



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

Via Certified Mail, Return Receipt Requested

BFS Petroleum Products, Inc.,
a division of
Bruceton Farm Service, Inc.,
a/d/b/a Bruceton Petroleum Co., Inc.
1768 Mileground Road
Morgantown, WV 26505

Rec'd
Sept. 9, 2009
L. Guy

**Re: Administrative Complaint against BFS Petroleum Products, Inc.
EPA Docket Number CWA-03-2009-0156**

Dear Sir or Madam:

Enclosed is an Administrative Complaint ("Complaint") which the United States Environmental Protection Agency ("EPA") is issuing to BFS Petroleum Products, Inc., a division of Bruceton Farm Service, Inc., a/d/b/a Bruceton Petroleum Co., Inc. (hereinafter referred to as "Respondent"). Respondent is the operator of a bulk oil storage and distribution facility located at 201, 302 and 410 West Myles Avenue, Pennsboro, West Virginia 26415 (the "Facility").

This Complaint is issued pursuant to Section 311(b)(6)(B)(ii) of the Clean Water Act ("CWA"), 33 U.S.C. § 1321(b)(6)(B)(ii), and proposes a Class II penalty of \$100,309 against the Respondent. Generally, Class II penalties for the period in question may not exceed \$11,000.00 per day per violation, with a \$157,500.00 maximum for an aggregate penalty. This proposed penalty does not constitute a demand as defined in the Equal Access to Justice Act, 28 U.S.C. § 2412.

This Complaint is being issued in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits," 64 Fed. Reg. 40138 (July 23, 1999), 40 C.F.R. Part 22 ("Consolidated Rules"). You should carefully read the Consolidated Rules and the Complaint to determine your company's available response alternatives. For your convenience, a copy of the Consolidated Rules has been enclosed with the Complaint.

RESPONSE TO THE ADMINISTRATIVE COMPLAINT

The Respondent may resolve this matter by paying the specific penalty proposed in the Complaint. Pursuant to the settlement provisions of the Complaint (Section IX), and subject to

the limitations of 40 C.F.R. Part 22.45, if Respondent pays the specific penalty proposed in the Complaint within thirty (30) days of receiving the Complaint, then, pursuant to the Consolidated Rules, it need not file a written answer to the Complaint.

However, if Respondent wishes to contest any material fact upon which the Complaint is based, contend that the proposed penalty is inappropriate, assert any defense, or seek judgment as a matter of law, Respondent must file a written answer (one original and one copy) with the Regional Hearing Clerk within thirty (30) days of service of the Complaint. The Hearing Clerk's mailing address is located within the Complaint. If Respondent fails to submit a timely response to the Complaint, it may be found in default. Once found in default, Respondent will be deemed to have admitted all factual allegations asserted in the Complaint and to have waived the right to a hearing on such factual allegations.

Respondent may qualify as a "small business" under the Small Business Regulatory Enforcement Fairness Act ("SBREFA"). Please see the Small Business Information enclosure accompanying this letter. This enclosure provides information on contacting the SBREFA Ombudsman to comment on federal enforcement and compliance activities and also provides information on compliance assistance. As noted in the enclosure, any decision to participate in such a program or to seek compliance assistance does not relieve Respondent of its obligation to respond in a timely manner to an EPA request or other enforcement action, or create any new rights or defenses under law, and will not affect EPA's decision to pursue this enforcement action. To preserve Respondent's legal rights, it must comply with all rules governing the administrative enforcement process. The Ombudsman and fairness boards do not participate in the resolution of EPA's enforcement action.

Respondent may be required to disclose to the Securities and Exchange Commission ("SEC") the existence of certain administrative or judicial proceedings taken against your company under federal, state or local environmental laws. Please see the enclosed "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings" for more information about this requirement and to aid you in determining whether Respondent is subject to it.

EX PARTE COMMUNICATIONS

Please be advised that Section 22.8 of the Consolidated Rules prohibits any *ex parte* discussion of the merits of the proceeding between any interested party outside of the EPA or any EPA staff member who performs a prosecutorial or investigative function in this proceeding (or any factually related proceeding) and the EPA Administrator, the members of the Environmental Appeals Board, the EPA Region III Regional Administrator, the Administrative Law Judge assigned to this matter, or any other person who is likely to advise these officials in the decision on the case.

Respondent has the right to retain and be represented by an attorney at any stage of the proceedings, including any informal discussions with EPA. Respondent's attorney should

contact Pamela J. Lazos, Sr. Assistant Regional Counsel, at (215) 814-2658, as soon as possible to discuss the matters herein.

