

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

IN THE MATTER OF:

Peninsula Oil and Propane, Inc.
40 South Market Street
Seaford, DE 19973,

Respondent.

Blades Bulk Plant
40 South Market Street
Seaford, DE 19973,

Facility.

CLEAN WATER ACT SECTION 311 CLASS II
CONSENT AGREEMENT
AND FINAL ORDER
UNDER 40 CFR §§ 22.13(b) AND 22.18(b)(2)

Docket No. CWA-03-2014-0044

REGIONAL HEARING CLERK
EPA REGION III PHILA PA

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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)(6)(B)(ii) of the Clean Water Act ("Act"), as amended, 33 U.S.C. § 1321(b)(6)(B)(ii), and under the authority provided by 40 C.F.R. §§ 22.13(b) and 22.18(b)(2). 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

I. Factual Allegations and Conclusions of Law

2. For the purpose of this proceeding, and with the exception of Paragraph 64, below, Respondent neither admits nor denies the following factual allegations and conclusions of law, but expressly waives its rights to contest said allegations.

3. Respondent is a corporation duly organized and existing under the laws of Delaware with a place of business located at 40 South Market Street, Seaford, Delaware. Respondent is a person within the meaning of Section 311(a)(7) of the Act, 33 U.S.C. § 1321(a)(7), and 40 C.F.R. § 112.2
4. Respondent is the owner and operator 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, of the Blades Bulk Plant, which is located at 40 South Market Street, Seaford, Delaware (“Facility”).
5. 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 C.F.R. § 112.2.
6. At all times relevant to this matter, Respondent operated the Facility under Standard Industrial Classification (SIC) code 5171 (Petroleum Bulk Storage and Terminals).
7. Respondent began operating the Facility in the 1950s.
8. EPA conducted an inspection of the Facility on May 28, 2013 (“Inspection”).

A. EPA’s Findings of Fact and Conclusions of Law - Oil Spill

COUNT I

9. Section 311(b)(3) of the Act 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. 33 U.S.C. § 1321(b)(3).
10. For purposes of Section 311 of the Act, oil is defined 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. 33 U.S.C. § 1321(a)(1)

11. 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.
12. On or about May 20, 2013, approximately 146 barrels of Number 2 fuel oil, or 6,154 gallons, were released into an earthen secondary containment due to a failure of Respondent's piping system at the West Tank Farm Area of the Facility.
13. An unknown quantity of the Number 2 fuel oil seeped through Respondent's earthen secondary containment and discharged into the waters of the Nanticoke River (the "Discharge"), which discharges into the Chesapeake Bay, a navigable waterway of the United States as defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 110.1.
14. Number 2 fuel oil is an oil pursuant to 33 U.S.C. § 1321(a)(1)
15. The Discharge on or about May 20, 2013, from its Facility caused a sheen upon or discoloration of the surface of the Nanticoke River, 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).
16. The Discharge from the Facility into or upon the Nanticoke River and the adjoining shoreline, in a quantity that has been determined may be harmful under 40 C.F.R. §

110.3, on or about May 20, 2013, violated Section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3).

B. Factual Allegations and Conclusions of Law – SPCC Plan

17. 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.
18. 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.
19. Pursuant to its delegated authority under Section 311(j) of the CWA, EPA promulgated Oil Pollution Prevention Regulations, 38 Fed. Reg. 34165 (Dec. 11, 1973), effective January 10, 1974.
20. The Oil Pollution Prevention Regulations, as amended from time to time, are codified at 40 C.F.R. Part 112.
21. The Oil Pollution Prevention Regulations provide, in relevant part, that “. . . this part applies 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 and oil products, which, due to its location, could reasonably be expected to discharge oil in quantities that may be harmful, as described in Part 110 of this chapter, into or upon the navigable waters of the United States or adjoining shorelines.” 40 C.F.R. § 112.1(b).

