

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 3
Philadelphia, Pennsylvania 19103**

FILED

Sep 27, 2024

1:23 pm

**U.S. EPA REGION 3
HEARING CLERK**

In the Matter of:	:	
	:	
Hazleton Oil and Environmental, Inc.	:	U.S. EPA Docket No. CWA-03-2024-0125
300 Tamaqua Street	:	
Hazleton, PA 18201	:	Proceeding under Sections 311(j) and
	:	311(b)(6)(A) & (B)(i) of the Clean Water Act,
Respondent.	:	33 U.S.C. §§ 1321(j) and 1321(b)(6)(A) & (B)(i)
	:	
	:	
Hazleton Oil and Environmental, Inc.	:	
300 Tamaqua Street	:	
Hazleton, PA 18201;	:	
	:	
Artex Incorporated	:	
Barnesville Bulk Petroleum Storage Plant	:	
Fairview Street (Intersection of Routes 54	:	
and 1020)	:	
Barnesville, PA 18214;	:	
	:	
Facilities.	:	

CONSENT AGREEMENT

PRELIMINARY STATEMENT

1. This Consent Agreement is entered into by the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region III ("Complainant") and Hazleton Oil and Environmental, Inc. ("Respondent") (collectively the "Parties"), pursuant to Section 311(b)(6)(A) and (B)(i) of the Clean Water Act ("CWA" or "Act"), as amended, 33 U.S.C. § 1321(b)(6)(A) & (B)(i), and 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. Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6) authorizes the Administrator of the U.S. Environmental Protection Agency to assess penalties and undertake other actions required by this Consent Agreement. The Administrator has delegated this authority to the Regional Administrator who, in turn, has delegated the authority to enter into agreements concerning administrative penalties to the Complainant. This Consent Agreement and the attached Final Order (hereinafter jointly referred to as the "Consent Agreement and Final Order") resolve Complainant's civil penalty claims against Respondent under the CWA for the violations alleged herein.

2. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant hereby simultaneously commences and resolves this administrative proceeding.

JURISDICTION

3. The U.S. Environmental Protection Agency ("EPA") has jurisdiction over the above-captioned matter, as described in Paragraph 1, above.
4. The Consolidated Rules of Practice govern this administrative adjudicatory proceeding pursuant to 40 C.F.R. § 22.50(a)(1).

GENERAL PROVISIONS

5. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this Consent Agreement and Final Order.
6. Except as provided in Paragraph 5, above, Respondent neither admits nor denies the specific factual allegations set forth in this Consent Agreement.
7. Respondent agrees not to contest the jurisdiction of the EPA with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of this Consent Agreement and Final Order.
8. For purposes of this proceeding only, Respondent hereby expressly waives its right to contest the allegations set forth in **this Consent Agreement and Final Order** and waives its right to appeal the accompanying Final Order.
9. Respondent consents to the assessment of the civil penalty stated herein, to the issuance of any specified compliance order herein, and to any conditions specified herein.
10. Respondent shall bear its own costs and attorney's fees in connection with this proceeding.

EPA's FINDINGS OF FACT AND CONCLUSIONS OF LAW

11. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant alleges and adopts the Findings of Fact and Conclusions of Law set forth immediately below.

12. Section 311(a)(1) of the Act, 33 U.S.C. § 1321(a)(1), defines “oil” as “oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil.”
13. 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.
14. 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.
15. EPA promulgated the Spill Prevention, Control, and Countermeasure (“SPCC”) regulations at 40 C.F.R. §§ 112.1-12 (the “Regulations”). 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. Pursuant to 40 C.F.R. § 112.1(d), the Regulations do not apply to any owner or operator of a facility with an aggregate aboveground oil storage capacity of 1,320 gallons or less.
16. Pursuant to 40 C.F.R. § 110.3, discharges of oil in such quantities that the Administrator has determined may be harmful to the public health or welfare or the environment of the United States include discharges of oil that cause a film or 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 adjoining shoreline.
17. Pursuant to 40 C.F.R. § 112.3, an owner or operator subject to the Regulations must prepare in writing and implement an SPCC plan, in accordance with Section 112.7 and any other applicable section.
18. For violations of Section 311(j) of the CWA, 33 U.S.C. § 1321(j), EPA has authority, under Section 311(b)(6)(A) and (B)(i) of the CWA, 33 U.S.C. § 1321(b)(6)(A)&(B)(i), as amended by the Debt Collection Improvement Act and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, and implemented by 40 C.F.R. Part 19, Adjustment of Civil Monetary Penalties for Inflation, to file an Administrative Complaint seeking a civil penalty of \$23,048 per violation, or seeking \$23,048 per day for each day during which a violation continues, up to a maximum of \$57,617 for violations occurring after November 2, 2015 and penalties assessed on or after December 27, 2023.

