

<u>Schedule</u>	<u>Principal</u> <u>Amount</u>		<u>Interest</u> <u>(1%)</u>	<u>Payment</u> <u>Amount Due</u>
1 st payment within 30 days of the Interest Accrual Date	\$4,667.00	+	\$0.00	\$4,667.00
2 nd payment within 60 days of the Interest Accrual Date	\$4,667.00	+	\$30.68	\$4,697.68
3 rd payment within 90 days of the Interest Accrual Date	\$4,667.00	+	\$26.85	\$4,693.85
4 th payment within 120 days of the Interest Accrual Date	\$4,667.00	+	\$23.01	\$4,690.01
5 th payment within 150 days of the Interest Accrual Date	\$4,667.00	+	\$19.18	\$4,686.18
6 th payment within 180 days of the Interest Accrual Date	\$4,667.00	+	\$15.34	\$4,682.34
7 th payment within 210 days of the Interest Accrual Date	\$4,667.00	+	\$11.51	\$4,678.51
8 th payment within 240 days of the Interest Accrual Date	\$4,667.00	+	\$7.67	4,674.67
9 th payment within 270 days of the Interest Accrual Date	\$4,664.00	+	\$3.83	\$4,667.83
TOTAL:	\$42,000.00	+	\$138.07	\$42,138.07

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

01/21/21
10:00 AM

In The Matter of: : **CONSENT AGREEMENT**
: :
Plotts Oil, Inc. : **PROCEEDING UNDER SECTION 311**
462 Main Street : **OF THE CLEAN WATER ACT, AS**
Royersford, Pennsylvania 19468, : **AMENDED, TO ASSESS A CLASS II**
: **CIVIL PENALTY**
Respondent. : :
3361 Schuylkill Road : **Docket No. CWA-03-2011-0110**
Spring City, Pennsylvania 19475, : :
Facility. : :
:

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 Section 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, "CA/FO", as prescribed by the Part 22 Rules pursuant to 40 C.F.R. § 22.13(b), and having consented to the entry of this CA/FO, agree to comply with the terms of this CA/FO.
3. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CA/FO.
4. Respondent neither admits nor denies the specific factual allegations, 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 and issuance of this CA/FO, or the enforcement of this CA/FO.

6. For the 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.

Findings of Fact and Conclusions of Law

8. Section 311(j)(1)(C) of the CWA, 33 U.S.C. § 1321(j)(1)(C), provides that the President shall issue regulations “establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil ... from onshore facilities ... and to contain such discharges”
9. Section 311(j)(5)(A) of the Act, 33 U.S.C. §1321(j)(5)(A), provides that the President shall issue regulations requiring each owner or operator of certain facilities to “submit to the President a plan for responding, to the maximum extent practicable, to a worst case discharge, and to a substantial threat of such a discharge, of oil or a hazardous substance.”
10. Initially by Executive Order 11548 (July 20, 1970), 35 Fed. Reg. 11677 (July 22, 1970), and most recently by Section 2(b)(1) and 2(d)(1) of Executive Order 12777 (October 18, 1991), 56 Fed. Reg. 54757 (October 22, 1991), the President delegated to EPA the authority of Section 311(j)(1)(C) and (j)(5)(A) to issue the regulations referenced in the preceding Paragraphs for non-transportation-related onshore facilities.
11. EPA subsequently promulgated the Oil Pollution Prevention regulations, which are codified at 40 C.F.R. Part 112 Subparts A, B, and C, pursuant to the delegated statutory authorities referred to above, and pursuant to its authorities under the CWA, which established certain procedures, methods and requirements upon each owner and operator of a non-transportation-related onshore facility if such facility, due to its location, could reasonably be expected to discharge oil into or upon the navigable waters of the United States and their adjoining shorelines in such quantity as EPA has determined in 40 C.F.R. § 110.3 may be harmful to the public health or welfare or the environment of the United States (“harmful quantity”).
12. Respondent is a corporation organized under the laws of Pennsylvania, with a place of business located at 462 Main Street in Royersford, Pennsylvania. 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.
13. Respondent is engaged in storing, transferring, or distributing oil or oil products located at an onshore bulk oil storage facility located at 3361 Schuylkill Road in Spring City, Pennsylvania (the “Facility”).