Sincerely,



jm Karen Melvin, Associate Director
Hazardous Site Cleanup Division

Enclosures

cc: Pamela J. Lazos (3RC20)
Paula Curtin (3HS61)

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III**

| | | |
|---------------------------------------|---|---|
| In The Matter of: | : | ADMINISTRATIVE COMPLAINT |
| | : | AND OPPORTUNITY TO REQUEST |
| BFS Petroleum Products, Inc., | : | HEARING AND CONFERENCE |
| a division of | : | |
| Bruceton Farm Service, Inc., | : | |
| a/d/b/a Bruceton Petroleum Co., Inc., | : | |
| 1768 Mileground Road | : | |
| Morgantown, WV 26505 | : | Proceeding to Assess Class II |
| | : | Civil Penalties Under Section |
| Facility located at: | : | 311(b)(6)(B) of the Clean Water Act, as |
| 201, 302 and 410 West Myles Ave. | : | amended, 33 U.S.C. § 1321(b)(6)(B) |
| Pennsboro, WV 26415 | : | |
| | : | |
| Respondent | : | Docket No. CWA-03-2009-0156 |

I. STATUTORY AUTHORITY

1. This Administrative Complaint and Opportunity to Request Hearing and Conference (“Complaint”) is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 311(b)(6)(B) of the Clean Water Act, as amended, (“CWA”), 33 U.S.C. § 1321(b)(6)(B). 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 Administrator of EPA has determined that Class II penalty proceedings for violations of Section 311(b)(3), 33 U.S.C. § 1321(b)(3), and regulations issued under Section 311(j), 33 U.S.C. § 1321(j), and other provisions of the CWA shall be conducted in accordance

with 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* ("Consolidated Rules"), 40 C.F.R. Part 22.

3. Therefore, pursuant to Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6), and in accordance with the Consolidated Rules, Complainant hereby requests that the Regional Administrator assess civil penalties against Respondent, BFS Petroleum Products, Inc., a/d/b/a Bruceton Petroleum Company, Inc., a/d/b/a Bruceton Farm Service, Inc. ("Respondent") for: (1) discharging oil into navigable waters of the United States in violation of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3); (2) failure to provide appropriate containment and/or diversionary structures or equipment to prevent discharged oil from reaching a navigable water course, in violation of 40 C.F.R. § 112.7(c); (3) failure to implement requirements pertaining to the Facility Tank Car and Truck Loading/Unloading Rack, which states the Facility must ensure the containment system at the loading rack holds the largest tank car or truck compartment, in violation of 40 C.F.R. § 112.7(e)(4)(ii); (4) failure to provide a secondary means of containment for bulk storage containers for the entire capacity of the largest single container and sufficient freeboard to contain precipitation, and for failure to ensure that diked areas are sufficiently impervious to contain discharged oil, in violation of 40 C.F.R. § 112.7(e)(2)(ii); (5) failure to provide adequate security by fencing the Facility and providing lighting commensurate with the type and location of the Facility, in violation of 40 C.F.R. § 112.7(e)(9)(I) and (v); (6) failure to maintain written procedures and records

of required tank and pipe inspections and tests, in violation of 40 C.F.R. § 112.7(e)(8); (7) failure to restrain drainage from diked storage areas by valves to prevent a discharge, in violation of 40 C.F.R. § 112.7(e)(1); (8) failure to maintain drainage records of diked areas, in violation of 40 C.F.R. § 112.7(e)(2)(iii)(D); (9) failure to prepare an adequate Spill Prevention Control and Countermeasures (“SPCC”) Plan, in violation of 40 C.F.R. § 112.3; and (10) failure to securely cap or blank flange loading/unloading connection of oil pipelines at the loading rack when not in service, in violation of 40 C.F.R. § 112.7(e)(9)(iv).

A. Oil Pollution Prevention Regulations

4. EPA promulgated Oil Pollution Prevention Regulations, 40 C.F.R. Part 112, 38 Fed. Reg. 34165 (Dec. 11, 1973), effective on January 10, 1974. These regulations were last codified at 40 C.F.R. Part 112 (2002) (hereinafter, the “1974 Regulations”).
5. The Oil Pollution Prevention Regulations were revised in part in 2002, 67 Fed. Reg. 47042 (July 17, 2002), effective August 16, 2002 (“2002 Regulations”), and again in 2006, 71 Fed. Reg. 77266 (Dec. 26, 2006), effective February 26, 2007 (“2006 Regulations”).
6. As set forth at 74 Fed. Reg. 29136 (June 19, 2009), the date by when compliance with the 2002 Regulations and the 2006 Regulations is required is November 10, 2010.
7. As set forth at 40 C.F.R. § 112.3(a)(1) (2002 and 2006 Regulations), oil storage facilities in operation prior to August 16, 2002 were required to maintain their existing SPCC plans

and remain in compliance with all pre-existing regulatory requirements. Accordingly, for purposes of this Complaint, unless otherwise noted, regulatory requirements cited herein refer to the 1974 Regulations.