19. Respondent is a corporation organized under the laws of the Commonwealth of Pennsylvania.
20. 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.
21. Respondent owns and operates a waste oil facility located at 300 Tamaqua Street in Hazleton, PA (the “Hazleton Facility”). Artex Incorporated is a wholly-owned subsidiary of Respondent. Artex owns and operates a bulk oil storage facility located on Fairview Street at the intersection of Routes 54 and 1020 in Barnesville, PA (the “Artex Facility”) (collectively “the Facilities”).
22. According to the Hazleton Facility’s 2018 SPCC plan, the Hazleton Facility has a total above-ground oil storage capacity of approximately 380,090 gallons.
23. According to the Artex Facility’s 2021 SPCC plan, the Artex Facility has a total above-ground oil storage capacity of approximately 3,382,600 gallons.
24. The Hazleton Facility is located 0.2 miles from Catawissa Creek, which flows into the Susquehanna River.
25. Pine Creek runs through the south property boundary of the Artex Facility. Pine Creek flows into the Little Schuylkill River, which in turn flows to the Schuylkill River.
26. The Hazleton Facility could reasonably be expected to discharge oil in harmful quantities into the Susquehanna River. The Artex Facility could reasonably be expected to discharge oil in harmful quantities into the Little Schuylkill River.
27. The Susquehanna River, the Schuylkill River and the Little Schuylkill River are navigable waters of the United States within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7).
28. The Facilities are onshore facilities 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.
29. The Facilities are non-transportation-related facilities 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.
30. Due to their locations, the Facilities 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 adjoining shorelines.

31. Pursuant to 40 C.F.R. § 112.1, Respondent, as the owner and operator of the Facilities, is subject to the Regulations codified at 40 C.F.R. Part 112.
32. Pursuant to 40 C.F.R. § 112.3, Respondent was required to prepare in writing and implement an SPCC plan at each Facility, in accordance with 40 C.F.R. § 112.7 and any other applicable section.
33. Pursuant to Section 311(j)(1)(C) and (j)(5)(A) of the CWA and the President's delegation of authority, in 1994 the Administrator of EPA amended 40 C.F.R. Part 112 by promulgating the Facility Response Plan ("FRP") regulations, codified at 40 C.F.R. §§ 112.20-21, and effective on August 30, 1994 (the "FRP Regulations"). These spill response regulations require owners or operators of non-transportation-related substantial-harm facilities to, *inter alia*, develop and implement an FRP, an oil spill response training program, and a program of oil spill response drills/exercises.
34. Pursuant to 40 C.F.R. § 112.20(a), the owner or operator of a non-transportation-related 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 shall prepare and submit to EPA an FRP.
35. As prescribed in 40 C.F.R. § 112.20(f)(1)(i-ii), a facility could, because of its location, reasonably be expected to cause substantial harm to the environment if: (1) the facility transfers oil over water to or from vessels and has a total oil storage capacity greater than or equal to 42,000 gallons; or (2) the facility's total oil storage capacity is greater than or equal to 1,000,000 gallons and one of the following is true: (a) the facility does not have sufficient secondary containment to contain the capacity of the largest above-ground oil storage tank plus freeboard for precipitation within each storage area; (b) the facility is located at a distance (as calculated from the appropriate formula in 40 C.F.R. Part 112, Appendix C) such that a discharge from the facility could cause injury to fish and wildlife and sensitive environments; (c) the facility is located at a distance (as calculated from the appropriate formula in 40 C.F.R. Part 112, Appendix C) such that a discharge from the facility would shut down a public drinking water intake; or (d) the facility has had a reportable oil spill of at least 10,000 gallons within the last five years.
36. The Artex Facility's FRP states that the Artex Facility is located at a distance such that a discharge from the Artex Facility could cause injury to fish and wildlife and sensitive environments and would shut down a public drinking water intake.
37. To meet the requirements of 40 C.F.R. § 112.20(h), an FRP shall follow the format of the model facility-specific response plan included in Appendix F to 40 C.F.R. Part 112, unless an equivalent response plan acceptable to the EPA Regional Administrator has been prepared to meet State or other Federal requirements.

- 38. The FRP Regulations also require the owner or operator of a substantial-harm facility to develop and implement a program of facility response drills/exercises for oil spill response. 40 C.F.R. § 112.21(a).
- 39. On December 6, 2021, EPA conducted a compliance evaluation inspection of the Facilities (the "Inspection") to determine Respondent's compliance the CWA and the Regulations.
- 40. On June 4, 2020; November 3, 2020; and July 16, 2021, EPA sent Information Request Letters ("IRLs") to Respondent.

Violations at the Hazleton Facility

Count I

Failure to Provide Appropriate Containment and/or Diversionary Structures to Prevent a Discharge

- 41. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
- 42. Pursuant to 40 C.F.R. § 112.7(c), an owner or operator is required to provide appropriate containment and/or diversionary structures or equipment to prevent a discharge. The entire containment system, including walls and floor, must be capable of containing oil and must be constructed so that any discharge from a primary containment system, such as a tank, will not escape the containment system before cleanup occurs.
- 43. During the Inspection, EPA personnel observed that the Hazleton Facility's SPCC plan indicated that a 20,000-gallon underground storage tank (Tank 004) provided secondary containment for the bulk oil storage tanks within Building 1 and the transfer areas in Building 2.
- 44. During the Inspection, EPA personnel were informed by Hazleton Facility representatives that Tank 004 had been removed from the Hazleton Facility in March 2020.
- 45. In its January 28, 2021, response to EPA's November 3, 2020, IRL, Respondent stated that Tank 004 was permanently closed at the request of the Pennsylvania Department of Environmental Protection.
- 46. During the Inspection, EPA personnel assessed that other spill containment features within the bulk tank area did not provide sufficient containment and/or diversionary structures or equipment to prevent a discharge from the bulk storage tanks within Building 1 and the transfer areas within Building 2.

