

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

**REGION 7**

**901 NORTH FIFTH STREET  
KANSAS CITY, KANSAS 66101**

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ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

**BEFORE THE ADMINISTRATOR**

IN THE MATTER OF

**Hartford Elevator Inc.  
Hartford, Kansas**

Respondent.

**CONSENT AGREEMENT  
AND FINAL ORDER**

Docket No. CWA-07-2005-0364

The United States Environmental Protection Agency (EPA) Region 7 (Complainant) and Hartford Elevator Inc., ("Hartford Elevator") (Respondent) have agreed to a settlement of this action, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

**Stipulations**

Jurisdiction

1. This is an administrative action for the assessment of Class I civil penalties instituted pursuant to Section 311(b)(6) of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act (CWA or the Act), 33 U.S.C. § 1321(b)(6), and in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, (Administrative Proceedings Not Governed by Section 554 of the Administrative Procedures Act) 40 C.F.R. Part 22, Subpart I.

2. This Consent Agreement/Final Order serves as notice that the United States Environmental Protection Agency (EPA) has reason to believe that Respondent has violated Sections 311(j) of the CWA, 33 U.S.C. § 1321(j), and regulations promulgated thereunder.

Parties

3. The Respondent is a grain elevator and bulk oil storage facility located at 400 Commercial St., Hartford, Kansas.

4. The authority to take action under Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6), is vested in the Administrator of the EPA. The Administrator has delegated this authority to the Regional Administrator, EPA, Region 7, who in turn has delegated it to the Director of the Air, RCRA and Toxics Division of EPA, Region 7 (Complainant).

#### Statutory and Regulatory Framework

5. Section 311(j)(1)(C) of the Act, 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 . . . ."

6. 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.

7. EPA subsequently promulgated the SPCC regulations pursuant to these delegated statutory authorities, and pursuant to its authorities under the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, which established certain procedures, methods and requirements upon each owner and operator of a non-transportation-related onshore 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").

8. In promulgating 40 CFR § 110.3, which implements Section 311(b)(4) of the Act, 33 U.S.C. § 1321(b)(4), EPA has determined that discharges of harmful quantities include oil discharges that cause either (1) a violation of applicable water quality standards or (2) a film, sheen upon, or discoloration of the surface of the water or adjoining shorelines, or (3) a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

#### Factual Background

9. Respondent is a corporation organized under the laws of Kansas. 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 CFR § 112.2.

10. Respondent is the owner/operator within the meaning of Section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6), and 40 CFR § 112.2, of a grain elevator and bulk oil storage facility located at 400 Commercial Street, Hartford, Kansas ("the facility"), near the Neosho River that began operating in the 1940's.

11. The facility has an aggregate above-ground storage capacity greater than 1320 gallons of oil in containers each with a shell capacity of at least 55 gallons.

12. The Neosho River is a navigable water of the United States within the meaning of 40 C.F.R. § 112.2 and Section 502(7) of the Act, 33 U.S.C. § 1362(7).

13. Respondent is engaged in storing, processing, using or consuming oil or oil products located at the facility.

14. The facility is a non-transportation-related facility within the meaning of 40 CFR § 112 Appendix A, as incorporated by reference within 40 CFR § 112.2.

15. The facility is an onshore facility within the meaning of Section 311(a)(10) of the Act, 33 U.S.C. § 1321(a)(10), and 40 CFR § 112.2.

16. The facility is therefore 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").

17. Pursuant to Section 311(j)(1)(C) of the Act, E.O. 12777, and 40 C.F.R. § 112.1 Respondent, as the owner and/or operator of an SPCC-regulated facility, is subject to the SPCC regulations.

18. On or about July 26, 2005, the EPA conducted an inspection at the Hartford Elevator facility.

#### Findings of Violation

19. The allegations stated in paragraphs 1 through 18 above are herein incorporated.

20. 40 CFR § 112.3 requires that the owner or operator of an SPCC-regulated facility must prepare and implement an SPCC plan that is in accordance with the requirements of 40 CFR § 112.7 and any other applicable section of the SPCC regulations.

21. At the time of the July, 2005 inspection Respondent had failed to prepare and implement an SPCC Plan.

22. Respondent's failure to prepare and implement an SPCC plan for the facility in accordance with the requirements of 40 CFR Part 112, as described in Paragraph 21, violated 40 CFR § 112.3.

