



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III

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COMMUNICATIONS SECTION  
CENTRAL OFFICE

<b>In the Matter of:</b>	)	<b>US EPA Docket No.:</b>
	)	<b>CWA-03-2016-0192</b>
	)	
<b>CenturyLink Communications, LLC.</b>	)	
<b>100 Century Link Drive</b>	)	
<b>Monroe, LA 71203,</b>	)	
	)	<b>Proceedings Pursuant to Sections</b>
<b>Respondent.</b>	)	<b>311(b)(3) and 311(b)(6)(B)(i) of the</b>
	)	<b>Clean Water Act, 33 U.S.C. §§ 1321(b)(3)</b>
<b>CenturyLink Communications, LLC.</b>	)	<b>and 1321(b)(6)(B)(i)</b>
<b>2400 Market Street</b>	)	
<b>Philadelphia, PA 19103,</b>	)	
	)	
<b>Facility.</b>	)	
	)	
	)	

**CONSENT AGREEMENT**

**LEGAL AUTHORITY**

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)(3) and 311(b)(6)(B)(i) of the Clean Water Act (“the Act”), as amended, 33 U.S.C. § 1321(b)(3) and 1321(b)(6)(B)(i), and under the authority provided by 40 C.F.R. § 22.13(b), 22.18(b)(2) and (3), and 22.50(a)(1) and (b). The Administrator has delegated these authorities to the Regional Administrator of EPA, Region III, who has in turn delegated them to the Director of the Region’s Hazardous Site Cleanup Division (“Complainant”).

**Factual Allegations and Conclusions of Law**

1. For the purpose of this proceeding, and with the exception of Paragraph 12, below, Respondent neither admits nor denies the following factual allegations and conclusions of law, but expressly waives its rights to contest said allegations.
2. CenturyLink Communication, LLC (“Respondent”), a subsidiary of CenturyLink, Inc., is incorporated in the state of Delaware. Respondent’s corporate headquarters are located at 100 Century Link Drive, Monroe, Louisiana, 71203.

3. Respondent is a person within the meaning of Section 311(a)(7) of the Act, 33 U.S.C. § 1321(a)(7).

4. Respondent is the owner and operator of the facility located at 2400 Market Street, Philadelphia, Pennsylvania, 19103 (“the Facility”). The Facility is an onshore facility within the meaning of Section 311(a)(10) of the Act, 33 U.S.C. § 1321(a)(10).

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

6. Section 311(a)(1) of the Act, 33 U.S.C. § 1321(a)(1), defines “oil” as “oil of any kind or in any form, including, but not limited to, petroleum [or] fuel oil....”

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

8. On January 21, 2016, approximately 4,200 gallons of diesel fuel were discharged from the Facility’s back-up emergency power generator system (“the discharge”). According to information submitted to EPA by Respondent, the discharge was caused by vandalism, sensor malfunctions, or a combination of both.

9. The discharged diesel fuel flowed through the soil and into an old, brick-lined, city storm drain, which subsequently discharged into the Schuylkill River. The Schuylkill River is a navigable water of the United States, as defined by Section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 110.1.

10. Respondent’s discharge on January 21, 2016, from its Facility caused pockets of diesel fuel along the east side tidal wall of the Schuylkill River, which were held in place by ice. Once the ice began to break up, a film or sheen formed on the surface of the Schuylkill River, and, therefore, the discharge was in a quantity that has been determined may be harmful under 40 C.F.R § 110.3, which implements Section 311(b)(3) and (b)(4) of the Act, 33 U.S.C. § 1321(b)(3) and (b)(4).

11. The discharge on January 21, 2016 from Respondent’s Facility into or upon the Schuylkill River in a quantity that has been determined may be harmful under 40 C.F.R. § 110.3 violated Section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3).

**Waiver of Rights**

For the purpose of this proceeding, Respondent:

12. Admits the jurisdictional allegations in this Consent Agreement and agrees not to contest EPA’s jurisdiction with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, and the enforcement of this Consent Agreement and the accompanying Final Order.

13. Waives the right to a hearing under Section 311(b)(6)(B)(i) of the Act, 33 U.S.C. § 1321(b)(6)(B)(i), and to appeal any Final Order in this matter under Section 311(b)(6)(G)(i) of the Act, 33 U.S.C. § 1321(b)(6)(G)(i), and consents to the issuance of a Final Order without further adjudication.