22. For purposes of the Oil Pollution Prevention Regulations, oil is defined as “oil of any kind 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.” 40 C.F.R. § 112.2.
23. Respondent is engaged in storing, transferring, or distributing oil or oil products located at the Facility.
24. The Facility had a total aboveground oil storage capacity of approximately 935,000 gallons at the time EPA conducted a compliance inspection at the Facility on May 28, 2013 (“the Inspection”).
25. The Facility borders the Nanticoke River.
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 a navigable water of the United States or its adjoining shoreline.
27. 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.
28. 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.
29. 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 due to its location could reasonably be expected to discharge oil in harmful quantities into or upon the navigable waters of the United States or adjoining shorelines.

30. Respondent signed and began to implement the SPCC Plan for the Facility on July 29, 2008, which was, according to the Respondent's representation at the time of the Inspection, in place at the Facility at the time of the Inspection (hereinafter, "2008 SPCC Plan").

COUNT II

31. Pursuant to 40 C.F.R. § 112.5(a), an owner or operator of a facility subject to the Oil Pollution Prevention Regulations is required to amend its SPCC Plan in accordance with the general requirements in 40 C.F.R. § 112.7, and with any specific section of 40 C.F.R. Part 112 applicable to that facility, within six months of making a change in the facility design, construction, operation or maintenance that materially affects its potential for a discharge as described in 40 C.F.R. § 112.1(b).
32. The commissioning or decommissioning of containers and changes of product stored at a facility are examples of changes provided at 40 C.F.R. § 112.5(a) that may require amendment of the SPCC Plan.
33. Pursuant to 40 C.F.R. § 112.5(c), except for qualified facilities as defined by 40 C.F.R. § 112.3(g) and as set forth in 40 C.F.R. § 112.6, a Professional Engineer must certify any technical amendments to an SPCC plan in accordance with 40 C.F.R. § 112.3(d).
34. The Facility is not a "qualified facility" pursuant to 40 C.F.R. § 112.3(g) and for purposes of 40 C.F.R. § 112.6 because it has an aggregate aboveground storage capacity that exceeds 10,000 gallons.

35. During the Inspection, EPA determined, based on a review of the Facility's SPCC plan and on discussions with facility representatives, that in or around April 2010 two 25,000-gallon tanks which had been within secondary containment had been removed and replaced with a new 25,000-gallon-capacity tank and a new 20,000-gallon-capacity tank, both of which were double-walled.
36. The decommissioning and commissioning of tanks and the modification of the method of secondary containment each constitute a change in facility design, construction, operation or maintenance that materially affects the Facility's potential for a discharge as described in 40 C.F.R. § 112.1(b).
37. Respondent was required to amend the 2008 SPCC Plan to account for the material changes set forth in Paragraph 35 within six months of making the changes.
38. Pursuant to 40 C.F.R. § 112.5(c), the changes set forth in Paragraph 36 required technical amendments to the 2008 SPCC Plan and were required to be certified by a Professional Engineer pursuant to 40 C.F.R. § 112.3(d).
39. Respondent manually amended the 2008 SPCC Plan within six months of material changes at its Facility, but failed to have the technical amendments certified by a Professional Engineer and, therefore, violated 40 C.F.R. § 112.5.

COUNT III

40. Pursuant to 40 C.F.R. § 112.7(e), an owner or operator of a facility subject to the Oil Pollution Prevention Regulations is required to conduct inspections and tests and compile records required by 40 C.F.R. Part 112 in accordance with written procedures and must

keep those written procedures and a record of the inspections and tests, signed by the appropriate supervisor or inspector, with the SPCC Plan for a period of three years.