8. The Oil Pollution Prevention Regulations, 40 C.F.R. Part 112, which implement Section 311(j) of the CWA, 33 U.S.C. § 1321(j), apply to owners or operators of non-transportation-related onshore and offshore facilities engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing or consuming oil or oil products (“Part 112 Facilities”).
9. 40 C.F.R. Part 112 sets forth procedures, methods and requirements to prevent the discharge of oil from Part 112 Facilities into or upon the navigable waters of the United States and adjoining shorelines in such quantities that, as determined by regulation, may be harmful to the public health or welfare or to the environment.
10. 40 C.F.R. § 112.3(a) requires owners and operators of onshore and offshore facilities in operation on or before the effective date of the Oil Pollution Prevention Regulations, that could reasonably be expected to discharge oil in harmful quantities into or upon the navigable waters of the United States or adjoining shorelines, to prepare SPCC plans in writing and in accordance with 40 C.F.R. § 112.7. Section 112.3(a) further provides that such SPCC plans shall be prepared within six months after the effective date of 40 C.F.R. § 112.3 and shall be fully implemented as soon as possible, but not later than one year after the effective date of 40 C.F.R. § 112.3. In addition, 40 C.F.R. § 112.3(b), requires owners and operators of onshore and offshore facilities becoming operational after the

effective date of the Oil Pollution Prevention Regulations, and that have discharged or could reasonably be expected to discharge oil in harmful quantities into or upon the navigable waters of the United States or adjoining shorelines, to prepare SPCC plans in accordance with 40 C.F.R. § 112.7. Such plans shall be prepared within six (6) months after the facilities become operational, and shall be fully implemented as soon as possible, but not later than one year after such Facility begins operations. 40 C.F.R. § 112.3(b).

B. Definitions

11. “Oil” is defined at Section 311(a)(1), 33 U.S.C. § 1321(a)(1), and 40 C.F.R. § 112.2 for purposes of Section 311(b)(3) of the CWA, to include any kind of oil in any form, including petroleum, fuel oil, sludge, oil refuse and oil mixed with wastes other than dredged spoil.
12. 40 C.F.R. § 110.3(b) defines “harmful quantity,” for purposes of Section 311 of the CWA, 33 U.S.C. § 1321, to include discharges of oil that cause a film or 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 adjoining shorelines.
13. Section 311(a)(2) of the CWA, 33 U.S.C. § 1321(a)(2), defines “discharge” to include any spilling, leaking, pumping, pouring, emitting, or dumping other than federally permitted discharges pursuant to a permit under 33 U.S.C. § 1342.
14. For purposes of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), “navigable water” is defined by 40 C.F.R. §§ 110.1 and 112.2, to include, among other things,

- tributaries to waters that could be used for industrial purposes or interstate commerce.
15. The definition of “worst case discharge,” found at 33 U.S.C. § 1321(a)(24) and 40 C.F.R. § 112.2, means, in the case of an onshore facility, the largest foreseeable discharge that could occur in adverse weather conditions.
 16. The definition of “onshore facility,” found at 33 U.S.C. § 1321(a)(10) and 40 C.F.R. § 112.2, means, any facility in, on or under land within the United States, other than submerged land, which is not a transportation-related facility.
 17. The definition of “non-transportation-related facility,” found in 40 C.F.R. Part 112, Appendix A and incorporated by reference at 40 C.F.R. § 112.2, includes oil drilling, producing, refining and storage facilities.
 18. The definition of “owner or operator,” found at 33 U.S.C. § 1321(a)(6) and 40 C.F.R. § 112.2, means, in the case of an onshore facility, any person owning or operating such an onshore facility.
 19. The definition of “navigable waters,” found at 40 C.F.R. § 110.1 and 40 C.F.R. § 112.2, includes “the waters of the United States, including the territorial seas. . . .”

