

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF)	CWA SECTION 311 CLASS I
)	CONSENT AGREEMENT AND
Wayne Supply Company)	FINAL ORDER
195 Lisle Industrial Blvd.)	UNDER 40 C.F.R. § 22.13(b)
Lexington, Kentucky 40511-2062)	
)	
Respondent.)	Docket No.: CWA-04-2009-5137(b)
_____)	

RECEIVED
EPA REGION 4
2009 MAY -6 AM 11:53
HEARING ROOM

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)(i) of the Clean Water Act ("Act"), 33 U.S.C. § 1321(b)(6)(B)(i), as amended by the Oil Pollution Act of 1990, and under the authority provided by 40 C.F.R. §§ 22.13(b) and 22.18(b)(2). The Administrator has delegated these authorities to the Regional Administrator of EPA, Region 4, who has in turn delegated these authorities through the Director, RCRA Division, to the Chief, RCRA and OPA Enforcement and Compliance Branch, RCRA Division ("Complainant").

CONSENT AGREEMENT

Stipulations

The parties, in their own capacity or by their attorneys or other authorized representatives, hereby stipulate:

1. Respondent, Wayne Supply Company, is a corporation formed under the laws of the Commonwealth of Kentucky and doing business in the Commonwealth of Kentucky. The Respondent is a person within the meaning of Sections 311(a)(7) and 502(5) of the Act, 33 U.S.C. §§ 1321(a)(7) and 1362(5), and 40 C.F.R. § 110.1.

2. The Respondent was and is the “owner” and “operator” as those terms are defined in Section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6), and 40 C.F.R. § 110.1 of a distributorship of earthmoving equipment and work tools. At its Lexington facility located at 195 Lisle Industrial Blvd., Lexington, Kentucky, (“the Facility”), it had above ground oil storage tanks.

3. Based upon information submitted to EPA by Respondent under penalty of potential criminal action as provided in Section 309 of the CWA 33 U.S.C. § 1319, the following occurred at Respondent’s Facility:

- At some period of time between approximately 6:00 p.m. during the night of May 25, 2008, and 1:00 a.m. of May 26, 2008 (the “relevant time”), a person(s) unknown to Respondent entered onto the Facility, broke off a coupling on an oil storage tank and escaped from the property with an unknown quantity of oil. The remaining oil about the level of the coupling drained out of the tank, onto Respondent’s parking area, and hence to an unnamed tributary of Town Branch.
- Respondent demonstrated to EPA that the entry onto Respondent’s property occurred despite security fencing being in place and having the area where the storage tanks were located well-lit. In addition, Respondent was able to show that the entry occurred while there were employees in another area of the Facility.

4. 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. Town Branch and its tributaries are “navigable waters” as defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 110.1 and thereby are subject to the jurisdiction of Section 311 of the Act.

6. Section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3), prohibits the discharge of oil 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.

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 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 (1) violate applicable water quality standards or (2) 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. Respondent admits the jurisdictional statements contained herein.

Allegations

9. Complainant alleges, and Respondent neither admits nor denies, that:

10. On or about May 25, 2008, Respondent discharged an unknown quantity of oil, the maximum being approximately 17 barrels of oil, as defined in Section 311(a)(1) of the Act, 33 U.S.C. § 1321(a)(1), and 40 C.F.R. § 110.1, from its Facility into or upon an unnamed tributary to Town Branch and/or its adjoining shorelines and hence to Town Branch and/or its adjoining shorelines.

11. Respondent's May 25, 2008, discharge of oil from its Facility caused a sheen upon or discoloration of the surface of the unnamed tributary to Town Branch and/or its adjoining shorelines and Town Branch and/or its adjoining shorelines, and, therefore, was in a quantity that has been determined may be harmful under 40 C.F.R § 110.3, in violation of Section 311(b)(3) of the Act.

Waiver of Rights

12. Respondent waives the right to contest the allegations contained herein, to a hearing under Section 311(b)(6)(B)(i) of the Act, 33 U.S.C. § 1321(b)(6)(B)(i), 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.

13. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during any discussions with, or to be served with and reply to, any memorandum or communication addressed to EPA officials where the purpose of such discussion, memorandum or communication is to persuade such official to accept and issue this Consent Agreement or the Final Order.

Penalty

14. The Complainant proposes, and Respondent consents to, the assessment of a civil penalty of \$2,982.00.

Payment Terms

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

16. No later than 30 days after the effective date of the Final Order, the Respondent shall pay the amount of \$2,982.00 by means of a cashier's or certified check, or by on-line payment or by wire transfer. If paying by check, the Respondent shall submit a cashier's or certified check, payable to "Environmental Protection Agency," and bearing the notation "OSLTF – 311."

