

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

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REGIONAL HEARING CLERK
EPA REGION III, PHILA. PA

In The Matter of:

Greenlight WVO, LLC
11508 E. Maple Street
Beltsville, Maryland 20705,

Respondent.

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: Proceedings Pursuant to Section 311(j) and
: 311(b)(6)(B)(ii) of the Clean Water Act,
: 33 U.S.C. § 1321(j) and 1321(b)(6)(B)(ii)
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: **Docket No. CWA-03-2015-0220**
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CONSENT AGREEMENT

This Consent Agreement is entered into by the Director for the Hazardous Site Cleanup Division, U.S. Environmental Protection Agency, Region III (“Complainant”) and Greenlight WVO, LLC (“Respondent”), pursuant to Section 311(b)(6)(B)(ii) of the Clean Water Act (“CWA”), as amended, 33 U.S.C. § 1321(b)(6)(B)(ii), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Part 22 Rules”), 40 C.F.R. Part 22 (with specific reference to 40 C.F.R. § 22.1(6), 22.13(b) and 22.18(b)).

I. PRELIMINARY STATEMENT AND STIPULATIONS

1. The violations cited herein pertain to the Respondent’s alleged failure, during operations at its waste cooking oil processing facility, to comply with Section 311(j) of the CWA, 33 U.S.C. § 1321(j), and its implementing regulations, the Oil Pollution Prevention Regulations, set forth in 40 C.F.R. Part 112.
2. The parties agree to the commencement and conclusion of this matter by issuance of this Consent Agreement and Final Order (collectively “CAFO”), as prescribed by the Part 22 Rules pursuant to 40 C.F.R. § 22.13(b) and 22.18(b), and having consented to the entry of this CAFO, agree to comply with the terms of this CAFO.

II. JURISDICTION

3. The U.S. Environmental Protection Agency (“EPA”) has jurisdiction over the above-captioned matter pursuant to Section 311(b)(6)(B)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(ii), and Section 22.1(a)(6) and 22.4 of the Part 22 Rules, 40 C.F.R. § 22.1(6) and 22.4.

III. GENERAL PROVISIONS

4. For purposes of this proceeding only, Respondent admits to the jurisdictional allegations set forth in this CAFO.
5. Respondent neither admits nor denies the specific factual allegations, findings of fact, conclusions of law, and determinations set forth in this Consent Agreement, except as provided in Paragraph 4, above.
6. Respondent agrees not to contest EPA's jurisdiction with respect to the execution, enforcement, and issuance of this CAFO.
7. For purposes of this proceeding only, Respondent hereby expressly waives any right to contest the allegations set forth in this Consent Agreement and any right to appeal the accompanying Final Order.
8. Respondent shall bear its own costs and attorney's fees.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

9. In accordance with 40 C.F.R. § 22.13(b) and 22.18(b)(2) and (3) of the Part 22 Rules, Complainant alleges the Findings of Fact and Conclusions of Law set forth immediately below.
10. Congress enacted the CWA, 33 U.S.C. §§ 1251 *et seq.*, in 1972. In 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.
11. 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.
12. 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").
13. 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.