41. In accordance with 40 C.F.R. § 112.7(e), the 2008 SPCC Plan provided that monthly inspections be conducted of aboveground containers to assess integrity; container supports and foundations for instability or excessive settlement; liquid level sensing devices for proper operation; diked areas for signs of deterioration, discharges, or accumulation of oil inside diked areas; and aboveground valves, piping and appurtenances to determine their condition.
42. At the time of the Inspection, Respondent could not produce monthly inspection records for the West Tank Farm for the months June 2011 through October 2011, February 2012 through May 2012, and August 2012 through October 2012 and were not available for the East Tank Farm for the months June 2011 through October 2011, February 2012 through May 2012, and September 2012 through October 2012.
43. Respondent failed to create and keep records of inspections for the months set forth in Paragraph 42 and, therefore, violated 40 C.F.R. § 112.7(e).

COUNT IV

44. Pursuant to 40 C.F.R. § 112.7(f)(1), an owner or operator of a facility subject to the Oil Pollution Prevention Regulations is required to, at a minimum, train its 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.

45. Pursuant to 40 C.F.R. § 112.7(f)(3), the training set forth in Paragraph 44 must be conducted at least once a year in order to assure adequate understanding of the SPCC Plan for that facility and must highlight and describe known discharges or failures, malfunctioning components, and any recently developed precautionary measures.
46. At the time of the Inspection, Respondent did not have records demonstrating that it had completed its annual training for calendar year 2012.
47. Respondent did not complete its annual training for calendar year 2012 and, therefore, violated 40 C.F.R. § 112.7(f).

COUNT V

48. Pursuant to 40 C.F.R. § 112.8(c)(2), all bulk storage tank installations except mobile refuelers and other non-transportation-related tank trucks must provide a secondary means of containment for the entire capacity of the largest single container and sufficient freeboard to contain precipitation.
49. Pursuant to 40 C.F.R. § 112.8(c)(2), diked areas must be sufficiently impervious to contain discharged oil.
50. Pursuant to 40 C.F.R. § 112.8(c)(3), drainage of uncontaminated rainwater from the diked area into a stormdrain is not allowed unless an owner or operator: (1) normally keeps the bypass valve sealed closed, (2) inspects the retained rainwater to ensure that its presence will not cause a discharge, (3) opens the bypass valve and reseals it following drainage under responsible supervision, and (4) keeps adequate records of such events.

51. Pursuant to 40 C.F.R. § 112.2, a bulk storage container is any container used to store oil; these containers are used for purposes including, but not limited to, the storage of oil prior to use, while being used, or prior to further distribution in commerce.
52. At the time of the Inspection, the West Tank Farm Area contained the following tanks used to store oil prior to further distribution in commerce:
- a. A tank with a 214,459-gallon capacity containing red-dyed diesel fuel;
 - b. A tank with a 185,102-gallon capacity that was empty;
 - c. Three 8,000-gallon-capacity tanks, each containing gasoline;
 - d. A tank with a 4,000-gallon capacity containing Number 2 diesel fuel;
 - e. A tank with a 4,000-gallon capacity containing kerosene.
53. Each of the tanks set forth in Paragraph 52 are bulk storage tanks pursuant to 40 C.F.R. § 112.2.
54. Red-dyed diesel fuel, gasoline, Number 2 diesel fuel, and kerosene are each an oil as defined in 40 C.F.R. § 112.2.
55. The tanks in the West Tank Farm Area are located within concrete block-diked secondary containment with a soil base.
56. At the time of the Inspection, EPA inspectors observed the presence of a manual sump pump within the secondary containment for the East Tank Farm Area. The sump pump was used to pump any fluid out of the secondary containment area directly into the Nanticoke River.
57. The use of a manual sump for the drainage of liquid, including rainwater, in the East Tank Farm Area caused rainwater to be discharged into the Nanticoke River without the

maintenance of records of bypass and drainage events required by 40 C.F.R. § 112.8(c)(3)(iv).

58. The Discharge, which was caused by oil seeping from the West Tank Farm Area earthen secondary containment, occurred because the secondary containment was inadequate to contain discharged oil, as required by 40 C.F.R. § 112.8(c)(2).
59. Respondent did not construct an adequate secondary containment at the West Tank Farm Area and failed to keep records of bypass and drainage events for the East Tank Farm Area in violation of 40 C.F.R. § 112.8(c).

