)	Docket No.: CWA-04-2009-5130(b)

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This Consent Agreement is proposed and entered into under the authority vested in the Administrator of the U.S. Environmental Protection Agency (USEPA) by Section 311(b)(6)(B)(i) of the Clean Water Act (CWA), 33 U.S.C. § 1321(b)(6)(B)(i), as amended by the Oil Pollution Act of 1990, and under the authority provided by 40 C.F.R. §§ 22.13(b) and 22.18(b)(2). The Administrator has delegated these authorities to the Regional Administrator of EPA, Region 4, who has in turn delegated these authorities through the Director, RCRA Division, to the Chief, RCRA and OPA Enforcement and Compliance Branch, RCRA Division (Complainant).

**CONSENT AGREEMENT**

**Stipulations**

The parties, in their own capacity or by their attorneys or other authorized representatives, hereby stipulate:

- Respondent, Volunteer Oil Service, LLC, is a limited liability company organized under the laws of the State of Tennessee doing business in the State of Tennessee. The Respondent is a person within the meaning of Sections 311(a)(7) and 502(5) of the Act, 33 U.S.C. §§ 1321(a)(7) and 1362(5), and 40 C.F.R. § 110.1.

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2. The Respondent was the owner within the meaning of Section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6), and 40 C.F.R. § 110.1 of a tanker truck that was being used to collect used oil from an underground storage tank at Packard's Service Center, LLC, (a.k.a. "Packard's BP"), 2417 Lebanon Road, Nashville, Tennessee 37214. (The tanker truck is "the facility").

3. In the process of transferring the used oil into the tanker truck, Respondent's employee went to the top of the truck to check the level of the load. At that time, an internal explosion occurred in the tanker portion of the truck rupturing the tanker and causing second and third degree burns to Respondent's employee. The rupture in the tanker released approximately 800 gallons of oil.

4. The Tennessee Department of Environment and Conservation (TDEC) investigated the oil release and determined that the explosion in the tanker truck resulted from a low flash point material having been placed in the used oil tank at Packard's BP. The TDEC inspector concluded that Respondent's employee had no way to know that there was a low flash point material in the used oil tank. It was determined that Packard's BP was legally responsible for the explosion per a subrogation agreement since gasoline had been mixed with the used oil. Hence, all liability for the explosion was previously assessed against Packard's BP.

5. The facility is an onshore facility within the meaning of Section 311(a)(10) of the Act, 33 U.S.C. § 1321(a)(10).

6. The unnamed tributary to Sims Creek and Sims Creeks, which is a tributary to Mill Creek, which is a tributary to the Cumberland River, are navigable waters as defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 110.1 and are subject to the jurisdiction of Section 311 of the Act.

7. Section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3), prohibits the discharge of oil into or upon the navigable waters of the United States or adjoining shorelines in such quantities that have been determined may be harmful to the public health or welfare or environment of the United States.

8. For purposes of Section 311(b)(3) and (b)(4) of the Act, 33 U.S.C. § 1321(b)(3) and (b)(4), discharges of oil into or upon the navigable waters of the United States in such quantities that have been determined may be harmful to the public health or welfare or environment of the United States are defined in 40 C.F.R. § 110.3 to include discharges of oil that (1) violate applicable water quality standards or (2) cause a film or a sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon the adjoining shorelines.

9. Respondent admits the jurisdictional statements contained herein solely for the purpose of settlement of this U. S. EPA matter.

#### Allegations

10. Complainant alleges, and Respondent neither admits nor denies, that:

11. On October 8, 2007, Respondent accidentally discharged approximately 800 gallons of oil, as defined in Section 311(a)(1) of the Act, 33 U.S.C. § 1321(a)(1), and 40 C.F.R. § 110.1, from its tanker truck into or upon the unnamed tributary to Sims Creek and adjoining shorelines.

12. Respondent's October 8, 2007, discharge of oil from its tanker truck caused a sheen upon or discoloration of the surface or the adjoining shoreline of the unnamed tributary to Sims Creek or an adjoining shoreline and, therefore, was in a quantity that has been determined may be harmful under 40 C.F.R § 110.3, in violation of Section 311(b)(3) of the Act.

**Waiver of Rights**

13. Respondent waives the right to contest the allegations contained herein, to a hearing under Section 311(b)(6)(B)(i) of the Act, 33 U.S.C. § 1321(b)(6)(B)(i), 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.

14. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during any discussions with, or to be served with and reply to, any memorandum or communication addressed to EPA officials where the purpose of such discussion, memorandum or communication is to persuade such official to accept and issue this Consent Agreement or the Final Order.

**Penalty**

15. The Complainant proposes, and Respondent consents to, the assessment of a civil penalty of **\$2,814.00**.

**Payment Terms**

16. Based on the forgoing, the parties, in their own capacity or by their attorneys or authorized representatives, hereby agree that:

17. No later than 30 days after the effective date of the Final Order, the Respondent shall pay the amount of \$2,814.00 by means of a cashier's or certified check, or by on-line payment or by wire transfer. If paying by check, the Respondent shall submit a cashier's or certified check, payable to "Environmental Protection Agency," and bearing the notation "OSLTF - 311."

*[The remainder of Page is blank.]*

18. If the Respondent sends payment by the U.S. Postal Service, the payment shall be sent to:

US Environmental Protection Agency  
**Fines and Penalties**  
Cincinnati Finance Center  
PO Box 979077  
St. Louis, MO 63197-9000

If the Respondent sends payment by an overnight commercial delivery service such as DHL, FedEx or UPS, the payment shall be sent to:

U.S. Bank  
Government Lockbox 979077  
**U.S. EPA Fines & Penalties**  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, MO 63101  
314-418-1028

Respondent may also elect the On Line Payment Option, available through the Department of Treasury. This payment option can be accessed at [www.pay.gov](http://www.pay.gov). Enter sfo 1.1 in the search field and then open form and complete required fields.

