

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III**

IN THE MATTER OF:

PETROLEUM MARKETERS, INC.

Respondent.

**Proceeding to Assess a Class II
Civil Penalty Under Section
311 of the Clean Water Act, as amended,
for FRP and SPCC Violations**

Docket No. CWA-03-2008-0103

CONSENT AGREEMENT

Statutory and Regulatory Authority

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 Sections 309(g) and 311(b)(6)(B)(ii) of the Clean Water Act, as amended, ("CWA"), 33 U.S.C. §§ 1319(g) and 1321(b)(6)(B)(ii), 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 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. 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 from vessels and from onshore and offshore facilities, and to contain such discharges"

3. 40 C.F.R. Part 112 ("Oil Pollution Prevention" regulations), which implements Section 311(j) of the CWA, 33 U.S.C. § 1321(j), sets forth procedures, methods and equipment and other requirements to prevent the discharge of oil from certain non-transportation-related facilities into or upon the navigable waters of the United States and adjoining shorelines in such quantities that by regulation have been determined may be harmful to the public health or welfare or environment of the United States by owners or operators who are engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing or consuming oil or oil products. The Oil Pollution Prevention regulations apply to certain non-transportation-related facilities with: (1) an underground storage capacity greater than 42,000 gallons of oil, or, (2) an above-ground aggregate storage capacity of greater than 1,320 gallons of oil.

4. In 1990, Congress amended the CWA and added Section 311(j)(5)(A), 33 U.S.C. § 1321(j)(5)(A). Section 311(j)(5)(A) of the CWA provides that the President shall issue regulations requiring, among other things, each owner or operator of an onshore facility that, because of its location, could reasonably be expected to cause substantial harm to the environment by discharging into or on the navigable waters, adjoining shorelines, or the exclusive economic zone to "submit to the President a plan for responding, to the maximum extent practicable, to a worst case discharge, and to a substantial threat of such a discharge, of oil or a hazardous substance."

5. By Section 2(d)(1) of Executive Order 12777 (October 18, 1991), the President delegated to the Administrator of EPA the authorities under Section 311(j)(5)(A) of the CWA, 33 U.S.C. § 1321(j)(5)(A).

6. The Administrator of EPA promulgated regulations, codified at 40 C.F.R. § 112.20, implementing the delegated statutory authorities in Section 311(j)(5)(A) of the CWA, 33 U.S.C. § 1321(j)(5)(A).

Procedural History

Complainant finds and PM Terminals, Inc. ("PM Terminals" or "Respondent") stipulates as follows:

7. On January 28, 2008, Complainant filed an Administrative Complaint, Docket No. CWA-3-2008-0103, pursuant to Section 311(b)(6)(B)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(ii), alleging that Petroleum Marketers, Inc. ("PMI") was liable for violations of the Oil Pollution Prevention regulations at 40 C.F.R. §§ 112.20(a)(1)(ii) and 112.7(h)(1).

8. Pursuant to Section 309(g)(4) of the CWA, 33 U.S.C. § 1319(g)(4), EPA published a notice of its proposed penalty against PMI which solicited public comment on January 29, 2008. The EPA did not receive any comments during the public comment period, which closed on February 27, 2008.

9. In its Complaint, EPA proposed assessing a Class II penalty against PMI for the alleged violations.

10. PMI subsequently moved for the substitution of PM Terminals, a related corporation, as the proper Respondent to this action. EPA did not oppose this motion. PM Terminals, as the proper Respondent, filed a timely Answer to the Complaint.

11. For the purposes of this proceeding, the Respondent, PM Terminals, admits the jurisdictional allegations in the Complaint.

Findings of Fact and Conclusions of Law

For the purposes of this proceeding only, the parties hereby stipulate to the following findings of fact and conclusions of law:

12. The Respondent is a Virginia corporation with a principal place of business located at 1415 Eastern Avenue in Roanoke, Virginia. The Respondent is engaged in the bulk storage of petroleum products.

13. PM Terminals 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.

14. The Respondent owns and operates a bulk oil storage facility known as the APB Whiting Oil Co. Facility located at 1415 Eastern Avenue in Roanoke, Virginia (the "Facility").

15. 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.

16. The Respondent is the operator, 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 (2002), of an onshore facility.

17. PM Terminals was engaged in storing or distributing oil or oil products using the Facility at all times relevant to the violations addressed in this matter.

18. EPA personnel inspected the Facility on January 10, 2006.

19. The EPA inspectors observed that the Facility has the capacity to store approximately 120,000 gallons of petroleum products, including fuel oil, kerosene and gasoline. The Facility maintains two above-ground storage tanks ("ASTs") each having a storage capacity of 30,000 gallons, as well as three ASTs each having a storage capacity of 20,000 gallons.

20. At the time of EPA's inspection, the secondary containment system for the five ASTs at the Facility consisted of an earthen containment dike surrounding the ASTs and connecting with an adjacent natural hillside. One wall of the containment dike was surfaced with gravel.