- 47. By not providing appropriate containment and/or diversionary structures or equipment to prevent a discharge therefrom, Respondent failed to comply with 40 C.F.R. § 112.7(c).
- 48. By failing to comply with 40 C.F.R. § 112.7(c), Respondent is subject to the assessment of penalties under Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6).

Count II
Failure to Conduct Integrity Testing

- 49. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
- 50. Pursuant to 40 C.F.R. § 112.8(c)(6), an owner or operator is required to have a qualified individual test or inspect each aboveground container for integrity on a regular schedule or when material repairs are made and maintain records of the types and frequency of inspections and tests.
- 51. During the Inspection, EPA personnel observed that the Hazleton Facility's SPCC plan indicated that tanks 10 through 60 would be tested for integrity by 2012 and that tanks 301 through 303 and tanks V1 through V10 would be tested for integrity by 2018.
- 52. During the Inspection, EPA personnel reviewed the Hazleton Facility's records and observed that the above-listed tanks had not been tested for integrity as specified in the Facility SPCC Plan.
- 53. By failing to perform integrity testing on the above-listed tanks, Respondent failed to comply with 40 C.F.R. § 112.8(c)(6).
- 54. By failing to comply with 40 C.F.R. § 112.8(c)(6), Respondent is subject to the assessment of penalties under Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6)).

Count III
Failure to Install Liquid Level Sensing Devices

- 55. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
- 56. Pursuant to 40 C.F.R. § 112.8(c)(8), an owner or operator is required to install one of four types of liquid level sensing devices specified in 40 C.F.R. § 112.8(c)(8)(i-iv) on a facility's oil storage tanks.

57. During the Inspection, EPA personnel observed that the Hazleton Facility's 2018 SPCC plan indicated that liquid level sensing alarms needed to be repaired on tanks located outside Building 2 and installed on tanks located in Building 3.
58. During the Inspection, EPA personnel observed that the Hazleton Facility had not repaired liquid level sensing alarms on tanks located outside Building 2 and had not installed liquid level sensing alarms on tanks located within Building 3.
59. By failing to repair liquid level sensing alarms on tanks located outside Building 2 and failing to install liquid level sensing alarms on tanks located in Building 3 during the 3 years following the Hazleton Facility's 2018 SPCC plan, Respondent failed to comply with the requirements of 40 C.F.R. § 112.8(c)(8)(i-iv).
60. By failing to comply with 40 C.F.R. § 112.8(c)(8)(i-iv), Respondent is subject to the assessment of penalties under Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6).

Count IV
Failure to Promptly Correct Visible Discharges of Oil

61. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
62. Pursuant to 40 C.F.R. § 112.8(c)(10), an owner or operator is required to promptly correct visible discharges which result in a loss of oil from a container, including but not limited to seams, gaskets, piping, pumps, valves, rivets, and bolts.
63. During the Inspection, EPA personnel observed many visible discharges of oil from containers within Buildings 2 and 3.
64. By failing to promptly correct visible discharges which result in a loss of oil from a container, including but not limited to seams, gaskets, piping, pumps, valves, rivets, and bolts, Respondent failed to comply with the requirements of 40 C.F.R. § 112.8(c)(10).
65. By failing to comply with 40 C.F.R. § 112.8(c)(10), Respondent is subject to the assessment of penalties under Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6).

Count V
Failure to Have Technical Amendments of the SPCC Plan
Certified by a Professional Engineer

66. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.

67. Pursuant to 40 C.F.R. § 112.5(c), owners or operators of a facility subject to Part 112 are required to have a Professional Engineer certify any technical amendments to an SPCC plan.
68. The Facility's SPCC Plan in place at the time of the Inspection documented that a heating oil underground storage tank was removed from the Facility and the SPCC plan was amended following the tank's removal in October 2019.
69. At the time of the Inspection, EPA personnel observed that the Facility's revised SPCC Plan from on or around October 2019 was not certified by a Professional Engineer.
70. By failing to have a Professional Engineer certify the Facility's SPCC plan revised on or around October 2019, Respondent failed to comply with 40 C.F.R. § 112.5(c).
71. By failing to comply with 40 C.F.R. § 112.5(c), Respondent is subject to the assessment of penalties under Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6).

Count VI

Failure to Mark the Location and Contents of Each Fixed Oil Storage Container, Transfer Areas, and Connecting Pipes in SPCC Plan Facility Diagram

72. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
73. Pursuant to 40 C.F.R. § 112.7(a)(3), owners or operators must include a facility diagram in the facility's SPCC plan that marks the location and contents of each fixed oil storage container, the storage area where mobile or portable oil storage containers are located, and all transfer stations and connecting pipes.
74. Upon review of the Facility's SPCC plan during the Inspection, EPA personnel observed that the diagrams in the Facility's SPCC Plan omitted the Facility's transfer areas, connecting pipes, two 275-gallon fuel oil tanks in Building 1, and a used oil bin inside Building 3. Further, the diagram had not been revised to reflect the removal of Tank 004.
75. By omitting the Facility's transfer areas, connecting pipes, two 275-gallon fuel oil tanks in Building 1, and a waste oil bin inside Building 3 from the Facility diagram, and failing to revise the Facility diagram to reflect the removal of Tank 004, Respondent failed to comply with 40 C.F.R. § 112.7(a)(3).
76. By failing to comply with 40 C.F.R. § 112.7(a)(3), Respondent is subject to the assessment of penalties under Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6).

