

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

In The Matter of:

Bedford Valley Petroleum
Corporation

One Potomac Street
Cumberland, Maryland 21502-4636

Respondent.

:
:
: **CONSENT AGREEMENT**
:
:

:
:
: **PROCEEDING UNDER SECTION 311**
: **OF THE CLEAN WATER ACT, AS**
: **AMENDED, TO ASSESS A CLASS I**
: **CIVIL PENALTY**
:
:

: **Docket No. CWA-03-2013-0132**
:
:

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 Sections 22.13(b) and 22.18(b) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Part 22 Rules"), 40 C.F.R. Part 22. The Administrator has delegated this authority to the Regional Administrator of EPA, Region III, who in turn has delegated it to the Director of the Region's Hazardous Site Cleanup Division ("Complainant").
2. The parties agree to the commencement and conclusion of this matter by issuance of this Consent Agreement and Final Order (collectively "CAFO"), as prescribed by the Part 22 Rules pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b), and having consented to the entry of this CAFO, agree to comply with the terms of this CAFO.
3. For purposes of this proceeding only, Respondent admits to the jurisdictional allegations set forth in this Consent Agreement.
4. Respondent neither admits nor denies the specific factual allegations, conclusions of law, and determinations set forth in this Consent Agreement, except as provided in Paragraph 3, above.
5. Respondent agrees not to contest EPA's jurisdiction with respect to the execution, enforcement, and issuance of this CAFO.

REGIONAL HEARING CLERK
EPA REGION III, PHILA. PA

2013 JUN 10 AM 11:19

RECEIVED

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 attorneys fees.

Statutory Authority

8. Congress enacted the CWA, 33 U.S.C. §§ 1251 *et seq.*, in 1972. In Section 311(j)(1)(C) of the CWA, Congress required the President to promulgate regulations which would, among other things, establish procedures, methods, and other requirements for preventing discharges of oil from onshore facilities into navigable waters and for containing such discharges.
9. By Executive Order 12777, the President delegated the authority to promulgate regulations under Section 311(j) of the CWA to EPA for non-transportation-related onshore and offshore facilities.
10. Pursuant to its delegated authority under Section 311(j) of the CWA, EPA promulgated Oil Pollution Prevention Regulations, 40 C.F.R. § 112, 38 Fed. Reg. 34165 (Dec. 11, 1973), effective January 10, 1974 (“1973 Regulations”).
11. On July 17, 2002, EPA promulgated an amendment to the Oil Pollution Prevention Regulations, 67 Fed. Reg. 47042 (“2002 Regulations”). The 2002 Regulations became effective on August 16, 2002. On December 26, 2006, EPA promulgated revisions to the 2002 Regulations, 71 Fed. Reg. 77266 (“2006 Regulations”). The 2006 Regulations became effective on February 27, 2007. On December 5, 2008, EPA promulgated additional revisions to the 2002 Regulations, 73 Fed. Reg. 74236 (“2008 Regulations”). The 2008 Regulations became effective on January 14, 2010. Furthermore, on November 13, 2009, EPA promulgated revisions to the 2008 Regulations, 74 Fed. Reg. 58784 (“2009 Regulations”). The effective date of the 2009 Regulations is January 14, 2010.
12. The compliance date for the 2002, 2006, 2008, and 2009 Regulations (“Revised Regulations”) was November 10, 2011. As set forth at 40 C.F.R. § 112.3(a) of the Revised Regulations, an owner or operator of a facility that was in operation on or before August 16, 2002, that could reasonably be expected to discharge oil in harmful quantities into or upon the navigable waters of the United States or adjoining shorelines, must maintain and implement the facility’s Spill Prevention, Control and Countermeasure Plan (“SPCC”) Plan, as required by the 1973 Regulations. Accordingly, for purposes of this Consent Agreement, unless otherwise noted, regulatory requirements cited herein shall refer to requirements as set forth in the 1973 Regulations, in effect until November 9, 2011, and the Revised Regulations, as of November 10, 2011 (collectively, the “Oil Pollution Prevention Regulations”).

13. 40 C.F.R. § 112.1(b) of the Oil Pollution Prevention Regulations states “. . . this part applies to owners or operators of non-transportation-related onshore and offshore facility engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using, or consuming oil and oil products, which due to its location, could reasonably be expected to discharge oil in quantities that may be harmful, as described in part 110 of this chapter, into or upon the navigable waters of the United States or adjoining shorelines....”
14. For violations of Section 311(j) of the CWA, 33 U.S.C. § 1321(j), EPA has authority, pursuant to Section 311(b)(6)(B)(i) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(i), to assess a Class I penalty in the amount of up to \$10,000 per violation, not to exceed a maximum penalty of \$25,000. Pursuant to the Debt Collection Improvement Act, and the subsequent Civil Monetary Penalty Inflation Adjustment Rule, codified at 40 C.F.R. Part 19, violations of Section 311(j) that occur after January 12, 2009, are subject to a statutory penalty of up to \$16,000 per violation, not to exceed a maximum penalty of \$37,500.