21. At the time of EPA's inspection, the containment dike surrounding the ASTs appeared to provide appropriate secondary containment for the ASTs.

22. During the January 10, 2006 inspection, EPA's inspectors were informed by an employee of the Respondent that the secondary containment system for the Facility's loading rack consisted of a concrete pad which drained to a 1,000 gallon catchment basin. The EPA inspectors were told that trucks with storage compartments as large as 3,000 gallons used this loading rack.

23. During a telephone call on July 23, 2007, an employee of the Respondent described the secondary containment system for the loading rack as a concrete pad which emptied into a trench drain which, in turn, drained into an underground storage tank with a storage capacity of 1,000 gallons. The Respondent's representative claimed that the trench drain itself provided an additional 139 gallons of containment capacity.

24. After the inspection, the Respondent informed EPA that it was advised by a consultant that the AST containment area at the Facility had insufficient storage capacity and that the containment dike needed an additional 22,500 gallons of storage capacity to meet regulatory requirements. The Respondent subsequently improved the containment dikes to expand the storage capacity of the containment area to achieve the requisite storage capacity.

25. The Facility is approximately 500 feet northeast of Tinker Creek, a tributary of the Roanoke River.

26. Tinker Creek and the Roanoke River are navigable waters of the United States as defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and 40 C.F.R. § 110.1. These surface waters provide habitats for various species of wildlife and encompass environmentally sensitive areas.

27. 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 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 CWA, 33 U.S.C. § 1362(7), and 40 C.F.R. § 110.1) or its adjoining shoreline that may either (1) violate applicable water quality standards or (2) cause a film or sheen 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 adjoining shorelines.

28. The Facility is a non-transportation-related facility under the definition incorporated by reference at 40 C.F.R. § 112.2 and set forth in an appendix thereto and published on December 18, 1971, at 36 Fed. Reg. 24,080 (Dec. 18, 1971).

29. The Facility is an onshore facility that, because of its location, could reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters or adjoining shorelines, within the meaning of Section 311(j)(5)(B)(iii) of the CWA, 33 U.S.C. § 1321(j)(5)(B)(iii), 40 C.F.R. § 112.20(a), and 40 C.F.R. Part 112, Appendix C ("substantial harm facility").

Complainant has made, and Respondent neither admits nor denies, the following findings of fact and conclusions of law:

30. The Oil Pollution Prevention Regulations provide that all bulk storage tank installations must be equipped with a secondary containment system large enough to contain the

volume of the contents of the largest tank in the installation plus sufficient freeboard for precipitation. 40 C.F.R. § 112.8(c)(2).

31. The requirement for secondary containment for bulk storage tanks has been part of the Oil Pollution Prevention Regulations since 1974. In 2002, the Oil Pollution Prevention Regulations were amended, and the secondary containment requirement for the loading rack found at 40 C.F.R. § 112.7(e)(2) was moved to 40 C.F.R. § 112.8(c)(2). The 2002 regulatory amendments did not suspend the requirement for secondary containment for bulk storage tanks at an oil storage facility.

32. In response to an information request dated September 7, 2007 sent by EPA pursuant to Section 308(a) of the CWA, 33 U.S.C. § 1318(a), the Respondent admitted that the secondary containment system for the ASTs at the Facility had an insufficient containment volume. The Respondent acknowledged that the Facility's containment dike required an additional 22,500 gallons of storage capacity to comply with the Oil Pollution Prevention Regulations.

33. At the time of EPA's inspection, the largest AST at the Facility had a volume of 30,000 gallons. The Facility's containment dike should have had a volume in excess of 30,000 gallons (volume of largest AST plus sufficient freeboard for precipitation) to comply with 40 C.F.R. § 112.8(c)(2). At that time, the containment capacity was deficient by an alleged 22,500 gallons.

34. The lack of sufficient secondary containment for the bulk storage ASTs at the Facility constituted a violation of the Oil Pollution Prevention Regulations at 40 C.F.R. § 112.8(c)(2).

35. Pursuant to 40 C.F.R. § 112.7(e)(4)(ii), which at all relevant times applied to the loading rack, where rack area drainage does not flow into a catchment basin, or treatment facility designed to handle spills, a quick drainage system designed to hold at least the maximum capacity of any single compartment of a tank car or tank truck loaded in the plant should be used for tank truck loading areas.

36. Tanker trucks using the loading rack at the Facility have capacities of at least 3,000 gallons.

37. During its inspection, EPA observed that the Facility did not have a catchment basin, treatment system, quick drainage system, or any other type of secondary containment sufficient to contain a discharge of oil of at least 3,000 gallons from a tank truck using the loading rack.

38. The Respondent's failure to have any secondary containment for the loading rack at the Facility at the time of EPA's inspection constituted a violation of the Oil Pollution Prevention regulations at 40 C.F.R. § 112.7(e)(4)(ii).

