

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

**In the Matter of:**

Brock Resources, Inc.  
d/b/a Brock Oil Company  
P.O. Box 70  
Dellslow, WV 26531,

**Respondent.**

Brock Oil Company  
3479 Earl L. Core Road  
Morgantown, WV 26508,

**Facility.**

:  
:  
: **U.S. EPA Docket No. CWA-03-2020-0123**  
:  
: **Proceeding under Sections 311(j) and**  
: **311(b)(6)(B)(i) of the Clean Water Act,**  
: **33 U.S.C. §§ 1321(j) and 1321(b)(6)(B)(i)**  
:  
:  
:

**CONSENT AGREEMENT**

**PRELIMINARY STATEMENT**

1. This Consent Agreement is entered into by the Director of the Enforcement & Compliance Assurance Division, U.S. Environmental Protection Agency, Region III (“Complainant”) and Brock Resources, Inc. d/b/a Brock Oil Company (“Respondent”) (collectively the “Parties”), pursuant to Section 311(b)(6)(B)(i) of the Clean Water Act (“CWA” or “Act”), as amended, 33 U.S.C. § 1321(b)(6)(B)(i), and 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. Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6), authorizes the Administrator of the U.S. Environmental Protection Agency to assess penalties and undertake other actions required by this Consent Agreement. The Administrator has delegated this authority to the Regional Administrator who, in turn, has delegated it to the Complainant. This Consent Agreement and the attached Final Order (hereinafter jointly referred to as the “Consent Agreement and Final Order”) resolve Complainant’s civil penalty claims against Respondent under the CWA for the violations alleged herein.

2. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant hereby simultaneously commences and resolves this administrative proceeding.

### **JURISDICTION**

3. The U.S. Environmental Protection Agency has jurisdiction over the above-captioned matter, as described in Paragraph 1, above.
4. The Consolidated Rules of Practice govern this administrative adjudicatory proceeding pursuant to 40 C.F.R. § 22.50(a)(1).

### **GENERAL PROVISIONS**

5. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this Consent Agreement and Final Order.
6. Except as provided in Paragraph 5, above, Respondent neither admits nor denies the specific factual allegations set forth in this Consent Agreement.
7. Respondent agrees not to contest the jurisdiction of EPA with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of this Consent Agreement and Final Order.
8. For purposes of this proceeding only, Respondent hereby expressly waives its right to contest the allegations set forth in this Consent Agreement and Final Order and waives its right to appeal the accompanying Final Order.
9. Respondent consents to the assessment of the civil penalty stated herein, to the issuance of any specified compliance order herein, and to any conditions specified herein.
10. Respondent shall bear its own costs and attorney's fees in connection with this proceeding.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

11. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant alleges and adopts the Findings of Fact and Conclusions of Law set forth immediately below.
12. Section 311(j)(1)(C) of the CWA, 33 U.S.C. § 1321(j)(1)(C), Congress required the President to promulgate regulations which would, among other things, establish procedures, methods, and other requirements for preventing discharges of oil from onshore facilities into navigable waters and for containing such discharges.

13. Section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1), defines “oil” as “oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil.”
14. By Executive Order 12777, the President delegated the authority to promulgate regulations under Section 311(j) of the CWA to EPA for non-transportation-related onshore and offshore facilities.
15. Pursuant to its delegated authority under Section 311(j) of the CWA, EPA promulgated the Oil Pollution Prevention Regulations, codified at 40 C.F.R. Part 112 (the “Regulations”).
16. Pursuant to 40 C.F.R. § 112.1(b), the Regulations apply to any owner or operator of a non-transportation-related onshore or offshore facility engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using, or consuming oil or oil products, which due to its location, could reasonably be expected to discharge oil in quantities that may be harmful into or upon the navigable waters of the United States or adjoining shorelines. Pursuant to 40 C.F.R. § 112.1(d), the Regulations do not apply to any owner or operator of a facility with an aggregate aboveground oil storage capacity of 1,320 gallons or less.
17. According to 40 C.F.R. § 112.3, an owner or operator subject to the Regulations must prepare in writing and implement a Spill Prevention, Control, and Countermeasure (“SPCC”) plan, in accordance with § 112.7 and any other applicable section.
18. For violations of Section 311(j) of the CWA, 33 U.S.C. § 1321(j), EPA has authority, under Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6), as amended by the Debt Collection Improvement Act and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, and implemented by 40 C.F.R. Part 19, Adjustment of Civil Monetary Penalties for Inflation, to file an Administrative Complaint seeking a civil penalty of \$19,277 per violation, up to a maximum of \$48,192, or seeking \$19,277 per day for each day during which a violation continues, up to a maximum of \$240,960 for violations occurring after November 2, 2015.
19. Respondent is a West Virginia corporation with an address of P.O. Box 70, Dellslow, WV, 26531.
20. 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 C.F.R. § 112.2.
21. Respondent is the owner and operator of a fuels distribution facility, located at 3479 Earl L. Core Road in Morgantown, WV 26508 (the “Facility”).
22. Respondent is, and at all times relevant to this Consent Agreement and Final Order has been, the owner and/or operator of the Facility within the meaning of Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6), and 40 C.F.R. § 112.2.

