

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

In the Matter of: :
: Proceeding under Section 311(j) and
Bilcare Research, Inc. : 311(b)(6)(B)(i) of the Clean Water Act,
1389 Schoolhouse Road : 33 U.S.C. § 1321(j) and 1321(b)(6)(B)(i)
Delaware City, DE 19706 :
: Respondent, :
: Bilcare Research, Inc. :
1389 Schoolhouse Road :
Delaware City, DE 19706 : Docket No. CWA-03-2018-0017
: Facility. :
: _____ :

U.S. EPA-REGION 3-RHC
FILED-27JUN2018AM10:49

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 22.13(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 (“Consolidated Rules of Practice”), 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 Consolidated Rules of Practice 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, Bilcare Research, Inc. (“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, and conclusions of law 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 and Regulatory Authority

8. Congress enacted the CWA, 33 U.S.C. §§ 1251 *et seq.*, in 1972. 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 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 for preventing discharges of oil from onshore facilities into navigable waters and for containing such discharges 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, 33 U.S.C. § 1321(j), EPA promulgated the Oil Pollution Prevention Regulations, codified at 40 C.F.R. Part 112, Subparts A - C.
11. Pursuant to 40 C.F.R. § 112.1, an owner or operator of a non-transportation-related onshore or offshore facility with an above-ground oil storage capacity exceeding 1,320 gallons, 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 is subject to Part 112.
12. According to 40 C.F.R. § 112.3, an owner or operator of an onshore or offshore facility subject to Part 112 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, under Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6), as amended by the Debt Collection Improvement Act and implemented by 40 C.F.R. Part 19, *Adjustment of Civil Monetary Penalties for Inflation*, to file a Class I Administrative Complaint seeking a civil penalty of \$18,107 per day for each day during which a violation continues, up to a maximum of \$44,268, for violations occurring after November 2, 2015.

Findings of Fact and Conclusions of Law

14. Respondent is a Delaware Corporation with a principal place of business located at 1389 Schoolhouse Road, Delaware City, DE 19706.
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. On October 3, 2016, EPA conducted an SPCC compliance inspection (“Inspection”) of the facility located at 1389 Schoolhouse Road, Delaware City, DE 19706 (“Facility”).
17. At the time of the Inspection, and since 2011, Respondent was 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. The Facility began operations in 2011.
19. The Facility has a total aboveground oil storage capacity of approximately 55,000 gallons.
20. The Facility is located less than half a mile to Dragon Creek which is a tributary of the Delaware River.
21. Dragon Creek and the Delaware River 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.
22. 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.
23. 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.
24. 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.
25. Pursuant to 40 C.F.R. § 112.3, Respondent is required to prepare in writing and implement an SPCC plan, in accordance with 40 C.F.R. § 112.7 and any other applicable section.
26. EPA believes that, at the time of the Inspection, Respondent failed to adequately implement the Oil Pollution Prevention Regulations, as set forth below.
27. At the time of the Inspection:
 - A. Respondent failed to comply with 40 C.F.R. § 112.3, which requires the owner or

operator of an onshore facility subject to § 112.3 to prepare in writing, and implement an SPCC Plan in accordance with § 112.7 and any other applicable section of Part 112. At the time of the Inspection, the Facility had not prepared in writing and had not implemented an SPCC Plan in accordance with § 112.7 or any other applicable sections of Part 112.