II. GENERAL ALLEGATIONS

20. Respondent, BFS Petroleum Products, Inc., a division of Bruceton Farm Service, Inc., also doing business as Bruceton Petroleum Co., Inc., is a West Virginia corporation with a principal place of business at 1768 Mileground, Morgantown, West Virginia, 26505.
21. Respondent has a principal place of business operating under Standard Industrial

- Classification (“SIC”) code for wholesale distribution of petroleum and petroleum products, 5172, located at 201, 302 and 410 West Myles Avenue, Pennsboro, West Virginia 26415 (“the Facility”).
22. Respondent is a person within the meaning of Section 311(a)(7) of the CWA, 33 U.S.C. § 1321(a)(7), and 40 C.F.R. § 112.2.
 23. Respondent is the owner and operator, 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, of an onshore facility as defined in Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10), and 40 C.F.R. § 112.2, consisting of aboveground storage tanks (“ASTs”) with an aggregate total capacity of 47,000 gallons (three kerosene tanks, one diesel tank, one gasoline tank, one race gas tank, and two fuel oil tanks), which are located at the Facility.
 24. Pursuant to 40 C.F.R. § 112.2, Respondent is engaged in producing, gathering, storing, processing, refining, transferring, distributing or consuming oil or oil products at the Facility.
 25. Upon information and belief, Respondent has operated the Facility since 1998.
 26. The Facility is a “non-transportation related facility” under the definition incorporated by reference at 40 C.F.R. § 112.2, set forth in Appendix A thereto and published at 36 Fed. Reg. 24,080 (Dec. 18, 1971).
 27. On March 12, 2008, the Facility discharged approximately 300 gallons of gasoline, of which approximately 150 gallons entered Bunnells Run, a tributary to Hughes River, which is a tributary to the Little Kanawha River, which is a tributary to the Ohio River, a

navigable-in-fact water. Therefore, Bunnells Run is a “navigable water,” as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and 40 C.F.R. §§ 110.1 and 112.2.

28. The Facility is located approximately 100 yards away from Bunnells Run, a navigable water of the United States.
29. 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 a navigable water of the United States or its adjoining shoreline.

III. COUNT ONE – UNPERMITTED DISCHARGE

30. The allegations set for in Paragraphs 1 through 29 are incorporated herein as if fully set forth at length.
31. Pursuant to Section 311(b)(3) of the CWA, “the discharge of oil or hazardous substances (I) into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone. . . . in such quantities as may be harmful as determined by the President under paragraph (4) of this subsection, is prohibited” 33 U.S.C. § 1321(b)(3).
32. Pursuant to Section 311(b)(4) of the CWA, the President shall by regulation determine those quantities of oil and any hazardous substances the discharge of which may be harmful to the public health or welfare or the environment of the United States, including, but not limited to fish, shellfish, wildlife, and public and private property, shorelines and beaches. 33 U.S.C. § 1321(b)(4). Pursuant to 40 C.F.R. § 110.3, the Administrator has

determined that discharges of oil that may be harmful to the public health or welfare or the environment include, but are not limited to discharges that cause a film or 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 adjoining shorelines.

40 C.F.R. § 110.3(b).

33. On March 12, 2008, Respondent discharged approximately 300 gallons of gasoline, of which 150 gallons entered Bunnells Run, a tributary to Hughes River, which is a tributary to the Little Kanawha River, which is a tributary to the Ohio River, a navigable waterway, which discharge caused a sheen or discoloration on the surface of the water in violation of 40 C.F.R. § 110.3(b). Respondent did not report the spill to the National Response Center ("NRC").
34. Respondent's discharge of oil in violation of 40 C.F.R. § 110.3(b) is subject to civil penalties of up to \$32,500.00 per day of violation or an amount up to \$1,100 per barrel of oil or unit of reportable quantity of hazardous substance discharged, pursuant to Section 311(b)(7) of the CWA, 33 U.S.C. § 1321(b)(7), and 40 C.F.R. Part 19.

IV. COUNT TWO – PLAN VIOLATION

35. The allegations set for in Paragraphs 1 through 34 are incorporated herein as if fully set forth at length.
36. Under 40 C.F.R. § 112.3, *Requirements for preparation and implementation of Spill Prevention, Control and Countermeasure Plans*, the owner or operator of an SPCC-

- regulated facility must prepare a written SPCC plan in accordance with 40 C.F.R. § 112.7 and any other applicable section of 40 C.F.R. Part 112.
37. On April 10, 2008, EPA inspected Respondent's Facility following the report of a spill of gasoline on March 12, 2008, which was determined following a report by the Wildlife Resource Section of the West Virginia Division of Natural Resources. At the time of the inspection, Respondent failed to provide EPA with an adequate SPCC plan as required by 40 C.F.R. § 112.3. A second inspection was conducted by EPA on May 7, 2009.
38. Pursuant to 40 C.F.R. § 112.3(b), owners and operators of onshore and offshore facilities becoming operational after the effective date of the Oil Pollution Prevention Regulations (January 10, 1974), that could reasonably be expected to discharge oil in harmful quantities into or upon the navigable waters of the United States or adjoining shorelines, are required to prepare SPCC Plans no later than six (6) months after the facilities become operational. Respondent's Facility began operations in 1998. Although Respondent subsequently submitted an SPCC plan to EPA by letter dated April 21, 2008, the plan was undated, inadequate and incomplete.
39. In accordance with 40 C.F.R. § 112.3(e), the owner or operator of a facility for which an SPCC plan is required must maintain a copy of the SPCC plan onsite for review by the Agency during normal working hours. Respondent's SPCC Plan was not available onsite during the inspection on April 10, 2008.
40. In addition, 40 C.F.R. § 112.3(d), requires that the owner or operator of an SPCC-regulated facility have a Registered Professional Engineer ("PE") who is familiar with the