23. According to Respondent's current SPCC plan, the Facility has a total above-ground oil storage capacity of approximately 59,500 gallons.
24. The Facility is located adjacent to Deckers Creek, which is a tributary of the Monongahela River.
25. The Facility could reasonably be expected to discharge oil in harmful quantities into Deckers Creek.
26. Deckers 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.
27. 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 C.F.R. § 112.2.
28. The Facility is a non-transportation-related facility within the meaning of 40 C.F.R. § 112.2 and Appendix A of 40 C.F.R. Part 112, as incorporated by reference within 40 C.F.R. § 112.2.
29. Due to its location, the Facility could reasonably be expected to discharge oil in harmful quantities, as defined by 40 C.F.R. § 110.3, into or upon navigable waters of the United States or adjoining shorelines.
30. Pursuant to 40 C.F.R. § 112.1, Respondent, as the owner and operator of the Facility, is subject to the Regulations codified at 40 C.F.R. Part 112.
31. Pursuant to 40 C.F.R. § 112.3, Respondent was required to prepare in writing and implement an SPCC plan, in accordance with 40 C.F.R. § 112.7 and any other applicable section.
32. EPA conducted an inspection of the Facility on August 1, 2018 to evaluate Respondent's compliance with the CWA and the Regulations (the "Inspection").
33. EPA provided Respondent an Inspection report, dated September 28, 2018, detailing potential violations that EPA observed during the Inspection.
34. On November 29, 2018, Respondent provided EPA with an updated SPCC plan and an update on the status of activities it had taken to date to address the potential violations identified in the Inspection report.
35. On December 17, 2019, Respondent provided EPA an additional update on the status of activities it had taken to date to address the potential violations identified in the Inspection report. In its letter, Respondent noted that it had taken numerous actions related to the Facility and its SPCC plan, including but not limited to SPCC plan updates, training, drum identification, truck transfer area improvements, improved facility

inspections and checklists, piping repairs or improvements, and the initiation of closure of certain tanks.

### **Count I**

#### **Failure to Include Required Certification of SPCC Plan**

36. The allegations of Paragraphs 1 through 32 of this Consent Agreement are incorporated herein by reference.
37. The Regulations at 40 C.F.R. § 112.3(d) require that a licensed Professional Engineer review and certify a facility's SPCC plan in order for it to be effective to satisfy the requirements of the Regulations. The Regulations require the Professional Engineer to make five separate attestations, including attesting that procedures for required inspections and testing have been established (40 C.F.R. § 112.3(d)(iv)), and attesting that the plan is adequate for the facility (40 C.F.R. § 112.3(d)(v)).
38. Upon review of the Facility's SPCC plan during the Inspection, EPA inspectors observed that the Facility's SPCC plan did not include the attestations required pursuant to 40 C.F.R. § 112.3(d)(iv) and (v).
39. By not having a Professional Engineer properly certify the Facility's SPCC plan, Respondent violated 40 C.F.R. § 112.3(d).
40. By failing to comply with 40 C.F.R. § 112.3(d), Respondent is subject to the assessment of penalties under Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6).

### **Count II**

#### **Failure to Include Required Information in Facility Description**

41. The allegations of Paragraphs 1 through 37 of this Consent Agreement are incorporated herein by reference.
42. The Regulations at 40 C.F.R. § 112.7(a)(3) require an owner or operator to describe the facility's physical layout in the SPCC plan, including a facility diagram marking the location and contents of each fixed oil storage container and the storage area where mobile or portable containers are located. The facility diagram must also include all transfer stations and connecting pipes. Furthermore, 40 C.F.R. § 112.7(a)(3) requires, in relevant part, that the SPCC plan include the type of oil and storage capacity of containers; countermeasures for discharge discovery, response and cleanup; methods of disposal of recovered material; and a contact list for facility response coordinator, responders and facility response contractors.
43. Upon review of the Facility's SPCC plan during the Inspection, EPA inspectors observed that the Facility's SPCC plan:
  - a. failed to discuss the existence of nine drums and one tote stored in a garage and

generally failed to discuss the type of oil and storage capacity for each mobile or portable container, or an estimate of the potential number of such containers, the types of oil, and anticipated storage capacities as required by 40 C.F.R. § 112.7(a)(3)(i);