**Penalty**

14. Section 311(b)(6) of the Act, as amended, 33 U.S.C. §1321(b)(6), authorizes EPA to assess administrative penalties for violations of Section 311(b)(3) of the Act. Complainant proposes, and Respondent consents to, the assessment of a civil penalty of \$7,879.00. The civil penalty is based upon Complainant’s consideration of a number of factors including the penalty criteria set forth in Section 311(b)(8) of the Act, 33 U.S.C. § 1321(b)(8), and has been calculated in accordance with Section 311(b)(6)(B)(i) of the Act, 33 U.S.C. § 1321(b)(6)(B)(i), as amended by the Debt Collection Improvement Act of 1996, as implemented by Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. Part 19, and with EPA’s *Civil Penalty Policy For Section 311(b)(3) and Section 311(j) of the Clean Water Act*, dated August 1998.

**Payment Terms**

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

15. Within thirty (30) days of the effective date of the Final Order, Respondent shall pay the amount of \$7,879.00 by means of a cashier’s or certified check, or by 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  
Contact: Heather Russell, (513) 487-2044

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

U.S. Environmental Protection Agency  
Government Lockbox 979077  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, MO 63101  
Attn: Heather Russell, (513) 487-2044

If paying by EFT, Respondent shall transfer the payment to:

Federal Reserve Bank of New York  
ABA 021030004  
Account 68010727  
Swift Address FRNYUS33  
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).

If paying through the Department of Treasury's Online Payment system, please access [www.pay.gov](http://www.pay.gov), and enter sfo 1.1 in the search field. Open the form and complete the required fields to make the payment. Note that the type of payment is "civil penalty," the docket number "CWA-03-2016-0192" should be included in the "Court Order # or Bill #" field, and 3 should be included as the Region number.

16. 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 or EFT confirmation to the attorney representing EPA in this matter at the following address:

Suzanne Parent (3RC40)  
Associate Regional Counsel  
U.S. Environmental Protection Agency, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

parent.suzanne@epa.gov

17. Failure by Respondent to pay the penalty assessed by the Final Order in full by its due date may subject Respondent to a civil action to collect the assessed penalty, plus interest, attorney's fees, costs and an additional quarterly nonpayment penalty pursuant to Section 311(b)(6)(H) of the Act, 33 U.S.C. § 1321(b)(6)(H), and 40 C.F.R. § 13.11. In any such collection action, the validity, amount, and appropriateness of the penalty agreed to herein shall not be subject to review.

**General Provisions**

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

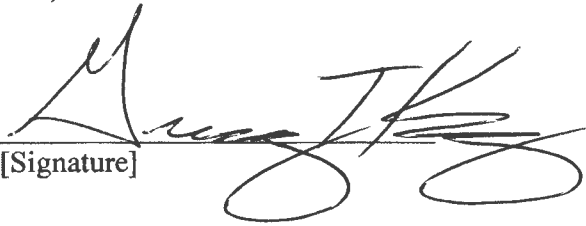
19. This Consent Agreement and the accompanying Final Order resolve only the civil penalty claims for the specific violation alleged in this Consent Agreement. The Final Order does not constitute a waiver, suspension or modification of the requirements of Section 311 of the Act, 33 U.S.C. § 1321, or any regulations promulgated thereunder, and does not affect the right of the Administrator or the United States to pursue any applicable injunctive or other equitable relief or criminal sanctions for any violation of law. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. Nor shall anything in this Consent Agreement and Final Order be construed to limit the United States authority to pursue criminal sanctions. In addition this settlement is subject to all limitations on the scope of resolution and the reservation of rights set forth in 40 C.F.R. § 22.18(c). Further, Complainant reserves any rights and remedies available to it under the Act, the regulations promulgated thereunder, and any other federal laws or regulations for which Complainant has jurisdiction, to enforce the provisions of this Consent Agreement and accompanying Final Order following its filing with the Regional Hearing Clerk.

20. The undersigned officer of Respondent represents and warrants that he or she has the authority to bind CenturyLink Communications, LLC, and its successors or assigns to this Consent Agreement.

