

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

In The Matter of:	:	
	:	
Seaboard Asphalt Products Company:	:	CONSENT AGREEMENT
3601 Fairfield Road	:	
Baltimore, Maryland 21226	:	
	:	
Respondent.	:	
	:	PROCEEDING UNDER SECTION 311
	:	OF THE CLEAN WATER ACT, AS
Seaboard Asphalt Products Company:	:	AMENDED, TO ASSESS A CLASS II
Lot 7, Rear of 3450 Asiatic Avenue	:	CIVIL PENALTY
Baltimore, Maryland 21226	:	
	:	
Facility.	:	Docket No. CWA-03-2014-0219

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)(ii) of the Clean Water Act ("CWA"), as amended, 33 U.S.C. § 1321(b)(6)(B)(ii), and under the authority provided by Sections 22.13(b) and 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 22.18(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, findings of fact, 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 attorney's 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 the Oil Pollution Prevention Regulations, codified at 40 C.F.R. Part 112 (the "Regulations").
11. 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.
12. According to 40 C.F.R. § 112.3, any owner or operator subject to the Regulations must prepare in writing and implement a Spill Prevention, Control, and Countermeasure (SPCC) plan, in accordance with § 112.7 and any other applicable section, including but not limited to § 112.8.
13. For violations of Section 311(j) of the CWA, 33 U.S.C. § 1321(j), EPA has authority, pursuant to Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6), to assess a Class II penalty in the amount of up to \$10,000 per day of violation, not to exceed a maximum penalty of \$125,000. 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 but before December 6, 2013, are subject to a Class II statutory penalty of up to \$16,000 per day of violation, not to exceed a maximum penalty of \$177,500.

Findings of Fact and Conclusions of Law

14. Respondent is a corporation with a principal place of business located at 3601 Fairfield Road, Baltimore, Maryland 21226.
15. 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.
16. Respondent is engaged in the business of distribution, blending and sale of a variety of asphalt products, including roof and foundation coatings, roof cement, aluminum roof coatings, driveway sealers and other asphalt base materials at a facility located at Lot 7, in the rear of 3450 Asiatic Avenue, Baltimore, Maryland 21226 ("Facility").
17. Respondent is 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.
18. Respondent has owned and operated the Facility since the year 1989, when the Facility started operations.
19. The Facility has a total aboveground oil storage capacity of approximately 224,500 gallons.
20. The Facility is located on a peninsula surrounded by two bodies of water. The southern part of the peninsula is adjacent to Curtis Bay and the eastern part is adjacent to the Patapsco River. The Facility is located 0.413 miles from the Patapsco River and approximately the same distance from Curtis Bay. Both bodies of water flow into Chesapeake Bay.
21. The Facility could reasonably be expected to discharge oil in harmful quantities through a storm drain system that discharges into the Patapsco River.
22. Patapsco River and Chesapeake Bay are navigable waters 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 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.
28. EPA conducted a compliance inspection at the Facility on July 11, 2011 (“the Inspection”).
29. EPA believes that, at the time of the Inspection, Respondent failed to adequately implement 40 C.F.R. § 112.3 of the Oil Pollution Prevention Regulations, as set forth in Paragraph 30, below.
30. During the Inspection, EPA inspectors, made the following observations:
 - a. The SPCC Plan for the Facility was not certified by a licensed Professional Engineer, as required by 40 C.F.R. § 112.3(d);
 - b. Two loading/unloading racks did not have a secondary containment system, as required by 40 C.F.R. § 112.7 (h)(1);
 - c. Mineral oil was stored in rusty, corroded tanks, which is inconsistent with 40 C.F.R. § 112.8 (c)(1), which forbids the use of containers for storage of oil unless its material and construction are compatible with the material stored and conditions of storage such as pressure and temperature;
 - d. There were cracks, holes and water seepage in the concrete walls of one of the facility’s main secondary containment areas and, thus, the secondary containment was not sufficiently impervious to contain discharges, as required by 40 C.F.R. § 112.8 (c)(2);
 - e. A section of the pipeline in an area of the Facility called the “MC Tank Farm” was supported by concrete blocks and plywood, not permanently fixed, creating an unstable brace for the pipeline, which is inconsistent with 40 C.F.R. § 112.8 (d)(3), which requires oil pipeline supports to be designed to minimize abrasion and corrosion and allow for expansion and contraction;
 - f. A visible discharge of oil in the MC Tank Farm secondary containment area was not promptly corrected, as required by § 112.8 (c)(10); and
 - g. No secondary containment was provided for mobile containers used to store oil, as required by 40 C.F.R. § 112.8 (c)(11).
31. EPA determined, based on the Inspection, discussions with Facility personnel during and after the Inspection, and review of documentation provided by Respondent, that Respondent failed to adequately prepare and implement an SPCC plan for the Facility, in accordance with the Regulations at 40 C.F.R. § 112.7 and § 112.8, in violation of 40 C.F.R. § 112.3 and in response to which EPA may seek penalties pursuant to Section 311(b)(6)(A) of the CWA, 33 U.S.C. § 1321(b)(6)(A).