- b. failed to discuss countermeasures for discharge discovery, response, and cleanup (both the Facility's capacity and those that might be required of a contractor), as required by 40 C.F.R. § 112.7(a)(3)(iv);
  - c. failed to discuss methods of disposal of recovered materials in accordance with applicable legal requirements as required by 40 C.F.R. § 112.7(a)(3)(v);
  - d. failed to provide a contact list and phone numbers for the Facility response coordinator, National Response Center, cleanup contractors, and all appropriate federal, state, and local agencies who must be contacted in case of a discharge as required by 40 C.F.R. § 112.7(a)(3)(vi).
44. By failing to include discussions and information listed in Paragraph 40 in the Facility's SPCC plan, Respondent violated 40 C.F.R. § 112.7(a)(3).
45. By failing to comply with 40 C.F.R. § 112.7(a)(3), Respondent is subject to the assessment of penalties under Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6).

### **Count III**

#### **Failure to Provide Procedures for Proper Reporting of a Discharge**

46. The allegations of Paragraphs 1 through 42 of this Consent Agreement are incorporated herein by reference.
47. The Regulations at 40 C.F.R. § 112.7(a)(4) require an owner or operator to provide information and procedures in a facility's SPCC plan that would enable a person reporting a discharge to relate specific information, such as exact address or location and phone number of facility, date and time of the discharge, type of material discharged, estimated amounts of discharge, source and cause of the discharge, and actions taken to mitigate the effect of the discharge, among other things.
48. Upon review of the Facility's SPCC plan during the Inspection, EPA inspectors observed that the Facility's SPCC plan did not provide information and procedures that would enable a person reporting a discharge to relate the information required by 40 C.F.R. § 112.7(a)(4).
49. By not providing information and procedures that would enable a person reporting a discharge to relate the information required by the Regulations, Respondent violated 40 C.F.R. § 112.7(a)(4).

50. By failing to comply with 40 C.F.R. § 112.7(a)(4), Respondent is subject to the assessment of penalties under Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6).

#### **Count IV**

##### **Failure to Provide Containment/Diversionsary Structures or Equipment**

51. The allegations of Paragraphs 1 through 50 of this Consent Agreement are incorporated herein by reference.
52. The Regulations at 40 C.F.R. § 112.7(c) require an owner or operator to provide appropriate containment and/or diversionsary structures or equipment to prevent a discharge.
53. The Regulations at 40 C.F.R. § 112.7(a)(1) require an owner or operator to discuss the Facility's conformance with, among other things, the secondary containment/diversionsary structures or equipment requirements in 40 C.F.R. § 112.7(c) in the facility's SPCC plan.
54. During the Inspection of the Facility and upon review of the Facility's SPCC plan, EPA inspectors observed that the Facility did not have secondary containment/diversionsary structures in the truck transfer area, nor did the Facility's SPCC plan provide information concerning the Facility's conformance with the secondary containment/diversionsary structures or equipment requirements in the truck transfer area.
55. By not providing secondary containment/diversionsary structures in the truck transfer area, and by not providing information concerning the Facility's conformance with the secondary containment/diversionsary structures or equipment requirements in the Facility's SPCC plan, Respondent violated 40 C.F.R. § 112.7(c) and 112.7(a)(1), respectively.
56. By failing to comply with 40 C.F.R. § 112.7(c) and 112.7(a)(1), Respondent is subject to the assessment of penalties under Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6).

#### **Count V**

##### **Failure to Provide Information Concerning Inspections, Tests, and Other Records**

57. The allegations of Paragraphs 1 through 56 of this Consent Agreement are incorporated herein by reference.
58. The Regulations at 40 C.F.R. § 112.7(e) require an owner or operator to conduct inspections and tests in accordance with written procedures developed for the Facility. The procedures and a record of the inspections and tests, signed by the appropriate supervisor or inspector, must be kept with the SPCC plan for three years.
59. During the Inspection of the Facility, Respondent was unable to provide any records to EPA inspectors to indicate that inspections of above ground tanks at the Facility were conducted in accordance with the Facility's SPCC plan, nor was Respondent able to

provide records to indicate that the Facility inspection checklist included in the Facility's SPCC plan was being used. Additionally, EPA inspectors observed that no inspection or test records for the previous three years were kept with the Facility's SPCC plan.

