

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
Region 2

U.S. ENVIRONMENTAL  
PROTECTION AGENCY REGION 2  
MAY 20 PM 2:43  
REGIONAL HEARING  
MERRILL

**IN THE MATTER OF:**

**Leroux Oil Co.  
3546 Chateaugay Street  
Fort Covington, New York 12937**

**Respondent.**

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

**CWA SECTION 311  
CONSENT AGREEMENT  
AND  
FINAL ORDER**

**DOCKET NO. CWA-02-2009-3810**

**CONSENT AGREEMENT AND ORDER**

Complainant, the United States Environmental Protection Agency ("EPA"), having issued the Complaint herein on September 30, 2009 against Respondent Leroux Oil Co. ("Respondent"), and

Complainant and Respondent having agreed that settlement of this matter is in the public interest, and that entry of this Consent Agreement and Final Order without further litigation is the most appropriate means of resolving this matter;

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

**I. PRELIMINARY STATEMENT**

1. Section 311(j)(1)(C) of the Clean Water Act (the "Act"), 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 . . . ."
2. The Respondent is a person within the meaning of Section 311(a)(7) of the Act, 33 U.S.C. §1321(a)(7) and 40 CFR §112.2.

### III. Penalty

13. No later than forty-five (45) calendar days after the date of signature on the Final Order (at the end of this document), Respondent shall pay the penalty of THIRTEEN THOUSAND FIVE HUNDRED (\$13,500.00) DOLLARS by cashier's or certified check, payable to the "Treasurer of the United States of America", identified with a notation of the name and docket number of this case, set forth in the caption on the first page of this document. This check shall be mailed to:

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

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

Eric Mosher, Chief  
Emergency and Remedial Response Division  
U.S. EPA, Region 2  
290 Broadway  
New York, NY 10007

and

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

Payment must be received at the above address no later than forty-five (45) calendar days after the date of signature of the Final Order (at the end of this document). The date by which payment must be received shall hereafter be referred to as the "due date".

- a. failure to pay the penalty in full according to the above provisions will result in a referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection;
- b. further, if the payment is not received on or before the due date, interest will be assessed at the annual rate established by the Secretary of Treasury pursuant to the Debt Collection Act, 21 U.S.C. § 2277.

following the due date in which the balance remains unpaid. A 6% per annum penalty also will be applied on any principal amount not paid within 90 days of the due date;

- c. In addition, pursuant to Section 309(g)(9) of the Clean Water Act, 33 U.S.C. § 1319(g)(9), if payment is not received by the due date, a quarterly nonpayment penalty will be imposed for each calendar quarter during which such nonpayment persists. The quarterly nonpayment penalty is 20% of the aggregate amount of penalties and quarterly nonpayment penalties which are unpaid as of the beginning of such quarter;
  - d. Respondent also may be required to pay attorneys fees and costs for collection proceedings in connection with nonpayment.
14. The penalty to be paid is a civil penalty assessed by the EPA and shall not be deductible from the Respondent's federal or state taxes.

#### **IV. General Provisions**

15. Respondent shall submit all notices and reports required by this Consent Agreement and Final Order by first class mail to:

Michael Hodanish  
USEPA  
Response & Prevention Branch  
2890 Woodbridge Ave.  
Bldg 205 MS-211  
Edison, NJ 08837

16. The Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during discussions with or to be served with and to reply to any memorandum or communication addressed to the Director or the Regional Administrator where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the accompanying Final Order.
17. Nothing in this agreement shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this agreement or of the statutes and regulations upon which this agreement is based, or for Respondent's violation of any applicable provision of law.

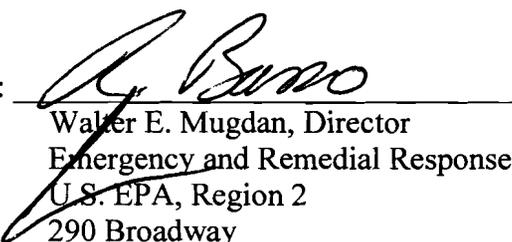
18. This Consent Agreement and Order shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit, nor shall it be construed to constitute EPA approval of the equipment or technology installed by Respondent.
19. This Consent Agreement and Final Order constitutes a settlement by EPA of all claims for civil penalties pursuant to the Clean Water Act for the violations alleged in the Complaint. Nothing in this Consent Agreement and Final Order is intended to nor shall be construed to operate in any way to resolve any criminal liability of the Respondent. Compliance with this Consent Agreement and Final Order shall not be a defense to any actions subsequently commenced pursuant to Federal laws and regulations administered by EPA, and it is the responsibility of Respondent to comply with such laws and regulations.
20. Each undersigned representative of the parties to this Consent Agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this Consent Agreement and to execute and legally bind that party to it.
21. Each party shall bear its own costs and attorneys fees in connection with the action resolved by this Consent Agreement and Order.

**RESPONDENT:**

BY:   
Phil Leroux  
Owner

DATE: 4/20/10

**COMPLAINANT:**

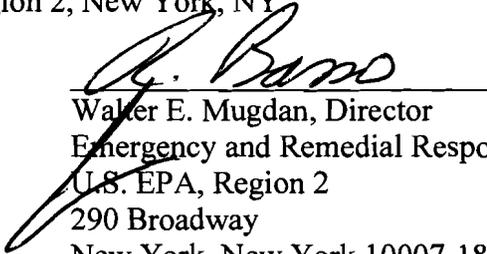
BY:   
Walter E. Mugdan, Director  
Emergency and Remedial Response Division  
U.S. EPA, Region 2  
290 Broadway  
New York, New York 10007 1966

DATE: 5/18/10

### **III. FINAL ORDER**

The Director of the Division of Enforcement and Compliance Assistant, U.S. Environmental Protection Agency Region 2, ratifies the foregoing Consent Agreement. The Agreement entered into by the parties is hereby approved, incorporated herein, and issued as an Order. The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, U.S. EPA Region 2, New York, NY

5/18/10  
Date

  
\_\_\_\_\_  
Walter E. Mugdan, Director  
Emergency and Remedial Response Division  
U.S. EPA, Region 2  
290 Broadway  
New York, New York 10007-1866

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

In The Matter of  
Leroux Oil Co.  
3546 Chateaugay Street  
Fort Covington, New York 12937

DOCKET NO. CWA-02-2009-3810

Respondent.

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

CERTIFICATE OF SERVICE

I certify that, on the date noted below, I served the foregoing fully executed Consent Agreement and Final Order, bearing the above-referenced docket number, in the following manner.

Copy to Respondent's Counsel  
by Certified Mail  
Return Receipt Requested

Kevin M. Young, Esq.  
Executive Woods,  
Five Palisades Drive  
Albany, NY 12205

Original and One Copy  
By Internal Mail (pouch):

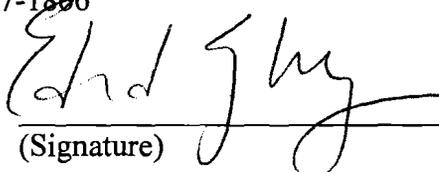
Regional Hearing Clerk  
U.S. Environmental Protection Agency  
290 Broadway, 16<sup>th</sup> floor  
New York, New York 10007-1866

Copy By Facsimile and  
Internal Mail (pouch)

Helen S. Ferrara  
Regional Judicial Officer  
U.S. Environmental Protection Agency  
290 Broadway, Room 1626  
New York, NY 10007-1866

Date:

5/19/2010

  
(Signature)