Penalty

32. 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 **\$60,000.00**.
33. The 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 allegations regarding 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.

Payment Terms

34. In order to avoid the assessment of interest, administrative costs, and late payment penalties in connection with the civil penalty described in this CAFO, Respondent shall pay the civil penalty of \$60,000.00, plus interest accruing at a rate of one percent (1%) per annum. The civil penalty amount shall become due and payable immediately upon Respondent's receipt of a true copy of this CAFO. Respondent agrees to pay the civil penalty in full by remitting installment payments, in accordance with Paragraph 35, below.
35. Payment of the civil penalty, which includes any accrued interest, shall be made in the manner and over the time period specified below:

<u>Schedule</u>	<u>Principal</u>	<u>1% Interest</u>	=	<u>Payment</u>
1 st payment due within 30 calendar days of the Effective Date	\$20,000.00		=	\$20,000.00
2 nd payment due within 180 calendar days of the Effective Date	\$40,000.00	+ \$200.00	=	\$40,200.00
				Total: <u>\$60,200.00</u>

36. 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-03-2014-0219) 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: Heather Russell (513) 487-2044

- 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-03-2014-0219" should be included in the "Court Order # or Bill #" field, and "3" should be included as the Region number.

37. 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.

38. Interest on the civil penalty will begin to accrue on the date that this CAFO, when fully executed, is mailed or hand-delivered to the Respondent ("Interest Accrual Date"). 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).
39. 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.
40. A penalty charge of six percent per year will be assessed monthly on any portion of a payment 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).
41. In order to avoid the assessment of administrative costs for overdue debts, as described above, Respondent must remit payment for the civil penalty in accordance with the payment deadline set forth above.
42. 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:
- | | |
|--|---|
| Lydia Guy (3RC00)
Regional Hearing Clerk
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029 | Lourdes del Carmen Rodriguez
(3RC42)
Senior Assistant Regional Counsel
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029 |
|--|---|
43. Failure by Respondent to pay the penalty assessed by the Final Order in full 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

44. 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.
45. The provisions of this Consent Agreement and the Final Order, if issued, shall be binding upon Respondent and Respondent's successors or assigns.
46. 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.
47. 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 alleged liability for federal civil penalties for the violations and facts alleged in this Consent Agreement.
48. 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, Seaboard Asphalt Products Company

Date: July 29, 2014

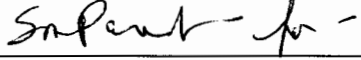
By: Adrian Berger

Name: ADRIAN F BERGER

Title: PRESIDENT

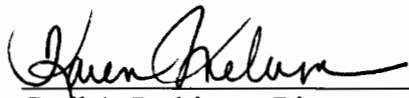
For the Complainant, U.S. Environmental Protection Agency, Region III

Date: 9/26/14

By: 
Lourdes del Carmen Rodriguez
Senior 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: SEP 26 2014

By: 
Cecil A. Rodrigues, Director
Hazardous Site Cleanup Division
EPA Region III

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

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: **OF THE CLEAN WATER ACT, AS**
Seaboard Asphalt Products Company : **AMENDED, TO ASSESS A CLASS II**
Lot 7, Rear of 3450 Asiatic Avenue : **CIVIL PENALTY**
Baltimore, Maryland 21226 : :
: :
Facility. : **Docket No. CWA-03-2014-0219**
: :
_____ : :

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 pay the **\$60,000.00** penalty plus accrued interest, in accordance with the Consent Agreement and otherwise comply with the terms of the foregoing Consent Agreement.

The Effective Date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

Date: 9-30-14


Heather Gray
Regional Judicial Officer/Presiding Officer

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

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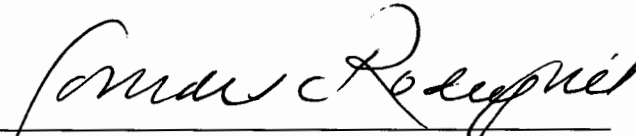
CERTIFICATE OF SERVICE

I hereby certify that the original and one copy of the foregoing Consent Agreement and Final Order ("CAFO") in the above-captioned matter have been filed with the EPA Region III Regional Hearing Clerk and that copies of the CAFO were sent via Overnight Mail to:

M. Trent Zivkovich
Whiteford, Taylor & Preston L.L.P.
7 St. Paul Street
Baltimore, MD 21202-1636

I further certify that I have sent a copy of the CAFO by electronic pdf to Respondent's representative at tzivkovich@wtplaw.com, on this day.

Sept 30, 2014
Date



Lourdes del Carmen Rodriguez,
Senior Assistant Regional Counsel,
Office of Regional Counsel
U.S. Environmental Protection Agency, Region III