60. By not providing any records to indicate that inspections of above ground tanks at the Facility were conducted in accordance with the Facility's SPCC plan, any records to indicate that the Facility inspection checklist included in the Facility's SPCC plan was being used, or any inspection or test records for the previous three years, Respondent violated 40 C.F.R. § 112.7(e).
61. By failing to comply with 40 C.F.R. § 112.7(e), Respondent is subject to the assessment of penalties under Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6).

**Count VI**  
**Failure to Provide Training to Facility Personnel**

62. The allegations of Paragraphs 1 through 61 of this Consent Agreement are incorporated herein by reference.
63. The Regulations at 40 C.F.R. § 112.7(f)(1) require owners or operators to train oil-handling personnel in the operation and maintenance of equipment to prevent discharges; discharge procedure protocols; applicable pollution control laws, rules, and regulations; general facility operations; and the contents of the facility's SPCC plan.
64. The Regulations at 40 C.F.R. § 112.7(f)(3) require owners or operators to schedule and conduct discharge prevention briefings for oil-handling personnel at least once a year to assure adequate understanding of the SPCC plan.
65. The Regulations at 40 C.F.R. § 112.7(a)(1) require owners or operators to discuss in a facility's SPCC plan the training and briefing requirements of 40 C.F.R. § 112.7(f)(1) and 112.7(f)(3).
66. During the Inspection of the Facility, EPA inspectors were informed by Facility personnel that no formal training program was in place to properly train oil-handling personnel, and that discharge prevention briefings were not conducted on a yearly basis. Additionally, upon review of the Facility's SPCC plan, EPA inspectors observed that it did not adequately discuss training and briefing requirements of 40 C.F.R. § 112.7(f)(1) and 112.7(f)(3).
67. By not providing training to oil-handling personnel in the operation and maintenance of equipment to prevent discharges; discharge procedure protocols; applicable pollution control laws, rules, and regulations; general facility operations; and the contents of the Facility's SPCC plan; by not scheduling and conducting discharge prevention briefings for oil-handling personnel at least once a year to assure adequate understanding of the Facility's SPCC plan; and by not discussing in the Facility's SPCC plan the training and

briefing requirements of 40 C.F.R. § 112.7(f)(1) and 112.7(f)(3), Respondent violated 40 C.F.R. § 112.7(f)(1), 112.7(f)(3), and 112.7(a)(1), respectively.

68. By failing to comply with 40 C.F.R. § 112.7(f)(1), 112.7(f)(3), and 112.7(a)(1), Respondent is subject to the assessment of penalties under Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6).

### **Count VII**

#### **Failure to Address Facility Tank Truck Loading/ Unloading Rack in SPCC Plan**

69. The allegations of Paragraphs 1 through 68 of this Consent Agreement are incorporated herein by reference.
70. The Regulations at 40 C.F.R. § 112.7(h)(1) require owners or operators to use a quick drainage system for tank car or tank truck loading/unloading racks where loading/unloading rack drainage does not flow into a catchment basin or treatment facility designed to handle discharges.
71. The Regulations at 40 C.F.R. § 112.7(a)(1) require owners or operators to discuss in a facility's SPCC plan the implementation of the requirements of 40 C.F.R. § 112.7(h)(1).
72. During the Inspection of the Facility, EPA inspectors observed that loading/unloading rack drainage did not flow into a catchment basin or treatment facility, nor did Respondent use a quick drainage system. Additionally, upon review of the Facility's SPCC plan, EPA inspectors observed that it did not discuss implementation of the requirements of 40 C.F.R. § 112.7(h)(1).
73. By failing to design an adequate drainage system for tank truck loading/unloading racks, and by failing to discuss in the Facility's SPCC plan the implementation of the requirements of 40 C.F.R. § 112.7(h)(1), Respondent violated 40 C.F.R. §§ 112.7(h) and 112.7(a)(1), respectively.
74. By failing to comply with 40 C.F.R. § 112.7(h) and 112.7(a)(1), Respondent is subject to the assessment of penalties under Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6).

### **Count VIII**

#### **Failure to Address Conformance with Other Applicable Requirements and Procedures**

75. The allegations of Paragraphs 1 through 74 of this Consent Agreement are incorporated herein by reference.
76. The Regulations at 40 C.F.R. § 112.7(j) require that a facility's SPCC plan provide a complete discussion of conformance with the applicable requirements and other effective discharge prevention and containment procedures listed in the Regulations, or any applicable more stringent State rules, regulations and guidelines.

77. During the Inspection of the Facility, EPA inspectors observed that the Facility's SPCC plan did not provide a discussion on conformance with other applicable requirements and procedures.
78. By failing to discuss in the Facility's SPCC plan conformance with other applicable requirements and procedures, Respondent violated 40 C.F.R. § 112.7(j).
79. By failing to comply with 40 C.F.R. § 112.7(j), Respondent is subject to the assessment of penalties under Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6).