14. Pursuant to 40 C.F.R. § 110.3, discharges of oil that may be harmful 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.
15. Pursuant to 40 C.F.R. 112.2, the term “oil” means “oil of any kind or in any form, including, but not limited to: fats, oils, or greases of animal, fish, or marine mammal origin; vegetable oils, including oils from seeds, nuts, fruits, or kernels; and, other oils and greases, including petroleum, fuel oil, sludge, synthetic oils, mineral oils, oil refuse, or oil mixed with wastes other than dredged spoil.”
16. Pursuant to 40 C.F.R. § 112.3, any owner or operator subject to the Regulations must prepare in writing and implement a Spill Prevention, Control, and Countermeasure (SPCC) plan, in accordance with 40 C.F.R. § 112.7 and any other applicable section, including but not limited to 40 C.F.R. § 112.8.
17. For violations of Section 311(j) of the CWA, 33 U.S.C. § 1321(j), EPA has authority, pursuant to Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6), to assess a Class II penalty in the amount of up to \$10,000 per day of violation, not to exceed a maximum penalty of \$125,000. Pursuant to the Debt Collection Improvement Act and 40 C.F.R. Part 19, Adjustment of Civil Monetary Penalties for Inflation, violations of Section 311(j) that occur after January 12, 2009 but on or before December 6, 2013 are subject to a Class II statutory penalty of up to \$16,000 per day of violation, not to exceed a maximum penalty of \$177,500, and violations that occur after December 6, 2013 are subject to a Class II statutory penalty of up to \$16,000 per day of violation, not to exceed a maximum penalty of \$187,500.
18. Respondent is incorporated in the Commonwealth of Virginia.
19. 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.
20. From 2008 until approximately July 1, 2015, Respondent was engaged in the business of distribution of oil from its facility located at 11508 E. Maple Street, Beltsville, Maryland (“the Facility”).
21. Respondent was 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 at the time of violations alleged in this CAFO.
22. EPA conducted an inspection of Respondent’s facility on May 14, 2013 (“the Inspection”).
23. At the time of the Inspection and at all times relevant to this CAFO, the Facility had a total aboveground oil storage capacity of approximately 152,208 gallons.

24. The Facility is located approximately 1500 feet north of Indian Creek, which is a tributary to the Paint Branch of the Northeast Branch of the Anacostia River, which ultimately flows into the Chesapeake Bay.
25. Indian Creek, the Anacostia River, and the Chesapeake Bay are navigable waters of the United States within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7).
26. 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 its adjoining shoreline.
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. Pursuant to 40 C.F.R. § 112.1, Respondent, as the owner and operator of the Facility at the time of the alleged violations, was subject to the Regulations codified at 40 C.F.R. Part 112.
30. Pursuant to 40 C.F.R. § 112.3, Respondent was required to prepare in writing and implement an SPCC plan for the Facility, in accordance with 40 C.F.R. § 112.7 and any other applicable section.

V. VIOLATIONS ALLEGED

31. Based on the Inspection and EPA's review of information gathered during the Inspection, Respondent failed to comply with the Regulations as follows:
 - a. Respondent failed to comply with 40 C.F.R. § 112.3(d), which requires that an SPCC Plan is certified by a licensed Professional Engineer. The SPCC plan that Respondent provided to EPA was not certified by a licensed Professional Engineer.
 - b. Respondent failed to comply with 40 C.F.R. § 112.7, which requires that an SPCC Plan include a statement of full approval from management at a level of authority to commit the necessary resources to fully implement the Plan. The SPCC plan that Respondent provided to EPA did not include a statement of approval from any level of management.
 - c. Respondent failed to comply with 40 C.F.R. § 112.7(a)(3), which requires that an SPCC Plan include a facility diagram. The SPCC plan that Respondent provided to EPA did not include a facility diagram.

