



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

May 29, 2009

HAND DELIVERY

Lydia Guy
Regional Hearing Clerk (3RC00)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

Re: **In the Matter of Massey Wood & West, Inc.**
U.S. EPA Docket No. CWA-03-2008-0434

Dear Ms. Guy:

Enclosed please find the original and one copy of the Consent Agreement and Final Order in the above-captioned matter, along with a certificate of service, which has been signed by the Regional Judicial Officer.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Mary E. Rugala".

Mary E. Rugala
Senior Assistant Regional Counsel

Enclosures

cc: Channing J. Martin, Esquire
Susan Hodges (ORC)
Arlin Galarza-Hernandez (3HS61)



10/13/2011 11:22

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III**

IN THE MATTER OF:

MASSEY WOOD & WEST, INC.
1713 Westwood Avenue
Richmond, Virginia 23227,

Respondent.

CONSENT AGREEMENT AND
FINAL ORDER

Proceeding Under Section 311 of the Clean
Water Act, as amended, to Assess Class II
Civil Penalty for FRP & SPCC Violations

Docket No. CWA-03-2008-0434

CONSENT AGREEMENT

Statutory and Regulatory Authority

1. This Consent Agreement is proposed and entered into under the authority vested in the Administrator of the United States 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").

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 vessels and from onshore and offshore facilities, and to contain such discharges . . ."

3. 40 C.F.R. Part 112 ("Oil Pollution Prevention Regulations", or "Regulations"), which implements Section 311(j) of the CWA, 33 U.S.C. § 1321(j), sets forth procedures, methods and equipment and other requirements to prevent the discharge of oil from certain non-transportation-related facilities into or upon the navigable waters of the United States and adjoining shorelines in such quantities that by regulation have been determined may be harmful to the public health or welfare or environment of the United States by owners or operators who are engaged in drilling,

producing, gathering, storing, processing, refining, transferring, distributing or consuming oil or oil products. The Oil Pollution Prevention Regulations apply to certain non-transportation-related facilities with: (1) an underground storage capacity greater than 42,000 gallons of oil; or, (2) an above-ground aggregate storage capacity of greater than 1,320 gallons of oil.

4. In 1990, Congress amended the CWA and added Section 311(j)(5)(A), 33 U.S.C. § 1321(j)(5)(A). Section 311(j)(5)(A) of the CWA provides that the President shall issue regulations requiring, among other things, each owner or operator of an onshore facility that, because of its location, could reasonably be expected to cause substantial harm to the environment by discharging into or on the navigable waters, adjoining shorelines, or the exclusive economic zone to “submit to the President a plan for responding, to the maximum extent practicable, to a worst case discharge, and to a substantial threat of such a discharge, of oil or a hazardous substance.”

5. In 2002, the Oil Pollution Prevention Regulations were amended. The implementation deadline for the 2002 amended regulatory requirements for existing facilities subsequently was extended to October 31, 2007. 40 C.F.R. § 112.3(a). In 2007, the implementation deadline was extended to July 1, 2009. 72 Fed.Reg. 27443 (May 16, 2007). However, oil storage facilities in operation prior to August 16, 2002, such as the Respondent’s Facility, were required to maintain their existing Spill Prevention, Control and Countermeasure (“SPCC”) Plan and remain in compliance with all pre-existing regulatory requirements prior to the implementation deadline for the amended regulations pursuant to 40 C.F.R. § 112.3(a).

6. By Section 2(d)(1) of Executive Order 12777 (October 18, 1991), the President delegated to the Administrator of EPA the authorities under Section 311(j)(5)(A) of the CWA, 33 U.S.C. § 1321(j)(5)(A).

7. The Administrator of EPA promulgated regulations, codified at 40 C.F.R. §§ 112.20 and 112.21, implementing the delegated statutory authorities in Section 311(j)(5)(A) of the CWA, 33 U.S.C. § 1321(j)(5)(A).