**Count IX**  
**Failure to Address Bulk Storage Container Requirements**

80. The allegations of Paragraphs 1 through 79 of this Consent Agreement are incorporated herein by reference.
81. 40 C.F.R. § 112.8(c)(1) requires the owner or operator of a facility to not use a container for the storage of oil unless its material and construction are compatible with the material stored and conditions of storage such as pressure and temperature.
82. During the Inspection, EPA inspectors observed that one 10,000-gallon diesel tank was resting in contact with the soil. Such conditions of storage are incompatible with the material and construction of the tank.
83. 40 C.F.R. § 112.8(c)(2) requires that the owner or operator of a facility construct all bulk storage tank installations so as to provide a secondary means of containment for the entire capacity of the largest single container and sufficient freeboard to contain precipitation. Diked areas must be sufficiently impervious to contain discharged oil.
84. During the Inspection, EPA inspectors observed fixed above-ground tanks situated within a concrete dike with a floor of mixed gravel and vegetation. EPA inspectors also observed four double-walled tanks with interstice ports which were sealed shut or filled with water and that the Facility's SPCC plan stated that integrity testing on these tanks had never been conducted, nor was Respondent able to provide EPA with integrity testing records.
85. 40 C.F.R. § 112.8(c)(6) requires that the owner or operator of a facility regularly test or inspect aboveground containers for integrity and whenever material repairs are made.
86. During the Inspection, EPA inspectors observed that the Facility's SPCC plan stated that integrity testing of above ground containers has never been conducted, nor was Respondent able to provide EPA with integrity testing records.
87. 40 C.F.R. § 112.8(c)(11) requires that the owner or operator of a facility locate mobile or portable oil storage containers to prevent a discharge and to provide secondary

containment sufficient to contain the largest single container with sufficient freeboard to contain precipitation.

88. During the Inspection, EPA inspectors observed drums and totes stored in a garage, with some drums being located directly next to the garage door. EPA inspectors observed holes at the base of the garage walls through which oil could be discharged.
89. By failing to ensure that (1) containers for the storage of oil were compatible with the material stored and conditions of storage, (2) an adequate secondary means of containment for bulk storage tank installations was provided, (3) integrity testing has been conducted on above ground containers, and (4) an adequate secondary means of containment for mobile or portable oil storage containers was provided, Respondent violated 40 C.F.R. § 112.8(c)(1), 112.8(c)(2), 112.8(c)(6), 112.8(c)(11), respectively.
90. By failing to comply with 40 C.F.R. § 112.8(c)(1), 112.8(c)(2), 112.8(c)(6), 112.8(c)(11), Respondent is subject to the assessment of penalties under Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6).

**Count X**  
**Failure to Properly Design Pipe Supports**

91. The allegations of Paragraphs 1 through 90 of this Consent Agreement are incorporated herein by reference.
92. 40 C.F.R. § 112.8(d)(3) requires that the owner or operator of a facility properly design pipe supports to minimize abrasion and corrosion and allow for expansion and contraction.
93. During the Inspection, EPA observed wood planks supporting piping at various locations in such a manner that did not appear to be designed to minimize abrasion and corrosion.
94. By failing to properly design pipe supports to minimize abrasion and corrosion and allow for expansion and contraction, Respondent violated 40 C.F.R. § 112.8(d)(3).
95. By failing to comply with 40 C.F.R. § 112.8(d)(3), Respondent is subject to the assessment of penalties under Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6).

**CIVIL PENALTY**

96. In settlement of EPA's claims for civil penalties for the violations alleged in this Consent Agreement, Respondent consents to the assessment of a civil penalty in the amount of **Thirty-Three Thousand and Sixty-Seven Dollars (\$33,067)**, which Respondent shall be liable to pay in accordance with the terms set forth below.
97. The civil penalty is based upon EPA's consideration of a number of factors, including the penalty criteria ("statutory factors") set forth in Section 311(b)(8) of the CWA, 33 U.S.C.

§ 1321(b)(8), including, the following: the seriousness of the violation; the economic benefit to the violator, if any; the degree of culpability involved; 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 mitigate the effects of a discharge, if any; the economic impact of the penalty on the violator; and other matters as justice may require. These factors were applied to the particular facts and circumstances of this case with specific reference to EPA's *Civil Penalty Policy for Section 311(b)(3) and Section 311(j) of the Clean Water Act* (August 1998), which reflects the statutory penalty criteria and factors set forth at Section 311(b)(8) of the CWA, 33 U.S.C. § 1321(b)(8), the appropriate *Adjustment of Civil Monetary Penalties for Inflation*, pursuant to 40 C.F.R. Part 19, and the applicable EPA memoranda addressing EPA's civil penalty policies to account for inflation.

