

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

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REGIONAL HEADQUARTERS
EPA REGION III
PHILADELPHIA, PA

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In The Matter of: :
:
Butler Fuel and Sons, Inc. :
1649 Butler Road :
Harrington, DE 19952, :
:
Respondent. :
:
:
Butler Fuel and Sons, Inc. :
Jackson Ditch Road :
Harrington, DE 19952, :
:
Facility. :
:
_____ :

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

Docket No. CWA-03-2015-0229

CONSENT AGREEMENT

1. This Consent Agreement is proposed and entered into under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 311(b)(6)(B)(i) of the Clean Water Act (“CWA”), as amended, 33 U.S.C. § 1321(b)(6)(B)(i), and under the authority provided by Section 22.13(b), 22.18(b)(2) and (3), and 22.50(a)(1) and (b) of 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. The Administrator has delegated this authority to the Regional Administrator of EPA, Region III, who in turn has delegated it to the Director of the Region’s Hazardous Site Cleanup Division (“Complainant”).
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.
3. For purposes of this proceeding only, Respondent admits to the jurisdictional allegations set forth in this Consent Agreement.
4. Respondent neither admits nor denies the specific factual allegations, findings of fact, and conclusions of law set forth in this Consent Agreement, except as provided in Paragraph 3, above.

5. Respondent agrees not to contest EPA's jurisdiction with respect to the execution, enforcement, and issuance of this CAFO.
6. For purposes of this proceeding only, Respondent hereby expressly waives its right to contest the allegations set forth in this Consent Agreement and any right to appeal the accompanying Final Order.
7. Respondent shall bear its own costs and attorney's fees.

Statutory and Regulatory Authority

8. 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.
9. 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.
10. 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").
11. 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.
12. 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.
13. 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, including but not limited to § 112.8.

14. 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 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 \$16,000 per day for each day during which a violation continues, up to a maximum of \$177,500 for each penalty for violations occurring after January 12, 2009.

Findings of Fact and Conclusions of Law

15. Respondent is a family-owned corporation with a principal place of business located at 1649 Butler Road, Harrington, Delaware, 19952.
16. 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.
17. Respondent is engaged in the business of distribution of fuel oil from its facility located at Jackson Ditch Road, Harrington, Delaware, 19952 (the "Facility").
18. Respondent is 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.
19. Respondent has owned and operated the Facility since 1966, when the Facility started operations.
20. EPA and the Delaware Department of Natural Resources and Environmental Control conducted an inspection of Respondent's facility on May 21, 2014 ("the Inspection").
21. During the Inspection, EPA observed that the Facility had a total aboveground oil storage capacity of approximately 85,665 gallons comprised of eight aboveground tanks: one 20,000-gallon fuel oil tank; three 10,000-gallon fuel oil tanks; two 10,000-gallon kerosene tanks; one 5,000-gallon gasoline tank; and one 10,000-gallon diesel tank.
22. The Facility is located approximately 400 feet from Browns Branch. Browns Branch flows to Spring Creek and then to Murderkill River, which flows into the Delaware Bay.
23. The Facility could reasonably be expected to discharge oil in harmful quantities into the Browns Branch, Spring Creek, Murderkill River and the Delaware Bay.
24. The Browns Branch, Spring Creek, Murderkill River and the Delaware Bay are navigable waters of the United States within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

25. 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.
26. 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.
27. 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.
28. 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.
29. 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 including but not limited to 40 C.F.R. § 112.7.

Count I

30. The findings of fact and conclusions of law contained in Paragraphs 15 through 29 of this CAFO are incorporated by reference herein as though fully set forth at length.
31. During the inspection, EPA learned that the facility has been in operations since 1966 and never prepared an SPCC Plan.
32. Based on EPA's Inspection and EPA's review of information gathered during the Inspection, EPA alleges that Respondent failed to prepare in writing an SPCC plan, as required by 40 C.F.R. § 112.3 of the Regulations.
33. Failure to prepare an SPCC plan is a violation of 40 C.F.R. § 112.3 of the Regulations, issued pursuant to Section 311(j) of the CWA, 33 U.S.C. § 1321(j), which is subject to the assessment of penalties pursuant to Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6).

