

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

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2015 AUG 18 PM 3: 06

IN THE MATTER OF:

Summit Environmental Services, LLC
9407 S. Pleasants Hwy
St. Marys, WV 26170.

Respondent.

EPA Docket No. CWA-03-2015-0225

REGIONAL HEARING CLERK
1000 MARKET STREET, PHILA. PA

Proceedings Pursuant to Section 311(b)(3) and
311(b)(6)(B)(i) of the Clean Water Act,
33 U.S.C. § 1321(b)(3) and 1321(b)(6)(B)(i)

LEGAL AUTHORITY

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)(3) and 311(b)(6)(B)(i) of the Clean Water Act (“the Act”), as amended, 33 U.S.C. § 1321(b)(3) and 1321(b)(6)(B)(i), and under the authority provided by 40 C.F.R. § 22.13(b), 22.18(b)(2) and (3), and 22.50(a)(1) and (b). The Administrator has delegated these authorities to the Regional Administrator of EPA, Region III, who has in turn delegated them to the Director of the Region’s Hazardous Site Cleanup Division (“Complainant”).

CONSENT AGREEMENT

Factual Allegations and Conclusions of Law

2. For the purpose of this proceeding, and with the exception of Paragraph 13, below, Respondent neither admits nor denies the following factual allegations and conclusions of law, but expressly waives its rights to contest said allegations.

Count I

3. Respondent is incorporated in the State of West Virginia, and its corporate headquarters are located at 9407 S. Pleasants Highway, St. Marys, West Virginia 26170.

Respondent is a person within the meaning of Section 311(a)(7) of the Act, 33 U.S.C. § 1321(a)(7).

4. Respondent is the owner and operator of a tractor trailer tanker truck designated as truck #LV0310 (“the Truck”). As a motor vehicle, the Truck is an onshore facility within the meaning of Section 311(a)(10) of the Act, 33 U.S.C. § 1321(a)(10).

5. Section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3), prohibits the discharge of oil or hazardous substances into or upon the navigable waters of the United States or adjoining shorelines in such quantities that have been determined may be harmful to the public health or welfare or environment of the United States.

6. Section 311(a)(1) of the Act, 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.”

7. For purposes of Section 311(b)(3) and (b)(4) of the Act, 33 U.S.C. § 1321(b)(3) and (b)(4), discharges of oil into or upon the navigable waters and adjoining shorelines of the United States in such quantities that have been determined may be harmful to the public health or welfare or environment of the United States are defined in 40 C.F.R. § 110.3 to include discharges of oil that 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.

8. On November 22, 2014, approximately 10 barrels of produced brine water containing oil were discharged from the Truck after it rolled as it approached the intersection of US Route 50 and I-77 in Wood County, Pennsylvania (“the discharge”).

9. When the accident occurred, Respondent's Truck had been transporting the produced brine water containing oil to an injection well for disposal. As oil mixed with wastes other than dredged spoils, the produced brine water containing oil is oil within the meaning of Section 311(a)(1) of the Act, 33 U.S.C. § 1321(a)(1).

10. The discharge flowed down the road and entered Berry's Run, which flows to Worthington Creek. Worthington Creek is a tributary of Little Kanawha River, a navigable water of the United States, as defined by Section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 110.1.

11. Respondent's discharge on November 22, 2014, from the Truck caused a sheen upon the surface of Berry's Run, and, therefore, was in a quantity that has been determined may be harmful under 40 C.F.R § 110.3, which implements Section 311(b)(3) and (b)(4) of the Act, 33 U.S.C. § 1321(b)(3) and (b)(4).

12. Respondent's discharge from its Truck into or upon Berry's Run in a quantity that has been determined may be harmful under 40 C.F.R. § 110.3 violated Section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3).

Waiver of Rights

For the purpose of this proceeding, Respondent:

13. Admits the jurisdictional allegations in this Consent Agreement and agrees not to contest EPA's jurisdiction with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, and the enforcement of this Consent Agreement and the accompanying Final Order.

14. Waives the right to a hearing under Section 311(b)(6)(B)(i) of the Act, 33 U.S.C. § 1321(b)(6)(B)(i), and to appeal any Final Order in this matter under Section 311(b)(6)(G)(i) of

the Act, 33 U.S.C. § 1321(b)(6)(G)(i), and consents to the issuance of a Final Order without further adjudication.

Penalty

15. Section 311(b)(6) of the Act, as amended, 33 U.S.C. §1321(b)(6), authorizes EPA to assess administrative penalties for violations of Section 311(b)(3) of the Act. Complainant proposes, and Respondent consents to, the assessment of a civil penalty of \$9,786. The civil penalty is based upon Complainant's consideration of a number of factors including the penalty criteria set forth in Section 311(b)(8) of the Act, 33 U.S.C. § 1321(b)(8), and has been calculated in accordance with Section 311(b)(6)(B)(i) of the Act, 33 U.S.C. § 1321(b)(6)(B)(i), as amended by the Debt Collection Improvement Act of 1996, as implemented by Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. Part 19, and with EPA's *Civil Penalty Policy For Section 311(b)(3) and Section 311(j) of the Clean Water Act*, dated August 1998.