98. The civil penalty is also based upon an analysis of Respondent's ability to pay a civil penalty. This analysis was based upon information submitted to EPA by Respondent, including Federal tax returns for 2016, 2017, and 2018. Based upon this analysis EPA has determined that the Respondent is unable to pay a civil penalty in excess of the dollar amount set forth in Paragraph 93, above, in settlement of the above-captioned action.
99. Pursuant to the provisions of this Consent Agreement, Respondent will remit a total civil penalty (principal) of **Thirty-Three Thousand and Sixty-Seven Dollars (\$33,067 Dollars)** and interest (calculated at the rate of 2% per annum on the outstanding principal balance) in the amount of **Forty-One Dollars and Thirty-Four Cents (\$41.34)**, in accordance with the installment payment schedule set forth in the chart, immediately below:

<b>Payment No.</b>	<b>Principal Amount</b>	<b>Interest</b>	<b>Date Payment Due (From Effective Date of Consent Agreement)</b>	<b>Payment Amount Due</b>
1	\$	\$ -	<i>Within 30 Days</i>	\$ 8,277.08
2	\$	\$ 20.67	<i>Within 60 Days</i>	\$ 8,277.08
3	\$	\$ 13.78	<i>Within 90 Days</i>	\$ 8,277.08
4	\$	\$ 6.89	<i>Within 120 Days</i>	\$ 8,277.08
<b>Total:</b>	<b>\$ 33,067</b>	<b>\$ 41.34</b>		<b>\$ 33,108.34</b>

100. If Respondent fails to make timely payment of any one of the required installment payments in accordance with the installment payment schedule set forth in Paragraph 96, immediately above, the entire unpaid balance of the penalty and all accrued interest shall become due immediately upon such failure, and Respondent shall immediately pay the entire remaining principal balance of the civil penalty along with any interest that has accrued up to the time of such payment. In addition, Respondent shall be liable for, and shall pay, applicable interest, administrative handling charges and late payment penalty charges as described in Paragraphs 100 through 104, below, in the event of any such failure or default.

101. Respondent may, at any time after commencement of payments under the installment payment schedule, elect to pay the entire principal balance, together with accrued interest to the date of such full payment.
102. Payment of the civil penalty amount, and any associated interest, administrative fees, and late payment penalties owed, shall be made by either cashier's check, certified check or electronic wire transfer, in the following manner:

- a. All payments by Respondent shall include reference to Respondent's name and address, and the Docket Number of this action, *i.e.*, CWA-03-2020-0123;
- b. All checks shall be made payable to "Environmental Protection Agency," and bear the notation "OSLTF-311";
- c. All payments made by check and sent by regular mail shall be addressed and mailed to:

U.S. Environmental Protection Agency  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

- d. For additional information concerning other acceptable methods of payment of the civil penalty amount see:

<https://www.epa.gov/financial/makepayment>

- e. A copy of Respondent's check or other documentation of payment of the penalty using the method selected by Respondent for payment shall be sent simultaneously to:

Manuel Ronquillo  
Senior Assistant Regional Counsel  
U.S. EPA, Region III (3RC20)  
1650 Arch Street  
Philadelphia, PA 19103-2029  
[ronquillo.manuel@epa.gov](mailto:ronquillo.manuel@epa.gov)

103. 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 of the penalty as specified herein shall result in the assessment of late payment charges including interest, penalties and/or administrative costs of handling delinquent debts.

104. Payment of the civil penalty, in accordance with the above terms and provisions, is due

and payable immediately upon the effective date of this Consent Agreement and Final Order. Receipt by Respondent or Respondent's legal counsel of such copy of the fully executed Consent Agreement and Final Order, with a date stamp indicating the date on which the Consent Agreement and Final Order was filed with the Regional Hearing Clerk, shall constitute receipt of written initial notice that a debt is owed as of the effective date of this Consent Agreement and Final Order by Respondent in accordance with 40 C.F.R. § 13.9(a).

105. INTEREST: Interest on the civil penalty assessed in this Consent Agreement and Final Order will begin to accrue on the effective date of this Consent Agreement and Final Order. However, EPA will not seek to recover interest on any amount of the civil penalties that is paid within thirty (30) calendar days after the effective date of this Consent Agreement and Final Order. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R § 13.11(a).
106. ADMINISTRATIVE COSTS: The costs of the EPA's administrative handling of overdue debts will be charged and assessed monthly throughout the period a debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives – Case 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.
107. LATE PAYMENT PENALTY: A late payment penalty of six percent per year will be assessed monthly on any portion of the civil penalty 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).
108. Respondent agrees not to deduct for federal tax purposes the civil penalty assessed in this Consent Agreement and Final Order.

