

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
Philadelphia, Pennsylvania 19103**



In the Matter of:	:
	:
Watco Transloading, L.L.C.	: U.S. EPA Docket No.
315 West 3rd Street	: CWA-03-2023-0103
Pittsburg, Kansas 66762	:
	:
Respondent.	: Proceeding under Sections 311(j) and
	: 311(b)(6)(B)(ii) of the Clean Water Act,
	: 33 U.S.C. §§ 1321(j) and 1321(b)(6)(B)(ii)
Dravosburg Marine Terminal	:
702 Washington Avenue	:
Dravosburg, Pennsylvania 15034	:
	:
Facility.	:
	:

CONSENT AGREEMENT

PRELIMINARY STATEMENT

1. This Consent Agreement is entered into by the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region III (“Complainant”) and Watco Transloading, L.L.C. (“Respondent”) (collectively the “Parties”), pursuant to Section 311(b)(6)(B)(ii) of the Clean Water Act (“CWA” or “Act”), as amended, 33 U.S.C. § 1321(b)(6)(B)(ii), and 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. Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6) authorizes the Administrator of the U.S. Environmental Protection Agency to assess penalties and undertake other actions required by this Consent Agreement. The Administrator has delegated this authority to the Regional Administrator who, in turn, has delegated it to the Complainant. This Consent Agreement and the attached Final Order (hereinafter jointly referred to as the “Consent Agreement and Final Order”) resolve Complainant’s civil penalty claims against Respondent under the CWA for the violations alleged herein.

2. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant hereby simultaneously commences and resolves this administrative proceeding.

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JURISDICTION

3. EPA has jurisdiction over the above-captioned matter, as described in Paragraph 1, above.
4. The Consolidated Rules of Practice govern this administrative adjudicatory proceeding pursuant to 40 C.F.R. § 22.1(a)(6).

GENERAL PROVISIONS

5. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this Consent Agreement and Final Order.
6. Except as provided in Paragraph 5, above, Respondent neither admits nor denies the specific factual allegations set forth in this Consent Agreement.
7. Respondent agrees not to contest the jurisdiction of EPA with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of this Consent Agreement and Final Order.
8. For purposes of this proceeding only, Respondent hereby expressly waives its right to contest the allegations set forth in **this Consent Agreement and Final Order** and waives its right to appeal the accompanying Final Order.
9. Respondent consents to the assessment of the civil penalty stated herein, to the issuance of any specified compliance order herein, and to any conditions specified herein.
10. Respondent shall bear its own costs and attorney's fees in connection with this proceeding.
11. Pursuant to 40 C.F.R. § 22.45(b)(1), this Consent Agreement and Final Order shall be issued after a 40-day public notice period is concluded.

EPA's FINDINGS OF FACT AND EPA's CONCLUSIONS OF LAW

12. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant alleges and adopts the Findings of Fact and Conclusions of Law set forth immediately below.
13. Section 311(a)(1) of the Act, 33 U.S.C. § 1321(a)(1), defines "oil" 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."
14. 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

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- procedures, methods, and other requirements for preventing discharges of oil from onshore facilities into navigable waters and for containing such discharges.
15. 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.
 16. EPA promulgated the Spill Prevention, Control, and Countermeasure (“SPCC”) regulations at 40 C.F.R. §§ 112.1-12 (the “Regulations”). 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.
 17. Pursuant to 40 C.F.R. § 110.3, discharges of oil in such quantities that the Administrator has determined may be harmful to the public health or welfare or the environment of the United States include discharges of oil that cause a film or 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 adjoining shoreline.
 18. Pursuant to 40 C.F.R. § 112.3, an owner or operator subject to the Regulations must prepare in writing and implement an SPCC plan, in accordance with Section 112.7 and any other applicable section.
 19. 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 the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 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 \$22,324 per violation, or seeking \$22,324 per day for each day during which a violation continues, up to a maximum of \$279,036 for violations occurring after November 2, 2015 and penalties assessed on or after January 6, 2023.
 20. Respondent is a corporation organized under the laws of the State of Delaware, with its principal place of business located at 315 West 3rd Street in Pittsburg, Kansas 66762.
 21. 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.
 22. Respondent is the owner and operator of a bulk liquid petroleum tank storage terminal, known as the Dravosburg Marine Terminal, located at 702 Washington Avenue in Dravosburg, Pennsylvania 15301 (the “Facility”).