Procedural History

Complainant finds as follows:

8. On September 29, 2008, Complainant filed an Administrative Complaint, Docket No. CWA-03-2008-0434, pursuant to Section 311(b)(6)(B)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(ii), alleging that Massey Wood & West, Inc., (“Massey” or “Respondent”) was liable for violations of the Oil Pollution Prevention Regulations. Complainant alleged that the Respondent: (1) failed to submit or have a Facility Response Plan, as required by 40 C.F.R. § 112.20(d)(2); (2) failed to implement an adequate training and drill/exercise program, as required by 40 C.F.R. § 112.21; and (3) failed to prepare and/or implement an adequate SPCC Plan, as

required by 40 C.F.R. § 112. Further, Complainant alleged that the Respondent: (1) failed to perform inspections (or adequate inspections), or failed to maintain proper records of such inspections at the Facility; (2) failed to comply with the personnel, training and discharge procedures; (3) failed to comply with security regulations pertaining to facility lighting; (4) failed to retain adequate records of dike drainage events; (5) and failed to include in its SPCC Plan any discussion regarding certification requirements for technical amendments or regarding certain requirements for tank truck loading/unloading racks.

9. In its Complaint, EPA proposed assessing an aggregate penalty of \$157,500.00 against the Respondent for the alleged violations.

10. For the purposes of this proceeding, Respondent admits the jurisdictional allegations in the Complaint.

11. Pursuant to Section 311(b)(6)(C)(I) of the CWA, 33 U.S.C. § 1321(b)(6)(C)(I), and 40 C.F.R. § 22.45(b), on September 30, 2008, the Complainant published a notice of its proposed penalty against Respondent which solicited public comment. The Complainant did not receive any comments during the public comment period, which closed on October 30, 2008.

Findings of Fact and Conclusions of Law

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

12. Respondent is a corporation organized under the laws of Virginia, with a place of business known as Bradley Oil Terminal, located at 8400 Meadowbridge Road in Mechanicsville, Hanover County, Virginia, 23116, at which the Respondent owns and operates a bulk oil storage facility (“the Facility”).

13. Respondent is a “person,” within the meaning of Section 311(a)(7) of the CWA, 33 U.S.C. § 1321(a)(7), and 40 C.F.R. § 112.2.

14. Respondent is the “owner or 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 (2002), of an onshore facility.

15. Respondent was engaged in storing or distributing oil or oil products using the Facility at all times relevant to the violations addressed in this matter.

16. The Facility has approximately eight bulk oil-storage tanks, with a total oil-storage capacity of approximately 1,580,000 gallons.

17. The Facility is located approximately 3,500 feet from the Chickahominy River, a navigable water of the United States, within the meaning of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3).

18. 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, which, due to its location, could reasonably be expected to discharge oil to a navigable water of the United States, as defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and 40 C.F.R. § 110.1) or its adjoining shoreline that may either: (1) violate applicable water quality standards; or (2) cause a film or sheen 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 adjoining shorelines.

19. The Facility is a non-transportation-related facility under the definition incorporated by reference at 40 C.F.R. § 112.2 and set forth in an appendix thereto and published on December 18, 1971, at 36 Fed. Reg. 24,080 (Dec. 18, 1971).

20. The Facility is an onshore facility that, because of its location, could reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters or adjoining shorelines, within the meaning of Section 311(j)(5)(B)(iii) of the CWA, 33 U.S.C. § 1321(j)(5)(B)(iii), 40 C.F.R. § 112.20(a), and 40 C.F.R. Part 112, Appendix C (“substantial harm facility”).

21. Pursuant to Section 311(j), 33 U.S.C. § 1321(j), and its implementing regulations, the Respondent is subject to the Facility Response Plan (“FRP”) submission requirements of 40 C.F.R. § 112.20 and the training and drills/exercises requirements of 40 C.F.R. § 112.21.

22. EPA inspected the Facility on May 15, 2007.

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

Requirement to Have an FRP

23. Pursuant to 40 C.F.R. § 112.20(a)(1)(ii), the owner or operator of a substantial harm facility in operation on or before February 18, 1993, who failed to submit a response plan by February 18, 1993, was required to submit to the EPA Regional Administrator no later than August 30, 1994, an FRP that satisfies the requirements of 40 C.F.R. § 112.20.