14. The Facility is located approximately 1000 feet from an unnamed pond on the Spring Hollow Golf Course, which drains into Spring Creek, a tributary of the Schuylkill River.
15. The Schuylkill River is a navigable water of the United States, and therefore, Spring Creek 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.
16. The Facility has a total oil storage capacity of greater than or equal to 1,691,000 gallons.
17. Respondent is the owner 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.
18. 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.
19. The Facility is a non-transportation-related facility within the meaning of 40 C.F.R. § 112.2 and Appendix A to 40 C.F.R. Part 112, as incorporated by reference within 40 C.F.R. § 112.2.
20. The Facility is, therefore, a non-transportation-related onshore facility which, due to its location, could reasonably be expected to discharge oil to a navigable water of the United States or its adjoining shorelines in a harmful quantity.
21. Due to the Facility's oil storage capacity of greater than or equal to 1 million gallons, and it is located less than 1,000 feet from the unnamed Spring Hollow Golf Course pond, which drains into Spring Creek, and less than 2,500 feet from the Schuylkill River, the Facility 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 because a discharge from the Facility could cause injury to fish and other wildlife and sensitive environments, within the meaning of Section 311(j)(5)(C)(iv) of the CWA, 33 U.S.C. § 1321(j)(5)(C)(iv), and 40 C.F.R. § 112.20(f)(1)(ii)(B).
22. Respondent has owned and operated the Facility since at least the year 1998.
23. Pursuant to Section 311(j)(5)(D) of the CWA, 33 U.S.C. § 1321(j)(5)(D), Respondent, as the owner and operator of the Facility, is subject to the response requirements of 40 C.F.R. Part 112, Subpart D, including the requirement to prepare and implement a facility response plan meeting the requirements of 40 C.F.R. Part 112, Subpart D.
24. EPA conducted a compliance inspection at the Facility on September 3, 2008 ("the Inspection").

25. At the time of the Inspection, the Facility had a facility response plan dated December 19, 2005, which required a drills/exercises program to be implemented at the Facility.

COUNT I

(Failure to Conduct Required Drills/Exercises Under Facility Response Plan)

26. Pursuant to 40 C.F.R. § 112.21(a), the owner or operator of any facility required to prepare a facility response plan under § 112.20 must develop and implement a facility response training program and a drill/exercise program that satisfy the requirements of 40 C.F.R. § 112.21(a).

27. EPA determined, based on discussions with Facility personnel during and after the Inspection and its review of documentation provided by Respondent, that Respondent had not adequately implemented a drills/exercises program at the Facility in accordance with its facility response plan until November 30, 2008, and Respondent therefore violated the requirements of 40 C.F.R. § 112.21(a).

Penalty

28. In settlement of Complainant's claims for civil penalties for the violation alleged in this Consent Agreement, Respondent agrees to pay a civil penalty of \$42,138.07, consisting of \$42,000.00 in principal and \$138.07 in interest. The principal of the civil penalty amount shall become due and payable immediately upon Respondent's receipt of a true and correct copy of this CA/FO. Respondent agrees to pay the above civil penalty in full by remitting installment payments in accordance with Paragraph 30, below.

29. The proposed 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 seriousness of the violation; the nature, extent, and degree of success of the Respondent's mitigation efforts; the ability of the Respondent to pay the penalty; and other matters as justice may require.

Payment Terms

30. Payment of the civil penalty assessed herein, which includes any accrued interest, shall be made in the manner and over the time period specified below:

<u>Schedule</u>	<u>Principal Amount</u>		<u>Interest (1%)</u>	<u>Payment Amount Due</u>
1 st payment within 30 days of the Interest Accrual Date	\$4,667.00	+	\$0.00	\$4,667.00
2 nd payment within 60 days of the Interest Accrual Date	\$4,667.00	+	\$30.68	\$4,697.68
3 rd payment within 90 days of the Interest Accrual Date	\$4,667.00	+	\$26.85	\$4,693.85
4 th payment within 120 days of the Interest Accrual Date	\$4,667.00	+	\$23.01	\$4,690.01
5 th payment within 150 days of the Interest Accrual Date	\$4,667.00	+	\$19.18	\$4,686.18
6 th payment within 180 days of the Interest Accrual Date	\$4,667.00	+	\$15.34	\$4,682.34
7 th payment within 210 days of the Interest Accrual Date	\$4,667.00	+	\$11.51	\$4,678.51
8 th payment within 240 days of the Interest Accrual Date	\$4,667.00	+	\$7.67	4,674.67
9 th payment within 270 days of the Interest Accrual Date	\$4,664.00	+	\$3.83	\$4,667.83
TOTAL:	\$42,000.00	+	\$138.07	\$42,138.07

31. Payment shall be made by a cashier's or certified check, or by an electronic funds transfer ("EFT").

- 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-03-2011-0110) 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: Natalie Pearson (314/418-4087)
- 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," 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-03-2011-0110" should be included in the "Court Order # or Bill #" field and "3" should be included as the Region number.

32. 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 CA/FO shall result in the

assessment of late payment charges including additional interest, penalties, and/or administrative costs of handling delinquent debts.

