

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

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In the Matter of: : **CONSENT AGREEMENT**
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: :
Scot Lubricants of Pennsylvania, Inc. : **PROCEEDING UNDER SECTION 311**
P.O. Box 326 : **OF THE CLEAN WATER ACT, AS**
Allentown, PA 18105, : **AMENDED, TO ASSESS A CLASS I**
: **CIVIL PENALTY**
Respondent. : :
: **Docket No. CWA-03-2012-0074**
Scot Lubricants of Pennsylvania, Inc. : :
1801 E. Tremont Street : :
Allentown, PA 18103, : :
: :
Facility. : :
: :

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)(i) of the Clean Water Act (“CWA”), as amended, 33 U.S.C. § 1321(b)(6)(B)(i), and under the authority provided by Section 22.18(b) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Part 22 Rules”), 40 C.F.R. Part 22. The Administrator has delegated this authority to the Regional Administrator of EPA, Region III, who in turn has delegated it to the Director of the Region’s Hazardous Site Cleanup Division (“Complainant”).
2. The parties agree to the commencement and conclusion of this matter by issuance of this Consent Agreement and Final Order (collectively “CAFO”), as prescribed by the Part 22 Rules pursuant to 40 C.F.R. § 22.13(b), and having consented to the entry of this CAFO, agree to comply with the terms of this CAFO.
3. For purposes of this proceeding only, Respondent admits to the jurisdictional allegations set forth in this Consent Agreement.
4. Respondent neither admits nor denies the specific factual allegations, conclusions of law, and determinations set forth in this Consent Agreement, except as provided in Paragraph 3, above.
5. Respondent agrees not to contest EPA’s jurisdiction with respect to the execution, enforcement, and issuance of this CAFO.

6. For purposes of this proceeding only, Respondent hereby expressly waives its right to contest the allegations set forth in this Consent Agreement and any right to appeal the accompanying Final Order.
7. Respondent shall bear its own costs and attorneys fees.

Statutory Authority

8. Congress enacted the CWA, 33 U.S.C. §§ 1251 et seq., in 1972. In Section 311(j)(1)(C) of the CWA, Congress required the President to promulgate regulations which would, among other things, establish procedures, methods, and other requirements for preventing discharges of oil from onshore facilities into navigable waters and for containing such discharges.
9. 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.
10. Pursuant to its delegated authority under Section 311(j) of the CWA, EPA promulgated Oil Pollution Prevention Regulations, 40 C.F.R. § 112, 38 Fed. Reg. 34165 (Dec. 11, 1973), effective January 10, 1974 (“1973 Regulations”).
11. On July 17, 2002, EPA promulgated an amendment to the Oil Pollution Prevention Regulations, 67 Fed. Reg. 47042, effective August 16, 2002. On December 26, 2006, EPA promulgated more revisions to the Regulations, 71 Fed. Reg. 77266, effective February 27, 2007. On December 5, 2008, EPA again promulgated revisions to the Regulations, 73 Fed. Reg. 74236, effective January 14, 2010. And on November 13, 2009, EPA promulgated additional revisions to the Regulations, 74 Fed. Reg. 58784, effective January 14, 2010. This series of amendments and revisions shall henceforth be referred to collectively as the “amended Regulations.”
12. The deadline for complying with the amended Regulations was ultimately extended to November 10, 2011. However, the amended Regulations at Section 112.3(a), 40 C.F.R. § 112.3(a), have maintained that an owner or operator of a facility that was in operation on or before August 16, 2002, that could reasonably be expected to discharge oil in harmful quantities into or upon the navigable waters of the United States or adjoining shorelines must maintain and implement the facility’s SPCC Plan, as required by the 1973 Regulations. Accordingly, for purposes of this Consent Agreement, unless otherwise noted, regulatory requirements cited herein refer to the 1973 Regulations.
13. The 1973 Regulations at 40 C.F.R. § 112.1(b) state that “. . . this part applies 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 and oil products, and which, due to their location, could reasonably be expected to discharge oil in harmful quantities,

as defined in Part 110 of this chapter, into or upon the navigable waters of the United States or adjoining shorelines.”