Payment Terms

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

16. Within thirty days of the effective date of the Final Order, Respondent shall pay the amount of \$9,786 by means of a cashier's or certified check, or by electronic funds transfer (EFT). 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 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
Contact: Heather Russell, (513) 487-2044

If Respondent sends payment by a private delivery service, the payment shall be addressed to:

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

If paying by EFT, Respondent shall transfer the payment to:

Federal Reserve Bank of New York
ABA 021030004
Account 68010727
Swift Address FRNYUS33
33 Liberty Street
New York, NY 10045

If paying by EFT, field tag 4200 of the Fedwire message shall read: (D 68010727 Environmental Protection Agency).

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 to make the payment. Note that the type of payment is "civil penalty," the docket number "CWA-03-2015-0225" should be included in the "Court Order # or Bill #" field, and 3 should be included as the Region number.

17. If paying by check, Respondent shall note on the penalty payment check the title and docket number of this case. 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 person:

Lydia Guy
Regional Hearing Clerk (3RC00)

U.S. Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103-2029

Respondent must also provide a copy of its check or EFT confirmation to the attorney representing EPA in this matter at the following address:

Lauren E. Ziegler
Assistant Regional Counsel (3RC42)
U.S. Environmental Protection Agency – Region III
1650 Arch Street
Philadelphia, PA 19103-2029
ziegler.lauren@epa.gov

18. Failure by Respondent to pay the penalty assessed by the Final Order in full by its due date may subject Respondent to a civil action to collect the assessed penalty, plus interest, attorney's fees, costs and an additional quarterly nonpayment penalty pursuant to Section 311(b)(6)(H) of the Act, 33 U.S.C. § 1321(b)(6)(H), and 40 C.F.R. § 13.11. In any such collection action, the validity, amount, and appropriateness of the penalty agreed to herein shall not be subject to review.

General Provisions

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

20. The Final Order does not constitute a waiver, suspension or modification of the requirements of Section 311 of the Act, 33 U.S.C. § 1321, or any regulations promulgated thereunder, and does not affect the right of the Administrator or the United States to pursue any applicable injunctive or other equitable relief or criminal sanctions for any violation of law. Payment of the penalty pursuant to this Consent Agreement resolves only Respondent's liability for federal civil penalties for the violations of the Act alleged herein.

21. The undersigned officer of Respondent represents and warrants that he or she has the authority to bind Summit Environmental Services, LLC and its successors or assigns to this Consent Agreement.

22. Each party to this action shall bear its own costs and attorney's fees.

SUMMIT ENVIRONMENTAL SERVICES, LLC

Date: August 12, 2015



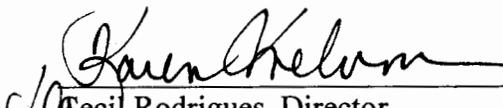
[Signature]

Charles Wright
Name (print or type)

CEO
Title

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: AUG 18 2015



Cecil Rodrigues, Director
Hazardous Site Cleanup Division

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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Respondent.

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33 U.S.C. § 1321(b)(3) and 1321(b)(6)(B)(i)

FINAL ORDER

Complainant, the Director of the Hazardous Site Cleanup Division, U.S. Environmental Protection Agency, Region III, and Respondent, Summit Environmental Services, 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 ("Consolidated Rules of Practice"), 40 C.F.R. Part 22 (with specific reference to Section 22.13(b), 22.18(b)(2) and (3), and 22.50(a)(1) and (b)). The terms of the foregoing Consent Agreement are hereby accepted by the undersigned and incorporated by reference into this Final Order as if fully set forth at length herein.

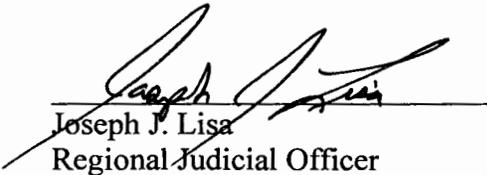
Based upon the representations of the parties in the attached Consent Agreement, the penalty agreed to therein is based upon consideration of, *inter alia*, EPA's *Civil Penalty Policy for Section 311(b)(3) and Section 311(j) of the Clean Water Act* (August 1998) and the statutory factors set forth in 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 Clean Water Act, 33 U.S.C. § 1321(b)(6)(B)(i), and the Consolidated Rules of Practice, **IT IS HEREBY ORDERED** that Respondent pay a penalty of **NINE THOUSAND SEVEN HUNDRED EIGHTY-SIX DOLLARS (\$9,786)**, plus any applicable interest, as specified in the Consent Agreement, and comply with the terms and conditions of the Consent Agreement.

Effective Date

The effective date of the foregoing Consent Agreement and this Final Order, signed by the Regional Administrator of the U.S. Environmental Protection Agency, Region III, or the Regional Judicial Officer, is the date on which this Final Order is filed with the Regional Hearing Clerk.

Date: Aug. 18, 2015


Joseph J. Lisa
Regional Judicial Officer

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the date provided below, I hand-delivered and filed the original of the signed Consent Agreement and Final Order with the Regional Hearing Clerk, U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029, and that true and correct copies of the Consent Agreement and Final Order were sent by UPS overnight mail to:

Mr. Charles R. Wright, Manager
Summit Environmental Services, LLC
9407 S. Pleasants Hwy
St. Marys, WV 26170

I further certify that I have sent a copy of the CAFO by electronic pdf to Respondent's representative Mr. Charles R. Wright on this day.

8-18-15
DATE


Lauren E. Ziegler (3RC42)
Assistant Regional Counsel
Counsel for Complainant
(215) 814-2623