33. Interest on any civil penalty assessed in a CA/FO begins to accrue on the date that a copy of such CA/FO is mailed or hand-delivered to the Respondent ("Interest Accrual Date"). EPA does 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). Accordingly, interest payments on each outstanding installment of the civil penalty assessed herein are set forth in Paragraph 30 of this CA/FO.
34. 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.
35. A penalty charge of six percent per year will be assessed monthly on any portion of an installment payment which 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).
36. In order to avoid the assessment of administrative costs for overdue debts, as described above, Respondent must remit installment payments for the civil penalty and accrued interest in accordance with the payment schedule set forth above. In order to avoid the assessment of late payment penalty charges, as described above, Respondent must remit all installment payments not later than 90 days after the date each such payment is due.
37. 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
Regional Hearing Clerk (3RC00)
U.S. Environmental Protection
Agency, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

Cynthia T. Weiss (3RC42)
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency,
Region III
1650 Arch Street
Philadelphia, PA 19103-2029

38. Failure by Respondent to pay the penalty assessed by the Final Order in full by the due date set forth herein 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.

Certification of Compliance

39. Within thirty (30) days of the Effective Date, Respondent shall submit to Cynthia T. Weiss, Senior Assistant Regional Counsel (at the address listed in Paragraph 37), a Certification of Compliance stating that it is in compliance with the statutory requirements for each violation alleged in this Consent Agreement. The Certification of Compliance must include the following language:

Except as provided below, I certify that the information contained in or accompanying this Certification of Compliance is true, accurate and complete. As to (the/those) portion(s) of this Certification of Compliance, for which I cannot personally verify (its/their) accuracy, I certify under the penalty of law that this Certification of Compliance and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Signature: _____
Name (print): _____
Title: _____

General Provisions

40. 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.
41. The provisions of the Final Order, if issued, shall be binding upon Respondent and Respondent's successors or assigns.
42. 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 liability for federal civil penalties for the violations and facts alleged in this Consent Agreement.

43. As used in this Consent Agreement, the term "Effective Date" shall mean the date on which the Final Order is filed with the Regional Hearing Clerk.
44. Pursuant to Section 311(b)(6)(C) of the CWA, 33 U.S.C. § 1321(b)(6)(C), the Complainant has provided public notice of and reasonable opportunity to comment on the proposed issuance of an administrative penalty against the Respondent. The period for public comment has expired.

For the Respondent,
Plotts Oil, Inc.

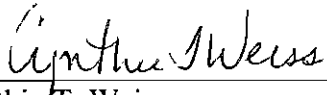
Date: March 9 2011

By: William Yeoman
Name: William Yeoman
Title: President

For the Complainant:

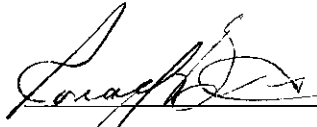
U.S. Environmental Protection Agency
Region III

Date: 3/18/11

By: 
Cynthia T. Weiss
Senior Assistant Regional Counsel

After reviewing the foregoing Consent Agreement and other pertinent information, Hazardous Site Cleanup Division, EPA Region III, recommends that the Regional Administrator or the Regional Judicial Officer issue the Final Order attached hereto.

Date: 4/13/11

By: 
Ronald J. Borsellino, Director
Hazardous Site Cleanup Division
EPA Region III

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

In The Matter of: : **FINAL ORDER**
: :
: :
Plotts Oil, Inc. : **PROCEEDING UNDER SECTION 311**
462 Main Street : **OF THE CLEAN WATER ACT, AS**
Royersford, Pennsylvania 19468, : **AMENDED, TO ASSESS A CLASS II**
: **CIVIL PENALTY**
Respondent. : :
: :
3361 Schuylkill Road : **Docket No. CWA-03-2011-0110**
Spring City, Pennsylvania 19475, : :
: :
Facility. : :
:

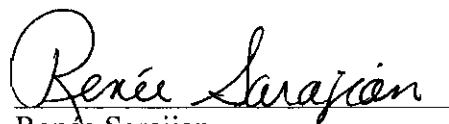
FINAL ORDER

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 comply with the terms of the foregoing Consent Agreement.

Date: 5/26/11



Renee Sarajian
Regional Judicial Officer/Presiding Officer

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

MAY 27 11:21 AM
EPA REGION III
PHILADELPHIA, PA

In The Matter of: : **CERTIFICATE OF SERVICE**
: :
: :
Plotts Oil, Inc. : **PROCEEDING UNDER SECTION 311**
462 Main Street : **OF THE CLEAN WATER ACT, AS**
Royersford, Pennsylvania 19468, : **AMENDED, TO ASSESS A CLASS II**
: **CIVIL PENALTY**
Respondent. : :
: :
3361 Schuylkill Road : **Docket No. CWA-03-2011-0110**
Spring City, Pennsylvania 19475, : :
: :
Facility. : :
:

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the date provided below, I hand-delivered and filed the original of Consent Agreement and Final Order, along with enclosures and/or attachments, for the above-referenced matter, with the Regional Hearing Clerk, EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029, and that a true and correct copy of the Consent Agreement and Final Order, along with its enclosures and/or attachments, was sent:

Via certified mail, return receipt requested, to:

Seth v.d.H. Cooley
Duane Morris LLP
30 S. 17th Street
Philadelphia, PA 19103

MAY 27 2011

Date



Cynthia T. Weiss (3RC42)
Senior Assistant Regional Counsel