Count VII

**Failure to Address the Type of Oil and Storage Capacity of Each
Fixed Oil Storage Container in SPCC Plan**

- 77. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
- 78. Pursuant to 40 C.F.R. § 112.7(a)(3)(i), an owner or operator is required to address the type of oil and storage capacity of each fixed oil storage container in the SPCC plan.
- 79. Upon review of the Facility's SPCC plan during the Inspection, EPA personnel observed that the container inventory in the Facility's SPCC plan omitted two 275-gallon fuel oil tanks in Building 1, drums and totes in Building 3, and a used oil bin in Building 3.
- 80. By failing to include two 275-gallon fuel oil tanks in Building 1, drums and totes in Building 3, and a used oil bin in Building 3 in the container inventory in the Facility's SPCC plan, Respondent failed to comply with 40 C.F.R. § 112.7(a)(3)(i).
- 81. By failing to comply with 40 C.F.R. § 112.7(a)(3)(i), Respondent is subject to the assessment of penalties under Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6).

**Count VII
Failure to Amend SPCC Plan**

- 82. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
- 83. Pursuant to 40 C.F.R. § 112.5(a), an owner or operator is required to amend the SPCC Plan when there is a change in the facility design, construction, operation, or maintenance that materially affects its potential for a discharge.
- 84. During the Inspection, EPA personnel observed that the Facility's SPCC Plan indicated that a security fence on the north side of the Facility required repairs to be made. When touring the Facility during the Inspection, EPA personnel observed that the security fence had been repaired.
- 85. By failing to update the Facility's SPCC plan to reflect the repairs made to the security fence, Respondent failed to comply with 40 C.F.R. § 112.5(a).
- 86. By failing to comply with 40 C.F.R. § 112.5(a), Respondent is subject to the assessment of penalties under Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6).

Count IX

Failure to Keep Records of Inspections with the SPCC Plan for Three Years

87. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
88. Pursuant to 40 C.F.R. § 112.7(e), an owner or operator is required to keep records of inspections and tests required under Part 112 with the SPCC plan for three years.
89. At the Inspection and in the November 3, 2020, IRL, EPA requested to review the SPCC Plan and the records of inspections and tests, however, Respondent did not produce the records of any inspections and tests for the period September 2019 to September 2020 and from December 2020 to July 2021 at the Inspection or in Respondent's January 28, 2021 response to the IRL.
90. EPA concludes that, if the records of inspections and tests performed at the Hazleton Facility for the previous three years were kept with the SPCC Plan, as required by 40 C.F.R. § 112.7(e), Respondent would have been able to produce such records when Respondent produced the SPCC Plan at the Inspection and in Respondent's January 28, 2021, response to EPA's November 3, 2020, IRL.
91. By failing to keep the records of inspections and tests from September 2019 to September 2020 and from December 2020 to July 2021 with the SPCC Plan, Respondent failed to comply with 40 C.F.R. § 112.7(e).
92. By failing to comply with 40 C.F.R. § 112.7(e), Respondent is subject to the assessment of penalties under Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6).

Violations at the Artex Facility

Count X

Failure to Implement the Facility's SPCC Plan

93. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
94. Section 9.0 (9) of Artex's 2021 SPCC plan states that records of monthly inspections will be maintained in the Plan or in a separate on-site file for a minimum period of five (5) years.
95. Since the time of the Inspection, Respondent has been unable to produce records of monthly inspections conducted at the Artex Facility prior to December 2020.
96. Section 10.1 of Artex's 2021 SPCC plan states that annual training records are kept on file with Artex's SPCC plan, but Artex has only been able to produce annual training records for training conducted on July 23, 2021.

- 97. By being unable to produce records of monthly inspections conducted at the Artex Facility prior to December 2020 and by being unable to produce annual training records apart from the annual training conducted on July 23, 2021, Respondent failed to implement its SPCC plan.
- 98. By failing to implement Artex's SPCC plan, Respondent failed to comply with 40 C.F.R. § 112.3.
- 99. By failing to comply with 40 C.F.R. § 112.3, Respondent is subject to the assessment of penalties under Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6).

Count XI
Failure to Prepare an Adequate Facility Response Plan

- 100. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
- 101. Pursuant to 40 C.F.R. § 112.20 (a), owners and operators of any facility that, due to its location, could reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters must submit to EPA a Facility Response Plan ("FRP") and undertake employee spill training and drills/exercises.
- 102. Pursuant to 40 C.F.R. § 112.20(h), a Facility's FRP must follow the format of the Model Facility-Specific Response Plan included in Appendix F to Part 112 unless an equivalent response plan format has been submitted to the Regional Administrator for approval.
- 103. Respondent has not submitted an equivalent response plan format for the Artex Facility to the Regional Administrator for approval.
- 104. Section 1.4.1(5)(d) of the Model Facility-Specific Response Plan requires an owner or operator to describe in writing the normal daily throughput for the facility and any effect on potential discharge volumes that a negative or positive change in that throughput may cause.
- 105. Artex's 2021 FRP did not describe the normal daily throughput for the Artex Facility and any effect on potential discharge volumes that a negative or positive change in that throughput may cause in the Artex FRP.
- 106. By not describing the normal daily throughput for the Artex Facility and any effect on potential discharge volumes that a negative or positive change in that throughput may cause in the Artex FRP, Respondent failed to follow the Model Facility-Specific Response Plan in developing the Artex FRP.
- 107. By not following the Model Facility-Specific Response Plan in developing the Artex FRP and not submitting an equivalent response plan format for the Artex Facility to the Regional Administrator for approval, Respondent failed to comply with 40 C.F.R. § 112.20(h).

