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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

2013 FEB 28 AM 10:14

In the Matter of:

English Construction Company, Inc.
615 Church Street
Lynchburg, Virginia 24504,

RESPONDENT.

English Construction Company, Inc.
113 Main Street
Hurt, Virginia 24563,

FACILITY.

CONSENT AGREEMENT
REGIONAL HEARING CLERK
EPA REGION III, PHILA. PA

Proceeding under Section 311
of the Clean Water Act
to assess a Class I Administrative
Penalty

Docket No.: CWA-03-2013-0014

STATUTORY 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)(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 22.18(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 consent to the entry of this CAFO, and agree to comply with its terms.
3. Congress enacted the CWA, 33 U.S.C. §§ 1251 *et seq.*, in 1972. In Section 311(j)(1)(C) of the CWA, 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.
4. 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.
5. Pursuant to its delegated authority under Section 311(j) of the CWA, EPA promulgated Oil Pollution Prevention Regulations, 40 C.F.R. § 112, 38 Fed. Reg. 34165 (Dec. 11, 1973), effective January 10, 1974 ("1973 regulations").

16. The Roanoke River 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.
17. 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.
18. Pursuant to 40 C.F.R. § 112.1, Respondent, as the owner and operator of the Facility, is subject to the Oil Pollution Prevention Regulations codified at 40 C.F.R. Part 112.
19. EPA conducted a compliance inspection at the Facility on October 25, 2010 (“the inspection”).
20. According to Respondent’s SPCC plan, dated July 15, 2011 and certified by a professional engineer, the Facility has an oil storage capacity of 68,149 gallons. Such SPCC plan was updated on May 17, 2012 and certified by a professional engineer that the Facility has an oil storage capacity of 41,975 gallons.
21. Pursuant to Section 311(j) of the CWA, 33 U.S.C. § 1321(j), and 40 C.F.R. §§ 112.1 and 112.3, the Facility is subject to the SPCC requirements of 40 C.F.R. § 112.3 because the Facility’s oil storage capacity exceeds the 1,320-gallon aboveground capacity threshold of the Oil Pollution Prevention Regulations and the Facility is an onshore non-transportation-related facility that could be reasonably expected to discharge oil in harmful quantities into or upon the navigable waters of the United States or adjoining shorelines.

COUNT 1: FAILURE TO PREPARE AN SPCC PLAN

22. The Regulations at § 112.3(a) require that persons subject to the SPCC requirements must “. . . prepare a Spill Prevention Control and Countermeasure Plan . . . , in writing and in accordance with § 112.7.” The SPCC Plan must also be “fully implemented as soon as possible, but not later than [January 10, 1975].”
23. During the inspection, Respondent could not provide EPA with an SPCC plan and Respondent’s representative at the inspection told EPA’s inspectors that the company was still developing a plan.
24. Respondent’s failure to prepare an SPCC plan in accordance with 40 C.F.R. § 112.7 is a violation of § 112.3(a) of the Regulations.

COUNT 2: FAILURE TO IMPLEMENT AN SPCC PLAN

Failure to Conduct Integrity Testing and Visual Inspection

25. The Regulations at § 112.7(e)(2)(vi) require that:

Aboveground tanks should be subject to periodic integrity testing, taking into account tank design (floating roof, etc.) and using such techniques as hydrostatic testing, visual inspection or a system of non-destructive shell thickness testing.

Drainage from diked storage areas should be restrained by valves or other positive means to prevent a spill or other excessive leakage of oil into the drainage system or in-plant effluent treatment system, except where plan systems are designed to handle such leakage. Diked areas may be emptied by pumps or ejectors; however, these should be manually activated and the condition of the accumulation should be examined before starting to be sure no oil will be discharged into the water.

31. The Regulations at § 112.7(e)(1)(iii) require that:

Plant drainage systems from undiked areas should, if possible, flow into ponds, lagoons or catchment basins, designed to retain oil or return it to the facility. Catchment basins should not be located in areas subject to periodic flooding.

32. The Regulations at § 112.7(e)(1)(iv) require that:

If plant drainage is not engineered as above, the final discharge of all in-plant ditches should be equipped with a diversion system that could, in the event of an uncontrolled spill, return the oil to the plant.

33. During its inspection, EPA determined that drainage from the diked and undiked tank storage areas at the Facility were not engineered according to 40 C.F.R. §§ 112.7(e)(1)(i), 112.7(e)(1)(iii), or 112.7(e)(1)(iv) and that the final discharge of all in-plant ditches was not equipped with a diversion system.
34. Respondent's failure to implement facility drainage safeguards violated 40 C.F.R. § 112.7(e)(1)(iv) (1973).