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23. Respondent has represented to EPA that it took physical possession of the Facility on July 1, 2015, and since that time has been 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.
24. According to Respondent's 2018 SPCC plan, the Facility has a total above-ground oil storage capacity of approximately 8.2 million gallons.
25. The Facility is located on the shoreline of the Monongahela River.
26. The Facility could reasonably be expected to discharge oil in harmful quantities into the Monongahela River.
27. The Monongahela 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).
28. 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.
29. 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.
30. 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 adjoining shorelines.
31. 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.
32. 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.
33. EPA conducted an inspection of the Facility on July 24, 2019 to evaluate Respondent's compliance with the CWA and the Regulations (the "Inspection").

Count I

Failure to Include Required Information in Facility Diagram

34. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
35. 40 C.F.R. § 112.7(a)(3) requires owners or operators to include a facility diagram in a facility's SPCC plan that marks the location of the storage area where mobile or portable oil storage containers are located and include all transfer stations and connecting pipes.

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36. Upon review of the Facility's SPCC plan during the Inspection, EPA inspectors observed that the diagrams in the Facility's SPCC plan omitted the Facility's drum storage areas, mineral spirit transfer area and the portable tank near Tank 40.
37. By not marking the location of the Facility's drum storage areas, mineral spirit transfer area and the portable tank near Tank 40 in the Facility's SPCC plan diagram, Respondent failed to comply with 40 C.F.R. § 112.7(a)(3).
38. By failing to comply with 40 C.F.R. § 112.7(a)(3), Respondent is subject to the assessment of penalties under Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6).

Count II

Failure to Include Required Information Relating to Portable Oil Storage Containers in SPCC Plan

39. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
40. In relevant part, 40 C.F.R. § 112.7(a)(3)(i) requires an owner or operator to provide in the SPCC plan either the type of oil and storage capacity for each mobile or portable container or provide an estimate of the potential number of mobile or portable containers, the types of oil, and anticipated storage capacities.
41. During the Inspection, EPA inspectors reviewed the Facility's SPCC plan and observed that the Facility's SPCC plan did not provide any of the following information: type of oil and storage capacity for each container or an estimate of the potential number of mobile or portable containers, the types of oil, and anticipated storage capacities.
42. By failing to include the type of oil and storage capacity for each container or provide an estimate of the potential number of mobile or portable containers, the types of oil, and anticipated storage capacities in the Facility's SPCC plan, Respondent failed to comply with 40 C.F.R. § 112.7(a)(3).
43. By failing to comply with 40 C.F.R. § 112.7(a)(3), Respondent is subject to the assessment of penalties under Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6).

Count III

Failure to Conduct Integrity Testing on Asphalt Storage Tanks

44. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
45. 40 C.F.R. § 112.8(c)(6) requires the owner or operator of a facility to test or inspect each aboveground container for integrity on a regular schedule and when material repairs are made and maintain records of the types and frequency of inspections and tests. The

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owner or operator must determine, in accordance with industry standards, the appropriate qualifications for personnel performing tests and inspections, and the frequency and type of testing and inspections, which take into account container size, configuration, and design.

46. At the time of the Inspection, the Facility had 19 bulk storage tanks in use that contained asphalt, #2 fuel oil, #6 fuel oil, asphalt cutback, mineral spirits, and lube oil. Eight of the Facility's bulk storage tanks were used to store asphalt.
47. During the Inspection, Facility personnel were unable to produce records of integrity testing for the asphalt tanks. Facility personnel explained to the EPA inspectors that the Facility had not conducted integrity testing on the asphalt tanks.
48. According to the Facility's SPCC plan, the asphalt tanks were installed in 1962, 1965, 1980, and 1989.
49. By not conducting integrity testing of the asphalt tanks on a regular schedule and when material repairs were made, Respondent failed to comply with 40 C.F.R. § 112.8(c)(6).
50. By failing to comply with 40 C.F.R. § 112.8(c)(6), Respondent is subject to the assessment of penalties under Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6).

CIVIL PENALTY

51. In settlement of EPA's claims for civil penalties for the violations alleged in this Consent Agreement, Respondent consents to the assessment of a civil penalty in the amount of **Sixty-Nine Thousand Three Hundred Seventy One Dollars (\$69,371)**, which Respondent shall be liable to pay in accordance with the terms set forth below.
52. The civil penalty is based upon EPA's consideration of a number of factors, including the penalty criteria ("statutory factors") set forth in Section 311(b)(8) of the CWA, 33 U.S.C. § 1321(b)(8), including, the following: 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. These factors were applied to the particular facts and circumstances of this case with specific reference to EPA's *Civil Penalty Policy for Section 311(b)(3) and Section 311(j) of the Clean Water Act* (August 1998), which reflects the statutory penalty criteria and factors set forth at Section 311(b)(8) of the CWA, 33 U.S.C. § 1321(b)(8), the appropriate *Adjustment of Civil Monetary Penalties for Inflation*, pursuant to 40 C.F.R. Part 19, and the applicable EPA memoranda addressing EPA's civil penalty policies to account for inflation.
53. Payment of the civil penalty amount, and any associated interest, administrative fees, and late payment penalties owed, shall be made by either cashier's check, certified check or electronic wire transfer, in the following manner:

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- a. All payments by Respondent shall include reference to Respondent's name and address, and the Docket Number of this action, *i.e.*, **CWA-03-2023-0103**;
- b. All checks in payment of the civil penalty shall be made payable to the **““Environmental Protection Agency,” and bearing the notation “OSLTF-311.”**
- c. All payments made by check and sent by regular mail shall be addressed and mailed to:

U.S. Environmental Protection Agency
Cincinnati Finance Center
P.O. Box 979078
St. Louis, MO 63197-9000

- d. For additional information concerning other acceptable methods of payment of the civil penalty amount see:

<https://www.epa.gov/financial/makepayment>

- e. A copy of Respondent's check or other documentation of payment of the penalty using the method selected by Respondent for payment shall be sent simultaneously by email to:

Mark Bolender
Senior Assistant Regional Counsel
bolender.mark@epa.gov

and

U.S. EPA Region III Regional Hearing Clerk
R3_Hearing_Clerk@epa.gov.

- 54. 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 of the penalty as specified herein shall result in the assessment of late payment charges including interest, penalties and/or administrative costs of handling delinquent debts.
- 55. Payment of the civil penalty is due and payable immediately upon the effective date of this Consent Agreement and Final Order. Receipt by Respondent or Respondent's legal counsel of such copy of the fully executed Consent Agreement and Final Order, with a date stamp indicating the date on which the Consent Agreement and Final Order was filed with the Regional Hearing Clerk, shall constitute receipt of written initial notice that

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a debt is owed as of the effective date of this Consent Agreement and Final Order by Respondent in accordance with 40 C.F.R. § 13.9(a).

56. INTEREST: Interest on the civil penalty assessed in this Consent Agreement and Final Order will begin to accrue on the effective date of this Consent Agreement and Final Order. However, EPA will not seek to recover interest on any amount of the civil penalties that is paid within thirty (30) calendar days after the effective date of this Consent Agreement and Final Order. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R § 13.11(a)..
57. ADMINISTRATIVE COSTS: The costs of the EPA's administrative handling of overdue debts will be charged and assessed monthly throughout the period a debt is overdue. 40 C.F.R. § 13.11(b). If payment is not received within 30 calendar days of the effective date of this Consent Agreement, EPA will also 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.
58. LATE PAYMENT PENALTY: A late payment penalty of six percent per year will be assessed monthly on any portion of the civil 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).
59. Respondent agrees not to deduct for federal tax purposes the civil penalty assessed in this Consent Agreement and Final Order.
60. The parties consent to service of the Final Order by email at the following valid email addresses: bolender.mark@epa.gov (for Complainant), and matt.rengel@watco.com (for Respondent).

GENERAL SETTLEMENT CONDITIONS

61. By signing this Consent Agreement, Respondent acknowledges that this Consent Agreement and Final Order will be available to the public and represents that, to the best of Respondent's knowledge and belief, this Consent Agreement and Final Order does not contain any confidential business information or personally identifiable information from Respondent.
62. Respondent certifies that any information or representation it has supplied or made to EPA concerning this matter was, at the time of submission true, accurate, and complete and that there has been no material change regarding the truthfulness, accuracy or completeness of such information or representation. EPA shall have the right to institute further actions to recover appropriate relief if EPA obtains evidence that any information provided and/or representations made by Respondent to the EPA regarding matters relevant to this Consent Agreement and Final Order, including information about

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respondent's ability to pay a penalty, are false or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action that EPA may have, civil or criminal, under law or equity in such event. Respondent and its officers, directors and agents are aware that the submission of false or misleading information to the United States government may subject a person to separate civil and/or criminal liability.

CERTIFICATION OF COMPLIANCE

63. Respondent certifies to EPA, upon personal investigation and to the best of its knowledge and belief, that Respondent currently is in compliance with the CWA with regard to the violations alleged in this Consent Agreement.

