

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III**

In The Matter of:	: CONSENT AGREEMENT
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	:
Tunstall Fuel Company	: Proceeding to Assess Class II
	: Civil Penalties Under Section
	: 311 of the Clean Water Act, as
8700 Somerset Pike	: amended, 33 U.S.C. § 1321.
Boswell, Pennsylvania 15531	:
	:
	:
Respondent.	: Docket No. CWA-03-2009-0162
_____	:

181611 US EPA
11/9/07

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)(ii) of the Clean Water Act, as amended, (“CWA”), 33 U.S.C. § 1321(b)(6)(B)(ii), 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 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”).

Findings of Fact and Conclusions of Law

For the purposes of this proceeding only, the parties, in their own capacity or by their attorneys or other authorized representatives, hereby stipulate to the following findings of fact and conclusions of law:

2. Section 311(j)(1)(C) of the CWA, 33 U.S.C. § 1321(j)(1)(C), provides that the President shall issue regulations “establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil . . . from onshore . . . facilities, and to contain such discharges”

3. Initially by Executive Order 11548 (July 20, 1970), 35 Fed. Reg. 11677 (July 22, 1970), and most recently by Section 2(b)(1) of Executive Order 12777 (October 18, 1991), 56 Fed. Reg. 54757 (October 22, 1991), the President delegated to EPA his authority under Section 311(j)(1)(C) of the CWA, 33 U.S.C. § 1321(j)(1)(C), to issue the regulations referenced in the preceding Paragraph for non-transportation-related onshore facilities.

4. EPA subsequently promulgated the Spill Prevention, Control and Countermeasure (“SPCC”) regulations (“SPCC regulations”) which are codified at 40 C.F.R. Part 112 Subparts A, B, and C, pursuant to the delegated statutory authorities referred to in Paragraphs 2 and 3, and pursuant to its authorities under the CWA. The SPCC regulations, among other things, established certain procedures, methods and requirements upon each owner and operator of a non-transportation-related onshore facility if such facility, due to its location, could reasonably be expected to discharge oil into or upon the navigable waters of the United States and their adjoining shorelines in

such quantity as EPA has determined in 40 C.F.R. § 110.3 may be harmful to the public health or welfare or the environment of the United States (“harmful quantity”).

5. In promulgating 40 C.F.R. § 110.3, which implements Section 311(b)(4) of the CWA, 33 U.S.C. § 1321(b)(4), EPA has determined that a discharge of a harmful quantity includes an oil discharge where such discharge causes either: (1) a violation of applicable water quality standards; (2) a film, sheen upon, or discoloration of the surface of the water or adjoining shorelines; or (3) a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

6. Respondent is a corporation organized under the laws of Pennsylvania with a place of business located at 8700 Somerset Pike, in Boswell, Pennsylvania (“the Facility”). 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.

7. Respondent is engaged in storing, transferring, or distributing oil or oil products located at an onshore bulk oil storage facility located at the Facility.

8. The Above Ground Storage Tanks (“ASTs”) at the Facility have an aggregate storage capacity of approximately 50,000 gallons of oil.

9. The Facility has an aggregate above-ground storage capacity greater than 1320 gallons of oil in containers, each with a shell capacity of at least 55 gallons.

10. On April 30, 2009, the Complainant issued an Administrative Complaint pursuant to Section 311(b)(6)(B)(ii) of the CWA, 33 U.S.C. §1321(b)(6)(B)(ii), Docket No. CWA-03-2009-0162, alleging that the Respondent was in violation of the SPCC regulations and proposing a civil penalty of \$39,930.00 (“the Complaint”). Specifically, the Complainant alleged that Respondent failed to prepare an adequate SPCC Plan as

required by 40 C.F.R. § 112.3(b)(2002), in violation of Section 311(j)(1) of the CWA, 33 U.S.C. § 1321(j)(1).

Complainant has made, and Respondent neither admits nor denies, the following findings of fact and conclusions of law:

11. Respondent is the owner and operator within the meaning of Section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6), and 40 C.F.R. § 112.2, of a bulk petroleum storage facility, located at the Facility, which is approximately 528 feet from North Branch Creek.

12. North Branch Creek is a navigable water of the United States within the meaning of 40 C.F.R. § 112.2 and Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

13. North Branch Creek is a tributary of the Quemahoning Creek, which is a tributary of Stonycreek River, which is a tributary of the Conemaugh River, all of which are navigable waters within the meaning of 40 C.F.R. § 112.2 and Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

14. 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.

15. The Facility is a non-transportation-related facility within the meaning of 40 C.F.R. § 112.2 Appendix A, as incorporated by reference within 40 C.F.R. § 112.2.

16. The Facility is a non-transportation-related onshore facility which, due to its location, could reasonably be expected to discharge oil to a navigable water of the United States or its adjoining shorelines in a harmful quantity (“an SPCC-regulated facility”) within the meaning of 40 C.F.R. Part 112.

17. Pursuant to Section 311(j)(1)(C) of the CWA, 33 U.S.C. § 1321(j)(1)(C), and 40 C.F.R. § 112.1, Respondent, as the operator of an SPCC-regulated facility, is subject to the SPCC regulations.

18. Complainant incorporates by reference, and Respondent neither admits nor denies, the allegations in Paragraphs 29 through 48 of the Complaint.

Waiver of Rights

19. The Respondent admits to the jurisdiction of EPA in this matter as set forth in the Complaint and waives the right to a hearing under Section 311(b)(6)(B)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(ii), and to appeal the Final Order in this matter (if issued in the form attached hereto) under Section 311(b)(6)(G)(ii) of the Act, 33 U.S.C. §1321(b)(6)(G)(ii), and consents to the issuance of a Final Order (in the form attached hereto) without further adjudication.