### **CONSENT AGREEMENT**

1. Respondent and EPA agree to the terms of this Consent Agreement/Final Order and Respondent agrees to comply with the terms of the Final Order portion of this Consent Agreement/Final Order.

2. Respondent admits the jurisdictional allegations of this Consent Agreement/Final Order and agrees not to contest the EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order portion of this Consent Agreement/Final Order set forth below.

3. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this Consent Agreement/Final Order.

4. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above, and its right to appeal the proposed Final Order portion of the Consent Agreement/Final Order.

5. Respondent and Complainant agree to conciliate the matters set forth in this Consent Agreement/Final Order without the necessity of a formal hearing and to bear their respective costs and attorney's fees.

6. This Consent Agreement/Final Order addresses all civil administrative claims for the CWA violations identified above. Complainant reserves the right to take any enforcement action with respect to any other violations of the CWA or any violations of law.

7. The effect of settlement described in paragraph 6, above is conditional upon the accuracy of the Respondent's representations to EPA, as memorialized in paragraph 10 of this Consent Agreement and Final Order and Respondent's letter dated February 15, 2006.

8. Nothing contained in the Final Order portion of this Consent Agreement/Final Order shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state and local environmental statutes and regulations and applicable permits.

9. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this Consent Agreement/Final Order and to execute and legally bind Respondent to it.

10. Respondent agrees that, in settlement of the claims alleged in this Consent Agreement/Final Order the Respondent shall pay a penalty of \$0, based upon Respondent's inability to pay and the permanent closure of the facility in accordance with the requirements of 40 CFR Part 112.

### **FINAL ORDER**

Pursuant to the authority of Section 311 of the CWA, 33 U.S.C. § 1321, and according to the terms of this Consent Agreement/Final Order, IT IS HEREBY ORDERED THAT:

1. Respondent in settlement of the allegations set forth in this document shall be assessed a penalty of \$0 based upon Respondent's inability to pay.

#### **A. Parties Bound**

1. This Final Order portion of this Consent Agreement/Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement/Final Order.

#### **B. General Provisions**

2. Notwithstanding any other provision of this Consent Agreement/Final Order, EPA reserves the right to enforce the terms of the Final Order portion of this Consent Agreement/Final Order by initiating a judicial or administrative action under Section 311 of the CWA, 33 U.S.C. § 1321, and to seek penalties against Respondent or to seek any other remedy allowed by law.

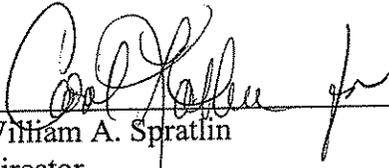
3. Complainant reserves the right to take enforcement action against Respondent for any future violations of the CWA and its implementing regulations and to enforce the terms and conditions of this Consent Agreement/Final Order.

4. Respondent and Complainant shall bear their respective costs and attorney's fees.

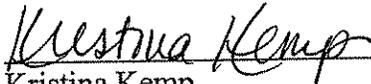
5. The headings in this Consent Agreement/Final Order are for convenience of reference only and shall not affect interpretation of this Consent Agreement/Final Order.

COMPLAINANT:  
U.S. ENVIRONMENTAL PROTECTION AGENCY

2/2/06  
Date

  
\_\_\_\_\_  
William A. Spratlin  
Director  
Air, RCRA and Toxics Division

2/21/06  
Date

  
\_\_\_\_\_  
Kristina Kemp  
Assistant Regional Counsel

Consent Agreement and Final Order  
Hartford Elevator, Inc.  
CWA-07-2005-0364

RESPONDENT:  
Hartford Elevator, Inc.

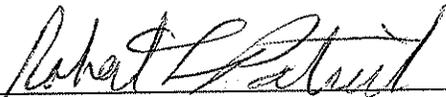
1-30-06  
Date

Name Dean Skison

Title Pres.

Address 410 Commercial St.  
Hartford, Pa 66854

IT IS SO ORDERED. This Final Order shall become effective immediately.



Robert Patrick  
Regional Judicial Officer

Date March 21, 2006

IN THE MATTER OF Hartford Elevator Inc., Respondent  
Docket No. CWA-07-2005-0364

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy hand delivered to  
Attorney for Complainant:

Kristina Kemp  
Assistant Regional Counsel  
Region VII  
United States Environmental Protection Agency  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Dean Wilson  
Hartford Elevator, Inc.  
400 Commercial Street  
Hartford, Kansas 66854

3/21/06  
Dated

  
Kathy Robinson  
Kathy Robinson  
Regional Hearing Clerk