#### **GENERAL SETTLEMENT CONDITIONS**

109. By signing this Consent Agreement, Respondent acknowledges that this Consent Agreement and Final Order will be available to the public and represents that, to the best of Respondent's knowledge and belief, this Consent Agreement and Final Order does not contain any confidential business information or personally identifiable information from Respondent.
110. Respondent certifies that any information or representation it has supplied or made to EPA concerning this matter was, at the time of submission true, accurate, and complete and that there has been no material change regarding the truthfulness, accuracy or completeness of such information or representation. EPA shall have the right to institute further actions to recover appropriate relief if EPA obtains evidence that any information provided and/or representations made by Respondent to the EPA regarding matters

relevant to this Consent Agreement and Final Order, including information about respondent's ability to pay a penalty, are false or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action that EPA may have, civil or criminal, under law or equity in such event. Respondent and its officers, directors and agents are aware that the submission of false or misleading information to the United States government may subject a person to separate civil and/or criminal liability.

### **CERTIFICATION OF COMPLIANCE**

111. Respondent certifies to EPA, upon personal investigation and to the best of its knowledge and belief, that it currently is in compliance with regard to the violations alleged in this Consent Agreement, except with regards to the violations of 40 C.F.R. § 112.8(c)(2) and (6) alleged in paragraphs 84 and 86, respectively, of Count IX – Failure to Address Bulk Storage Container Requirements.
112. Respondent certifies to EPA, upon personal investigation and to the best of its knowledge and belief, that it is currently working towards addressing the violations of 40 C.F.R. § 112.8(c)(2) and (6) alleged in paragraphs 84 and 86, respectively, of Count IX – Failure to Address Bulk Storage Container Requirements. Respondent has taken the oil storage tanks out of service and will “permanently close” the tanks, as that term is defined in 40 C.F.R. § 112.2, within one-hundred and eighty (180) days of the effective date of this Consent Agreement. Respondent will provide EPA updates on its progress towards permanent closure of the oil storage tanks no later than the fifteenth (15<sup>th</sup>) day of each month after the effective date of this Consent Agreement until the work is completed, and will provide EPA with photographic proof of the work's completion within fourteen (14) days of its completion.

### **OTHER APPLICABLE LAWS**

113. Nothing in this Consent Agreement and Final Order shall relieve Respondent of its obligation to comply with all applicable federal, state, and local laws and regulations, nor shall it restrict EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on the validity of any federal, state or local permit. This Consent Agreement and Final Order does not constitute a waiver, suspension or modification of the requirements of the CWA or any regulations promulgated thereunder.

### **RESERVATION OF RIGHTS**

114. This Consent Agreement and Final Order resolves only EPA's claims for civil penalties for the specific violations alleged against Respondent in this Consent Agreement and Final Order. 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. This settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of

Practice, 40 C.F.R. § 22.18(c). EPA reserves any rights and remedies available to it under the CWA, the regulations promulgated thereunder and any other federal law or regulation to enforce the terms of this Consent Agreement and Final Order after its effective date.

### **EXECUTION /PARTIES BOUND**

115. This Consent Agreement and Final Order shall apply to and be binding upon the EPA, the Respondent and the officers, directors, employees, contractors, successors, agents and assigns of Respondent. By his or her signature below, the person who signs this Consent Agreement on behalf of Respondent is acknowledging that he or she is fully authorized by the Respondent to execute this Consent Agreement and to legally bind Respondent to the terms and conditions of this Consent Agreement and Final Order.

### **EFFECTIVE DATE**

116. The effective date of this Consent Agreement and Final Order is the date on which the Final Order, signed by the Regional Administrator of EPA, Region III, or his/her designee, the Regional Judicial Officer, is filed along with the Consent Agreement with the Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.

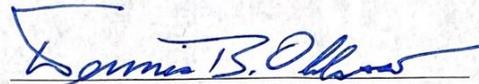
### **ENTIRE AGREEMENT**

117. This Consent Agreement and Final Order constitutes the entire agreement and understanding between the Parties regarding settlement of all claims for civil penalties pertaining to the specific violations alleged herein and there are no representations, warranties, covenants, terms, or conditions agreed upon between the Parties other than those expressed in this Consent Agreement and Final Order.

