

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM

TO BE FILLED OUT BY ORIGINATING OFFICE:

(Attach a copy of the final order and transmittal letter to Defendant/Respondent)

This form was originated by: James Van Orden
Name of Contact person

9/28/10
Date

in the R3 ORC
Office

at 215-814-2693
Phone number

Non-SF Jud. Order/Consent Decree. DOJ COLLECTS

Administrative Order/Consent Agreement
FMD COLLECTS PAYMENT

SF Jud. Order/Consent Decree. FMD COLLECTS

This is an original debt

This is a modification

Name of Person and/or Company/Municipality making the payment

Allen Family Foods, Inc

The Total Dollar Amount of Receivable \$11,000.00

(If in installments, attach schedule of amounts and respective due dates)

The Case Docket Number CWA-03-2009-0208 - CWA-03-2010-0269

The Site-Specific Superfund Acct. Number NA

The Designated Regional/HQ Program Office R3 O.I. & Prevention Branch

TO BE FILLED OUT BY LOCAL FINANCIAL MANAGEMENT OFFICE:

The IFMS Accounts Receivable Control Number _____

If you have any questions call: _____

Name of Contact

Date

in the Financial Management Office, phone number: _____

JUDICIAL ORDERS: Copies of this form with an attached copy of the front page of the final judicial order should be mailed to:

1. Rosemarie Pacheco
Environmental Enforcement Section
Lands Division, Room 130044
1425 New York Avenue, N.W.
Washington, D.C. 20005

2. Originating Office (ORC)
3. Designated Program Office

ADMINISTRATIVE ORDERS: Copies of this form with an attached copy of the front page of the administrative order should be sent to:

1. Originating Office
3. Regional Hearing Clerk

2. Designated Program Office
3. Regional Counsel

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION III

RECEIVED
MAY 10 2010
EPA REGION III
HARRISBURG, PA

In The Matter of:

Allen Family Foods, Inc.
Harbeson Processing Plant
18752 Harbeson Road
Harbeson, DE

Respondent.

: **CONSENT AGREEMENT**

: **PROCEEDING UNDER SECTION 311**
: **OF THE CLEAN WATER ACT, AS**
: **AMENDED, TO ASSESS A CLASS II**
: **CIVIL PENALTY FOR SPCC**
: **VIOLATIONS**

: Docket No. CWA-03-2010-0269

CONSENT AGREEMENT

1. This Consent Agreement ("CA") 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, as amended, ("CWA"), 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 cause of action by issuance of this CA and Final Order ("FO"), which are collectively referred to as the "CA/FO", as prescribed by the Consolidated Rules of Practice 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 and conclusions of law set forth in this CA, 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 the CA/FO.
6. For the purposes of this proceeding only, Respondent hereby expressly waives its right to contest the allegations set forth in this CA and any right to appeal the accompanying FO.
7. Respondent consents to the issuance of this CA/FO and agrees to comply with its terms.
8. Respondent shall bear its own costs and attorneys fees.

Findings of Fact and Conclusions of Law

9. 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"
10. Initially by Executive Order 11548 (July 20, 1970), 35 Fed. Reg. 11677 (July 22, 1970), and most recently by Section 2(b)(1) of Executive Order 12777 (October 18, 1991), 56 Fed. Reg. 54757 (October 22, 1991), the President delegated to EPA his Section 311(j)(1)(C) authority to issue the regulations referenced in the preceding Paragraph for non-transportation-related onshore facilities.
11. EPA subsequently promulgated the Spill Prevention, Control and Countermeasure ("SPCC") regulations, which are codified at 40 C.F.R. Part 112 Subparts A, B, and C (collectively, "SPCC regulations"), 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 Delaware. 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 CFR § 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 18752 Harbeson Road, Harbeson, Delaware ("the Facility").
14. The Facility is located approximately half a mile from Beaver Dam Creek.

15. Beaver Dam Creek is a tributary of the Broadkill River, which is a navigable water of the United States, and therefore, Beaver Dam 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 approximately 37,000 gallons.
17. 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 CFR § 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 CFR § 112.2.
19. The Facility is a non-transportation-related facility within the meaning of 40 CFR § 112.2 and Appendix A to 40 C.F.R. Part 112, as incorporated by reference within 40 CFR § 112.2.
20. The Facility is 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 (“an SPCC-regulated facility”) within the meaning of 40 C.F.R. Part 112.
21. Pursuant to Section 311(j)(1)(C) of the CWA, 33 U.S.C. § 1321(j)(1)(C,) and 40 C.F.R. § 112.1 Respondent, as the owner and operator of an SPCC-regulated facility, is subject to the SPCC regulations.
22. EPA conducted a compliance inspection at the Facility on September 19, 2007 (“the Inspection”).

COUNT I

Failure to Review and Evaluate the SPCC Plan Every Five Years

23. 40 C.F.R. § 112.5(b) (2002) requires the owner or operator of any facility required to prepare a SPCC Plan are required to complete a review and evaluation of the SPCC Plan at least once every three years from the date such facility becomes subject to the SPCC regulations.
24. Discussions with Facility personnel during and subsequent to the Inspection revealed that the Facility had not completed a review and evaluation of the Respondent’s SPCC Plan for the Facility from October 1994 until February 2009, when the SPCC Plan was amended.