Findings of Fact and Conclusions of Law

15. Respondent is a corporation organized under the laws of Maryland, with a place of business located at One Potomac Street, Cumberland, Maryland.
16. 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.
17. Respondent is engaged in the storage and distribution of motor gasoline, kerosene, and low sulfur diesel fuel at its facility located at One Potomac Street, Cumberland, Maryland (“Facility”). In addition, as part of its operations at the Facility, Respondent distributes drummed and packaged lube and motor oil products and performs installation and servicing of fuel oil heating services.
18. Respondent is the owner 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.
19. Respondent has owned and operated the Facility since at least the year 1986.
20. The Facility has a total aboveground oil storage capacity of approximately 194,915 gallons.
21. The Facility is located approximately 1,600 feet from the north branch of the Potomac River.
22. The Potomac River is a navigable water of the United States within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and 40 C.F.R. § 112.2.

23. The Facility is an onshore facility within the meaning of Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10), and 40 C.F.R. § 112.2.
24. The Facility is a non-transportation-related facility within the meaning of 40 C.F.R. § 112.2 and Appendix A of 40 C.F.R. Part 112, as incorporated by reference within 40 C.F.R. § 112.2.
25. Due to its location, the Facility could reasonably be expected to discharge oil in harmful quantities, as defined by 40 C.F.R. § 110.3, into or upon navigable waters of the United States or its adjoining shoreline.
26. Pursuant to 40 C.F.R. § 112.1, Respondent, as the owner and operator of the Facility, is subject to the Oil Pollution Prevention Regulations codified at 40 C.F.R. Part 112.
27. Pursuant to Section 311(j) of the CWA, 33 U.S.C. § 1321(j), and 40 C.F.R. §§ 112.1 and 112.3, the Facility is subject to the SPCC requirements of 40 C.F.R. § 112.3 because the Facility's 194,915-gallon oil storage capacity exceeds the 1,320-gallon aboveground capacity threshold of the Oil Pollution Prevention Regulations and the Facility is an onshore non-transportation-related facility that due to its location could reasonably be expected to discharge oil in harmful quantities into or upon the navigable waters of the United States or adjoining shorelines.
28. EPA conducted a compliance inspection at the Facility on August 8, 2011 ("the Inspection").
29. EPA believes that, at the time of the Inspection, Respondent failed to adequately implement 40 C.F.R §§ 112.8(c)(1), 112.8(c)(11), and 112.8(d)(3) of the Oil Pollution Prevention Regulations, as set forth in more detail in paragraphs 30 through 35, below, each of which constitutes a separate violation.
30. Section 112.8(c)(1) of the Oil Pollution Prevention Regulations, 40 C.F.R. § 112.8(c)(1), provides:

The owner or operator of the Facility must not use a container for the storage of oil unless its material and construction are compatible with the material stored and conditions of storage such as pressure and temperature.
31. Respondent failed to adequately implement Section 112.8(c)(1) as follows:
 - a. During the Inspection, EPA observed that the roof of a 17,600-gallon above-ground tank at the Facility that was being used to store oil was partially collapsed and severely corroded. In addition, the collapsed area of the tank roof allowed water to pond on the roof causing additional corrosion. The resultant condition of the roof was such that

the structural integrity of the roof and roof support system was weakened. The conditions of the tank roof rendered this tank incompatible with the material stored and conditions of storage, in violation of Section 112.8(c)(1).

- b. The Facility was aware of the deteriorated condition of the tank roof since at least September 2009 as a result of an American Petroleum Institute Standard 653 tank inspection ("API Inspection") that was conducted at that time. The inspector conducting the API Inspection observed that the tank roof was partially collapsed, severely corroded, and determined that the tank failed to comply with the applicable API Standards. The API inspector recommended at the time of the API Inspection that Respondent remove the tank from service because of those conditions. Based on EPA's observations at the Inspection, no such action was taken by Respondent in response to the API Inspection.

32. Section 112.8(c)(11) of the Oil Pollution Prevention Regulations, 40 C.F.R. § 112.8(c)(11), provides:

The owner or operator of the Facility must position or locate mobile or portable oil storage containers to prevent a discharge as described in Section 112.1(b). The owner or operator must furnish a secondary means of containment, such as a dike or catchment basin, sufficient to contain the capacity of the largest single compartment or container with sufficient freeboard to contain precipitation.

