



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

Bayside Fuel Oil Depot Corp.
Attn: Sergio Allegretti, Pres.
1776 Shore Parkway
Brooklyn, New York 11214

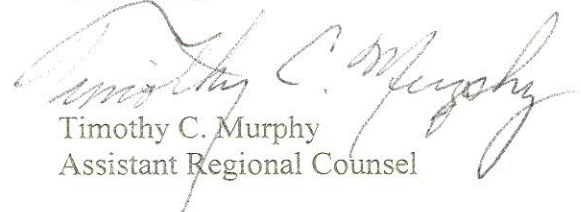
September 30, 2019

Subject: Frank H. Truck Corp., CWA 02-2019-3301,3302, 3303 and 3804

Dear Mr. Allegretti:

Enclosed herewith are the copies of the Consent Agreement/Final Orders for the subject cases. Please contact me at (212) 637-3236 if you have any questions with respect to this matter. Thank you.

Yours truly,


Timothy C. Murphy
Assistant Regional Counsel

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF:

Bayside Fuel Oil Depot Corp.
1776 Shore Parkway
Brooklyn, New York 11214,

Respondent.

Bayside Fuel Oil Depot Corp.
Smith Street Terminal
537 Smith Street
Brooklyn, New York 11231,

Facility.

Proceeding Pursuant to Section 311(b)(6) of
the Clean Water Act, 33 U.S.C. §1321(b)(6).

CLEAN WATER ACT SECTION 311 CLASS I

CONSENT AGREEMENT
AND FINAL ORDER

UNDER 40 CFR §§ 22.13(b) AND 22.18(b)(2)

Docket No. CWA-02-2019-3803

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EPA REGION 2

I. PRELIMINARY STATEMENT

Complainant, the United States Environmental Protection Agency ("EPA"), and Respondent, Bayside Fuel Oil Depot Corp. ("Bayside" or "Respondent") having agreed that settlement of this matter is in the public interest, and that entry of this Consent Agreement and Final Order ("CA/FO") without further litigation is the most appropriate means of resolving this matter;

NOW, THEREFORE, before the taking of any testimony, upon the pleadings, without adjudication of any issue of fact or law, and upon consent and agreement of the Parties, it is hereby agreed, and ordered as follows:

II. CONSENT AGREEMENT

Stipulations

The parties, in their own capacity or by their attorneys or other authorized representatives, hereby stipulate:

1. Section 311(j)(1)(C) of the Clean Water Act (the "Act"), 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"

2. 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 Section 311(j)(1)(C) authority to issue the regulations referenced in the preceding Paragraph for non-transportation-related onshore facilities.
3. EPA subsequently promulgated the Spill Prevention Control and Countermeasure ("SPCC") regulations pursuant to these delegated statutory authorities, and pursuant to its authorities under the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, which established certain procedures, methods and requirements incumbent 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 CFR § 110.3 may be harmful to the public health or welfare or the environment of the United States ("harmful quantity").
4. Respondent is a corporation with a place of business located at 1776 Shore Parkway, Brooklyn, New York 11214. Respondent is a person within the meaning of Sections 311(a)(7) and 502(5) of the Act, 33 U.S.C. § 1321(a)(7) and 1362(5), and 40 CFR § 112.2.
5. 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 CFR § 112.2 of an onshore oil storage facility, located at 537 Smith Street, Brooklyn, New York 11231 ("the Facility"), located on the Gowanus Canal.
6. Respondent is engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using or consuming oil or oil products located at the Facility.
7. The Facility is a "non-transportation-related facility" within the meaning of 40 CFR § 112.2 Appendix A, as incorporated by reference within 40 CFR § 112.2.
8. The Facility is an "onshore facility" within the meaning of Section 311(a)(10) of the Act, 33 U.S.C. § 1321(a)(10), and 40 CFR § 112.2.
9. The Facility is therefore 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 (as defined by Section 502(7) of the Act, 33 U.S.C. § 1362(7) and 40 CFR §§ 110.1 and 112.2) or its adjoining shorelines in a harmful quantity ("an SPCC-regulated facility"). The Gowanus Canal is a navigable water of the United States within the meaning of 40 CFR § 112.2 and Section 502(7) of the Act, 33 U.S.C. § 1362(7).
10. Pursuant to Section 311(j)(1)(C) of the Act, 40 CFR § 112.1 and E.O. 12777, Respondent, as the owner and operator of an SPCC-regulated facility, is subject to the SPCC regulations.
11. Pursuant to Section 311(j)(5) of the Act, as amended by the Oil Pollution Act of 1990, Respondent, as owner and operator of a Facility Response Plan facility, is subject to the Facility Response Plan regulations due to the following criteria:

- a. The Facility transfers oil over water to or from vessels and has a total oil storage capacity greater than or equal to 42,000 gallons; or
 - b. The Facility's total oil storage capacity is greater than or equal to 1 million gallons, and at least one of the following is true:
 - (1) The facility does not have secondary containment for each aboveground storage area sufficiently large to contain the capacity of the largest aboveground oil storage tank within each storage area plus sufficient freeboard to allow for precipitation;
 - (2) The facility is located at a distance (as calculated using the appropriate formula in Appendix C of 40 CFR § 112) such that a discharge from the facility could cause injury to fish and wildlife and sensitive environments.
 - (3) The facility is located at a distance (as calculated using the appropriate formula in Appendix C of 40 CFR § 112) such that a discharge from the facility would shut down a public drinking water intake; or
 - (4) The facility has had a reportable oil discharge in an amount greater than or equal to 10,000 gallons within the last 5 years.
12. Under the authority of Section 311(j)(5) of the Act, Subparts A and D of 40 CFR § 112 (“the Facility Response Plan” or “FRP regulations”) require FRP-regulated facilities to prepare a Facility Response Plan as specified in 40 CFR § 112.20(h), and to develop and implement a facility response training program and a drill/exercise program that satisfies the requirements of 40 CFR § 112.21(a).
 13. This Consent Agreement and Final Order (collectively “CA/FO”) resolves violations of Section 311 of the Act, 33 U.S.C. § 1321, as specifically alleged herein.

Findings of Violations

14. On March 14, 2019, the Acting Director of the Emergency and Remedial Response Division (“ERRD”) of EPA Region 2 (“Complainant”) issued an Administrative Complaint pursuant to Section 311(b)(6)(B)(i) of the Clean Water Act (“Act”), 33 U.S.C. § 1321(b)(6)(B)(i), Docket No. CWA-02-2019-3803, alleging that the Respondent was in violation of the SPCC and FRP regulations and proposing a civil penalty of \$44,800. Complainant particularly alleged that:
 - a. The Respondent’s failure to prepare and implement a SPCC Plan for the Facility in accordance with 40 CFR 112.7 and 40 CFR 112.8, as required by 40 CFR 112.3(a), violated regulations issued under Section 311(j) of the Act. Pursuant to Section 311(b)(6)(B)(i) of the Act and 40 CFR 19.4, the Respondent is liable for civil penalties of up to \$18,477 per day for each day during which the violation continues, up to a maximum of \$46,192.
 - b. The Respondent’s failure to amend and review the Facility’s SPCC Plan in accordance with 40 CFR 112.5 violated regulations issued under Section 311(j) of the Act.

Pursuant to Section 311(b)(6)(B)(i) of the Act and 40 CFR 19.4, the Respondent is liable for civil penalties of up to \$18,477 per day for each day during which the violation continues, up to a maximum of \$46,192.

- c. The Respondent's failure to revise and resubmit portions of the FRP in accordance with 40 CFR 112.20(d)(1) violated regulations issued under Section 311(j) of the Act. Pursuant to Section 311(b)(6)(B)(i) of the Act and 40 CFR 19.4, the Respondent is liable for civil penalties of up to \$18,477 per day for each day during which the violation continues, up to a maximum of \$46,192.
- d. The Respondent's failure to implement a sufficient self-inspection program in accordance with 40 CFR 112.20(h)(8) violated regulations issued under Section 311(j) of the Act. Pursuant to Section 311(b)(6)(B)(i) of the Act and 40 CFR 19.4, the Respondent is liable for civil penalties of up to \$18,477 per day for each day during which the violation continues, up to a maximum of \$46,192.
- e. The Respondent's failure to implement a sufficient training and drill/exercise program in accordance with 40 CFR 112.21 violated regulations issued under Section 311(j) of the Act. Pursuant to Section 311(b)(6)(B)(i) of the Act and 40 CFR 19.4, the Respondent is liable for civil penalties of up to \$18,477 per day for each day during which the violation continues, up to a maximum of \$46,192.

Jurisdiction & Waiver of Rights

- 15. For the purpose of this Consent Agreement, Respondent admits that EPA has jurisdiction over the subject matter alleged herein and waives any defenses it might have as to jurisdiction and venue; admits the factual and legal allegations contained in the Consent Agreement; and waives the right to a hearing under Section 311(b)(6)(B)(i) of the Act and to appeal any Final Order in this matter under Section 311(b)(6)(G)(i) of the Act, 33 U.S.C. § 1321(b)(6)(G)(i), and consents to the issuance of a Final Order without further adjudication.