24. The prior owner or operator of the Facility commenced operations at the Facility before February 18, 1993, and, therefore, that owner or operator of the Facility was required to submit an FRP to EPA by August 30, 1994.

25. When Respondent became the owner and operator of the Facility in 1996, it was required to submit an FRP prior to the start of operations in 1996 pursuant to 40 C.F.R. § 112.20(a)(2) and 40 C.F.R. § 112.20(a)(2)(ii).

26. At the time of EPA's inspection, Respondent, as an owner and operator of a substantial harm facility, did not have an FRP for the Facility.

27. The Respondent submitted an FRP for the Facility to EPA on November 19, 2007. By letter dated January 3, 2008, EPA notified Respondent of numerous deficiencies in the November 2007 FRP. The Respondent submitted a final FRP on April 25, 2008.

28. The Respondent's failure to have an adequate FRP for the Facility until April 25, 2008, when the Respondent should have prepared an FRP by 1996, constitutes a violation of the Oil Pollution Prevention Regulations at 40 C.F.R. § 112.20(a)(2) and 40 C.F.R. § 112.20(a)(2)(ii).

Response Drills/Exercises

29. Pursuant to 40 C.F.R. § 112.21(a), the owner or operator of an FRP-regulated facility shall develop and implement a response drill/exercise program that satisfies the requirements of 40 C.F.R. Part 112.

30. Subsection 112.21(c) states that a drill/exercise program that follows the National Preparedness for Response Exercise Program Guidelines ("PREP Guidelines") will satisfy the requirements of Section 112.21.

31. Under the PREP Guidelines, documentation of a drill/exercise must include, at a minimum, the following information: (1) the type of exercise; (2) the date and time of the exercise; (3) a description of the exercise; (4) the objectives met in the exercise; (5) the components of the response plan exercised; and (6) lessons learned along with procedures and schedules for implementing lessons learned. PREP Guidelines, Appendix A (Internal Exercise Documentation Forms) at A-1. 40 C.F.R. § 112.20(h)(8)(iv) also provides, *inter alia*, that the FRP shall include logs of drills/exercises.

32. At the time of EPA's May 15, 2007 inspection, the Respondent did not have an FRP for the Facility nor did Respondent produce any documentation of drills/exercises for the Facility.

33. Neither the initial nor the final FRP for the Facility contain any indication that a program of drills/exercises has been conducted as of at least April 25, 2008.

34. On May 6, 2008, EPA sent an information request to the Respondent pursuant to Section 308(a) of the CWA, 33 U.S.C. § 1318(a), (“308 Request”), seeking information about, *inter alia*, the Facility’s program of drills/exercises. Although Respondent’s May 19, 2008 response (“308 Response”) described certain requirements for drills/exercises set forth in the oil spill response regulations, there was no indication in the 308 Response, nor in any of the supporting documentation attached to that response, that Respondent had actually performed any drills/exercises for the Facility as of the date of that response.

35. Respondent has failed to implement a program of facility response drills and exercises for oil spill response, in violation of 40 C.F.R § 112.21(a) and (c). Respondent has failed to comply with the regulations requiring the performance and documentation of facility drills and exercises from 1996 until at least April 25, 2008.

Inspections, Tests and Records under Oil Pollution Prevention Procedures

36. The Oil Pollution Prevention Regulations, 40 C.F.R. Part 112 (1974) (amended 2002), which implement Section 311(j) of the CWA, 33 U.S.C. § 1321(j), apply to owners or operators of non-transportation-related onshore and offshore facilities engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing or consuming oil or oil products (“Part 112 Facilities”).

37. 40 C.F.R. Part 112 (1974) (amended 2002) sets forth procedures, methods and requirements to prevent the discharge of oil from Part 112 Facilities into or upon the navigable waters of the United States and adjoining shorelines in such quantities that, as determined by regulation, may be harmful to the public health or welfare or to the environment.