If the Respondent sends payment by wire transfer, the wire transfer should be directed to the Federal Reserve Bank of New York as follows:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 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."

*[The remainder of Page is blank.]*

19. If paying by check, the Respondent shall note on the penalty payment check the title and docket number of this case. The Respondent shall submit a copy of the check or, for other type payments, a confirmation copy of such payment, to:

Patricia Bullock  
Regional Hearing Clerk  
U.S. EPA- Region 4  
Sam Nunn Atlanta Federal Center  
61 Forsyth Street, SW  
Atlanta, GA 30303-8960

Doug McCurry, Chief  
North Enforcement and Compliance Section  
RCRA and OPA Enforcement and Compliance Branch  
RCRA Division  
U.S. EPA- Region 4  
Sam Nunn Atlanta Federal Center  
61 Forsyth Street, SW  
Atlanta, GA 30303-8960

20. Respondent's failure to pay the penalty assessed by the Final Order in full by its due date 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 Act, 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**

21. The Final Order shall be binding upon Respondent and Respondent's officers, directors, agents, servants, employees, and successors or assigns.

22. The Final Order does not constitute a waiver, suspension or modification of the requirements of Section 311 of the Act, 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 liability for federal civil penalties for the violations and facts stipulated to and alleged herein.

23. The undersigned representative of Respondent hereby certifies that he is fully authorized to enter into the terms and conditions of this Consent Agreement and attached Final Order and to execute and legally bind Respondent to this Consent Agreement and attached Final Order.

24. A copy of any documents that Respondent files in this action shall be sent to the following attorney who represents EPA in this matter and who is authorized to receive service for EPA in the proceeding:

Michael T. Newton,  
Associate Regional Counsel  
U.S. EPA – Region 4  
61 Forsyth Street, SW  
Atlanta, Georgia 30303-8960  
404-562-9567

25. A copy of any documents that Complainant files in this action shall be sent to the following individual who represents the Respondent in this matter and who is to receive service for the Respondent in this proceeding:

Sharon O. Jacobs, Esq.  
Bone McAllester Norton PLLC  
Nashville City Center, Suite 1600,  
511 Union Street  
Nashville, TN 37219  
615-238-6306

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**Effective Date**

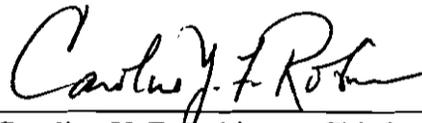
25. This Consent Agreement and attached Final Order are effective upon the filing of the Final Order with the Regional Hearing Clerk.

**CONSENTED AND AGREED TO:**

VOLUNTEER OIL SERVICE, LLC

Date: 12/10/08  
Name:   
Title: President

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 12/16/08  
  
Caroline Y. F. Robinson, Chief  
RCRA and OPA Enforcement and Compliance Branch  
RCRA Division

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4**

IN THE MATTER OF	)	CWA SECTION 311 CLASS 1
	)	CONSENT AGREEMENT AND
Volunteer Oil Service, LLC	)	FINAL ORDER
3342 Granite Springs	)	UNDER 40 C.F.R. § 22.13(b)
Murfreesboro, Tennessee 37129	)	
	)	
Respondent.	)	Docket No.: CWA-04-2009-5130(b)
_____)		

**FINAL ORDER**

The foregoing Consent Agreement is hereby approved, ratified and incorporated by reference into this Final Order in accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, 40 C.F.R. Part 22. The Respondent is hereby ORDERED to comply with all of the terms of the foregoing Consent Agreement effective immediately upon filing of this Consent Agreement and Final Order with the Regional Hearing Clerk. This Order disposes of this matter pursuant to 40 C.F.R. §§ 22.18 and 22.31.

**BEING AGREED, IT IS SO ORDERED** this 21<sup>st</sup> day of January, 2009.

BY: Susan B. Schub  
Susan B. Schub  
Regional Judicial Officer

I hereby certify that on 1-21-09, I filed the foregoing

Consent Agreement and the attached Final Order (CA/FO), in the Matter of Volunteer Oil Service, LLC, Docket Number: CWA-04-2009-5130(b), and that on 1-21-09,

I served a true and correct copy of the CA/FO on the parties listed below in the manner

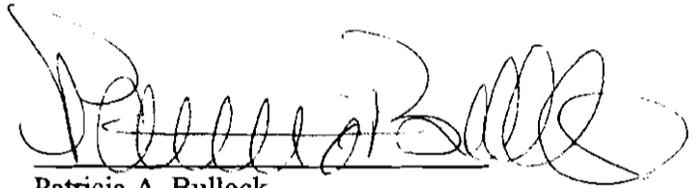
indicated:

Via Certified Mail - Return Receipt Requested

Sharon O. Jacobs, Esq.  
Bone McAllester Norton PLLC  
Nashville City Center, Suite 1600, 511 Union Street  
Nashville, TN 37219

Via EPA's internal mail

Michael T. Newton  
Associate Regional Counsel  
U.S. EPA - Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303



Patricia A. Bullock  
Regional Hearing Clerk  
U.S. EPA - Region 4  
61 Forsyth Street, S.W.  
Atlanta, GA 30303  
(404) 562-9511