III. TERMS OF SETTLEMENT

Pursuant to Section 311(b)(6) of the Act, 33 U.S.C. §1321(b)(6), and 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, 40 C.F.R. § 22.18, it is hereby agreed by and between the parties, and Respondent voluntarily and knowingly agrees as follows:

- 16. Pursuant to Section 311(b)(6) of the Act, 33 U.S.C. §1321(b)(6), the nature of the violations, and other relevant factors including Respondent's payment of a civil penalty to the NYS-DEC for State violations arising out of the same incident as well as its commitment improving conformance with federal oil spill prevention, planning and response regulations, EPA has determined that an appropriate civil penalty to settle this action is in the amount of thirty-seven thousand dollars (\$37,000).

17. For purposes of settlement, Respondent consents to the issuance of this Consent Agreement and consents to the payment of the civil penalty cited in the foregoing Paragraph.

IV. PAYMENT OF CIVIL PENALTY

18. No later than forty-five (45) days after the date of issuance of the executed Final Order signed by the Director of the Enforcement and Compliance Assurance Division, Respondent shall pay a civil penalty in the amount of **Thirty-Seven Thousand Dollars (\$37,000)**, payable to the "Treasurer of the United States of America." The payment shall indicate "OSLTF-311" and "CWA-02-2019-3803".
19. Payment can be made by debit/credit card, check, or electronically. Electronic payments fall into two categories: wires and Automated Clearinghouse ("ACH"). Wires are same day and more costly. ACH is the next day or any future scheduled day and is less expensive. Please note that wires and ACH payments must be conducted through the sender's bank. The checks (cashier's or certified checks only) shall be identified with a notation of the name and docket number of this case, set forth in the caption on the first page of this document. Payment methods are described on the following page:

Type of Payment	Payment Information		
Debit and Credit Card Payments	https://www.pay.gov/paygov/		
Checks from U.S. Banks		U.S. Postal Service	UPS, Federal Express, or Overnight Mail
Finance Center Contacts: Craig Steffen (513-487-2091)	Check Payments – Fines and Penalties	US Environmental Protection Agency Fines and Penalties Cincinnati Finance Center PO Box 979077 St. Louis, MO 63197-9000	U.S. Bank Government Lockbox 979077 US EPA Fines & Penalties 1005 Convention Plaza SL-MO-C2-GL St. Louis, MO 63101 314-418-1028 Contact: Natalie Pearson 314-418-4087
Checks drawn on foreign banks with no USA branches (any currency)	Cincinnati Finance US EPA, MS-NWD 26 W ML King Drive Cincinnati, OH 45268-0001		
Wire Transfers (any currency)	Federal Reserve Bank of New York ABA: 021030004 Account Number: 68010727 SWIFT address: FRNYUS33 33 Liberty Street New York, NY 10045 Field Tag 4200 of the Fedwire message should read: "D 68010727 Environmental Protection Agency"		
ACH - Automated Clearinghouse for receiving US currency Finance Center Contacts: John Schmid (202-874-7026) REX (Remittance Express) 1-866-234-5681	US Treasury REX / Cashlink ACH Receiver ABA: 051036706 Account Number: 310006, Environmental Protection Agency CTX Format Transaction Code 22 – checking Physical location of US Treasury facility: 5700 Rivertech Court Riverdale, MD 20737		

ON-LINE PAYMENT:

There is now an on-line Payment Option, available through the Department of Treasury. This payment option can be accessed from the information below: WWW.PAY.GOV. Enter sfo 1.1 in the search field. Open form and complete required fields.

Respondent shall also send copies of this payment to each of the following:

Branch Chief
Air Compliance Branch
Enforcement and Compliance Assurance Division
U.S. EPA, Region 2
290 Broadway, 21st Floor
New York, New York 10007

and

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, New York 10007.