38. 40 C.F.R. § 112.3(a) (1974) (amended 2002) requires owners and operators of onshore and offshore facilities becoming operational on or before the effective date of the regulations (January 10, 1974), that could reasonably be expected to discharge oil in harmful quantities into or upon the navigable waters of the United States or adjoining shorelines, to prepare SPCC Plans not later than July 10, 1974, and to implement those plans as soon as possible but not later than January 10, 1975. In addition, 40 C.F.R. § 112.3(b) (1974) (amended 2002), requires owners and operators of onshore and offshore facilities becoming operational after the effective date of the regulations (January 10, 1974), that could reasonably be expected to discharge oil in harmful quantities into or upon the navigable waters of the United States or adjoining shorelines, to prepare SPCC Plans not later than six months after the facilities become operational. 40 C.F.R. § 112.3(a) (amended 2002) requires owners and operators of onshore and offshore facilities that were operational on or before August 16, 2002, to maintain their existing SPCC Plans as required by 40 C.F.R. § 112.3(b)(1974).

39. 40 C.F. R. § 112.7(e)(8), now found at 112.7(e) (amended 2002), requires that inspections should be conducted in accordance with written procedures developed for the facility

by the owner or operator and that such records of inspections shall be signed by the appropriate supervisor or inspector and kept with the SPCC Plan and maintained for a period of three years.

40. Respondent's SPCC Plan indicated that inspections of the Facility would be performed on a daily and monthly basis, as evidenced by the daily and monthly checklist forms referenced and included in the SPCC Plan. During EPA's May 15, 2007 inspection, Respondent could not provide any records for the daily and monthly inspections which were to be conducted at the Facility according to the written procedures developed by the Facility.

41. In its 308 Request, EPA requested copies of Respondent's inspection records for the period 2003-2008. As part of its 308 Response, Respondent provided records (in the form of checklists) for daily, weekly and monthly inspections at the Facility. According to those records, daily inspections were conducted from April 26, 2006 until January 31, 2007. The weekly inspection records included in the 308 Response indicated that weekly inspections took place between April 29, 2006 until May 16, 2008. Monthly inspections, according to the 308 Response, took place between April 29, 2006 and April 29, 2008. The Respondent did not produce any records of inspections for 2003-2005 or for the first three months of 2006.

42. The inspection records provided with the Respondent's 308 Response, however, are insufficient and do not evidence adequate inspections. These records are inadequate because they do not provide sufficient detail, *inter alia*, regarding which tank/area had been inspected.

43. Pursuant to 40 C.F.R. § 112.7(e)(8), now found at 40 C.F.R. § 112.7(e) (amended 2002), the Facility was required to keep records of inspections for a three-year period, to be made part of its SPCC Plan.

44. Respondent failed to perform inspections (or adequate inspections), or failed to maintain proper records of such inspections, in violation of 40 C.F.R. § 112.7(e)(8), now found at 40 C.F.R. § 112.7(e), for at least the last three (3) years.

Personnel, Training and Discharge Prevention Procedures

45. 40 C.F.R. § 112.7(e)(10)(i)(1974), now found at 40 C.F.R. § 112.7(f)(1) (amended 2002), requires that facility owners and operators properly instruct their personnel in the operation and maintenance of equipment and on applicable pollution control laws, rules and regulations to prevent discharges of oil.

46. 40 C.F.R. § 112.7(f)(1) (2002) requires that facility owners and operators properly instruct their personnel on discharge procedure protocols, on general facility operations, and on the contents of the facility SPCC Plan.

47. 40 C.F.R. § 112.7(e)(10)(ii) (1974), now found at 40 C.F.R. § 112.7(f)(2) (amended 2002), requires that owners and operators designate a person accountable for oil spill prevention who reports to facility management.

48. 40 C.F.R. § 112.7(e)(10)(iii) (1974), now found at 40 C.F.R. § 112.7(f)(3) (amended 2002), requires that owners and operators of facilities schedule and conduct spill-prevention briefings in order to ensure adequate understanding of the facility's SPCC Plan.