Failure to Adequately Train Personnel

35. The Regulations at § 112.7(e)(10) require owners or operators to properly instruct their personnel in the operation and maintenance of equipment to prevent the discharges of oil and applicable pollution control laws, rules, and regulations.
36. During the inspection, Respondent was not able to provide training records for personnel handling oil.
37. Based on EPA's observations, EPA determined that Respondent failed to instruct its personnel on operation and maintenance of equipment to prevent the discharges of oil.
38. Respondent's failure to adequately instruct its personnel violated 40 C.F.R. § 112.7(e)(10).

CIVIL PENALTY

39. 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 **\$17,289** in accordance with the payment terms set forth below.

- 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-03-2013-0014" should be included in the "Court Order # or Bill #" field, and "3" should be included as the Region number.
- G. Payment by the Respondent shall reference Respondent's name and address, and the EPA Docket Number of this CAFO (CWA-03-2013-0014). A copy of Respondent's check or a copy of Respondent's electronic fund transfer shall be sent simultaneously to:

Lee M. Zarzecki
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region III (Mail Code 3RC41)
1650 Arch Street
Philadelphia, PA 19103-2029

Ms. Lydia Guy
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region III (Mail Code 3RC00)
1650 Arch Street
Philadelphia, PA 19103-2029

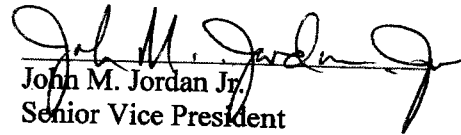
43. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's 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.
44. Interest on the civil penalty will begin to accrue on the date that this CAFO is mailed or hand-delivered to 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).
45. 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 the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.
46. A penalty charge of six percent per year will be assessed monthly on any portion of the 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).
47. Failure by Respondent to pay the penalty assessed by the Final Order in full by the Interest Accrual 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

For the Respondent, English Construction Company, Inc.

Date:

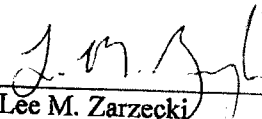
1/16/13

By:


John M. Jordan Jr.
Senior Vice President
English Construction Company, Inc.

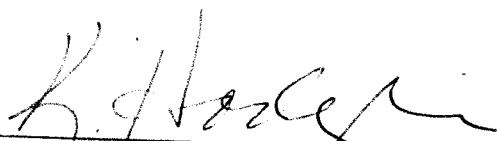
For the Complainant, U.S. Environmental Protection Agency, Region III

Date: 1/24/2013

By: 
Lee M. Zarzecki
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: 2/21/2013

By: 
Kathryn A. Hodgkiss, Acting Director
Hazardous Site Cleanup Division

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

In the Matter of:

English Construction Company, Inc.
615 Church Street
Lynchburg, Virginia 24504,

RESPONDENT,

English Construction Facility
113 Main Street
Hurt, Virginia 24563,

FACILITY.

FINAL ORDER

Proceeding under Section 311
of the Clean Water Act
to assess a Class I Administrative
Penalty for SPCC Violations

Docket No.: CWA-03-2013-0014

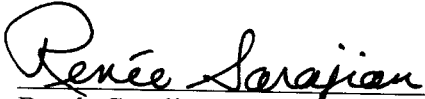
FINAL ORDER

Pursuant to Section 311(b)(6) of the CWA, 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," codified at 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order.

Nothing in the foregoing Consent Agreement relieves Respondent from otherwise complying with the applicable requirements set forth in the Clean Water Act.

Respondent is ordered to comply with the terms of the foregoing Consent Agreement.

Date: 2/27/13


Renée Sarajian
Regional Judicial Officer/Presiding Officer

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III**

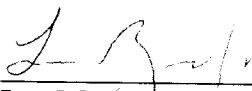
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615 Church Street	:	of the Clean Water Act to assess a Class I
Lynchburg, Virginia 24504,	:	Administrative Penalty
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Respondent.	:	
	:	
English Construction and Company, Inc.	:	Docket No.: CWA-03-2013-0014
113 Main Street	:	
Hurt, Virginia 24563,	:	
	:	
Facility.	:	

CERTIFICATE OF SERVICE

I hereby certify that the original and one copy of the foregoing Consent Agreement and Final Order ("CAFO") in the above-captioned matter have been filed with the EPA Region III Regional Hearing Clerk and a copy of the CAFO was sent via UPS overnight to:

English Construction Company, Inc.
Attention: James Higginbotham
615 Church Street
Lynchburg, Virginia 24504

2/28/2013
Date



Lee M. Zarzecki
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region III