- d. Respondent failed to comply with 40 C.F.R. § 112.7(a)(3)(vi), which requires that an SPCC Plan designate a facility response coordinator, and include relevant contact information. The SPCC plan that Respondent provided to EPA did not designate any facility response coordinators or give relevant contact information.
 - e. Respondent failed to comply with 40 C.F.R. § 112.7(e), which requires all regulated facilities to maintain written procedures and records of inspections and tests for a period of three years. At the time of the Inspection, Respondent could not provide to EPA complete written procedures and records of inspection and test for the past three years.
 - f. Respondent failed to comply with 40 C.F.R. § 112.8(b)(3), which requires all regulated onshore facilities to design facility drainage systems to ensure that drainage from undiked areas with a potential for oil discharge flows into ponds, lagoons, or catchment basins designed to retain oil or return it to the facility. At the time of the Inspection, EPA Inspectors observed that the Facility was not designed to prevent oil discharged in undiked areas from flowing beyond the Facility, except for a partial catchment basin comprised of 20 cinder blocks placed in an open semi-square shape, located at one corner of the Facility.
 - g. Respondent failed to comply with 40 C.F.R. § 112.8(c)(2), which requires all regulated onshore facilities to provide sufficiently impervious secondary containment for the entire capacity of the largest single container plus sufficient freeboard to contain precipitation. At the time of the Inspection, EPA Inspectors observed that the largest single container at the Facility held 20,000 gallons, and that the Facility did not have any secondary containment, except for 20 cinder blocks formed in an open semi-square shape, located at one corner of the Facility. EPA Inspectors observed that the secondary containment provided by the 20 cinder blocks was not impervious, because it was designed in an open shape and the capacity of the open, semi-square shape was far less than the capacity of the largest single container.
32. EPA has determined that, based on Respondent's failures to comply with the Regulations, Respondent is in violation of Section 311(j) of the Clean Water Act ("CWA"), 33 U.S.C. § 1321(j).

VI. CIVIL PENALTY

33. In settlement of EPA's claim for a civil monetary penalty assessable for the violations alleged in this Consent Agreement, Respondent consents to the assessment of a civil penalty in the amount of **forty thousand dollars (\$40,000.00)**, which Respondent agrees to pay in accordance with the terms set forth below. Such civil penalty shall become due and payable immediately upon Respondent's receipt of a true and correct copy of this CAFO, fully executed by the parties, signed by the Regional Administrator or his designee, the Regional Judicial Officer, and filed with the Regional Hearing Clerk. In order to avoid the assessment of interest, administrative costs, and late payment penalties in connection with

such civil penalty as described in this CAFO, Respondent must pay such civil penalty no later than thirty (30) calendar days after the date on which this CAFO is received by Respondent.

34. 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 mitigation efforts; the economic impact of the penalty on the violator; and other matters as justice may require.

35. 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-03-2015-0220) of this case.

b. If Respondent sends payments by the U.S. Postal Service, the payments 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 payments by a private delivery service, the payments shall be addressed to:

U.S. Environmental Protection Agency
U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101
Attn: Heather Russell (513) 487-2044

d. If paying by EFT, the Respondent shall make the transfers 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. 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-03-2015-0220” should be included in the “Court Order # or Bill #” field, and “3” should be included as the Region number.
36. 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.
37. Interest on the civil penalty will begin to accrue on the date that this CAFO, when fully executed, is received 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).
38. 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 a payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.
39. 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 from the date it was due. 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).
40. 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.

41. Respondent shall submit a copy of the checks (or, in the case of an EFT transfer, a copy of the EFT confirmations) to the following persons:

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

and

Jennifer J. Nearhood (3RC50)
Assistant Regional Counsel
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

42. 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.
43. The Respondent agrees not to deduct for federal tax purposes the civil monetary penalty specified in this Consent Agreement and the accompanying Final Order.

VII. EFFECT OF SETTLEMENT

44. The settlement set forth in this CAFO shall constitute full and final satisfaction of all civil claims for penalties which Complainant may have under the CWA for the specific violations alleged in Section IV ("Findings of Fact and Conclusions of Law") and Section V ("Violations Alleged"), above. 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.

VIII. OTHER APPLICABLE LAWS

46. Nothing in this CAFO shall relieve Respondent of the obligation to comply with all applicable federal, state, and local laws and regulations.

IX. CERTIFICATION OF COMPLIANCE

47. Respondent certifies to EPA, upon personal investigation and to the best of its knowledge and belief that it currently is complying with Section 311(j) of the CWA and 40 C.F.R. Part 112.

X. RESERVATION OF RIGHTS

48. This Consent Agreement and the accompanying Final Order resolve only EPA's claims for civil monetary penalties for the specific violations alleged against the Respondent in this CAFO. 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. In addition, 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). Further, EPA reserves any rights and remedies available to it under the CWA, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO following its filing with the EPA Regional Hearing Clerk.