SPCC regulations to have examined the Facility and certify the SPCC Plan as having been prepared in accordance with good engineering practice, including consideration of applicable industry standards, and in accordance with the requirements of the SPCC regulations. Respondent's SPCC Plan was not certified by a PE.

41. 40 C.F.R. § 112.7 requires that SPCC plans be "carefully thought-out" and "prepared in accordance with good engineering practices."
42. Respondent's failure to prepare, certify and implement an SPCC plan in accordance with the Oil Pollution Prevention Regulations and good engineering practices is a violation of Section 311(b), 33 U.S.C. § 1321(b), and 40 C.F.R. §§ 112.3 and 112.7, and is subject to civil penalties which may not exceed \$11,000.00 per day for each day during which the violation continues; except that the maximum amount of any Class II civil penalty under this subparagraph shall not exceed \$157,500.00, pursuant to 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.

V. COUNT THREE – IMPLEMENTATION VIOLATIONS

43. The allegations set forth in Paragraphs 1 through 42 are incorporated herein as if fully set forth at length.

A. Failure to provide appropriate containment and/or diversionary structures or equipment to prevent discharged oil from reaching a navigable water course.

44. Under 40 C.F.R. § 112.7(c), Respondent must provide appropriate containment and/or diversionary structures or equipment so that any discharge from a primary containment

system such as a tank or pipe will not escape the containment system before cleanup occurs.

45. Respondent's containment system was insufficient as evidenced by the gasoline spill which occurred on March 12, 2008 when approximately 150 gallons of gasoline entered Brunnells River.
46. Respondent's failure to maintain a sufficient containment system is a violation of 40 C.F.R. § 112.7(c) and, therefore, Respondent is subject to civil penalties which may not exceed \$11,000.00 per day for each day during which the violation continues; except that the maximum amount of any Class II civil penalty under this subparagraph shall not exceed \$157,500.00, pursuant to 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.

B. Failure to implement requirements pertaining to the Facility Tank Car and Truck Loading/Unloading Rack, which states the Facility must ensure the containment system at the rack holds the largest tank car or truck compartment.

47. Pursuant to 40 C.F.R. § 112.7(e)(4)(ii), Respondent must, at a minimum, design and implement a containment system to hold at least the maximum capacity of any single compartment of a tank car or tank truck loaded or unloaded at the Facility.
48. At the time of the April 10, 2008 inspection, Respondent's Facility failed to have sufficient containment at the two loading/unloading racks to hold at least the maximum capacity of any single compartment of a tank truck or tank car.
49. Respondent's failure to implement requirements pertaining to rack capacity is a violation of 40 C.F.R. § 112.7(e)(4)(ii), and, therefore, Respondent is subject to civil penalties

which may not exceed \$11,000.00 per day for each day during which the violation continues; except that the maximum amount of any Class II civil penalty under this subparagraph shall not exceed \$157,500.00, pursuant to Section 311(b)(6)(B)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(ii), and 40 C.F.R. Part 1

C. Failure to provide a secondary means of containment for bulk storage containers for the entire capacity of the largest single container and sufficient freeboard to contain precipitation, and for failure to ensure that diked areas are sufficiently impervious to contain discharged oil.

50. Pursuant to 40 C.F.R. § 112.7(e)(2)(ii), Respondent shall construct all bulk storage tank installations so that Respondent can provide a secondary means of containment for the entire capacity of the largest single container and sufficient freeboard to contain precipitation. In addition, Respondent must ensure that the diked areas are sufficiently impervious to contain discharged oil.
51. EPA inspected the Facility on April 10, 2008 and again on May 7, 2009, and found the secondary containment system to be inadequate at the location of the spill, and evidence that the diked area had not been sufficiently impervious given that the Facility had a 300 gallon spill and the oil had seeped into the soil as well as a storm drain. In addition, there was inadequate secondary containment for two 15,000 gallon kerosene tanks where the dike had been breached, and no secondary containment for a 500 gallon race gas tank.
52. Respondent's failure to provide adequate secondary means of containment as well as a diked area of a sufficiently impervious nature is a violation of 40 C.F.R. § 112.7(e)(2)(ii), and, therefore, Respondent is subject to civil penalties which may not exceed \$11,000.00

per day for each day during which the violation continues; except that the maximum amount of any Class II civil penalty under this subparagraph shall not exceed \$157,500.00, pursuant to 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.

