

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM

TO BE FILLED OUT BY ORIGINATING OFFICE:

(Attach a copy of the final order and transmittal letter to Defendant/Respondent)

This form was originated by: Jacquie Milhouse 1/24/2012
Name of Contact person Date

in the Office of Regional Counsel at 215 814 2663
Region III 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 Person and/or Company/Municipality making the payment Frenz Petroleum Corporation

The Total Dollar Amount of Receivable \$ 8440 to USCG Oil Spill Liability
(If in installments, attach schedule of amounts and respective due dates) Trust Fund

The Case Docket Number CWA-03-2012-0084

The Site-Specific Superfund Acct. Number _____

The Designated Regional/HQ Program Office _____

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
- 3. Regional Counsel



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, PA 19103-2029

MEMORANDUM

DATE: February 7, 2012

SUBJECT: In the Matter of: Frenz Petroleum Corporation
U.S. EPA Docket No.: CWA-03-2012-0084
Consent Agreement and Final Order

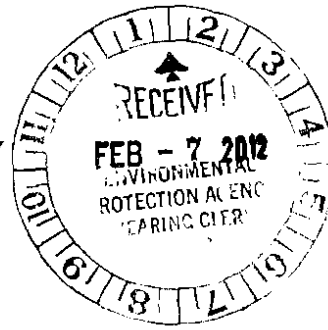
FROM: Jacquin Milhouse (3RC41)

TO: Lydia Guy, Regional Hearing Clerk (3RC00)

Enclosed for filing is a fully executed Consent Agreement and Final Order settling this matter. A courtesy copy of the Consent Agreement and Final Order is also enclosed.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III



IN THE MATTER OF:

Frenz Petroleum Corporation
2318 West State Street
New Castle, Pennsylvania 16101,

Respondent.

CWA Section 311 Class I
Consent Agreement and Final Order
Under 40 C.F.R. § 22.13(b) and 22.18(b)(2)

Docket No.: CWA-03-2012-0084

CONSENT AGREEMENT AND FINAL ORDER

Legal Authority

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 ("Act"), 33 U.S.C. § 1321(b)(6)(B)(i), as amended by the Oil Pollution Act of 1990, and under the authority provided by 40 C.F.R. §§ 22.13(b) and 22.18(b)(2). The Administrator has delegated these authorities to the Regional Administrator of EPA, Region 3, who has in turn delegated them to the Director of the Hazardous Site Cleanup Division, Region 3 ("Complainant").

Stipulations

2. For the purposes of this Consent Agreement only, Respondent admits the jurisdictional allegations set forth in the Consent Agreement.
3. Respondent Frenz Petroleum Corporation ("Frenz") is a corporation organized under the laws of Pennsylvania with its place of business located at 2318 West State Street, New Castle, Pennsylvania 16101.
4. Respondent is a "person" within the meaning of Section 311(a)(7) of the Act, 33 U.S.C. §1321(a)(7) and 40 C.F.R. §112.2.
5. On March 24, 2010, Frenz operated a tanker truck that was transporting diesel fuel at or near State Highway 8, in Cornplanter Township, Venango County, Pennsylvania.
6. On May 26, 2010, Frenz operated a tanker truck that was transporting diesel fuel at or near State Route 27 in Eldred Township, Warren County, Pennsylvania.
7. Both tanker trucks are onshore facilities 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 ("Facility").
8. Diesel fuel is an oil as defined in Section 311(a)(1) of the Act, 33 U.S.C. §1321(a)(1), and 40 C.F.R. §110.1.

9. Cherry Tree Run and Wykle Run are tributaries to Oil Creek, which is a tributary to the Allegheny River, a navigable waterway of the United States as defined in Section 502(7) of the Clean Water Act, 33 U.S.C. §1362(7), and 40 C.F.R. §110.1.
10. Caldwell Creek is a tributary to the Pine Creek, which is a tributary to Oil Creek, which in turn is a tributary to the Allegheny River, a navigable waterway of the United States as defined in Section 502(7) of the Clean Water Act, 33 U.S.C. §1362(7), and 40 C.F.R. §110.1.
11. Section 311(b)(3) of the Act prohibits the discharge of oil or a hazardous substance 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.
12. For purposes of Section 311(b)(3) and (b)(4) of the Clean Water Act, 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 violate applicable water quality standards or 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.

Allegations

13. 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 2, above.
14. On March 24, 2010, Respondent discharged 7,500 gallons of oil as defined in Section 311(a)(1) of the Clean Water Act, 33 U.S.C. §1321(a)(1), and 40 C.F.R. §110.1, from its Facility into or upon Cherrytree Run and Wykle Run.
15. On May 26, 2010, Respondent discharged 5,292 gallons of oil as defined in Section 311(a)(1) of the Clean Water Act, 33 U.S.C. §1321(a)(1), and 40 C.F.R. §110.1, from the Facility into or upon Caldwell Creek.
16. The March 24, 2010 discharge of oil caused a sheen upon Cherrytree Run, Wykel Run, and Oil Creek and, therefore, was in a quantity that has been determined may be harmful under 40 C.F.R §110.3.
17. The May 26, 2010 discharge of oil caused a sheen upon or discoloration of the surface of Caldwell Creek or deposited a sludge or emulsion beneath the water's surface and, therefore, was in a quantity that has been determined may be harmful under 40 C.F.R §110.3.
18. Respondent's March 24, 2010 discharge of oil from its Facility into or upon Cherrytree Run and Wykle Run in a quantity that has been determined may be harmful under 40

C.F.R. §110.3 is a violation of Section 311(b)(3) of the Act, and therefore, subject to the assessment of a penalty pursuant to Section 311(b)(6) of the Act.