49. 40 C.F.R. § 112.7(e)(10)(iii) (1974), now found at 40 C.F.R. § 112.7(f)(3) (amended 2002), provides that briefings should discuss known spill events or failures, malfunctioning components, and recently developed precautionary measures. 40 C.F.R. § 112.7(f)(3)(2002) provides that, in addition to discussing failures, malfunctioning components, and any recently developed precautionary measures, that such briefings must highlight and describe "known discharges as described in 40 C.F.R. § 112.1(b)."

50. 40 C.F.R. § 112(f)(3)(2002) retains the requirements set forth in 40 C.F.R. § 112.7(e)(10)(iii) (1974), and also specifies that, at a minimum, spill-prevention briefings must be held at least once per year.

51. At the time of EPA's May 15, 2007 inspection, the Respondent did not produce any evidence that any of the training and procedural requirements set forth in Paragraphs 45 through 50 above were performed at the Facility.

52. In its 308 Request, EPA requested copies of the Respondent's records pertaining to personnel, training, and discharge prevention for the period 2003-2008. As part of its 308 Response, Respondent submitted documentation of: (1) Annual Oil Release Response Training for only one employee in 2002; (2) Annual Oil Release Response Training for a second employee in the year 2005; and (3) Annual Oil Release Response Training for two other employees in the year 2006. The Annual Oil Release Response Training forms fail to demonstrate compliance with the requirements set forth in Paragraphs 45 through 50.

53. According to 40 C.F.R. Part 112, Appendix F, § 1.8.1, regulated facilities are required to keep SPCC records for three years.

54. Respondent has failed to comply with the personnel, training and discharge procedures, as required by the Oil Pollution Prevention Regulations. Respondent has failed to demonstrate that it conducted discharge prevention briefings frequently enough to ensure that Facility personnel have an adequate understanding of the Facility's SPCC Plan (at least annually, according to Respondent's own training form), in violation of 40 C.F.R. § 112.7 (e)(10)(iii). Therefore, Respondent is in violation of 40 C.F.R. § 112.7(e)(10)(i)-(iii)(1974), now found at 40 C.F.R. § 112.7(f)(1)-(3), for at least the last three (3) years.

Requirements Pertaining to Security

55. Pursuant to the Oil Pollution Prevention Regulations regarding security, at 40 C.F.R. § 112.7(e)(9)(v)(A)-(B), now found at 40 C.F.R. § 112.7(g)(5)(i)-(ii) (amended 2002), facility lighting should be commensurate with the type and location of the facility, with consideration given to: (1) discovery of spills occurring during hours of darkness, both by operating personnel, if present, and non-operating personnel (the general public, local police, etc.); and (2) prevention of spills occurring through acts of vandalism.

56. Respondent's SPCC Plan states, *inter alia*, that area security lights are located in such positions as to illuminate the storage tank area, and are positioned so the discovery of spills could be made during night hours and to prevent vandalism. At the time of EPA's inspection, EPA was advised by Respondent's representative that the loading rack was the only area with illumination. EPA's inspector observed that there was no lighting in the above-ground tank area in violation of 40 C.F.R. § 112.7(e)(9)(v)(A)-(B).

57. In a letter to EPA dated May 15, 2008, which confirmed Respondent's receipt of EPA's 308 Request for information, Respondent stated that it was in the process of awarding the contract for the lighting system on the loading rack as well as the above-ground tanks at the facility. Respondent further stated that "these items will be completed upon the awarding of the contract."

58. Respondent has failed to comply with the regulations pertaining to security for at least the last three (3) years, in violation of 40 C.F.R. § 112.7(e)(9)(v)(A)-(B).

Implementation of Bulk Storage Container Requirements

59. Pursuant to the Oil Pollution Prevention Regulations regarding bulk storage container requirements at, *inter alia*, 40 C.F.R. § 112.7(e)(2)(iii), now found at 40 C.F.R. § 112.8(c)(3) (amended 2002), drainage of rainwater from diked areas into a storm drain or an effluent discharge that empties into an open water course, lake or pond, is only acceptable if certain requirements are met, including: (1) the bypass valve is normally closed; (2) inspection of run-off rainwater ensures compliance with applicable water quality standards and will not cause a harmful discharge as defined by 40 C.F.R. Part 110; (3) the bypass valve is opened, and resealed following drainage under responsible supervision; (4) adequate records are kept of such events.