XI. PARTIES BOUND

49. This Consent Agreement and the accompanying Final Order shall apply to and be binding upon the Respondent and the Respondent's successors, agents, and assigns.

XII. EFFECTIVE DATE

50. The effective date of this Consent Agreement and the accompanying Final Order (which is signed by the Regional Administrator of EPA Region III, or his designee, the Regional Judicial Officer), shall be the date the CAFO is filed with the EPA Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.

XIII. ENTIRE AGREEMENT

51. This Consent Agreement and the accompanying Final Order constitute the entire agreement and understanding of the parties regarding settlement of all claims 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 CAFO.

XIV. EXECUTION

52. The person signing this Consent Agreement on behalf of the Respondent acknowledges and certifies by his signature that he is fully authorized to enter into this Consent Agreement and to legally bind Respondent to the terms and conditions of this Consent Agreement and the accompanying Final Order.

For Respondent Greenlight WVO, LLC:

Date: 7/17/15

By: 
James R. Kingdon, Manager
Greenlight Biofuels, Inc.
for Greenlight WVO, LLC

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

Date: 8/12/15

By: Jennifer Nearhood
Jennifer J. Nearhood
Assistant Regional Counsel
U.S. EPA, Region III

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

Date: 8/27/2015

By: Cecil Rodrigues
Cecil A. Rodrigues, Director
Hazardous Site Cleanup Division
U.S. EPA, Region III

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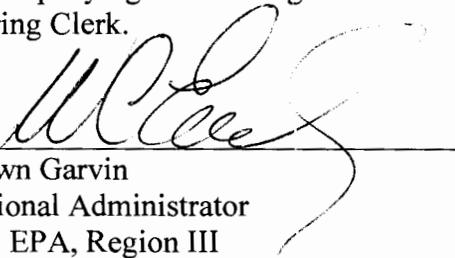
FINAL ORDER

The Complainant, the Director for the Hazardous Site Cleanup Division, U.S. Environmental Protection Agency, Region III and Respondent, Greenlight WVO, 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 ("Part 22 Rules"), 40 C.F.R. Part 22 (with specific reference to Section 22.1(6), 22.13(b) and 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.

WHEREFORE, pursuant to the authority of Section 311(b)(6)(B)(ii) of the Clean Water Act ("CWA"), as amended, 33 U.S.C. § 1321(b)(6)(B)(ii), for violations of the Oil Pollution Prevention Regulations, set forth in 40 C.F.R. Part 112, after having determined, based on the representations of the parties to the attached Consent Agreement, that the civil penalty agreed therein was based upon consideration of the factors set forth in Section 311(b)(8) of the CWA, 33 U.S.C. § 1321(b)(8), **IT IS HEREBY ORDERED** that Respondent pay a civil penalty of **forty thousand dollars (\$40,000.00)**, in accordance with the payment provisions set forth in the attached Consent Agreement, including payment of any applicable interest, and complying with each of the additional terms and conditions as specified in the attached Consent Agreement.

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

Date: SEP - 2 2015


Shawn Garvin
Regional Administrator
U.S. EPA, Region III

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33 U.S.C. § 1321(j) and 1321(b)(6)(B)(ii)

Docket No. CWA-03-2015-0220

CERTIFICATE OF SERVICE

I certify that the foregoing CONSENT AGREEMENT AND FINAL ORDER in the above referenced matter was sent this day in the following manner to the below addressees.

Original and One Copy by Hand-Delivery:

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

Copy by Certified Mail:

Marian Hwang
Miles & Stockbridge P.C.
100 Light Street
Baltimore, MD 21202

9/2/15
Date

Jennifer J. Nearhood
Jennifer J. Nearhood (3RC50)
Assistant Regional Counsel
U.S. EPA, Region III

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