

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM

This form was originated by: Yvette Hamilton-Taylor January 31, 2011
Name of Contact person *Date*

in the Office of Regional Counsel – Region III at (215) 814- 2636
Office *Phone number*

Non-SF Jud. Order/Consent Decree. DOJ COLLECTS Administrative Order/ Consent Agreement FMD COLLECTS PAYMENT
 SF Jud. Order/Consent Decree. FMD COLLECTS

This is an original debt This is a modification

Name of Company making payment: International Petroleum Corporation of Delaware d/b/a FCC Environmental

The Total Dollar Amount of Receivable: \$5,000.00
(If in installments, attach schedule of amounts and respective due dates)

The Case Docket Number CWA-03-2010-0327

The Site-Specific Superfund Acct. Number _____

The Designated Regional/HQ Program Office Hazardous Site Cleanup Division – Region III

TO BE FILLED OUT BY LOCAL FINANCIAL MANAGEMENT OFFICE:

The IFMS Accounts Receivable Control Number _____

If you have any questions call: _____
Name of Contact *Date*

in the Financial Management Office, phone number: _____

JUDICIAL ORDERS: Copies of this form with an attached copy of the front page of the final judicial order should be mailed to:

- 1. Rosemarie Pacheco
Environmental Enforcement Section
Lands Division, Room 130044
1425 New York Avenue, N.W.
Washington, D.C. 20005
- 2. Originating Office (ORC)
- 3. Designated Program Office

ADMINISTRATIVE ORDERS: Copies of this form with an attached copy of the front page of the administrative order should be sent to:

- 1. Originating Office
- 2. Designated Program Office
- 3. Regional Hearing Clerk

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III**

In The Matter of:	:	CONSENT AGREEMENT AND FINAL ORDER
International Petroleum Corporation of Delaware d/b/a FCC Environmental	:	Proceeding to Assess Class I Civil Penalties Under Section 311(b)(6) of the Clean Water Act, as amended, 33 U.S.C. § 1321(b)(6)
505 South Market Street Wilmington, DE 19801,	:	Docket No. CWA-03-2010-0327
Respondent,	:	

CONSENT AGREEMENT

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) of the Clean Water Act, as amended, (“CWA” or “the Act”), 33 U.S.C. § 1321(b)(6), 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” (“Consolidated 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 Region III’s Hazardous Site Cleanup Division (“Complainant”).

Statutory and Regulatory Basis

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

2. Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), prohibits the discharge of oil into or upon the navigable waters of the United States or adjoining shorelines in such quantities that have been determined may be harmful to the public health or welfare or environment of the United States.

3. For purposes of Section 311(b)(3) and (b)(4) of the CWA, 33 U.S.C. § 1321(b)(3) and (b)(4), discharges of oil into or upon the navigable waters of the United States in such quantities that have been determined may be harmful to the public health or welfare or environment of the United States are defined in 40 C.F.R. § 110.3 to include discharges of oil that cause a film or a 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 upon the adjoining shorelines.

4. "Oil" is defined at Section 311(a)(1), 33 U.S.C. § 1321(a)(1), for purposes of Section 311(b)(3) of the CWA, to include any kind of oil in any form, including petroleum, fuel oil, sludge, oil refuse and oil mixed with wastes other than dredged spoil.

5. Section 311(a)(2) of the CWA, 33 U.S.C. § 1321(a)(2), defines "discharge" to include any spilling, leaking, pumping, pouring, emitting, or dumping other than federally permitted discharges pursuant to a permit under Section 402 of the CWA, 33 U.S.C. § 1342.

6. For purposes of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), "navigable waters" is defined by 40 C.F.R. § 110.0 to include, among other things, tributaries to waters that could be used for industrial purposes or interstate commerce.

7. For purposes of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), "sheen" is defined by 40 C.F.R. § 110.1 as an iridescent appearance on the surface of water.

8. 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 and hazardous substances from vessels and from onshore facilities and offshore facilities, and to contain such discharges”

Allegations

Complainant has made, and except as set forth in Paragraph 20, the Respondent neither admits nor denies, the following allegations:

9. Respondent is a Delaware corporation that is headquartered at 505 S. Market Street, Wilmington, Delaware 19801 and is registered to do business in the State of Delaware.

10. Respondent is the owner of an onshore 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, which is a tanker truck (“Facility”) that was located on Pennsylvania State Highway Route 41 in Avondale, Chester County, Pennsylvania on or about June 2, 2008.

11. The 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.

12. The Respondent’s 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 C.F.R. §112.2.

13. On June 30, 2010, the Complainant issued an Administrative Complaint against the Respondent pursuant to Section 311(b)(6)(B)(i) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(i), Docket No. CWA-03-2010-0327, alleging that the Respondent violated Section 311(b)(3) of the CWA, 33 U.S.C. §1321(b)(3), and proposing a penalty of \$11,000.00 (“the Complaint”). Specifically, the Complainant alleged that, on June 2, 2008, the Respondent’s Facility discharged approximately 400 gallons of No. 5 fuel oil onto Pennsylvania State Highway Route 41 in Avondale, Chester County, Pennsylvania. The oil was then discharged through a nearby storm drain into Trout Run, which flows into White Clay Creek, which in turn flows into the Christiana

River, a navigable waterway. The oil that entered Trout Run caused a sheen on the surface of Trout Run. As a result of this discharge, an estimated thirty (30) gallons of oil entered Trout Run.