14. For violations of Section 311(j) of the CWA, 33 U.S.C. § 1321(j), EPA has authority, pursuant to Section 311(b)(6)(B)(i) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(i), to assess a Class I penalty in the amount of up to \$10,000 per violation, not to exceed a maximum penalty of \$25,000. Pursuant to the Debt Collection Improvement Act, and the subsequent Civil Monetary Penalty Inflation Adjustment Rule, codified at 40 C.F.R. Part 19, violations of Section 311(j) that occur after January 12, 2009, are subject to a statutory penalty of up to \$16,000 per violation, not to exceed a maximum penalty of \$37,500.

Findings of Fact and Conclusions of Law

15. Respondent is a corporation organized under the laws of the Commonwealth of Pennsylvania, with a place of business located at 1801 E. Tremont Street in Allentown, Pennsylvania.
16. 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.
17. Respondent was engaged in storing, transferring, or distributing oil or oil products located at an onshore used oil processing facility located at 1801 E. Tremont Street in Allentown, Pennsylvania (“Facility”).
18. Respondent is the owner 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.
19. Respondent has owned and operated the Facility since at least the year 1986.
20. The Facility has a total aboveground oil storage capacity of approximately 144,240 gallons.
21. The Facility is located approximately 3,000 feet from an unnamed tributary of the Lehigh River.
22. The Lehigh River is a navigable water of the United States within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and 40 C.F.R. § 112.2.
23. 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.
24. 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.

25. Due to its location, the Facility could reasonably be expected to discharge oil in harmful quantities, as defined by 40 C.F.R. § 110.3, into or upon navigable waters of the United States or its adjoining shoreline.
26. 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.
27. 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 144,240-gallon 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.
28. EPA conducted a compliance inspection at the Facility on July 7, 2009 ("the Inspection").
29. EPA believes that, at the time of the Inspection, Respondent failed to adequately implement the following Regulations, each of which constitutes a separate violation:
 - a. **40 C.F.R. § 112.3:** failure to prepare and implement a Spill Prevention, Control, and Countermeasure Plan.
 - b. **40 C.F.R. § 112.7(e)(2)(vi):** failure to periodically test aboveground containers for integrity using hydrostatic testing, visual inspection, or a system of non-destructive shell thickness testing; keep comparison records; inspect container supports and foundations; and frequently observe the outside of containers for deterioration, leaks, or accumulation of oil inside diked areas.
 - c. **40 C.F.R. § 112.7(e)(8):** failure to maintain a record of inspections, signed by the appropriate supervisor or inspector, for a period of three years.
30. EPA determined, based on discussions with Facility personnel during and after the Inspection and its review of documentation provided by Respondent, that Respondent had not adequately implemented its SPCC Plan, and Respondent therefore violated the requirements of 40 C.F.R. §§ 112.3 and 112.7.

Penalty

31. In settlement of Complainant's claims for civil penalties for the violations alleged in this Consent Agreement, Respondent agrees to pay a civil penalty of **\$18,078**. The civil penalty amount shall become due and payable immediately upon Respondent's receipt of a true and correct copy of this CAFO.
32. The proposed penalty was calculated after consideration of the applicable statutory penalty factors in Section 311(b)(8) of the CWA, 33 U.S.C. § 1321(b)(8), including the seriousness of the violation; the economic benefit to the violator, if any; the degree of culpability; 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.
33. Payment shall be made by a cashier's or certified check, by an electronic funds transfer ("EFT"), or by on-line payment.
 - a. 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 paying by check, Respondent shall note on the check the title and docket number (CWA-03-2012-0074) of this case.
 - b. 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
 - c. If 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: Craig Steffen (513/487-2091)
 - d. 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