Count II

34. The findings of fact and conclusions of law contained in Paragraphs 15 through 33 of this CAFO are incorporated by reference herein as though fully set forth at length.
35. At the time of the Inspection, EPA inspectors observed that Respondent failed to implement an SPCC plan at the Facility, as follows:

- a. Pursuant to 40 C.F.R. § 112.7(e), the owner or operator of a facility subject to the Regulations must conduct inspections and tests required by the Regulations in accordance with the written procedures established in the SPCC Plan and the owner or operator must retain records of the inspections and tests, signed by the appropriate supervisor or inspector, with the SPCC plan for three years. Pursuant to 40 C.F.R. § 112.8(c)(6), the owner or operator of a facility subject to the Regulations, except an oil production facility, must test or inspect each aboveground container for integrity on a regular schedule. At the time of the Inspection, Respondent could not provide any written documentation indicating that any inspections or integrity tests had been conducted at the Facility.
 - b. Pursuant to 40 C.F.R. § 112.7(f), the owner or operator of a facility subject to the Regulations must 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 SPCC plan. In addition, 40 C.F.R. § 112.7(f) requires the owner or operator to schedule and conduct discharge prevention briefings for oil-handling personnel at least once a year. At the time of the Inspection, EPA learned from company personnel that a training program for the oil handling personnel was not in place.
 - c. Pursuant to 40 C.F.R. § 112.7(h)(1), the owner or operator of a facility subject to the Regulations must provide containment for oil spills from the facility's tank car and tank truck loading/unloading rack by means of a catchment basin, treatment facility, or quick drainage system. At the time of the Inspection, EPA inspectors observed that the Facility did not have a containment system for the tank car and tank truck loading/unloading rack.
 - d. Pursuant to 40 C.F.R. § 112.8(d)(3), the owner or operator of a facility subject to the Regulations, except an oil production facility, must properly design pipe supports to minimize abrasion and corrosion and allow for expansion and contraction. At the time of the Inspection, EPA inspectors observed that cinder blocks were used to support piping throughout the facility. The soil around the cinder blocks had eroded leaving them on top of unstable soil columns.
36. Based on EPA's Inspection and EPA's review of information gathered during the Inspection, EPA alleges that Respondent failed to implement an SPCC plan for the Facility, in accordance with 40 C.F.R § 112.7 and any other applicable section, including but not limited to § 112.8, as required by 40 C.F.R § 112.3 of the Regulations.
 37. Failure to implement an SPCC plan in accordance with 40 C.F.R § 112.7 and any other applicable section, including but not limited to § 112.8, is a violation of 40 C.F.R § 112.3 of the Regulations, issued pursuant to Section 311(j) of the CWA,

33 U.S.C. § 1321(j), which is subject to the assessment of penalties pursuant to Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6).

Penalty

38. In settlement of Complainant's claims for civil penalties for the violations alleged in this Consent Agreement, Respondent agrees to pay a civil penalty of \$22,115 plus \$92.35 in interest. In order to avoid the assessment of additional interest, administrative costs, and late payment penalties in connection with the civil penalty described in this CAFO, Respondent shall pay the civil penalty of \$22,115 plus \$92.35 in interest by remitting payments in accordance with Paragraph 40, below.
39. 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.
40. Respondent shall pay the penalty of \$22,115, in nine monthly installment payments, commencing with the first payment made no later than thirty (30) days after the effective date of the Final Order, and thereon making monthly payments with a 1% interest on the remaining amount of the penalty due as follows:
 - a. a first payment of **\$2,457.22** shall be made within 30 calendar days of the effective date of the Final Order;
 - b. a second payment of \$2,449.72 plus \$33.86 in interest for a total of **\$2,483.58** shall be made shall be made within 60 calendar days of the effective date of the Final Order;
 - c. a third payment of \$2,452.31 plus \$14.34 in interest for a total of **\$2,466.65** shall be made shall be made within 90 calendar days of the effective date of the Final Order;
 - d. a fourth payment of \$2,453.94 plus \$12.71 in interest for a total of **\$2,466.65** shall be made shall be made within 120 calendar days of the effective date of the Final Order;
 - e. a fifth payment of \$2,456.40 plus \$10.25 in interest for a total of **\$2,466.65** shall be made shall be made within 150 calendar days of the effective date of the Final Order;