14. Trout Run is a navigable water of the United States as defined in Section 502(7) of the CWA, 33 U.S.C. §1362(7), and 40 C.F.R. §112.2 because it is a tributary of White Clay Creek.

15. White Clay Creek is a navigable water of the United States as defined in Section 502(7) of the CWA, 33 U.S.C. §1362(7), and 40 C.F.R. §112.2 because it is a tributary of the Christiana River.

16. White Clay Creek has received a special designation by the United States Congress pursuant to the National Wild and Scenic River Act, 16 U.S.C. §1271 et seq. as an environmentally sensitive watershed.

17. The Christiana 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.

18. Respondent's June 2, 2008, discharge of oil from its Facility was in a quantity that has been determined may be harmful under 40 C.F.R. §110.3, which implements Sections 311(b)(3) and (b)(4) of the CWA.

19. Respondent's discharge of oil from its Facility into or upon Trout Run occurred in a quantity that has been determined may be harmful under 40 C.F.R. §110.3 and Sections 311(b)(3) and (b)(4) of the CWA, 33 U.S.C. §1321(b)(3) and (b)(4), and violated Section 311(b)(3) of the CWA because it caused a film or sheen upon or discoloration of the surface of Trout Run.

Waiver of Rights

20. For the purposes of this proceeding, the Respondent admits to the jurisdictional allegations in the Complaint and waives the right to a hearing under Section 311(b)(6)(B)(i) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(i), 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.

Penalty

21. Complainant proposes, and Respondent consents to, the assessment of a civil penalty of \$5,000.

Payment Terms

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

22. Respondent shall pay the penalty within thirty (30) days of the Effective Date of the Final Order as the full, final, and complete settlement of Respondent's liability for all claims alleged in the Complaint.

23. Payments required pursuant to Paragraphs 21 and 22 shall be made by a cashier's or certified check, or by an electronic funds transfer (EFT).

24. If paying by check, Respondent shall submit a cashier's or certified check, payable to "Environmental Protection Agency," and bearing the notation "OSLTF – 311." Respondent shall note on the penalty payment check the title and docket number ("CWA-03-2010-0327") of this case. If the Respondent sends payment by the U.S. Postal Service, the payment shall be addressed to:

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

If Respondent sends payment by a private delivery service, the payment shall be addressed to:

U.S. Environmental Protection Agency
U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101
Attn: Natalie Pearson (314/418-4087)

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

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

Field Tag 4200 of the Fedwire message shall read: "(D 68010727 Environmental Protection Agency)."

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

26. If paying through the Department of Treasury's Online Payment system, Respondent shall 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-03-2010-0327" should be included in the "Court Order # or Bill #" field, and "3" should be included as the Region number.

27. Respondent shall submit a copy of the check (or, in the case of an EFT transfer, a copy of the EFT confirmation or, in the case of an online payment, a copy of the payment confirmation) to the following person:

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

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

Yvette Hamilton-Taylor
Senior Assistant Regional Counsel (3RC43)
U.S. Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103-2029

28. Failure by the Respondent to pay the penalty assessed by a Final Order 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 Act, 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

29. This Consent Agreement and any Final Order shall be binding upon Respondent, its officers, directors, agents, servants, employees, and successors or assigns. By his or her signature below, the person signing this Consent Agreement on behalf of Respondent warrants that he or she is fully authorized by Respondent to execute this Consent Agreement and bind Respondent to the terms and conditions of this Consent Agreement.

30. Payment of the penalty pursuant to this Consent Agreement fully resolves Respondent's liability for all claims alleged in the Complaint. 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 federal law not alleged in the Complaint.

31. As used in this Consent Agreement, the term "Effective Date" shall mean the date on which the Final Order is filed with the Regional Hearing Clerk


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

INTERNATIONAL PETROLEUM CORPORATION OF DELAWARE
d/b/a FCC ENVIRONMENTAL

Date: 1/4/11

Name: Kenneth D. Cherry
Title: EVP & GM

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION III



Ronald J. Borsellino, Director
Hazardous Site Cleanup Division

Date: 3/16/11

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III**

In The Matter of:

International Petroleum
Corporation of Delaware
d/b/a FCC Environmental

505 South Market Street
Wilmington, DE 19801,

Respondent,

CONSENT AGREEMENT
AND FINAL ORDER

Proceeding to Assess Class I
Civil Penalties Under Section
311(b)(6) of the Clean Water Act, as
amended, 33 U.S.C. § 1321(b)(6)

Docket No. CWA-03-2010-0327

FINAL ORDER


1. Pursuant to Section 311(b)(6) of the Clean Water Act, 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. The Respondent is ordered to comply with the terms of the foregoing Consent Agreement.

Effective Date

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

Date:

3/17/11


Renee Sarajian
Regional Judicial Officer