108. By failing to comply with 40 C.F.R. § 112.20(h), Respondent is subject to the assessment of penalties under Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6).

Count XII

Failure to Implement the Facility's Response Training and Drills/Exercise Program

109. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
110. Pursuant to 40 C.F.R. § 112.21(a), an owner or operator is required to develop and implement a facility response training program and a drills/exercise program.
111. Section 1.8.2 of the Artex FRP states that copies of the completed quarterly Qualified Individual Notification Drill Logs, bi-annual Equipment Deployment Drill Logs (by an Oil Spill Response Organization), and annual Spill Management Team Drill Logs are kept on file at the Artex Facility.
112. At the time of the Inspection, and during subsequent communications between EPA and Respondent, Respondent was unable to produce copies of the relevant drill logs for the Artex Facility.
113. By failing to produce copies of the relevant drill logs for the Artex Facility, Respondent failed to implement the facility response training program and a drills/exercise program for the Artex Facility.
114. By failing to implement the facility response training program and a drills/exercise program for the Artex Facility, Respondent failed to comply with 40 C.F.R. § 112.21(a).
115. By failing to comply with 40 C.F.R. § 112.21(a), Respondent is subject to the assessment of penalties under Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6).

CIVIL PENALTY

116. In settlement of EPA's claims for civil penalties for the violations alleged in this Consent Agreement, Respondent consents to the assessment of a civil penalty in the amount of **six thousand three hundred dollars (\$6,300)**, which Respondent shall be liable to pay in accordance with the terms set forth below.
117. The civil penalty is based upon EPA's consideration of a number of factors, including the penalty criteria ("statutory factors") set forth in Section 311(b)(8) of the CWA, 33 U.S.C. § 1321(b)(8), including, the following: the seriousness of the violation; the economic benefit to the violator, if any; the degree of culpability; any other penalty for the same incident; 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. These factors were applied to the particular facts and circumstances of this case with specific reference to EPA's *Civil Penalty Policy for Section 311(b)(3) and Section 311(j) of the Clean Water Act (August 1998)*, which reflects the statutory penalty criteria and factors set forth at Section 311(b)(8) of the CWA, 33 U.S.C. § 1321(b)(8), the appropriate *Adjustment of Civil Monetary Penalties for Inflation*, pursuant to 40 C.F.R. Part 19, and the applicable EPA memoranda addressing EPA's civil penalty policies to account for inflation.

118. The civil penalty is also based on the Respondent's ability to pay a civil penalty. This analysis was based upon information provided to EPA by the Respondent, including the following: S Corporation federal income tax returns from 2018-2023, EPA Region 3 Financial Statement for Business form, Accurant asset reports, correspondence between Respondent's accountant and EPA, 2024 Accounts Receivable Aging Summary (as of August 14, 2024), 2024 Accounts Payable Aging Summary (as of August 14, 2024), and a 2024 Cash Flow Analysis (as of August 14, 2024).
119. Respondent agrees to pay a civil penalty in the amount of \$6,300 ("Assessed Penalty"). Based upon Respondent's documented inability to pay claim and in accordance with applicable laws, the EPA conducted an analysis of Respondent's financial information and determined that the Assessed Penalty is an appropriate amount to settle this action, which Respondent consents to pay as follows.
- a. The Assessed Penalty will be paid in six equal installments, in order to complete payment of the entire Assessed Penalty and interest, which is assessed at 4%, including the Assessed Penalty and interest, the total amount that will be paid upon completion of all payments will be \$6,352.55. The first payment is due within thirty (30) days after the Effective Date of the Consent Agreement and Final Order. Respondent's subsequent payments shall thereafter be due in monthly intervals from said Effective Date.
- b. Respondent shall make payments in accordance with the following schedule:

	Principal Due	Interest	Payment	Due Date
Payment 1	\$ 1,058.80	\$ -	\$ 1,058.80	Within 30 Days
Payment 2	\$ 1,041.20	\$ 17.55	\$ 1,058.75	Within 60 Days
Payment 3	\$ 1,044.75	\$ 14.00	\$ 1,058.75	Within 90 Days
Payment 4	\$ 1,048.25	\$ 10.50	\$ 1,058.75	Within 120 Days
Payment 5	\$ 1,051.75	\$ 7.00	\$ 1,058.75	Within 150 Days
Payment 6	\$ 1,055.25	\$ 3.50	\$ 1,058.75	Within 180 Days
	\$ 6,300.00	\$ 52.55	\$ 6,352.55	