D. Failure to provide adequate security by fencing the facility and providing lighting commensurate with the type and location of the Facility.

53. Pursuant to 40 C.F.R. § 112.7(e)(9), Respondent is required to fully fence each Facility handling, processing, or storing oil, and lock and/or guard entrance gates when the Facility is not in production or is unattended. Respondent's Facility is not fenced and the lighting is inadequate.
54. Respondent's failure to provide adequate security by fencing the Facility and providing sufficient lighting commensurate with the type and location is a violation of 40 C.F.R. § 112.9(7)(e)(9). Respondent is subject to civil penalties which may not exceed \$11,000.00 per day for each day during which the violation continues; except that the maximum amount of any Class II civil penalty under this subparagraph shall not exceed \$157,500.00, pursuant to 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.

E. Failure to maintain written procedures and records of required tank and pipe inspections and tests.

55. Pursuant to 40 C.F.R. § 112.7(e)(8), Respondent must keep written procedures and a record of inspections and tests, signed by the appropriate supervisor or inspector, with the SPCC Plan, for a period of three years.

56. At the inspections on April 10, 2008, and May 7, 2009, Respondent had no written procedures or records of inspections at the Facility.
57. Respondent's failure to maintain written procedures and records is a violation of 40 C.F.R. § 112.7(e)(8), and therefore Respondent is subject to civil penalties which may not exceed \$11,000.00 per day for each day during which the violation continues; except that the maximum amount of any Class II civil penalty under this subparagraph shall not exceed \$157,500.00, pursuant to 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.

F. Failure to restrain drainage from diked storage areas by valves to prevent a discharge.

58. Pursuant to 40 C.F.R. § 112.7(e)(1), Respondent must restrain drainage from diked storage areas by valves to prevent a discharge into the treatment system, except where facility systems are designed to control such discharge.
59. At the inspection on April 10, 2008, EPA observed no dike valves.
60. Respondent's failure to restrain drainage from diked storage areas by valves to prevent a discharge is a violation of 40 C.F.R. § 112.7(e)(1), and therefore Respondent is subject to civil penalties which may not exceed \$11,000.00 per day for each day during which the violation continues; except that the maximum amount of any Class II civil penalty under this subparagraph shall not exceed \$157,500.00, pursuant to 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.

G. Failure to maintain drainage records of diked areas.

61. Pursuant to 40 C.F.R. § 112.7(e)(2)(iii)(D), Respondent must keep adequate records of drainage from diked areas into a storm drain or discharge of an effluent into an open watercourse, lake, or pond which bypasses the Facility treatment.
62. At the inspection on April 10, 2008, EPA found no records of dike drainage.
63. Respondent's failure to maintain drainage records of diked areas is a violation of 40 C.F.R. § 112.7(e)(2)(iii)(D), and therefore Respondent is subject to civil penalties which may not exceed \$11,000.00 per day for each day during which the violation continues; except that the maximum amount of any Class II civil penalty under this subparagraph shall not exceed \$157,500.00, pursuant to 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.

H. Failure to securely cap or blank flange loading/unloading connection of oil pipelines when not in service.

64. Pursuant to 40 C.F.R. § 112.7(e)(9)(iv), Respondent must securely cap or blank flange the loading/unloading connections of oil pipelines when not in service for an extended period of time.
65. At the time of the May 7, 2009 inspection, Respondent's Facility's loading and unloading connections at the loading rack were not securely capped or blank-flanged when not in service or in a standby service for an extended period of time.
66. Respondent's failure to implement the requirements of 40 C.F.R. § 112.7(e)(9)(iv) is a violation of the CWA and therefore, Respondent is subject to civil penalties which may

not exceed \$11,000.00 per day for each day during which the violation continues; except that the maximum amount of any Class II civil penalty under this subparagraph shall not exceed \$157,500.00, pursuant to 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.