33. Respondent failed to adequately implement Section 112.8(c)(11) as follows:

- a. During the Inspection, EPA observed that the Facility lacked adequate secondary containment at its warehouse entrances, in violation of Section 112.8(c)(11) of the Regulations. EPA inspectors observed that the Facility had stacked mobile containers, including totes and drums, up to Facility warehouse entrances, with no secondary containment in place that could restrain a spill.
- b. The engineer certifying the Facility's SPCC Plan on March 4, 2011 noted that secondary containment at the Facility for the mobile containers was not adequate. The engineer recommended that Respondent install at the Facility warehouse entrances raised curbs or bumps that could restrain a spill, but as of the time of the Inspection, no such secondary containment had been installed.

34. Section 112.8(d)(3) of the Oil Pollution Prevention Regulations, 40 C.F.R. § 112.8(d)(3), provides:

The owner or operator of the Facility must properly design pipe supports to minimize abrasion and corrosion and allow for expansion and contraction.

35. Respondent failed to adequately implement Section 112.8(d)(3) as follows:
- a. During the Inspection, EPA observed that Respondent utilized oil pipeline supports in an earthen dike at the Facility that did not comply with Section 112.8(d)(3) of the Regulations. The Facility used concrete blocks and/or bricks to support its oil pipelines connected to above-ground tanks. These concrete blocks and/or bricks were not fixed in place and did not adequately minimize abrasion and corrosion of the pipelines.
 - b. The engineer that certified the Facility's SPCC Plan on March 4, 2011, notified Respondent that the pipeline supports were inadequate. The engineer also recommended to Respondent that it install adequate supports, but as of the time of the EPA Inspection, no such adequate supports had been installed.
36. EPA determined, based on its Inspection, discussions with Facility personnel during and after the Inspection, and its review of documentation provided by Respondent, that Respondent had not adequately implemented its SPCC Plan, and Respondent therefore violated the requirements of 40 C.F.R. § 112.8.

Penalty

37. 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 \$34,000, plus interest in the amount of \$66.10, for a total amount of \$34,066.10. Respondent agrees to pay the above civil penalty amount in accordance with the provisions set forth in Paragraph 39, below.
38. The proposed 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 seriousness of the violation; the economic benefit to the violator, if any; the degree of culpability; history of prior violations, if any; the nature, extent, and degree of success of the violator's mitigation efforts; the economic impact of the penalty on the violator; and other matters as justice may require.

Payment Terms

39. Payment of the civil penalty assessed herein shall be made in the manner and over the time period specified below:

<u>Schedule</u>	<u>Principal</u>		<u>1% Interest</u>		<u>Payment</u>
1 st payment due within 30 days of the Interest Accrual Date (as defined in Paragraph 42 of this CAFO).	\$11,334	+	\$0	=	\$11,334
2 nd payment due within 90 days of the Interest Accrual Date.	\$11,333	+	\$37.77	=	\$11,370.77
3 rd payment due within 120 days of the Interest Accrual Date.	\$11,333	+	\$28.33	=	\$11,361.33

					TOTAL: \$34,066.10

40. 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-03-2013-0132) of this case.
 - b. If Respondent sends payment by the U.S. Postal Service, the payment shall be addressed to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000
 - c. If Respondent sends payment by a private delivery service, the payment shall be addressed to:

U.S. Environmental Protection Agency
U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101
Attn: Heather Russell (513) 487-2044

- d. If paying by EFT, the Respondent shall make the transfer to:
- Federal Reserve Bank of New York
ABA 021030004
Account 68010727
33 Liberty Street
New York, NY 10045
- e. If paying by EFT, field tag 4200 of the Fedwire message shall read: “(D 68010727 Environmental Protection Agency).” In the case of an international transfer of funds, the Respondent shall use SWIFT address FRNYUS33.
- f. If paying through the Department of Treasury's Online Payment system, please access “www.pay.gov,” and enter sfo 1.1 in the search field. Open the form and complete the required fields and make payments. Note that the type of payment is “civil penalty,” the docket number “CWA-FILL IN” should be included in the “Court Order # or Bill #” field, and “3” should be included as the Region number.
41. 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.
42. Interest on the civil penalty should begin to accrue on the date that this CAFO is mailed or hand-delivered to the Respondent (“Interest Accrual Date”). EPA will not seek to recover interest on any amount of such civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest on the portion of a civil penalty not paid within such thirty (30) calendar day period will be assessed at the rate of the U.S. Treasury Tax and Loan Rate in accordance with 40 C.F.R. § 13.11(a).
43. 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.