If the Respondent sends payment by the U.S. Postal Service, the payment shall be sent to:

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

If the Respondent sends payment by an overnight commercial delivery service such as DHL, FedEx or UPS, the payment shall be sent to:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
314-418-1028

Respondent may also elect the On Line Payment Option, available through the Department of Treasury. This payment option can be accessed at www.pay.gov. Enter sfo 1.1 in the search field and then open form and complete required fields.

If the Respondent sends payment by wire transfer, the wire transfer should be directed to the Federal Reserve Bank of New York as follows:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency."

17. If paying by check, the Respondent shall note on the penalty payment check the title and docket number of this case. The Respondent shall submit a copy of the check or, for other type payments, a confirmation copy of such payment, to:

Patricia Bullock
Regional Hearing Clerk
U.S. EPA- Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, GA 30303-8960

Doug McCurry, Chief
North Enforcement and Compliance Section
RCRA and OPA Enforcement and Compliance Branch
RCRA Division
U.S. EPA- Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, GA 30303-8960

18. Respondent's failure 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). In any such collection action, the

validity, amount and appropriateness of the penalty agreed to herein shall not be subject to review.

General Provisions

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

20. 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. Payment of the penalty pursuant to this Consent Agreement resolves only Respondent's liability for federal civil penalties for the violations and facts stipulated to and alleged herein.

21. The undersigned representative of Respondent hereby certifies that he is fully authorized to enter into the terms and conditions of this Consent Agreement and attached Final Order and to execute and legally bind Respondent to this Consent Agreement and attached Final Order.

22. A copy of any documents that Respondent files in this action shall be sent to the following attorney who represents EPA in this matter and who is authorized to receive service for EPA in the proceeding:

Michael T. Newton,
Associate Regional Counsel
U.S. EPA – Region 4
61 Forsyth Street, SW
Atlanta, Georgia 30303-8960
404-562-9567

23. A copy of any documents that Complainant files in this action shall be sent to the following individual who represents the Respondent in this matter and who is to receive service for the Respondent in this proceeding:

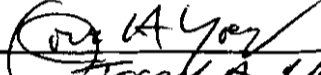
Gary Stephenson
Safety Manager
Wayne Supply Company
195 Lisle Industrial Blvd.,
Lexington, Kentucky 40511-2062
562-774-4441

Effective Date

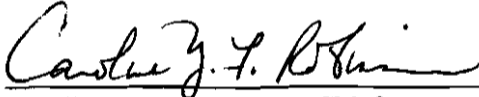
24. This Consent Agreement and attached Final Order are effective upon the filing of the Final Order with the Regional Hearing Clerk.

CONSENTED AND AGREED TO:

WHAYNE SUPPLY COMPANY

Date: April 24, 2009 Name: 
Title: USCIS

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: May 4, 2009 
Caroline Y. F. Robinson, Chief
RCRA and OPA Enforcement and Compliance Branch
RCRA Division

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF) CWA SECTION 311 CLASS I
) CONSENT AGREEMENT AND
Whayne Supply Company) FINAL ORDER
195 Lisle Industrial Blvd.) UNDER 40 C.F.R. § 22.13(b)
Lexington, Kentucky 40511-2062)
)
Respondent.) Docket No.: CWA-04-2009-5137(b)
_____)

FINAL ORDER

The foregoing Consent Agreement is hereby approved, ratified and incorporated by reference into this Final Order in accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, 40 C.F.R. Part 22. The Respondent is hereby ORDERED to comply with all of the terms of the foregoing Consent Agreement effective immediately upon filing of this Consent Agreement and Final Order with the Regional Hearing Clerk. This Order disposes of this matter pursuant to 40 C.F.R. §§ 22.18 and 22.31.

BEING AGREED, IT IS SO ORDERED this 6th day of May, 2009.

BY: Susan B. Schub
Susan B. Schub
Regional Judicial Officer

In the Matter of Whayne Supply Company
Docket Number: CWA-04-2009-5137(b)

CERTIFICATE OF SERVICE

I hereby certify that on MAY 06 2009, I filed the foregoing Consent Agreement and the attached Final Order (CA/FO), in the Matter of Whayne Supply Company, Docket Number: CWA-04-2009-5137(b), and that on MAY 06 2009, I served a true and correct copy of the CA/FO on the parties listed below in the manner indicated:

Via Certified Mail - Return Receipt Requested

Gary Stephenson
Safety Manager
Whayne Supply Company
195 Lisle Industrial Blvd.,
Lexington, Kentucky 40511-2062

Via EPA's internal mail

Michael T. Newton
Associate Regional Counsel
U.S. EPA - Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303



Patricia A. Bullock
Regional Hearing Clerk
U.S. EPA - Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303
(404) 562-9511