39. As a result of the violations alleged in the preceding paragraph, the Respondent is liable for a civil penalty not to exceed \$11,000.00 per day for each day each violation continues, up to a maximum of \$137,500.00, for violations occurring between January 30, 1997 and March 15, 2004, pursuant to Section 311(b)(6)(B)(ii) of the CWA, 33 U.S.C. §1321(b)(6)(B)(ii), and 40 C.F.R. § 19.4. For violations occurring after March 15, 2004, the maximum applicable penalty is \$157,500.00 pursuant to 40 C.F.R. § 19.4.

Penalty

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

40. PM Terminals consents to the assessment of a civil penalty of \$50,000.00.

41. PM Terminals shall pay the penalty within thirty (30) days of the effective date of the Final Order.

42. PM Terminals shall pay the penalty to the EPA either by the submission of a cashier's or certified check, or by means of an electronic funds transfer ("EFT").

43. If the Respondent pays the penalty with a cashier's or certified check, the check shall be drawn for the full amount due and made payable to "**Environmental Protection Agency**". The check must include the notation "**OSTLF-311**" and the docket number of this action: **CWA-03-0103**. If Respondent submits the check via the U.S. Postal Service, the check should be sent to the following address:

U.S. Environmental Protection Agency
P.O. Box 371099M
Pittsburgh, PA 15251

If the Respondent uses a private delivery service, the check should be sent to the following address:

Mellon Client Service Center
ATTN: Shift Supervisor,
Lockbox 371099M/Account 9109125
500 Ross Street, Pittsburgh, PA. 15262-0001

The telephone contact for Customer Service for at the EPA Lockbox is Patricia McKaveney, (402) 234-5805. The Respondent must file a copy of its check with the Regional Hearing Clerk at the following address:

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

44. If the Respondent elects to pay the penalty by an EFT or wire transfer, Respondent must instruct its agent to transfer funds to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT Address = FRNYUS33
33 Liberty Street
New York, NY 10045

The Field Tag 4200 of the wire transfer message should read: "D 68010727 Environmental Protection Agency". Respondent also must file a copy of the EFT confirmation with the Regional Hearing Clerk at the address stated in Paragraph 37.

45. The Respondent also shall send a copy of the check or EFT confirmation to the EPA attorney assigned to this case:

John J. Monsees
Senior Assistant Regional Counsel (3RC42)
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

46. Failure to pay the penalty assessed by the Final Order in compliance with the payment schedule 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.

Effect of this Consent Agreement and Final Order

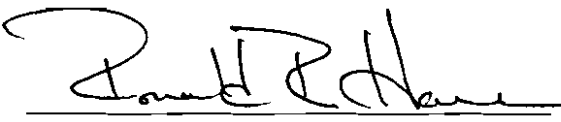
47. For the purpose of this proceeding, Respondent expressly waives its right to contest the allegations and to a Hearing under Sections 309(g) and 311(b)(6)(B)(ii) of the CWA, 33 U.S.C. §§ 1319(g) and 1321(b)(6)(B)(ii), and to appeal this Order under Section 311(b)(6)(G)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(G)(ii).

48. The provisions of the Final Order shall be binding upon Respondent, and its successors or assigns. The undersigned officer of Respondent represents and warrants that he or she has the authority to bind Petro, and its successors or assigns.

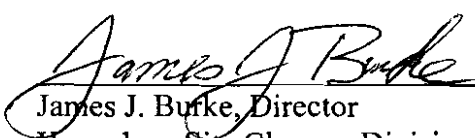
49. This Consent Agreement/Final Order resolves only those claims which are alleged in the Complaint. Nothing herein shall be construed to limit the authority of the Complainant to undertake action against any person, including the Respondent, in response to any condition which Complainant determines may present an imminent and substantial endangerment to the public health, public welfare or the environment. Nothing in this Consent Agreement/Final Order shall be construed to limit the United States' authority to pursue criminal sanctions. Payment of the penalty pursuant to this Consent Agreement resolves only Respondent's liability for federal civil penalties for the violations and facts alleged in the Administrative Complaint.

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

PM TERMINALS, INC.

Date: August 23, 2008 

U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION III

Date: 9/12/08 
James J. Burke, Director
Hazardous Site Cleanup Division

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III**

IN THE MATTER OF:

PETROLEUM MARKETERS, INC.

Respondent.

**Proceeding to Assess a Class II
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311 of the Clean Water Act, as amended,
for FRP and SPCC Violations**

Docket No. CWA-03-2008-0103

FINAL ORDER

1. Pursuant to Sections 309(g) and 311(b)(6) of the CWA, 33 U.S.C. §§ 1319(g) and 1321(b)(6), and in accordance with the "Consolidated Rules", 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 referenced Consent Agreement.

Effective Date

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

Date: _____

Renée Sarajian
Regional Judicial Officer
EPA, Region III