COUNT II

Failure to Implement Requirements Pertaining to Personnel, Training, and Discharge Prevention Procedures

25. 40 C.F.R. § 112.7(e)(10)(i) (2002) requires the owner or operator of a facility for which an SPCC Plan is required to properly instruct personnel in the operation and maintenance of equipment to prevent the discharges of oil and applicable pollution control laws, rules, and regulations.
26. 40 C.F.R. § 112.7(e)(10)(iii) (2002) requires the owner or operator of a facility for which an SPCC Plan is required to schedule and conduct spill prevention briefings for their operating personnel at intervals frequent enough to assure adequate understanding of the SPCC Plan for the facility and requires that such briefings highlight and describe known spill events or failures, malfunctioning components, and recently developed precautionary developments.
27. Discussions with Facility personnel during and subsequent to the Inspection revealed that the Facility had not completed the training required for its operating personnel as required by 40 C.F.R. § 112.7(e)(10) (2002).

Penalty

28. In settlement of Complainant's claims for civil penalties for the violations alleged in this CA, Respondent agrees to pay a civil penalty of \$11,000.00. 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 must pay the civil penalty no later than THIRTY (30) CALENDAR DAYS after the date on which this CA/FO is mailed or hand-delivered to Respondent.
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 degree of culpability involved; the respondent's history of prior violations; and the nature, extent, and degree of success of the respondent's mitigation efforts.

Payment Terms

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

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)

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, the 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 payments. Note that the type of payment is "civil penalty," the docket number "CWA-03-2010-0269" should be included in the "Court Order # or Bill #" field and "3" should be included as the Region number.

31. If paying by check, Respondent shall note on the penalty payment check the title and docket number (CWA-03-2010-0269) 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:

James Van Orden
Assistant Regional Counsel (3RC42)
U.S. Environmental Protection Agency

Region III
1650 Arch Street
Philadelphia, PA 19103-2029

32. Failure by Respondent to pay the penalty assessed by the Final Order in full by due dates 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.

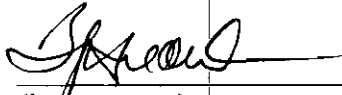
General Provisions

33. The undersigned officer of Respondent represents and warrants that he or she has the authority to bind the Respondent, and its successors or assigns.
34. The provisions of the FO shall be binding upon Respondent and Respondent's successors or assigns.
35. 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 CA.
36. As used in this CA, the term "Effective Date" shall mean the date on which the Final Order is filed with the Regional Hearing Clerk.

For the Respondent:

Allen Family Foods, Inc.

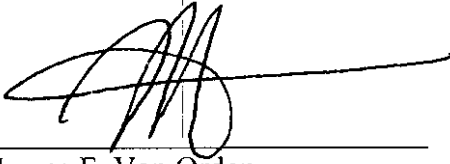
Date: 9/14/10

By: 
(insert name)
BRIAN G. HILDRETH, VP FINANCE

For the Complainant:


U.S. Environmental Protection Agency
Region III

Date: Aug. 3, 2010

By: 
James F. Van Orden
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: August 4, 2010

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

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION III

In The Matter of:	:	FINAL ORDER
	:	
	:	
Allen Family Foods, Inc.	:	
Harbeson Processing Plant	:	PROCEEDING UNDER SECTION 311
126 N. Shipley Street	:	OF THE CLEAN WATER ACT, AS
Seafod, DE 19973	:	AMENDED, TO ASSESS A CLASS II
	:	CIVIL PENALTY FOR SPCC
	:	VIOLATIONS
	:	
Respondent.	:	Docket No. CWA-03-2010-0269

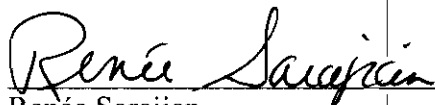
FINAL ORDER

Pursuant to Section 311(b)(6) of the CWA, 33 U.S.C. §1321(b)(6) and the delegated authority of the undersigned, 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 CFR 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: 9/27/10


Renée Sarajian
Regional Judicial Officer/Presiding Officer

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

CONSENT AGREEMENT

In The Matter of:

Allen Family Foods, Inc.
Harbeson Processing Plant
18752 Harbeson Road
Harbeson, DE

**PROCEEDING UNDER SECTION 311
OF THE CLEAN WATER ACT, AS
AMENDED, TO ASSESS A CLASS II
CIVIL PENALTY FOR SPCC
VIOLATIONS**

Respondent.

Docket No. CWA-03-2010-0269

PROOF OF SERVICE

I hereby certify that on this date I filed and served copies of the Consent Agreement and Final Order, as follows:

Original filed with:
(via hand delivery)

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

Copy to:
(via Certified Mail,
Return Receipt Requested
and Email as a PDF)

Tom Brinson
Corporate Environmental Manager
126 N. Shipley Street
Seaford, DE 19973
tom.brinson@allenfamilyfoods.com

Date:

9/27/10



James F. Van Orden
Assistant Regional Counsel
EPA, Region III

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