Penalty

20. On or about June 9, 2009, Respondent provided information to EPA to support a claim that it is unable to pay a penalty.

21. On or about June 23, 2009, EPA conducted an ability-to-pay analysis of Respondent and determined that Respondent is unable to pay the full penalty proposed in the Complaint.

22. Respondent consents to the assessment of a civil penalty of \$100.00.

Payment Terms

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

23. Within thirty (30) days of the effective date of the Final Order, the Respondent shall pay the amount of \$100.00 by means of a cashier's or certified check, or by electronic funds transfer ("EFT"). If paying by check, the Respondent shall submit a cashier's or certified check, payable to "Environmental Protection Agency," and bearing the notation "OSLTF – 311." If the 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

If the Respondent sends payment by a private delivery service, the payment 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: Natalie Pearson (314/418-4087)

24. If paying by EFT, the Respondent shall make the transfer to:

Federal Reserve Bank of New York
ABA 021030004
Account 68010727
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)."

In the case of an international transfer of funds, the Respondent shall use SWIFT address FRNYUS33.

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 and make payments. Note that the type of payment is "civil penalty," the docket number "CWA-03-2009-0162" should be included in the "Court Order # or Bill #" field and "3" should be included as the Region number.

25. If paying by check, the Respondent shall note on the penalty payment check the title and docket number ("CWA-03-2009-0162") of this case. The 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

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

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

26. Failure by the Respondent to pay the penalty assessed by the Final Order in full by due dates set forth in Paragraph 23 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.

Compliance

27. In the event the Respondent resumes operations at the Facility, Respondent must have prepared an SPCC Plan for the Facility, prepared by a certified engineer, that meets the requirements of 40 C.F.R. Part 112.

28. Respondent must provide to EPA at least thirty (30) days written notice prior to the occurrence of any of the following:

a. Initiation of activities to permanently close tanks at the Facility. As set forth in 40 C.F.R. § 112.2, permanent closure requires that:

- (1) All liquid and sludge has been removed from each container and connecting line; and
- (2) All connecting lines and piping have been disconnected from the container and blanked off, all valves (except ventilation valves) have been closed and locked, and conspicuous signs have been posted on each container stating it is a permanently closed container and noting the date of closure. Id.; or

b. The Facility is sold, transferred, or leased to any other party; or

c. Respondent resumes operations at the facility.

29. Written notice as required in Paragraph 28 shall be to Arlin Galarza-Hernandez at the following address:

Arlin Galarza-Hernandez
Inspector (3HS61)
U.S. Environmental Protection Agency
Region III

1650 Arch Street
Philadelphia, PA 19103-2029
FAX: 215-814-3274

General Provisions

30. Pursuant to Section 311(b)(6)(C) of the CWA, 33 U.S.C. § 1321(b)(6)(C), the Complainant has provided public notice of and reasonable opportunity to comment on this proposed issuance of a penalty in this matter.

31. The provisions of the Final Order shall be binding upon Respondent and Respondent's successors or assigns.

32. 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 liability for federal civil penalties for the violations and facts alleged in the Complaint.

33. As used in this Consent Agreement, the term "Effective Date" shall mean the date on which the Final Order is served on Respondent.

TUNSTALL FUEL COMPANY

Date: 9.10.09

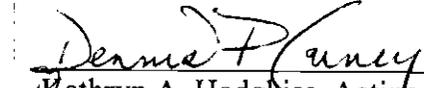
Tunstall Fuel Company

Name: Paul B. Tunstall

Title: President

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 9/25/09


Kathryn A. Hodgkiss, Acting Director
for
Hazardous Site Cleanup Division

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

In The Matter of: : **FINAL ORDER**
:
:
Tunstall Fuel Company : **Proceeding to Assess Class II**
: **Civil Penalties Under Section**
: **311 of the Clean Water Act, as**
: **amended, 33 U.S.C. § 1321.**
:
:
8700 Somerset Pike :
Boswell, Pennsylvania 15531 :
:
Respondent. : **Docket No. CWA-03-2009-0162**
:
_____ :

FINAL ORDER

Pursuant to Section 311(b)(6) of the Clean Water Act ("CWA"), 33 U.S.C. §1321(b)(6), and the delegated authority of the undersigned, 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.

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

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

Date: 9/29/09


Renée Sarajian
Regional Judicial Officer/Presiding Officer

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

In The Matter of: : **CONSENT AGREEMENT AND**
: **FINAL ORDER**
:
:
Tunstall Fuel Company : Proceeding to Assess Class II
: Civil Penalties Under Section
: 311 of the Clean Water Act, *as*
8700 Somerset Pike : *amended*, 33 U.S.C. § 1321.
Boswell, Pennsylvania 15531 :
:
Respondent. : Docket No. CWA-03-2009-0162

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on this date I served a true and correct copy of the Consent Agreement and Final Order in the above-captioned matter to the following:

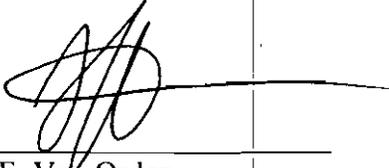
FILED VIA HAND DELIVERY

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

SERVED VIA FEDERAL EXPRESS

Mr. Robert B. Tunstall
President
Tunstall Fuel Company
8700 Somerset Pike
Boswell, PA 15531

Dated: September 30, 2009


James F. Van Orden
Assistant Regional Counsel
Counsel for Complainant

SEP 30 11 51 AM '09