- B. Respondent failed to comply with 40 C.F.R. § 112.7(e), which, in pertinent part, requires the owner or operator of a facility to conduct inspections and tests in accordance with written procedures that the owner, operator, or certifying engineer developed for the Facility. The owner or operator must keep these written procedures and a record of the inspections and tests, signed by the appropriate supervisor or inspector, with the SPCC Plan for a period of three years. At the time of the Inspection, neither written procedures nor a record of the inspections and tests, signed by the appropriate supervisor or inspector, had been kept for a period of three years for the following containers: fifty-four (54) 55-gallon oil containment drums, two (2) 275 gallon totes of heating transfer oil, a 265 gallon single walled lubrication oil tank, an 80 gallon hydraulic oil tank, a 100 gallon vacuum waste oil tank, a 500 gallon transformer, three (3) 10,000 gallon oil-containing wastewater tanks, fourteen (14) 275 gallon totes of oil-based stabilizer, three (3) 5,000 gallon process boiler tanks, and a 2,000 gallon outdoor boiler tank.
- C. Respondent failed to comply with 40 C.F.R. § 112.7(f)(1) and (f)(3), which require the facility owner or operator to train oil-handling personnel in the operation and maintenance of equipment to prevent discharges; discharge procedure protocols; applicable pollution control laws, rules, and regulations; general facility operations; the contents of the facility SPCC Plan; and schedule and conduct discharge prevention briefings at least once a year to assure adequate understanding of the SPCC Plan for that facility. At the time of the Inspection, the Facility provided training on discharge procedures and prevention equipment but the Facility did not train the oil-handling personnel in the applicable pollution control laws, rules, and regulations, and the contents of the facility SPCC Plan. Discharge prevention briefings for the oil-handling personnel were not being scheduled and conducted at least once a year to assure adequate understanding of the SPCC Plan for the Facility.
- D. Respondent failed to comply with 40 C.F.R. § 112.7(g), which, in pertinent part, requires the owner or operator of a facility to describe in the SPCC Plan how the Facility: secure(s) master flow and drain valves. At the time of the Inspection, bypass valves were observed in the open position and the Facility failed to describe in the SPCC Plan how the Facility secures master flow and drain valves.
- E. Respondent failed to comply with 40 C.F.R. § 112.8(c)(2), which requires the owner or operator of a facility to construct all bulk storage tank installations with a secondary means of containment for the entire capacity of the largest single container and sufficient freeboard to contain precipitation. At the time of the

Inspection, a bulk storage tank installation, an elevated outdoor boiler tank (2,000 gallons), did not have a secondary means of containment.

- F. Respondent failed to comply with 40 C.F.R. § 112.8(c)(6), which requires the owner or operator of a facility to test or inspect each aboveground container for integrity on a regular schedule. The owner or operator must determine, in accordance with industry standards, the frequency and type of testing and inspections, which take into account container size, configuration, and design. At the time of the Inspection, Respondent did not test or inspect the aboveground containers for integrity on a regular schedule.
- G. Respondent failed to comply with 40 C.F.R. § 112.8(c)(10), which requires the owner or operator of a facility to promptly correct visible discharges which result in a loss of oil from the container, including but not limited to seams, gaskets, piping, pumps, valves, rivets, and bolts. The Facility must promptly remove any accumulations of oil in diked areas. At the time of the Inspection, Respondent had not promptly corrected visible discharges which had resulted in a loss of oil from the container and had not removed accumulations of oil in the boiler room, below the external oil tank, and in the basement.
- H. Respondent failed to comply with 40 C.F.R. § 112.8(c)(11), which requires the owner or operator of a facility furnish a secondary means of containment, such as a dike or catchment basin, sufficient to contain the capacity of the largest single container and sufficient freeboard to contain precipitation. At the time of the Inspection, EPA Personnel observed approximately twenty-six (26) mobile or portable oil storage containers (portable 55-gallon drums) without a secondary means of containment.

Penalty

- 28. 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 **\$32,282**.
- 29. 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; any other penalty for the same incident; 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. The applicable statutory factors were applied in accordance with EPA's *Civil Penalty Policy for Section 311(b)(3) and Section 311(j) of the Clean Water Act* (August 1998).

Payment Terms

30. 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 **\$32,282**. The civil penalty amount shall become due and payable immediately upon the upon Respondent's receipt of the signed and filed CAFO.
31. 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-03-2018-0017) 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
1005 Convention Plaza
SL-MO-C2GL
St. Louis, MO 63101
Contact: (314) 418-1028
 - 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-03-2017-0131” should be included in the “Court Order # or Bill #” field, and “3” should be included as the Region number.