VI. PROPOSED PENALTY

67. Based on the foregoing allegations, and pursuant to the authority of Section 311(b)(6)(B)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(ii), the Complainant proposes that the Regional Administrator assess administrative penalties against the Respondent in the following amounts: Count I – \$21,000 for discharging oil into navigable waters of the United States; Count II – \$40,542 for failure to prepare, certify and implement an adequate SPCC Plan; and Count III – \$38,767 for the failure to implement specific and vital requirements pertaining to the SPCC program.
68. The proposed penalty for Counts I through III, totaling \$100,309 was determined after taking into account the factors identified at Section 311(b)(8) of the CWA, 33 U.S.C. § 1321(b)(8), including: the seriousness of the violation, the economic benefit to the violator resulting from the violation; the degree of culpability involved; any other penalty for the same incident; any history of prior violations; the nature, extent, and degree of success of any efforts of the violator to minimize or mitigate the effects of the violation; the economic impact of the penalty on the violator; and any other factors as justice may require.

69. The proposed penalties may be adjusted by Complainant if Respondent establishes a bona fide issue of an inability to pay or other defenses relevant to the appropriate amount of the proposed penalties.

**VII. ANSWER TO THE ADMINISTRATIVE COMPLAINT AND
OPPORTUNITY TO REQUEST A HEARING**

70. Pursuant to Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6), and Section 22.15(c) of the Consolidated Rules, Respondent may request a hearing. The procedures for the hearing, if one is held, are set out in the Consolidated Rules.
71. If Respondent contests any material fact upon which the Complaint is based; contends that the proposed penalties are inappropriate; or contends that it is entitled to judgment as a matter of law, it shall file an original and one copy of a written answer to the Complaint (“Answer”) with the Regional Hearing Clerk and shall serve copies of its Answer on all other parties. Any Answer to the Complaint must be filed within thirty (30) days after service of this Complaint with:

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

Respondent must also provide a copy of its Answer to the attorney representing EPA in this matter at the following address:

Pamela J. Lazos

Sr. Asst. Regional Counsel (3RC20)
U.S. Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103-2029
(215) 814-2658

72. Respondent's Answer shall clearly and directly admit, deny or explain each of the factual allegations contained in the Complaint with regard to which Respondent has knowledge. Where Respondent has no knowledge of a particular factual allegation, Respondent shall so state and the allegation shall be deemed denied. Failure to admit, deny, or explain any material factual allegation contained in the Complaint constitutes an admission of the allegation. Respondent's Answer shall also state: (1) the circumstances or arguments which are alleged to constitute the grounds of defense; (2) the facts which Respondent disputes; (3) the basis for opposing any proposed relief; and (4) whether a hearing is requested.
73. If Respondent fails to submit an Answer within thirty (30) days of receipt of this Complaint, and the case is not otherwise disposed of through settlement, Respondent may be found in default. For purposes of this action, a default constitutes an admission of all facts alleged in the Complaint and a waiver of the right to a hearing to contest such factual allegations.

VIII. PUBLIC NOTICE

74. Pursuant to Section 311(b)(6)(C) of the CWA, 33 U.S.C. § 1321(b)(6)(C), in the event of

the proposed settlement of this matter, including quick resolution pursuant to Section IX below, the Complainant will provide public notice of and reasonable opportunity to comment on the proposed issuance of a Final Order assessing administrative penalties against Respondent. If a hearing is held on this matter, members of the public who submitted timely comments on this penalty proposal shall have the right under Section 311(b)(6)(C) of the CWA, 33 U.S.C. § 1321(b)(6)(C), to be heard and present evidence at the hearing.

IX. SETTLEMENT AND QUICK RESOLUTION

75. In accordance with Section 22.18(a) of the Consolidated Rules, the Respondent may resolve this proceeding at any time by either: (1) paying the full penalty requested in Paragraph 68; or (2) filing a written statement with the Regional Hearing Clerk at the address provided above agreeing to pay, and subsequently paying within sixty (60) days of Respondent's receipt of this Complaint, the full penalty requested in Paragraph 68. If Respondent pays or agrees to pay within sixty (60) days the specific penalty proposed in this Complaint within thirty (30) days of receiving this Complaint, then, pursuant to the Consolidated Rules, no Answer need be filed.
76. If Respondent wishes to resolve this proceeding by paying the penalty proposed in this Complaint instead of filing an Answer, but needs additional time to pay the penalty, pursuant to 40 C.F.R. § 22.18(a)(2), Respondent may file a written statement with the Regional Hearing Clerk within thirty (30) days after receiving this Complaint, stating that

Respondent agrees to pay the proposed penalty in accordance with 40 C.F.R. § 22.18(a)(1). Such written statement need not contain any response to, or admission of, the allegations in the Complaint. Such statement shall be filed with the Regional Hearing Clerk (3RC00), U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029, and a copy shall be provided to Pamela J. Lazos (3RC20), Sr. Asst. Regional Counsel, at the address provided in Paragraph 80, below. Within sixty (60) days of receiving the Complaint, Respondent shall pay the full amount of the proposed penalty in accordance with Paragraph 79.