19. Respondent's May 26, 2010 discharge of oil from its Facility into or upon Caldwell Creek in a quantity that has been determined may be harmful under 40 C.F.R. §110.3 is a violation of Section 311(b)(3) of the Act, and therefore, subject to the assessment of a penalty pursuant to Section 311(b)(6) of the Act.

Waiver of Rights

20. Respondent waives the right to a hearing under Section 311(b)(6)(B)(i) of the Act, 33U.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. The Complainant proposes, and Respondent consents to, the assessment of a civil penalty of **\$8,440**.
22. The proposed penalty was calculated after consideration of the applicable statutory penalty factors in Section 311(b)(8) of the Clean Water Act, 33 U.S.C. § 1321(b)(8), including the seriousness of the violation; the economic benefit to the violator; the degree of culpability; the nature, extent, and degree of success of the Respondent' mitigation efforts; the economic impact of the penalty on the violator; and other matters as justice may require.

Payment Terms

23. 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-03-2012-0084) of this case.
 - B. Payments sent by U.S. Postal Service must be addressed to:

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

C. Payments sent by a private delivery service must 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)

D. If paying by EFT, field tag 4200 of the Fedwire message shall read: “(D 68010727 Environmental Protection Agency).” For an international transfer of funds, the SWIFT address is FRNYUS33. Make the transfer to:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 68010727
SWIFT address: FRNYUS33
33 Liberty Street
New York, NY 10045

E. 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-03-2012-0084” should be included in the “Court Order # or Bill #” field, and “3” is the Region number.

F. Payment by the Respondent shall reference Respondent’s name and address, and the EPA Docket Number of this CAFO (CWA-03-2012-0084). A copy of Respondent’s check or a copy of Respondent’s electronic fund transfer shall be sent simultaneously to:

Jacquie Milhouse
Office of Regional Counsel
U.S. Environmental Protection Agency
Region III (Mail Code 3RC41)
1650 Arch Street
Philadelphia, PA 19103-2029

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

Interest and Late Fees

24. 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.

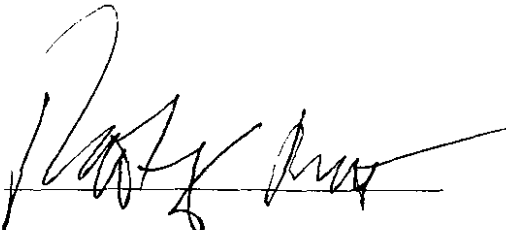
25. Interest on the civil penalty will begin to accrue on the date that this CAFO is mailed or hand-delivered to the Respondent. EPA will not seek to recover interest on any amount of such civil penalty that is paid within thirty (30) calendar days of the date interest begins to accrue. Interest on the portion of a civil penalty not paid within the 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).
26. 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.
27. 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 under 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 under 31 C.F.R. § 901.9(d).
28. Failure by Respondent to pay the penalty assessed by the Final Order according to 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

29. The Final Order shall be binding upon Respondent and Respondent's officers, directors, agents, servants, employees, and successors or assigns. 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.
30. The Final Order does not constitute a waiver, suspension or modification of the requirements of Section 311 of the Clean Water Act, 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 stipulated to and alleged herein.
31. Respondent shall bear their own legal costs and attorney's fees.
32. The Effective Date of this Consent Agreement is the date on which the Final Order is filed with the Regional Hearing Clerk.

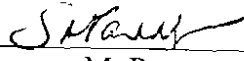
For Respondent, Frenz Petroleum Corporation

Date: 1/17/12

By: 
Robert W. Frenz
President

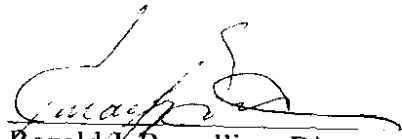
For the Complainant, U.S. Environmental Protection Agency, Region III

Date: 1/24/2012

By: 
Suzanne M. Parent
Associate 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: 1/30/2012

By: 
Ronald Y. Borsellino, Director
Hazardous Site Cleanup Division

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III**

IN THE MATTER OF:

Frenz Petroleum Corporation
2318 West State Street
New Castle, Pennsylvania 16101,

Respondent.

CWA Section 311 Class I
Consent Agreement and Final Order
Under 40 C.F.R. § 22.13(b) and
22.18(b)(2)

Docket No.: CWA-03-2012-0084

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 Clean Water Act.

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

Date: 2/6/12



Renée Sarajian
Regional Judicial Officer/Presiding Officer