

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III**

IN THE MATTER OF	:	
	:	
R.R. Cortez, Inc. d/b/a	:	
R.R. Cortazzo Fuel Oil Services	:	
989 Pennsylvania Avenue	:	Proceeding Under Section 311(b)(6)(B)(i) of the
Pen Argyl, PA 18072,	:	Clean Water Act, 33 U.S.C. § 1321(b)(6)(B)(i)
	:	
Respondent,	:	
	:	Docket No. CWA-03-2016-0227
	:	
R.R. Cortazzo Fuel Oil Services	:	
989 Pennsylvania Avenue	:	
Pen Argyl, PA 18072,	:	
Facility.	:	
	:	

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CONSENT AGREEMENT

I. PRELIMINARY STATEMENT

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)(i) of the Clean Water Act (“CWA”), as amended, 33 U.S.C. § 1321(b)(6)(B)(i), 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 (“Consolidated Rules of Practice”), 40 C.F.R. Part 22. By EPA Delegation No. 2-51, the Administrator has delegated this authority to the Regional Administrator of EPA, Region III, who, in turn by EPA Region III Delegation No. 2-51, has redelegated it to the Director of the Region’s Hazardous Site Cleanup Division (“Complainant”).

2. EPA initiated this administrative proceeding for the assessment of civil penalties against R.R. Cortez, Inc. d/b/a R.R. Cortazzo Fuel Oil Services (“Respondent”), by issuance of a Complaint and Notice of Opportunity to Request a Hearing (“Complaint”) filed with the Regional Hearing Clerk on September 29, 2016. The Complaint, incorporated herein by reference, alleges that Respondent failed to prepare and implement an SPCC plan for its facility at 989 Pennsylvania Avenue, Pen Argyle, Pennsylvania 18072 (the “Facility”) as required by 40 C.F.R. § 112.3.

3. For purposes of this proceeding only, R.R. Cortez, Inc. d/b/a R.R. Cortazzo Fuel Oil Services (“Respondent”) admits to the jurisdictional allegations set forth in this Consent Agreement.
4. Respondent neither admits nor denies the specific factual allegations, findings of fact, and conclusions of law 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, enforcement, and issuance of this CAFO.
6. For 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 attorney’s fees.

II. FINDINGS OF FACT

8. EPA incorporates by reference all factual allegations contained in the Complaint.

III. CONCLUSIONS OF LAW

9. EPA incorporates by reference all legal conclusions contained in the Complaint.

IV. PENALTY

10. In settlement of Complainant’s claims for civil penalties for the violations alleged in this Consent Agreement, Respondent agrees to pay a civil penalty of \$23,000.00.
11. The 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 economic benefit to the violator, if any; the degree of culpability; any other penalty for the same incident; history of prior violations, if any; the nature, extent, and degree of success of the violator’s efforts to minimize or mitigate the effects of the discharge; the economic impact of the penalty on the violator; and any other matters as justice may require. The applicable statutory factors were applied in accordance with EPA’s *Civil Penalty Policy for Section 311(b)(3) and Section 311(j) of the Clean Water Act* (August 1998). For purposes of penalty calculation, EPA considered that the Respondent was not in compliance with the applicable regulations for a period of 51 months.

V. PAYMENT TERMS

12. In order to avoid the assessment of interest, administrative costs, and late payment penalties in connection with the civil penalty described in this CAFO, Respondent shall pay the civil penalty of **\$23,000.00**. The civil penalty amount shall become due and payable immediately upon the effective date of this CAFO.
13. Payment shall be made by a cashier's or certified check, by an electronic funds transfer ("EFT"), or by on-line payment.
 - 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-03-2016-0227) 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 overnight delivery service, the payment shall be addressed to:

U.S. Bank
Government Lockbox 979077
U.S. EPA, Fines & Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101
 - 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. All payments through the Automated Clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

US Treasury REX/Cashlink ACH Receiver
ABA = 051036706
Transaction Code 22 - checking
Account 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – Checking

Physical location of U.S. Treasury Facility:
5700 Rivertech Court
Riverdale, MD 20737
REX: 1-866-234-5681

- g. If paying through the Department of Treasury’s Online Payment system, please access “www.pay.gov,” and 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-03-2016-0227” should be included in the “Court Order # or Bill #” field, and “3” should be included as the Region number.

14. 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 (3RC00)
Regional Hearing Clerk
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

Sarah M. Gonzalez (Mail Code 2243A)
Attorney-Adviser
U.S. EPA, Headquarters
1200 Pennsylvania Avenue NW
Washington, D.C. 20004

15. 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 CAFO shall result in the assessment of late payment charges including additional interest, penalties, and/or administrative costs of handling delinquent debts.