- e. 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.
 - f. If paying through the Department of Treasury's Online Payment system, please access “www.pay.gov,” and enter sfo 1.1 in the search field. Open the form and complete the required fields and make payments. Note that the type of payment is “civil penalty,” the docket number “CWA-03-2012-0074” should be included in the “Court Order # or Bill #” field, and “3” should be included as the Region number.
34. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment or to comply with the conditions in this CAFO shall result in the assessment of late payment charges including additional interest, penalties, and/or administrative costs of handling delinquent debts.
35. Interest on the civil penalty should begin to accrue on the date that this CAFO is mailed or hand-delivered to the Respondent. EPA will not seek to recover interest on any amount of such civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest on the portion of a civil penalty not paid within such thirty (30) calendar day period will be assessed at the rate of the U.S. Treasury Tax and Loan Rate in accordance with 40 C.F.R. § 13.11(a).
36. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's Resources Management Directives - Cash Management, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.
37. A penalty charge of six percent per year will be assessed monthly on any portion of the penalty that remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

38. 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 persons:
- | | |
|---|--|
| Wojciech Jankowski
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region III (Mail Code 3RC50)
1650 Arch Street
Philadelphia, PA 19103-2029 | Lydia Guy
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region III (Mail Code 3RC00)
1650 Arch Street
Philadelphia, PA 19103-2029 |
|---|--|
39. Failure by Respondent to pay the penalty assessed by the Final Order in full in accordance with this Consent Agreement 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.

General Provisions

40. The undersigned officer of Respondent represents and warrants that he or she has the authority to bind the Respondent, and its successors or assigns, to the terms of this Consent Agreement.
41. The provisions of this Consent Agreement and the Final Order, if issued, shall be binding upon Respondent and Respondent's successors or assigns.
42. Payment of the penalty pursuant to this Consent Agreement shall resolve all liability of Respondent for federal civil penalties for the violations alleged based on the facts alleged in this Consent Agreement.
43. 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 this Consent Agreement.
44. The Effective Date of this Consent Agreement is the date on which the Final Order is filed with the Regional Hearing Clerk.

For the Respondent, Scot Lubricants of Pennsylvania, Inc.

Date: 12/15/11

By: 

Name: *Timothy D Fritz*

Title: *President*


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

Date: 12/15/11

By: 
Wojciech Jankowski
Assistant Regional Counsel

After reviewing the foregoing Consent Agreement and other pertinent information, the Hazardous Site Cleanup Division, EPA Region III, recommends that the Regional Administrator or the Regional Judicial Officer issue the Final Order attached hereto.

Date: December 20, 2011

By: 
Ronald J. Borsellino, Director
Hazardous Site Cleanup Division
EPA Region III

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

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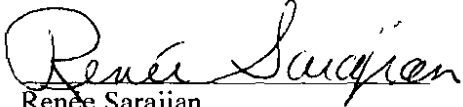
FINAL ORDER

Pursuant to Section 311(b)(6) of the CWA, 33 U.S.C. §1321(b)(6), and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits," codified at 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order.

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

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

Date: 12/29/11


Renee Sarajian
Regional Judicial Officer/Presiding Officer

In the Matter of:

Scot Lubricants of Pennsylvania, Inc.
P.O. Box 326
Allentown, PA 18105,

Respondent.

Scot Lubricants of Pennsylvania, Inc.
1801 E. Tremont Street
Allentown, PA 18103,

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CONSENT AGREEMENT

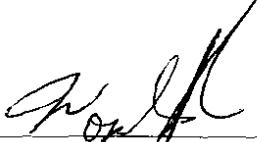
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OF THE CLEAN WATER ACT, AS
AMENDED, TO ASSESS A CLASS I
CIVIL PENALTY**

Docket No. CWA-03-2012-0074

CERTIFICATE OF SERVICE

I certify that on the date provided below, I hand-delivered the original and one copy of the Consent Agreement and Final Order in the case captioned *In re* Scot Lubricants of Pennsylvania, Inc., Docket No. CWA-03-2012-0074 to Lydia Guy, Regional Hearing Clerk, U.S. EPA, Region 3, 1650 Arch St, Philadelphia, PA 19134, and sent one copy of the signed original of the document by certified mail–return receipt requested to Timothy Fritz, President, Scot Lubricants of Pennsylvania, Inc., P.O. Box 326, Allentown, PA 18105.

Dated: 12/29/11



Wojciech Jankowski
Assistant Regional Counsel
U.S. EPA Region 3