77. Failure to make such payment within sixty (60) days of receipt of the Complaint may subject the Respondent to default pursuant to 40 C.F.R. § 22.17.
78. In accordance with 40 C.F.R. § 22.18(a)(3), upon receipt of payment in full, the Regional Judicial Officer or Regional Administrator shall issue a Final Order. Payment by Respondent shall constitute a waiver of Respondent's right to contest the allegations contained in this Complaint and to appeal the Final Order.
79. Payment shall be made by a cashier's or certified check, or by an electronic funds transfer (EFT). If paying by check, Respondent shall submit a cashier's or certified check, payable to "Environmental Protection Agency", and bearing the notation "**Oil Spill Liability Trust Fund - 311**". 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

BFS Petroleum Products, Inc.
Docket No. CWA-03-2009-0156

P.O. Box 979077
St. Louis, MO 63197-9000

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

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101
Attn: Natalie Pearson (314/418-4087)

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

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, Respondent shall use SWIFT address FRNYUS33.

If paying through the Department of Treasury's Online Payment system, please access www.pay.gov, enter sfo 1.1 in the search field. Open the form and complete the required fields and make a payment of \$100,309. Note that the type of payment is "civil penalty," the docket number "CWA-03-2009-0097" should be included in the "Court Order # or Bill #" field and 3 should be included as the Region number.

80. If paying by check, Respondent shall note on the penalty payment check the title and docket number of this case. 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 person:

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

Respondent must also provide a copy of its check to the attorney representing EPA in this matter at the following address:

Pamela J. Lazos
Sr. Asst. Regional Counsel (3RC20)
U.S. Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103-2029
(215) 814-2658

X. EX PARTE COMMUNICATIONS

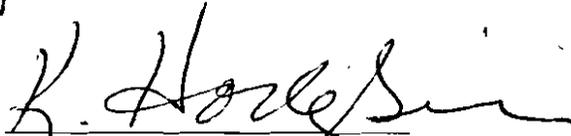
81. The following EPA offices, and the staffs thereof, are designated as the trial staff to represent EPA as a party in this case: the Region III Office of Regional Counsel; the Region III Hazardous Site Cleanup Division; the Office of the EPA Assistant Administrator for Solid Waste and Emergency Response; and the Office of the EPA Assistant Administrator for Enforcement and Compliance Assurance. Please be advised that, pursuant to Section 22.8 of the Consolidated Rules, from the date of this Complaint

until the final Agency decision in this case, the Administrator, the members of the Environmental Appeals Board, the Regional Administrator, the Presiding Officer, or any person who is likely to advise these officials on any decision in the proceeding, shall not have any ex parte communication about the merits of the proceeding with Respondent, a representative of Respondent, or any person outside EPA having an interest in the proceeding, or with any EPA staff member who performs a prosecutorial or investigative function in this proceeding or a factually-related proceeding. Any communication addressed to the Administrator, the members of the Environmental Appeals Board, the Regional Administrator, or the Presiding Officer during the pendency of the proceeding and relating to the merits thereof, by or on behalf of any party, shall be regarded as argument made in the proceeding, and shall be served upon all other parties.

XII. INFORMAL CONFERENCE

82. Respondent may request an informal conference concerning the alleged violations and the amount of the proposed penalty. The request for an informal conference does not extend the thirty (30) day period in which Respondent must submit its written Answer to preserve the right to a hearing. To request an informal conference relating to this Administrative Complaint, Respondent should contact Pamela J. Lazos, Sr. Asst. Regional Counsel, at (215) 814-2658.

Signed this 3rd day of September, 2009.



Kathryn A. Hodgkiss, Acting Director
Hazardous Site Cleanup Division

Upon information and belief, I certify this Administrative Complaint as a legally sufficient pleading:

Date: 9/9/, 2009



Pamela J. Lazos
Sr. Asst. Regional Counsel

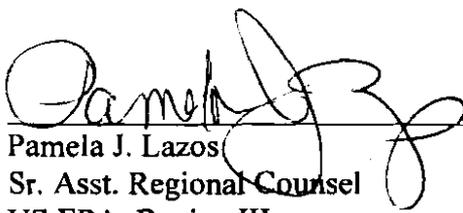
BFS Petroleum Products, Inc.
Docket No. CWA-03-2009-0156

CERTIFICATE OF SERVICE

I certify that the original Administrative Complaint was filed this day with the Regional Hearing Clerk, with copies sent to:

BFS Petroleum Products, Inc.
1768 Mileground Road
Morgantown, WV 26505

Date: 9/9/09



Pamela J. Lazos
Sr. Asst. Regional Counsel
US EPA, Region III