For Respondent: Brock Resources, Inc. d/b/a Brock Oil Company

Date: Sept. 15<sup>th</sup>, 2020

By:



Dennis B. Oleksa, President  
Brock Resources Inc., d/b/a Brock Oil  
Company

For the Complainant:

After reviewing the Consent Agreement and other pertinent matters, I, the undersigned Director of the Enforcement & Compliance Assurance Division of the United States Environmental Protection Agency, Region III, agree to the terms and conditions of this Consent Agreement and recommend that the Regional Administrator, or his/her designee, the Regional Judicial Officer, issue the attached Final Order.

Date: 9/17/20

By: **KAREN MELVIN** Digitally signed by KAREN MELVIN  
Date: 2020.09.17 15:17:47 -04'00'  
Karen Melvin  
Director  
Enforcement & Compliance Assurance Division  
U.S. EPA Region III  
Complainant

Attorney for Complainant:

Date: 9/17/20

By: **MANUEL RONQUILLO** Digitally signed by MANUEL RONQUILLO  
Date: 2020.09.17 07:38:35 -04'00'  
Manuel Ronquillo  
Senior Assistant Regional Counsel  
U.S. EPA Region III

**BEFORE THE UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION III**

**In the Matter of:**

Brock Resources, Inc.  
d/b/a Brock Oil Company  
P.O. Box 70  
Dellslow, WV 26531,

**Respondent.**

Brock Oil Company  
3479 Earl L. Core Road  
Morgantown, WV 26508

**Facility.**

**U.S. EPA Docket No. CWA-03-2020-0123**

**Proceeding under Sections 311(j) and  
311(b)(6)(B)(i) of the Clean Water Act,  
33 U.S.C. §§ 1321(j) and 1321(b)(6)(B)(i)**

**FINAL ORDER**

Complainant, the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region III, and Respondent, Brock Resources, Inc., d/b/a Brock Oil Company, 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. Sections 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 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 CWA, and Section 22.18(b)(3) of the Consolidated Rules of Practice, **IT IS HEREBY ORDERED** that Respondent pay a civil penalty in the amount of **THIRTY-THREE THOUSAND AND SIXTY-SEVEN DOLLARS (\$33,067)**, plus interest in the amount of **FORTY-ONE DOLLARS AND THIRTY-FOUR CENTS (\$41.34)**, in accordance with the payment

provisions set forth in the Consent Agreement, and comply with the terms and conditions of the Consent Agreement.

This Final Order constitutes the final Agency action in this proceeding. This Final Order shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief, or criminal sanctions for any violations of the law. This Final Order resolves only those causes of action alleged in the Consent Agreement and does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of the Clean Water Act and the regulations promulgated thereunder.

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.

9/18/20

\_\_\_\_\_  
Date

**JOSEPH LISA** Digitally signed by JOSEPH LISA  
Date: 2020.09.18 08:01:55  
-04'00'

\_\_\_\_\_  
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**

<b>In the Matter of:</b>	)	
	)	
<b>Brock Resources, Inc.</b>	)	<b>Docket No. CWA-03-2020-0123</b>
<b>d/b/a Brock Oil Company</b>	)	
<b>P.O. Box 70</b>	)	
<b>Dellslow, WV 26531</b>	)	<b>Proceeding under Sections 311(j) and</b>
	)	<b>311(b)(6)(B)(i) of the Clean Water Act,</b>
<b>RESPONDENT.</b>	)	<b>33 U.S.C. §§ 1321(j) and 1321(b)(6)(B)(i)</b>
	)	

**CERTIFICATE OF SERVICE**

I certify that on 9/18/20, the original and one (1) copy of foregoing ***Consent Agreement and Final Order***, were filed with the EPA Region III Regional Hearing Clerk. I further certify that on the date set forth below, I served a true and correct copy of the same to each of the following persons, in the manner specified below, at the following addresses:

Copy served via **Electronic Mail** to:

Allyn G. Turner  
Steptoe & Johnson PLLC  
P.O. Box 1588, Charleston, WV 25326-1588  
Overnight  
707 Virginia Street, East, 17th Floor, Charleston, WV 25301  
(304) 539-1629  
[Allyn.Turner@Steptoe-Johnson.com](mailto:Allyn.Turner@Steptoe-Johnson.com)  
(Attorney for Brock Resources, Inc.)

Copy served via **Electronic Mail** to:

Manuel Ronquillo  
Senior Assistant Regional Counsel  
Office of Regional Counsel (3RC20)  
U.S. EPA, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029  
[Ronquillo.manuel@epa.gov](mailto:Ronquillo.manuel@epa.gov)  
(Attorney for Complainant)

Dated: 9/18/20

**BEVIN  
ESPOSITO**

Digitally signed by BEVIN  
ESPOSITO  
Date: 2020.09.18 14:25:02  
-04'00'

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region III