44. A penalty charge of six percent per year will be assessed monthly on any portion of an installment 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).
45. In order to avoid the assessment of administrative costs for overdue debts, as described above, Respondent must remit installment payments for the civil penalty and accrued interest in accordance with the payment schedule set forth above. In order to avoid the assessment of late payment penalty charges, as described above, Respondent must remit all installment payments no later than 90 days after the date each such payment is due.
46. Respondent shall submit a copy of the check (or, in the case of an EFT transfer, a copy of the EFT confirmation) to the following persons:
- | | |
|--|---|
| Lydia Guy (3RC00)
Regional Hearing Clerk
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029 | Joan A. Johnson (3RC41)
Senior Assistant Regional Counsel
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029 |
|--|---|
47. Failure by Respondent to pay the penalty assessed by the Final Order in full within the time period set forth in Paragraph 39 of this CAFO 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

48. 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.
49. The provisions of this Consent Agreement and the Final Order, if issued, shall be binding upon Respondent and Respondent's successors or assigns.
50. Payment of the penalty pursuant to this Consent Agreement shall resolve all liability of Respondent for federal civil penalties for the violations alleged based on the facts alleged in this Consent Agreement.
51. The Final Order does not constitute a waiver, suspension or modification of the requirements of Section 311 of the CWA, 33 U.S.C. § 1321, or any regulations promulgated thereunder, and does not affect the right of the Administrator or the

United States to pursue any applicable injunctive or other equitable relief or criminal sanctions for any violation of law. Payment of the penalty pursuant to this Consent Agreement resolves only Respondent's liability for federal civil penalties for the violations and facts alleged in this Consent Agreement.

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

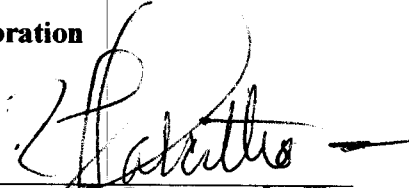
For the Respondent, Bedford Valley Petroleum Corporation

Date: 4-16-13

By:

Name:

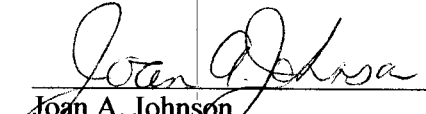
Title:



Ronald G. Sawatch
PRESIDENT.

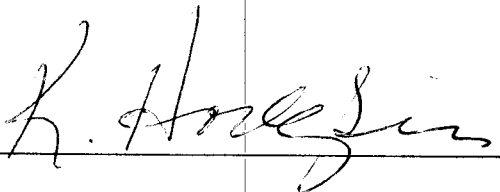
For the Complainant, U.S. Environmental Protection Agency, Region III

Date: 5/9/2013

By: 
Joan A. Johnson
Senior Assistant Regional Counsel

After reviewing the foregoing Consent Agreement and other pertinent information, the Hazardous Site Cleanup Division, EPA Region III, recommends that the Regional Administrator or the Regional Judicial Officer issue the Final Order attached hereto.

Date: 5/22/2013

By: 
Kathryn A. Hodgkiss, Acting Director
Hazardous Site Cleanup Division
EPA Region III

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

FINAL ORDER

In The Matter of:

Bedford Valley Petroleum
Corporation
One Potomac Street
Cumberland, Maryland 21502-4636

Respondent.

**PROCEEDING UNDER SECTION 311
OF THE CLEAN WATER ACT, AS
AMENDED, TO ASSESS A CLASS I
CIVIL PENALTY**

Docket No. CWA-03-2013-0132

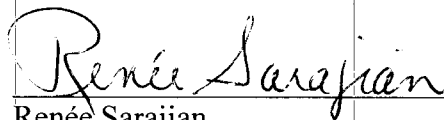
FINAL ORDER

Pursuant to Section 311(b)(6) of the CWA, 33 U.S.C. §1321(b)(6), and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits," codified at 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order.

Nothing in the foregoing Consent Agreement relieves Respondent from otherwise complying with the applicable requirements set forth in the CWA.

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

Date: 6/6/13



Renée Sarajian
Regional Judicial Officer/Presiding Officer

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

In The Matter of:

Bedford Valley Petroleum
Corporation

One Potomac Street
Cumberland, Maryland 21502-4636

Respondent.

CONSENT AGREEMENT

**PROCEEDING UNDER SECTION 311
OF THE CLEAN WATER ACT, AS
AMENDED, TO ASSESS A CLASS I
CIVIL PENALTY**

Docket No. CWA-03-2013-0132

PROOF OF SERVICE

I hereby certify that on this date I filed and served copies of the Consent Agreement and Final Order, as follows:

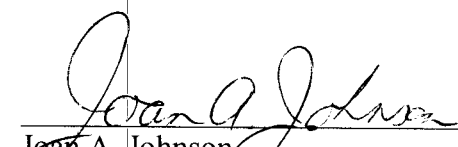
Original filed with:
(via hand delivery)

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

Copy to:
(via Certified Mail,
Return Receipt Requested
and Email as a PDF)

Bedford Valley Petroleum Corporation
Attn: Robert Salathe, President
10228 Lincoln Highway
Everett, PA 15537

Date: June 10, 2013


Joan A. Johnson
Sr. Assistant Regional Counsel
EPA, Region III