OTHER APPLICABLE LAWS

64. Nothing in this Consent Agreement and Final Order shall relieve Respondent of its obligation to comply with all applicable federal, state, and local laws and regulations, nor shall it restrict EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on the validity of any federal, state or local permit. This Consent Agreement and Final Order does not constitute a waiver, suspension or modification of the requirements of the CWA or any regulations promulgated thereunder.

RESERVATION OF RIGHTS

65. This Consent Agreement and Final Order resolves only EPA's claims for civil penalties for the specific violations alleged against Respondent in this Consent Agreement and Final Order. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. This settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice, 40 C.F.R. § 22.18(c). EPA reserves any rights and remedies available to it under the CWA, the regulations promulgated thereunder and any other federal law or regulation to enforce the terms of this Consent Agreement and Final Order after its effective date.

EXECUTION /PARTIES BOUND

66. This Consent Agreement and Final Order shall apply to and be binding upon the EPA, the Respondent and the officers, directors, employees, contractors, successors, agents and assigns of Respondent. By his or her signature below, the person who signs this Consent Agreement on behalf of Respondent is acknowledging that he or she is fully authorized by the Respondent to execute this Consent Agreement and to legally bind Respondent to the terms and conditions of this Consent Agreement and Final Order.

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EFFECTIVE DATE

67. Pursuant to 40 C.F.R. § 22.45(b), this Consent Agreement and Final Order shall be issued only after a 40-day public notice and comment period is concluded. This Consent Agreement and Final Order will become final and effective thirty (30) days after having been signed by the Regional Administrator or his delegate, the Regional Judicial Officer, and filed with the Regional Hearing Clerk.

ENTIRE AGREEMENT

68. This Consent Agreement and Final Order constitutes the entire agreement and understanding between the Parties regarding settlement of all claims for civil penalties pertaining to the specific violations alleged herein and there are no representations, warranties, covenants, terms, or conditions agreed upon between the Parties other than those expressed in this Consent Agreement and Final Order.


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For Respondent:

Watco Transloading, L.L.C.

Date: 8/16/2023

By: 
Name: Nick Coomes
Title: EVP & Chief Operating Officer

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For the Complainant:

After reviewing the Consent Agreement and other pertinent matters, I, the undersigned Director of the Enforcement & Compliance Assurance Division of the United States Environmental Protection Agency, Region III, agree to the terms and conditions of this Consent Agreement and recommend that the Regional Administrator, or his/her designee, the Regional Judicial Officer, issue the attached Final Order.

By: _____
[*Digital Signature and Date*]
Karen Melvin, Director
Enforcement & Compliance Assurance Division
U.S. EPA – Region III
Complainant

Attorney for Complainant:

By: _____
[*Digital Signature and Date*]
Mark Bolender
Sr. Assistant Regional Counsel
U.S. EPA – Region III

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of the CWA and the regulations promulgated thereunder.

The effective date of the attached Consent Agreement and this Final Order is thirty (30) days after the Final Order, having been signed by the Regional Administrator or his delegate, the Regional Judicial Officer, is filed with the Regional Hearing Clerk.

Date: _____

By: _____

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

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
Philadelphia, Pennsylvania 19103-2029**

In the Matter of:	:
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	: U.S. EPA Docket No.
Watco Transloading, L.L.C.	: CWA-03-2023-0103
315 West 3rd Street	:
Pittsburg, Kansas 66762	: Proceeding under Sections 311(j) and
	: 311(b)(6)(B)(ii) of the Clean Water Act,
Respondent.	: 33 U.S.C. §§ 1321(j) and 1321(b)(6)(B)(ii)
	:
Dravosburg Marine Terminal	:
702 Washington Avenue	:
Dravosburg, Pennsylvania 15034	:
	:
Facility.	:

CERTIFICATE OF SERVICE

I certify that on _____, the foregoing ***Consent Agreement and Final Order***, was filed with the EPA Region III Regional Hearing Clerk. I further certify that on the date set forth below, I caused to be served a true and correct copy of the foregoing to each of the following persons, in the manner specified below, at the following addresses:

Copies served via email to:

Nick Coomes, EVP & COO
Watco Transloading, L.L.C.
315 West 3rd Street
Pittsburg, Kansas 66762
Ncoomes@watco.com

Matt Rengel
Associate General Counsel
Watco Transloading, L.L.C.
315 West 3rd Street
Pittsburg, Kansas 66762
Matt.Rengel@watco.com

Mark Bolender
Senior Assistant Regional Counsel
U.S. EPA, Region III
bolender.mark@epa.gov

Deborah Lindsey
SPCC/FRP Coordinator
U.S. EPA, Region III
lindsey.deborah@epa.gov

[Digital Signature and Date]
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region III