20. Payment must be received at the above address no later than forty-five (45) calendar days after the date of signature of the Final Order (at the end of this document). The date by which payment must be received shall hereafter be referred to as the "due date."
21. Failure to pay the penalty in full by the due date will result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for Collection.
22. Further, if the payment is not received on or before the due date, interest will be assessed at the annual rate established by the Secretary of Treasury pursuant to the Debt Collection Act, 31 U.S.C. §3717, on the overdue amount from the due date through the date of payment. In addition, a late payment handling charge of \$15.00 will be assessed for each 30-day period (or any portion thereof) following the due date in which the balance remains unpaid. A 6% per annum penalty will also be applied on any principal amount not paid within 90 days of the due date.
23. In addition, pursuant to Section 309(g)(9) of the Act, 33 U.S.C. §1319(g)(9), if payment is not received by the due date, a quarterly nonpayment penalty will be imposed for each calendar quarter during which such nonpayment persists. The quarterly nonpayment penalty is 20% of the aggregate amount of penalties and quarterly nonpayment penalties, which are unpaid as of the beginning of such quarter. You may also be required to pay attorney's fees and costs for collection proceedings in connection with nonpayment.
24. The penalty to be paid is a civil penalty assessed by the EPA and shall not be deductible from Respondent's federal or New York State taxes.

V. GENERAL PROVISIONS

25. The provisions of this CA/FO shall be binding upon Respondent, its officers, directors, agents, servants, authorized representatives and successors or assigns, including, but not limited to, subsequent purchasers. No transfer of ownership or operation shall relieve Respondent of its obligation to comply with this CA/FO.
26. The Respondent waives any right it may have pursuant to 40 C.F.R. §22.8 to be present during discussions with or to be served with and to reply to any memorandum or communication addressed to the Director or the Regional Administrator where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the accompanying Final Order.
27. Except for the specific violations alleged herein, nothing in this agreement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this agreement or of the statutes and regulations upon which this agreement is based, or for Respondent's violation of any applicable provision of law.
28. This CA/FO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit.
29. This CA/FO constitutes a settlement by EPA of all claims for civil penalties pursuant to the Act for the violations by the Respondent alleged herein. Nothing in this CA/FO is intended to, nor shall be construed to operate in any way to resolve any criminal liability of the Respondent. Compliance with this CA/FO shall not be a defense to any actions subsequently commenced pursuant to Federal laws and regulations administered by EPA, and it is the responsibility of Respondent to comply with such laws and regulations.
30. Each undersigned representative of the parties to this Consent Agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this Consent Agreement and to execute and legally bind that party to it.
31. Each party shall bear its own costs and attorney's fees in connection with the action resolved by this CA/FO.
32. EPA agrees that the provisions of this Consent Agreement shall not be used to modify, deny, suspend, condition, or revoke any permits, registrations, or approvals issued by EPA.

VI. FINAL ORDER

The Regional Administrator of the United States Environmental Protection Agency, Region 2, vested by authority delegated by the Administrator of the United States Environmental Protection Agency ("EPA") and having further re-delegated such authority to the Enforcement and Compliance Assurance Division Director, Region 2, EPA, ratifies the foregoing Consent Agreement. The Agreement entered into by the parties is hereby approved, incorporated herein, and issued as an Order. The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, United States Environmental Protection Agency, Region 2, New York, New York.


DATED: SEP 26 2019



Dore F. LaPosta, Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 2
290 Broadway
New York, NY 10007-1866

SEP 28 2019

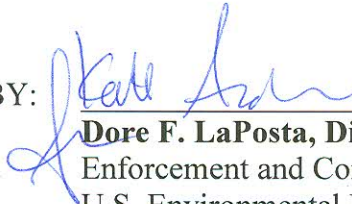
RESPONDENT:

BY: 
Sergio Allegretti, President
Bayside Fuel Oil Depot Corp.
1776 Shore Parkway
Brooklyn, New York 11214

DATE: 9/25/19

SEP 26 2019

COMPLAINANT:

BY: 
Dore F. LaPosta, Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 2
290 Broadway
New York, New York 10007

DATE: SEP 26 2019

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF:

Bayside Fuel Oil Depot Corp.
1776 Shore Parkway
Brooklyn, New York 11214,

Respondent.

Bayside Fuel Oil Depot Corp.
Smith Street Terminal
537 Smith Street
Brooklyn, New York 11231,

Facility.

CONSENT AGREEMENT
AND FINAL ORDER

Docket No. CWA-02-2019-3803

CERTIFICATE OF SERVICE

I certify that, on the date noted below, I caused to be mailed, by certified mail, return receipt requested, a copy of the foregoing "CONSENT AGREEMENT AND FINAL ORDER" and a copy of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties," (40 C.F.R. Part 22) to the following person at the addresses listed below:

Sergio Allegretti
President
Bayside Fuel Oil Depot Corp.
1776 Shore Parkway
Brooklyn, New York 11214

I sent by inter-office mail the original and a copy of the foregoing Consent Agreement/Final Order to the office of the Regional Hearing Clerk, United States Environmental Protection Agency, Region 2.

Date:

Print Name: _____
New York, NY