COUNT VI

60. The Oil Pollution Prevention Regulations at Section 112.8(d)(3) requires that pipe supports be properly designed to minimize abrasion and corrosion and allow for expansion and contraction. 40 C.F.R. § 112.8(d)(3).
61. At the time of the Inspection, EPA inspectors observed that, in certain areas, pipes were supported with cinder blocks in a manner that did not minimize abrasion and corrosion and allow for expansion and contraction.
62. Respondent failed to properly design adequate pipe supports, in violation of 40 C.F.R. § 112.8(d)(3).

II. Waiver of Rights

For the purpose of this proceeding, Respondent:

63. Admits the jurisdictional allegations in this Consent Agreement and agrees not to contest EPA's jurisdiction with respect to the execution or enforcement of this Agreement.
64. Waives the right to a hearing under Section 311(b)(6)(B)(i) of the Act 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.

III. Penalty

65. The Complainant proposes, and Respondent consents to, the assessment of a civil penalty of \$38,272.00.

IV. Payment Terms

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

66. Within 30 days of the effective date of the Final Order, Respondent shall pay the amount of \$38,272.00 by means of a cashier's or certified check, or by electronic funds transfer (EFT) as full, final and complete settlement of Respondent's liability for all claims alleged in this Consent Agreement. 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, 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-03-2014-0044" should be included in the "Court Order # or Bill #" field, and 3 should be included as the Region number.

67. 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:

James F. Van Orden
Senior Assistant Regional Counsel (3RC42)
U.S. Environmental Protection Agency – Region III
1650 Arch Street
Philadelphia, PA 19103-2029
(215) 814-2693

68. 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). In any such collection action, the validity, amount and appropriateness of the penalty agreed to herein shall not be subject to review.

V. General Provisions

69. The Final Order shall be binding upon Respondent and Respondent's officers, directors, agents, servants, employees, and successors or assigns.
70. 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

fully resolves Respondent's liability for all claims alleged herein, including federal civil penalties for the alleged violations of the Act.

71. The undersigned officer of Respondent represents and warrants that he or she has the authority to bind Peninsula Oil and Propane, Inc. and its successors or assigns to this Consent Agreement.
72. Each party to this action shall bear its own costs and attorney's fees.

PENINSULA OIL AND PROPANE, INC.

Date: 9-10-14

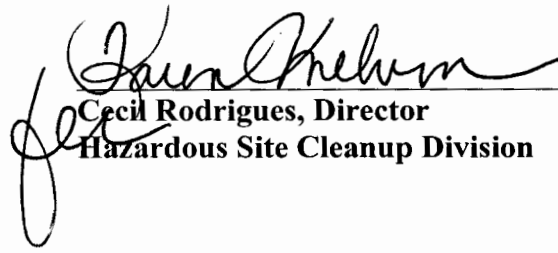
John M. Evans
[Signature]

JOHN M. EVANS
Name (print or type)

CONTROLLER
Title

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: SEP 24 2014


Cecil Rodrigues, Director
Hazardous Site Cleanup Division

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III**

IN THE MATTER OF:

Peninsula Oil and Propane, Inc.
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Respondent.

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**CLEAN WATER ACT SECTION 311 CLASS II
CONSENT AGREEMENT
AND FINAL ORDER
UNDER 40 CFR §§ 22.13(b) AND 22.18(b)(2)**

Docket No. CWA-03-2014-0044

FINAL ORDER

Pursuant to Section 311(b)(6) of the Clean Water Act, as amended, 33 U.S.C.

§ 1321(b)(6), and in accordance with 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,” codified at 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. Respondent is ordered to pay the \$38,272.00 penalty and otherwise comply with the terms of the Consent Agreement.

Effective Date

This Final Order shall become effective on the date it is filed with the Regional Hearing Clerk.

Date: 9-30-14



Heather Gray
Regional Judicial Officer