21. Each party to this action shall bear its own costs and attorney's fees.

CENTURYLINK COMMUNICATIONS, LLC

Date: 8/11/16

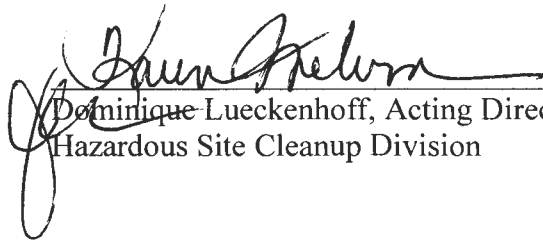
  
[Signature]

Greg Kunz  
Name (print or type)

Director - Core Network E + C  
Title

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: **AUG 18 2016**

  
\_\_\_\_\_  
Dominique Lueckenhoff, Acting Director  
Hazardous Site Cleanup Division

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III

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REGIONAL HEARING OFFICE  
EPA REGION III, PHILA, PA

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<b>Monroe, LA 71203,</b>	)	
	)	
<b>Respondent.</b>	)	<b>Proceedings Pursuant to Sections</b>
	)	<b>311(b)(3) and 311(b)(6)(B)(i) of the</b>
	)	<b>Clean Water Act, 33 U.S.C. §§ 1321(b)(3)</b>
<b>CenturyLink Communications, LLC</b>	)	<b>and 1321(b)(6)(B)(i)</b>
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<b>Philadelphia, PA 19103,</b>	)	
	)	
<b>Facility.</b>	)	
	)	
	)	

**FINAL ORDER**

Complainant, the Acting Director of the Hazardous Site Cleanup Division, U.S. Environmental Protection Agency, Region III, and Respondent, CenturyLink Communications, LLC, have executed a document entitled "Consent Agreement," which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22 (with specific reference to Section 22.13(b), 22.18(b)(2) and (3), and 22.50(a)(1) and (b)). The terms of the foregoing Consent Agreement are hereby accepted by the undersigned and incorporated by reference into this Final Order as if fully set forth at length herein.

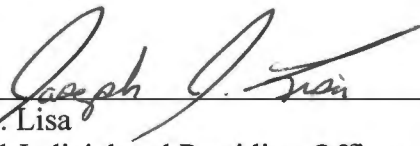
Based upon the representations of the parties in the attached Consent Agreement, the penalty agreed to therein is based upon consideration of, *inter alia*, EPA's *Civil Penalty Policy for Section 311(b)(3) and Section 311(j) of the Clean Water Act* (August 1998) and the statutory factors set forth in Section 311(b)(8) of the Clean Water Act, 33 U.S.C. § 1321(b)(8).

**NOW, THEREFORE, PURSUANT TO** Section 311(b)(6)(B)(i) of the Clean Water Act, 33 U.S.C. § 1321(b)(6)(B)(i), and the Consolidated Rules of Practice, **IT IS HEREBY ORDERED** that Respondent pay a penalty of **SEVEN THOUSAND EIGHT HUNDRED AND SEVENTY-NINE DOLLARS (\$7,879.00)**, plus any applicable interest, as specified in the Consent Agreement, and comply with the terms and conditions of the Consent Agreement.



The effective date of the attached Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

Aug 23, 2016  
Date

  
\_\_\_\_\_  
Joseph J. Lisa  
Regional Judicial and Presiding Officer  
U.S. EPA Region III

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

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	)	
<b>Facility.</b>	)	
	)	
	)	
	)	


**CERTIFICATE OF SERVICE**

I hereby certify that the original and one copy of the foregoing Consent Agreement and Final Order ("CAFO") in the above-captioned matter have been filed with the EPA Region III Regional Hearing Clerk and that a copy of the CAFO was delivered by hand to:

Nathan J. Andrisani, Esq.  
Morgan, Lewis & Bockius LLP  
1701 Market Street  
Philadelphia, PA 19103-2921

I further certify that I have sent a copy of the CAFO by electronic pdf to Respondent's counsel, Nathan J. Andrisani, Esq., at [nathan.andrisani@morganlewis.com](mailto:nathan.andrisani@morganlewis.com) on this day.

8/23/16  
Date

  
Suzanne M. Parent  
Associate Regional Counsel  
U.S. Environmental Protection Agency, Region III