- c. Notwithstanding Respondent's agreement to pay the Assessed Penalty in accordance with the installment schedule set forth above, Respondent may pay the entire Assessed Penalty of \$6,300 within thirty (30) days of the Effective Date and, thereby, avoid payment of interest pursuant to 40 C.F.R. § 13.11(a). In addition, Respondent may, at any time after commencement of payments under the installment schedule, elect to pay the entire principal balance remaining, together with any interest and other charges accrued up to the date of such full payment.
120. If Respondent fails to make timely payment of any one of the required installment payments in accordance with the installment payment schedule set forth in Paragraph 118.b, immediately above, the entire unpaid balance of the penalty and all accrued interest shall become due immediately upon such failure and Respondent shall immediately pay the entire remaining principal balance of the civil penalty along with any interest that has accrued up to the time of such payment. In addition, Respondent shall be liable for, and shall pay, applicable interest, administrative handling charges and late payment penalty charges as described in Paragraph 122, below, in the event of any such failure or default.
121. Respondent shall pay the Assessed Penalty and any interest, fees, and other charges due using any method, or combination of appropriate methods, as provided on the EPA website:
<https://www.epa.gov/financial/makepayment>. For additional instructions see:
<https://www.epa.gov/financial/additional-instructions-making-payments-epa>.
122. When making a payment, Respondent shall:
- a. Identify every payment with Respondent's name and the docket number of this Consent Agreement, **CWA-03-2024-0125**,
 - b. Concurrently with any payment or within 24 hours of any payment, Respondent shall serve Proof of Payment simultaneously **by email** to the following person(s):
 - Mark Bolender
Sr. Assistant Regional Counsel
Bolender.mark@epa.gov,
 - U.S. Environmental Protection Agency
Cincinnati Finance Center
CINWD_AcctsReceivable@epa.gov,
 - and
 - U.S. EPA Region 3 Regional Hearing Clerk
R3_Hearing_Clerk@epa.gov.

“Proof of Payment” means, as applicable, a copy of the check, confirmation of credit card or debit card payment, or confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to the EPA requirements, in the amount due, and identified with the appropriate docket number and Respondent’s name.

123. Interest, Charges, and Penalties on Late Payments. Pursuant to 33 U.S.C. § 1321(b)(6)(H), 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to timely pay the full amount of the Assessed Penalty or fails to make any payment in accordance with the schedule and the terms set forth above per this Consent Agreement, the EPA is authorized to recover, in addition to the amount of the unpaid Assessed Penalty, the following amounts.
- a. Interest. Interest begins to accrue from the Effective Date of this Consent Agreement. If the Assessed Penalty is paid in full within thirty (30) days, interest accrued is waived. If the Assessed Penalty is not paid in full within thirty (30) days, interest will continue to accrue until any unpaid portion of the Assessed Penalty as well as any interest, penalties, and other charges are paid in full. Interest will be assessed at prevailing rates, per 33 U.S.C. § 1321(b)(6)(H). The rate of interest is the IRS standard corporate underpayment rate..
 - b. Handling Charges. The United States’ enforcement expenses including, but not limited to, attorneys’ fees and costs of collection proceedings.
 - c. Late Payment Penalty. A twenty percent (20%) quarterly non-payment penalty.
124. Late Penalty Actions. In addition to the amounts described in the prior Paragraph, if Respondent fails to timely pay any portion of the Assessed Penalty, interest, or other charges and penalties per this Consent Agreement, the EPA may take additional actions. Such actions the EPA may take include, but are not limited to, the following.
- a. Refer the debt to a credit reporting agency or a collection agency, per 40 C.F.R. §§ 13.13 and 13.14.
 - b. Collect the debt by administrative offset (i.e., the withholding of money payable by the United States government to, or held by the United States government for, a person to satisfy the debt the person owes the United States government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, per 40 C.F.R. Part 13, Subparts C and H.
 - c. Suspend or revoke Respondent’s licenses or other privileges, or suspend or disqualify Respondent from doing business with the EPA or engaging in programs the EPA sponsors or funds, per 40 C.F.R. § 13.17.

- d. Request that the Attorney General bring a civil action in the appropriate district court to recover the full remaining balance of the Assessed Penalty, in addition to interest and the amounts described above, per to 33 U.S.C. § 1321(b)(6)(H). In any such action, the validity, amount, and appropriateness of the Assessed Penalty shall not be subject to review.
125. Allocation of Payments. Pursuant to 31 C.F.R. § 901.9(f) and 40 C.F.R. § 13.11(d), a partial payment of debt will be applied first to outstanding handling charges, second to late penalty charges, third to accrued interest, and last to the principal that is the outstanding Assessed Penalty amount.
126. Tax Treatment of Penalties. Penalties, interest, and other charges paid pursuant to this Consent Agreement shall not be deductible for purposes of federal taxes.
127. Payment of the civil penalty, in accordance with the above terms and provisions, is due and payable immediately upon Respondent's receipt of a true and correct copy of the fully executed and filed Consent Agreement and Final Order. Receipt by Respondent or Respondent's legal counsel of such copy of the fully executed Consent Agreement and Final Order, with a date stamp indicating the date on which the Consent Agreement and Final Order was filed with the Regional Hearing Clerk, shall constitute receipt of written initial notice that a debt is owed the EPA by Respondent in accordance with 40 C.F.R. § 13.9(a).
128. The Parties consent to service of the Final Order by e-mail at the following valid e-mail addresses: bolender.mark@epa.gov (for Complainant), and TBergere@atllp.com (for Respondent).
129. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, EPA is required to send to the Internal Revenue Service ("IRS") annually, a completed IRS Form 1098-F ("Fines, Penalties, and Other Amounts") with respect to any court order or settlement agreement (including administrative settlements), that require a payor to pay an aggregate amount that EPA reasonably believes will be equal to, or in excess of, \$50,000 for the payor's violation of any law or the investigation or inquiry into the payor's potential violation of any law, **including** amounts paid for "restitution or remediation of property" or to come "into compliance with a law." EPA is further required to furnish a written statement, which provides the same information provided to the IRS, to each payor (i.e., a copy of IRS Form 1098-F). Failure to comply with providing IRS Form W-9 or Tax Identification Number ("TIN"), as described below, may subject Respondent to a penalty, per 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and 26 C.F.R. § 301.6723-1. In order to provide EPA with sufficient information to enable it to fulfill these obligations, EPA herein requires, and Respondent herein agrees, that:
- a. Respondent shall complete an IRS Form W-9 ("Request for Taxpayer Identification Number and Certification"), which is available at <https://www.irs.gov/pub/irs-pdf/fw9.pdf>;