- f. a sixth payment of \$2,458.17 plus \$8.48 in interest for a total of **\$2,466.65** shall be made shall be made within 180 calendar days of the effective date of the Final Order;
 - g. a seventh payment of \$2,460.29 plus \$6.36 in interest for a total of **\$2,466.65** shall be made shall be made within 210 calendar days of the effective date of the Final Order;
 - h. an eight payment of \$2,462.68 plus \$3.97 in interest for a total of **\$2,466.65** shall be made shall be made within 240 calendar days of the effective date of the Final Order; and
 - i. a ninth and final payment of \$2,464 plus \$2.38 in interest for a total of **\$2,466.65** shall be made shall be made within 270 calendar days of the effective date of the Final Order.
41. All payments 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-03-2015-0229) 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-03-2015-0229” should be included in the “Court Order # or Bill #” field, and “3” should be included as the Region number.
42. 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.
43. Interest on the civil penalty will begin to accrue on the date that this CAFO, when fully executed, is mailed or hand-delivered to the Respondent. 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).
44. 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.
45. 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).

46. In order to avoid the assessment of administrative costs for overdue debts, as described above, Respondent must remit payments for the civil penalty in accordance with the payment deadline set forth above.
47. 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

Lourdes del Carmen Rodriguez (3RC42)
Senior Assistant Regional Counsel
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

48. 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.

General Provisions

49. The undersigned officer of Respondent represents and warrants that he or she has the authority to bind the Respondent and its successors or assigns to the terms of this Consent Agreement.
50. The provisions of this Consent Agreement and the Final Order, if issued, shall be binding upon Respondent and Respondent's successors or assigns.
51. Payment of the penalty pursuant to this Consent Agreement shall resolve all liability of Respondent for federal civil penalties for the violations alleged based on the facts alleged in this Consent Agreement.
52. The Final Order does not constitute a waiver, suspension or modification of the requirements of Section 311 of the CWA, 33 U.S.C. § 1321, or any regulations promulgated thereunder, and does not affect the right of the Administrator or the United States to pursue any applicable injunctive or other equitable relief or criminal sanctions for any violation of law. Payment of the penalty pursuant to this Consent Agreement resolves only Respondent's alleged liability for federal civil penalties for the violations and facts alleged in this Consent Agreement.

53. 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.

For the Respondent, Butler Fuel and Sons, Inc.

Date: 8/18/15

By: Robert Allen Butler

Name: ROBERT ALLEN BUTLER

Title: PRESIDENT

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

Date: 9/8/2015 By: Lourdes del Carmen Rodriguez
Senior Assistant Regional Counsel

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

Date: 9/9/2015 By: Cecil A. Rodriguez
Cecil A. Rodriguez, Director
Hazardous Site Cleanup Division
EPA Region III

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

In The Matter of:	:	
	:	
Butler Fuel and Sons, Inc.	:	
1649 Butler Road	:	Proceedings Pursuant to Section 311(j) and
Harrington, DE 19952.	:	311(b)(6)(B)(i) of the Clean Water Act,
	:	33 U.S.C. § 1321(j) and 1321(b)(6)(B)(i)
Respondent.	:	
	:	
	:	
Butler Fuel and Sons, Inc.	:	Docket No. CWA-03-2015-0229
Jackson Ditch Road	:	
Harrington, Kent County, DE	:	
	:	
Facility.	:	
	:	

FINAL ORDER

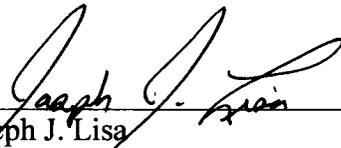
Complainant, the Director of the Hazardous Site Cleanup Division, U.S. Environmental Protection Agency, Region III, and Respondent, Butler Fuel and Sons, Inc., have executed a document entitled "Consent Agreement," which I hereby ratify as a Consent Agreement in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits," ("Consolidated Rules of Practice"), 40 C.F.R. Part 22, with specific references to Section 22.13(b), 22.18(b)(2) and (3), 22.1(b) and 22.50(a)(1). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.

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

NOW, THEREFORE, PURSUANT TO Section 311(b)(6)(B)(i) of the CWA, as amended, and the Consolidated Rules of Practice, IT IS HEREBY ORDERED that Respondent pay a civil penalty of TWENTY-TWO THOUSAND AND ONE HUNDRED AND FIFTEEN DOLLARS (\$22,115), plus any applicable interest, as specified in the Consent Agreement, and comply with the terms and conditions of the Consent Agreement.

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: Sept. 9, 2015



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