60. At the time of EPA's inspection, Respondent was unable to produce any record of dike drainage events as required by 40 C.F.R. § 112.7(e)(2)(iii)(D), now found at 40 C.F.R. § 112.8(c)(3)(iv) (amended 2002).

61. In its 308 Request, EPA requested copies of the Respondent's records pertaining to dike drainage events for the period 2003-2008. In its 308 Response, Respondent submitted a

Water Discharge Form for the Facility which recorded drainage events for July-December of 2007 and January- May of 2008.

62. Upon information and belief, the Respondent has failed to retain adequate records of such events, in violation of 40 C.F.R. § 112.7(e)(2)(iii)(D), now found at 112.8(c)(3)(iv) (amended 2002), for at least the last three years.

Complete Discussions of SPCC Requirements in SPCC Plan

63. 40 C.F.R. § 112.3(a)(1974), now found at 40 C.F.R. § 112.3 (amended 2002), requires that owner or operators of an onshore or offshore facility subject to Part 112 of the Regulations must prepare an SPCC plan in writing and in accordance with 40 C.F.R. § 112.7. 40 C.F.R. § 112.3 (2002) further provides that the SPCC Plan must be prepared in accordance with Section 112.7, and any other applicable section of Part 112.

64. 40 C.F.R. § 112.7 (1974) further requires that SPCC Plans be "carefully thought-out" and "prepared in accordance with good engineering practices". 40 C.F.R. § 112.7 (1974) also provides that the SPCC Plan must follow the sequence specified in the Regulations and include a discussion of the facility's conformance with the appropriate guidelines.

65. Pursuant to the Oil Pollution Prevention Regulations regarding amendments of SPCC Plans, at 40 C.F.R. § 112.5(c), a facility is required, *inter alia*, to have a Professional Engineer certify any technical amendments to the Plan in accordance with 40 C.F.R. § 112.3(d). 40 C.F.R. § 112.3(d) requires a number of attestations by the Professional Engineer.

66. Pursuant to the Oil Pollution Prevention Regulations regarding facility loading and unloading racks, at 40 C.F.R. § 112.7(4)(iii)-(iv), now found at 40 C.F.R. § 112.7(h)(2)-(3) (amended 2002), a facility is required, *inter alia*, to follow certain requirements for tank truck loading/unloading racks to prevent vehicles from departing before disconnection of transfer lines and to prevent liquid discharge while in transit.

67. At the time of EPA's inspection, the Respondent's SPCC Plan did not contain any discussion regarding the above certification process required in connection with any technical amendments that might occur at the Facility, as required by 40 C.F.R. § 112.5(c). Nor did the SPCC Plan contain any discussion regarding the above requirements for tank truck loading/unloading racks, as set forth in by 40 C.F.R. § 112.7(4)(iii)-(iv), now found at 40 C.F.R. § 112.7(h)(2)-(3) (amended 2002).

68. SPCC Plans must contain such discussions pertaining to technical amendments and requirements for tank truck loading/unloading racks in order to demonstrate that the SPCC Plan is "carefully thought-out" and "prepared in accordance with good engineering practices" and to demonstrate conformance with the Regulations, as required by 40 C.F.R. § 112.3 and 40 C.F.R.

§ 112.7.

69. Respondent has failed to properly discuss in its SPCC Plan: (1) the requirement that technical amendments be certified by a Professional Engineer, in violation of 40 C.F.R. § 112.5(c); and (2) the specific requirements for truck loading/unloading racks in violation of 40 C.F.R. § 112.7(4)(iii)-(iv), now found at 40 C.F.R. § 112.7(h)(2)-(3) (amended 2002). The Respondent has been in violation since 2001 when it submitted its current SPCC Plan.

Penalty

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

70. Respondent consents to the assessment of a civil penalty of \$125,000.00.

71. Within 90 days of the date that Respondent receives a fully executed copy of this Consent Agreement and Final Order, Respondent shall make an initial payment of \$42,591.32 (consisting of \$41,666.66 principal and \$924.66 interest).