- b. Respondent shall therein certify that its completed IRS Form W-9 includes Respondent's correct TIN or that Respondent has applied and is waiting for issuance of a TIN;
- c. Respondent shall email its completed Form W-9 to EPA's Cincinnati Finance Center at henderson.jessica@epa.gov, within 30 days after the Final Order ratifying this Consent Agreement is filed, and EPA recommends encrypting IRS Form W-9 email correspondence; and
- d. In the event that Respondent has certified in its completed IRS Form W-9 that it has applied for a TIN and that TIN has not been issued to Respondent within 30 days after the effective date of this Consent Agreement and Final Order, then Respondent, using the same email address identified in the preceding subparagraph, shall further:
 - i. Notify EPA's Cincinnati Finance Center of this fact, via email, within 30 days after the 30 days after the effective date of this Consent Agreement and Final Order per Paragraph 130; and
 - ii. Provide EPA's Cincinnati Finance Center with Respondent's TIN, via email, within five (5) days of Respondent's issuance and receipt of the TIN.

GENERAL SETTLEMENT CONDITIONS

- 130. By signing this Consent Agreement, Respondent acknowledges that this Consent Agreement and Final Order will be available to the public and represents that, to the best of Respondent's knowledge and belief, this Consent Agreement and Final Order does not contain any confidential business information or personally identifiable information from Respondent.
- 131. Respondent certifies that any information or representation it has supplied or made to EPA concerning this matter was, at the time of submission true, accurate, and complete and that there has been no material change regarding the truthfulness, accuracy or completeness of such information or representation. EPA shall have the right to institute further actions to recover appropriate relief if EPA obtains evidence that any information provided and/or representations made by Respondent to the EPA regarding matters relevant to this Consent Agreement and Final Order, **including information about respondent's ability to pay a penalty**, are false or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action that EPA may have, civil or criminal, under law or equity in such event. Respondent and its officers, directors and agents are aware that the submission of false or misleading information to the United States government may subject a person to separate civil and/or criminal liability.

132. Respondent certifies to EPA, upon personal investigation and to the best of its knowledge and belief, that it currently is in compliance with regard to the violations alleged in this Consent Agreement.

OTHER APPLICABLE LAWS

133. Nothing in this Consent Agreement and Final Order shall relieve Respondent of its obligation to comply with all applicable federal, state, and local laws and regulations, nor shall it restrict EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on the validity of any federal, state or local permit. This Consent Agreement and Final Order does not constitute a waiver, suspension or modification of the requirements of the CWA, or any regulations promulgated thereunder.

RESERVATION OF RIGHTS

134. This Consent Agreement and Final Order resolves only EPA's claims for civil penalties for the specific violation[s] alleged against Respondent in this Consent Agreement and Final Order. 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. This settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice, 40 C.F.R. § 22.18(c). EPA reserves any rights and remedies available to it under CWA, the regulations promulgated thereunder and any other federal law or regulation to enforce the terms of this Consent Agreement and Final Order after its effective date.

EXECUTION /PARTIES BOUND

135. This Consent Agreement and Final Order shall apply to and be binding upon the EPA, the Respondent and the officers, directors, employees, contractors, successors, agents and assigns of Respondent. By their signature below, the person who signs this Consent Agreement on behalf of Respondent is acknowledging that they are fully authorized by the Respondent to execute this Consent Agreement and to legally bind Respondent to the terms and conditions of this Consent Agreement and Final Order.

EFFECTIVE DATE

136. The effective date of this Consent Agreement and Final Order ("Effective Date") is the date on which the Final Order, signed by the Regional Administrator of the EPA, Region 3, or his/her designee, the Regional Judicial Officer, is filed along with the Consent Agreement with the Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.

ENTIRE AGREEMENT

137. This Consent Agreement and Final Order constitutes the entire agreement and understanding between the Parties regarding settlement of all claims for civil penalties pertaining to the specific violations alleged herein and there are no representations, warranties, covenants, terms, or conditions agreed upon between the Parties other than those expressed in this Consent Agreement and Final Order.