32. 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.
33. Interest on the civil penalty will begin to accrue on the effective date of this CAFO. 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).
34. 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.
35. 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).
36. 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.
37. 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:

Regional Hearing Clerk (3RC00)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029


Alison M. Debes (3RC00)
Senior Assistant Regional Counsel
U.S. EPA, Region III
1650 Arch Street
Philadelphia PA, 19103

38. 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

39. 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.
40. The provisions of this Consent Agreement and the Final Order, if issued, shall be binding upon Respondent and Respondent's successors or assigns.
41. The Respondent certifies to EPA by its signature herein that, upon investigation, to the best of its knowledge and belief, it is presently in compliance with the specific provisions of the CWA allegedly violated as set forth in this CAFO.
42. This Consent Agreement and the accompanying Final Order resolve only the civil penalty claims for the specific violations alleged in this Consent Agreement. 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. Nor shall anything in this Consent Agreement and the accompanying Final Order be construed to limit the United States authority to pursue criminal sanctions. In addition this settlement is subject to all limitations on the scope of resolution and the reservation of rights set forth in 40 C.F.R. § 22.18(c). Further, Complainant reserves any rights and remedies available to it under the CWA, the regulations promulgated thereunder, and any other federal laws or regulations for which Complainant has jurisdiction, to enforce the provisions of this Consent Agreement and accompanying Final Order following its filing with the Regional Hearing Clerk. 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.
43. The effective date of this Consent Agreement and the accompanying Final Order (which is signed by the Regional Administrator, or his designee, the Regional Judicial Officer) shall be the date the CAFO is filed, with the Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.


For the Respondent, Bilcare Research, Inc.

Date: 06/13/18 By: 
Marco Differi
Vice President Operations,
Bilcare Research Inc.

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

Date: 6/21/18 By: 
Alison M. Debes
Senior Assistant Regional Counsel

After reviewing the foregoing Consent Agreement and other pertinent information, the Director of 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: JUN 21 2018 By: 
Karen Melvin, Director
Hazardous Site Cleanup Division
EPA Region III

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

In the Matter of:	:	
	:	Proceeding under Section 311(j) and
Bilcare Research, Inc.	:	311(b)(6)(B)(i) of the Clean Water Act,
1389 Schoolhouse Road	:	33 U.S.C. § 1321(j) and 1321(b)(6)(B)(i)
Delaware City, DE 19706	:	
	:	
Respondent,	:	
	:	
Bilcare Research, Inc.	:	
1389 Schoolhouse Road	:	
Delaware City, DE 19706	:	Docket No. CWA-03-2018-0017
	:	
Facility.	:	
_____	:	

FINAL ORDER

Complainant, the Director of the Hazardous Site Cleanup Division, U.S. Environmental Protection Agency, Region III, and Respondent, Bilcare Research, Inc., have executed a document entitled “Consent Agreement,” which I hereby ratify as a Consent Agreement in accordance with 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, with specific references to Section 22.13(b), 22.18(b)(2) and (3). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.

Based on the representations of the parties in the attached Consent Agreement, the penalty agreed to herein is based upon consideration of, *inter alia*, the statutory penalty factors in Section 311(b)(8) of the CWA, 33 U.S.C. § 1321(b)(8), which were applied in accordance with EPA’s *Civil Penalty Policy for Section 311(b)(3) and Section 311(j) of the Clean Water Act* (August 1998).

NOW, THEREFORE, PURSUANT TO Section 311(b)(6)(B)(i) of the CWA, as amended, and the Consolidated Rules of Practice, IT IS HEREBY ORDERED that Respondent pay a civil penalty of \$32,282., plus any applicable interest, as specified in the Consent Agreement, and comply with the terms and conditions of the 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: June 26, 2018



Joseph J. Lisa
Regional Judicial Officer
U.S. Environmental Protection Agency, Region III

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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Delaware City, DE 19706 : Docket No. CWA-03-2018-0017
: Facility. :
:

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the date provided below, I hand-delivered and filed the original of the signed Consent Agreement and Final Order with the Regional Hearing Clerk, U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029, and that true and correct copies of the Consent Agreement and Final Order were sent to:

Mohan H. Bhandari
Chairman & CEO, Bilcare Research Inc.
1389 Schoolhouse Road
Delaware City, DE 19706

I further certify that I have sent a copy of the CAFO by electronic pdf to Respondent's representative Shawn R Someday, Vice President of Operations on this day.

June 27, 2018
DATE

Alison M. Debes
Alison M. Debes (3RC42)
Senior Assistant Regional Counsel
Counsel for Complainant
(215) 814-2679

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1905, 1906