72. Within 180 days of receiving a fully executed copy of this Consent Agreement and Final Order, Respondent shall make a second payment of \$42,283.10 (consisting of \$41,666.66 principal and \$616.44 interest).

73. Within 270 days of receiving a fully executed copy of this Consent Agreement and Final Order, Respondent shall make a third payment of \$41,974.90 (consisting of \$41,666.68 principal and \$308.22 interest).

74. Respondent shall pay the penalty to the EPA either by the submission of a cashier's or certified check, or by means of an electronic funds transfer ("EFT").

75. If the Respondent pays the penalty with a cashier's or certified check, the check shall be drawn for the full amount due and made payable to "**Environmental Protection Agency**". The check must include the notation "**OSTLF-311**" and the docket number of this action: **CWA-03-2008-0434**. If Respondent submits the check via the U.S. Postal Service, the check should be sent to the following address:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

If the Respondent uses a private commercial overnight delivery service, the check should be sent to the following address:

U.S. Environmental Protection Agency
U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

The Respondent must file a copy of its check with the Regional Hearing Clerk at the following address:

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

76. If the Respondent elects to pay the penalty by an EFT or wire transfer, Respondent must instruct its agent to transfer funds to:

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

The Field Tag 4200 of the wire transfer message should read: "D 68010727 Environmental Protection Agency". Respondent also must file a copy of the EFT confirmation with the Regional Hearing Clerk at the address stated above.

77. If the Respondent elects to pay through the Department of Treasury's Online Payment system, Respondent shall access "www.pay.gov", enter sfo 1.1 in the search field, and open the form and complete the required fields.

78. If the Respondent elects to pay through ACH (also known as REX or remittance express), Respondent shall use the following:

Automated Clearinghouse (ACH) for receiving US currency
PNC Bank
808 17th Street, NW

Washington, DC 20074
ABA = 051036706
Transaction Code 22 - checking
Environmental Protection Agency
Account 310006
CTX Format

79. The Respondent also shall send a copy of the checks or EFT confirmations to the EPA attorney assigned to this case:

Mary E. Rugala
Senior Assistant Regional Counsel (3RC42)
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

80. Failure to pay the penalty assessed by the Final Order in compliance with the payment schedule may subject Respondent to a civil action to collect the assessed penalty, plus interest, attorneys' 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.

Injunctive Relief

Based on the foregoing, the parties hereby consent to the following regarding the Facility:

81. Within thirty (30) days of the effective date of the Final Order, Respondent shall submit to EPA for EPA's review and approval a final copy of its revised FRP which corrects any remaining deficiencies alleged in the Complaint. Among other things, the FRP shall include an adequate drill/exercise program and an implementation schedule for the same.

82. Within thirty (30) days of the effective date of the Final Order, Respondent shall submit to EPA a final copy of its revised SPCC Plan which corrects any remaining deficiencies alleged in the Complaint. Among other things, the revised SPCC Plan shall: (1) include and describe an adequate program of inspections and personnel, training and discharge procedures; (2) describe how the Facility complies with security regulations pertaining to Facility lighting; and (3) describe how adequate records will be maintained of dike drainage events.

83. Respondent shall implement the revised FRP and SPCC Plans in accordance with the regulations.

84. The revised Plans that Respondent must submit under paragraphs 81 and 82 shall be submitted to the following address:

Arlin Galarza-Hernandez
SPCC/FRP Inspector (3HS61)
Oil and Prevention Branch
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

Effect of this Consent Agreement and Final Order

85. For the purpose of this proceeding, Respondent expressly waives its right to contest the allegations and 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 this Order under Section 311(b)(6)(G)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(G)(ii). Respondent does not admit, nor does it deny, the factual allegations and legal conclusions stated in this Complaint, except for the jurisdictional allegations stated herein.

86. The provisions of the Final Order shall be binding upon Respondent, and its successors or assigns. The undersigned officer of Respondent represents and warrants that he or she has the authority to bind Respondent, and its successors or assigns.