In the Matter of: Hazleton Oil and Environmental, Inc.

EPA Docket No. CWA-03-2024-0125

For Respondent:

Hazleton Oil and Environmental, Inc.

Date:

9/13/2024

By:



Sloane Six
President

For the Complainant:

After reviewing the Consent Agreement and other pertinent matters, I, the undersigned Director of the Enforcement & Compliance Assurance Division of the United States Environmental Protection Agency, Region 3, agree to the terms and conditions of this Consent Agreement and recommend that the Regional Administrator, or his/her designee, the Regional Judicial Officer, issue the attached Final Order.

By: _____
[*Digital Signature and Date*]
Karen Melvin, Director
Enforcement & Compliance Assurance Division
U.S. EPA – Region III
Complainant

Attorney for Complainant:

By: _____
[*Digital Signature and Date*]
Mark Bolender
Senior Assistant Regional Counsel
U.S. EPA – Region III

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 3
Philadelphia, Pennsylvania 19103

FILED

Sep 27, 2024

1:23 pm

U.S. EPA REGION 3
HEARING CLERK

In the Matter of:	:
	:
Hazleton Oil and Environmental, Inc.	: U.S. EPA Docket No. CWA-03-2024-0125
300 Tamaqua Street	:
Hazleton, PA 18201	: Proceeding under Sections 311(j) and
	: 311(b)(6)(A) & (B)(i) of the Clean Water Act,
Respondent.	: 33 U.S.C. §§ 1321(j) and 1321(b)(6)(A) & (B)(i)
	:
	:
Hazleton Oil and Environmental, Inc.	:
300 Tamaqua Street	:
Hazleton, PA 18201;	:
	:
Artex Incorporated	:
Barnesville Bulk Petroleum Storage Plant	:
Fairview Street (Intersection of Routes 54	:
and 1020)	:
Barnesville, PA 18214;	:
	:
Facilities.	:

FINAL ORDER

Complainant, the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region 3, and Respondent, Hazleton Oil and Environmental, 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 reference to Sections 22.13(b) and 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 upon the representations of the parties in the attached Consent Agreement, the penalty agreed to therein is based upon consideration of, inter alia, *EPA's Civil Penalty Policy for Section 311(b)(3) and Section 311(j) of the Clean Water Act (August 1998)* and the statutory factors set forth in Section 311(b)(8) of the CWA, 33 U.S.C. § 1321(b)(8).

NOW, THEREFORE, PURSUANT TO Section 311(b)(6)(A) and (B)(i) of the Clean Water Act, 33 U.S.C. § 1321(b)(6)(A) & (B)(i), and Section 22.18(b)(3) of the Consolidated Rules of Practice, **IT IS HEREBY ORDERED** that Respondent pay a civil penalty in the amount of **six thousand three hundred dollars (\$6,300)**, in accordance with the payment provisions set forth in the Consent Agreement and in 40 C.F.R. § 22.31(c), and comply with the terms and conditions of the Consent Agreement.

This Final Order constitutes the final Agency action in this proceeding. This Final Order shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief, or criminal sanctions for any violations of the law. This Final Order resolves only those causes of action alleged in the Consent Agreement and does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of the Clean Water Act and the regulations promulgated thereunder.

The effective date of the attached Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

By: _____
[Digital Signature and Date]
Joseph J. Lisa
Regional Judicial and Presiding Officer
U.S. EPA Region 3

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 3
Philadelphia, Pennsylvania 19103

In the Matter of:	:
	:
Hazleton Oil and Environmental, Inc.	: U.S. EPA Docket No. CWA-03-2024-0125
300 Tamaqua Street	:
Hazleton, PA 18201	: Proceeding under Sections 311(j) and
	: 311(b)(6)(A) & (B)(i) of the Clean Water Act,
Respondent.	: 33 U.S.C. §§ 1321(j) and 1321(b)(6)(A) & (B)(i)
	:
	:
Hazleton Oil and Environmental, Inc.	:
300 Tamaqua Street	:
Hazleton, PA 18201;	:
	:
Artex Incorporated	:
Barnesville Bulk Petroleum Storage Plant	:
Fairview Street (Intersection of Routes 54	:
and 1020)	:
Barnesville, PA 18214;	:
	:
Facilities.	:

CERTIFICATE OF SERVICE

I certify that the foregoing ***Consent Agreement and Final Order*** was filed with the EPA Region 3 Regional Hearing Clerk on the date that has been electronically stamped on the ***Consent Agreement and Final Order***. I further certify that on the date set forth below, I caused to be served a true and correct copy of the foregoing to each of the following persons, in the manner specified below, at the following addresses:

Copies served via email to:

Timothy J. Bergere, Esq.
Armstrong Teasdale LLP
2005 Market Street, 29th Floor
One Commerce Square
Philadelphia, PA 19103
tbergere@atlpl.com

Deborah Lindsey
SPCC/FRP Coordinator
U.S. EPA, Region III
lindsey.deborah@epa.gov

Mark Bolender
Senior Assistant Regional Counsel
U.S. EPA, Region III
bolender.mark@epa.gov

Leighton Smith
SPCC/FRP Inspector
U.S. EPA, Region III
smith.leighton@epa.gov

[Digital Signature and Date]
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 3