16. Interest on the civil penalty will begin to accrue on the date that this CAFO, when fully executed, is mailed or hand-delivered to the Respondent ("Interest Accrual Date"). EPA will 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).
17. 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.
18. A penalty charge of six percent per year will be assessed monthly on any portion of a payment that 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).
19. In order to avoid the assessment of administrative costs for overdue debts, as described above, Respondent must remit payment for the civil penalty in accordance with the payment deadline set forth above.
20. Failure by Respondent to pay the penalty assessed by the Final Order in full 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.

VI. GENERAL PROVISIONS

21. The provisions of this Consent Agreement and the Final Order shall be binding upon Respondent and Respondent's successors or assigns.
22. This Consent Agreement and the accompanying Final Order resolve only the civil penalty claims for the specific violations alleged in the Complaint. 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 the accompanying 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 CWA, 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. 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.

VII. CERTIFICATION

23. Respondent certifies to Complainant by its signature hereto, to the best of Respondent's knowledge and belief, that Respondent is in compliance with all relevant provisions of 40 C.F.R § 112.3 for which violations are alleged in the Complaint.

VIII. FULL AND FINAL SATISFACTION

24. This settlement shall constitute full and final satisfaction of all civil claims for penalties which EPA may have against Respondent pursuant to Section 311(b)(6)(B)(i) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(i), for the specific violations alleged in the Complaint and herein. Compliance with this CAFO shall not be a defense to any action commenced at any time for any other violation of the Federal laws and regulations administered by EPA.

IX. PARTIES BOUND

25. This CAFO shall apply to and be binding upon the EPA, Respondent, and the officers, directors, successors, and assigns of Respondent. By his or her signature below, the person signing this Consent Agreement on behalf of Respondent is acknowledging that he or she is fully authorized by Respondent to execute this Consent Agreement and to legally bind Respondent to the terms and conditions of this CAFO.

X. EFFECTIVE DATE

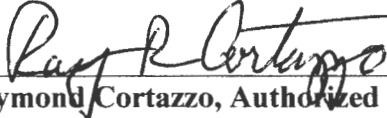
26. The effective date of this CAFO is the date on which the Final Order, signed by the Regional Administrator of EPA, Region III, or his designee, the Regional Judicial Officer, is filed with the Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.

XI. ENTIRE AGREEMENT

27. This CAFO constitutes the entire agreement and understanding of the Parties concerning settlement of the above-captioned action and there are no representations, warranties, covenants, terms, or conditions agreed upon between the Parties other than those expressed herein.

For the Respondent, R.R. CORTAZZO FUEL OIL SERVICES

Date: 11-10-16



**Raymond Cortazzo, Authorized
Representative of Respondent**

For the Complainant, U.S. Environmental Protection Agency, Region III

Date: 11/14/10

By:




**Sarah M. Gonzalez
Attorney-Adviser**

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

Date: DEC 7 2016

By:



**Karen Melvin, Director
Hazardous Site Cleanup Division
EPA Region III**

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Facility.	:	
_____	:	

FINAL ORDER

Complainant, the Director of the Hazardous Site Cleanup Division, U.S. Environmental Protection Agency, Region III, and Respondent, R.R. Cortazzo Fuel oil Services, 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 references to Section 22.18(b)(2) and (3). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.

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

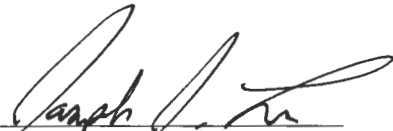
NOW, THEREFORE, PURSUANT TO Section 311(b)(6)(B)(i) of the CWA, as amended, 33 U.S.C. § 1321(b)(6)(B)(i), and the Consolidated Rules of Practice, **IT IS HEREBY ORDERED** that Respondent pay a civil penalty of **\$23,000.00**, plus any applicable interest, as

In the Matter of R.R. Cortez, Inc. d/b/a R.R. Cortazzo Fuel Oil Services CWA-03-2016-0227

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.

Date: Dec. 17, 2016



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

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

In the Matter of: :

R.R. Cortez, Inc. d/b/a:

R.R. Cortazzo Fuel Oil Services:

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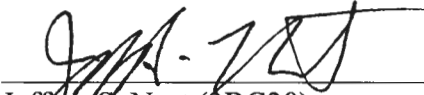
RESPONDENT. :

CERTIFICATE OF SERVICE

I hereby certify that the original and one copy of the Consent Agreement/Final Order and associated enclosures, have been hand delivered and filed with the EPA Region III Regional Hearing Clerk on the date below, and that copies of the same were sent via UPS expedited delivery to:

Ray Cortazzo
989 Pennsylvania Ave
Pen Argyl, PA 18072

12/15/16
Date


Jeffrey S. Nast (3RC30)
Sr. Asst. Regional Counsel
U.S. EPA, Region III
(215) 814-2652