87. This Consent Agreement/Final Order resolves only those claims which are alleged in the Complaint. Nothing herein shall be construed to limit the authority of the Complainant to undertake action against any person, including the Respondent, in response to any condition which Complainant determines may present an imminent and substantial endangerment to the public health, public welfare or the environment. Nothing in this Consent Agreement/Final Order shall be construed to limit the United States' authority to pursue criminal sanctions. 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 Administrative Complaint.

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


MASSEY WOOD & WEST, INC.

Date: 5/5/09

BY: G. W. Bradley
~~XXXXXX~~ G.W. Bradley
~~XXXXXX~~ President

U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION III

Date: MAY - 6 2009

BY: 
James J. Burke, Director
Hazardous Site Cleanup Division

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III**

IN THE MATTER OF

MASSEY WOOD & WEST, INC.
1713 Westwood Avenue
Richmond, Virginia 23227,

Respondent.

ADMINISTRATIVE COMPLAINT AND
OPPORTUNITY TO REQUEST A HEARING

Proceeding Under Section 311 of the Clean
Water Act, as amended, to Assess
Class II Civil Penalty for FRP and SPCC
Violations

Docket No. CWA-03-2008-0434

FINAL ORDER

1. Pursuant to Section 311(b)(6) of the Clean Water Act, as amended, ("CWA"), 33 U.S.C. § 1321(b)(6), and in accordance with the "Consolidated Rules," 40 C.F.R. Part 22, the Complainant and Respondent have agreed to comply with the Consent Agreement and have consented to the Entry of this Final Order. It is hereby Ordered that:

1. Respondent is hereby assessed a civil penalty of \$125,000.00.
2. Within 90 days of the date that Respondent receives a fully executed copy of this Consent Agreement and Final Order, Respondent shall make an initial payment of \$42,591.32 (consisting of \$41,666.66 principal and \$924.66 interest), in the manner set forth in paragraphs 74-79 of the Consent Agreement.
3. Within 180 days of receiving a fully executed copy of this Consent Agreement and

Final Order, Respondent shall make a second payment of \$42,283.10 (consisting of \$41,666.66 principal and \$616.44 interest), in the manner set forth in paragraphs 74-79 of the Consent Agreement.

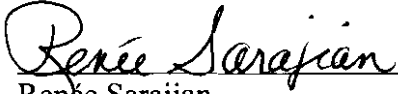
4. Within 270 days of receiving a fully executed copy of this Consent Agreement and Final Order, Respondent shall make a third payment of \$41,974.90 (consisting of \$41,666.68 principal and \$308.22 interest), in the manner set forth in paragraphs 74-79 of the Consent Agreement.

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

Effective Date

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

Date: 5/28/09



Renee Sarajian
Regional Judicial Officer
EPA, Region III

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

In The Matter of: : **CERTIFICATE OF SERVICE**
: **CONSENT AGREEMENT AND FINAL ORDER**
:
Massey Wood & West, Inc., : Proceeding to Assess Class II
1713 Westwood Avenue : Civil Penalties Under Section
Richmond, Virginia 23277, : 311 of the Clean Water Act, as
: *amended*, 33 U.S.C. § 1321, for FRP and SPCC
: Violations
:
:
Respondent. : Docket No. CWA-03-2008-0434
:

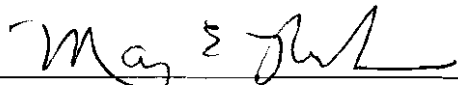
I hereby certify that on this date I filed and served copies of the attached Consent Agreement and Final Order, as follows:

Original filed with: Lydia Guy (3RC00)
(via hand delivery) Regional Hearing Clerk
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103

Copy to: Channing J. Martin, Esquire
(via certified mail Williams Mullen
and email) Two James Center
1021 East Cary Street (23219)
P.O. Box 1320
Richmond, Virginia 23218-1320
cmartin@williamsmullen.com

Date:

5/29/09



Mary E. Rugala
Senior Assistant Regional Counsel
US EPA, Region III