

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III

IN THE MATTER OF:

BUCHANAN OIL CORPORATION  
Highway 460 East  
Grundy, VA 24614

Respondent.

Proceeding to Assess a Class II  
Civil Penalty Under Section  
311 of the Clean Water Act, as amended,  
for a Spill Violation

Docket No. CWA-03-2008-0123

**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(b)(3) of the CWA, 33 U.S.C. §1321(b)(3), prohibits the discharge of oil into or upon the navigable waters of the United States or adjoining shorelines in such quantities that have been determined may be harmful to the public health or welfare or environment of the United States.

3. For purposes of Section 311(b)(3) and (b)(4) of the CWA, 33 U.S.C. §1321(b)(3) and (b)(4), discharges of oil into or upon the navigable waters of the United States in such quantities that have been determined may be harmful to the public health or welfare or environment of the United States are defined in 40 C.F.R. §110.3 (2002) to include discharges of oil that cause a film or a sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon the adjoining shorelines.

### **Procedural History**

Complainant finds and Buchanan Oil Corporation (“Buchanan”) stipulates as follows:

4. On March 6, 2008, Complainant filed an Administrative Complaint, Docket No. CWA-3-2008-0123, pursuant to Sections 309(g) and 311(b)(6)(B)(ii) of the CWA, 33 U.S.C. §§ 1319(g) and 1321(b)(6)(B)(ii), alleging that the Respondent was liable for a discharge of oil into navigable waters of the United States in violation of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3).

5. In its Complaint, EPA proposed assessing an aggregate penalty of \$112,570.00 against the Respondent for the alleged violation.

6. For the purposes of this proceeding, Buchanan admits the jurisdictional allegations in the Complaint.

7. 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 Buchanan which solicited public comment on March 7, 2008. EPA did not receive any comments during the public comment period.

### **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:

8. The Respondent is a Virginia corporation with a principal place of business located at Highway 460 East, Grundy, Virginia 24614. The Respondent is engaged in the wholesale marketing of petroleum products.

9. Buchanan delivers its products by tanker trucks. Buchanan was operating a tanker truck (the “Tanker”) near the town of Northfork, West Virginia on September 5, 2007.

10. Buchanan 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 (2002).

11. The Respondent’s Tanker 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.

12. Buchanan is the owner and 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, consisting of the Tanker.

13. The Respondent was engaged in producing, gathering, storing, processing, refining, transferring, distributing or consuming oil or oil products using the Tanker at all times relevant to the violation addressed in this matter.

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

14. On September 5, 2007, at approximately 3:00 a.m., the driver employed by Buchanan lost control of the Tanker on U.S. Route 52 near the town of Northfork, West Virginia. The Tanker struck a guardrail and the cargo tank ruptured.

15. A deputy of the McDowell County Sheriff's Office cited the driver's exceeding of the speed limit as a contributing factor to the one-vehicle accident.

16. At the time of the incident, the Tanker was carrying a load of approximately 7,400 gallons of diesel fuel. After the cargo tank ruptured, an estimated 7,400 gallons of diesel fuel escaped into the environment.

17. The released diesel fuel flowed into the nearby Elkhorn Creek. The spill reportedly affected a four-mile stretch of the Elkhorn Creek.

18. The Elkhorn Creek is a tributary of the Tug Fork River, which in turn is a tributary of the Big Sandy River. The Big Sandy River flows into the Ohio River.

19. Representatives of the West Virginia Division of Natural Resources observed that the diesel fuel spill caused a fish kill of more than 2,000 fish.

20. Diesel fuel constitutes "oil" as defined in Section 311(a)(1) of the CWA, 33 U.S.C. §1321(a)(1), and the regulations promulgated thereunder, 40 C.F.R. §112.2.

21. For purposes of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), "navigable water" is defined by 40 C.F.R. §§ 110.1 and 112.2 (2002) to include, among other things, tributaries to waters that could be used for industrial purposes or interstate commerce.

22. The Elkhorn Creek is a "navigable water" of the United States as defined in Section 502(7) of the CWA, 33 U.S.C. §1362(7), and 40 C.F.R. §110.1, because it is a tributary of the Tug Fork River, which is a tributary of the Big Sandy River, which is a tributary of the Ohio River.

23. Section 311(a)(2) of the CWA, 33 U.S.C. § 1321(a)(2), defines "discharge" to include any spilling, leaking, pumping, pouring, emitting, or dumping other than federally permitted discharges pursuant to a permit under 33 U.S.C. § 1342.

24. 40 C.F.R. § 110.3(b) (2002) defines “harmful quantity,” for purposes of Section 311 of the CWA, to include discharges that “cause a film or sheen upon . . . the surface of the water or adjoining shorelines.”

25. Buchanan’s discharge of approximately 7,400 gallons of diesel fuel from its Tanker on or about September 5, 2007, caused a sheen upon or discoloration of the surface of the Elkhorn Creek and, therefore, was in a quantity that has been determined may be harmful under 40 C.F.R. §110.3, which implements Section 311(b)(3) and (b)(4) of the CWA, 33 U.S.C. §1321(b)(3) and (b)(4).

26. Respondent's discharge of diesel fuel from the Tanker into the Elkhorn Creek in a quantity that has been determined may be harmful under 40 C.F.R. §110.3 on September 5, 2007, violated Section 311(b)(3) of the CWA, 33 U.S.C. §1321(b)(3).

27. In light of the information above, EPA concludes that Buchanan was in violation of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3). Pursuant to Sections 309(g) and 311(b)(6)(B)(ii) of the CWA, 33 U.S.C. §§ 1319(g) and 1321(b)(6)(B)(ii), EPA further concludes that Buchanan is liable for a civil penalty. In determining the amount of the civil penalty, the following factors have been taken into consideration: the seriousness of the violation, the economic benefit to the violator resulting from the violation, the degree of culpability involved, any other penalty for the same incident, any history of prior violations, the nature, extent and degree of success of any efforts of the violator to minimize or mitigate the effects of the discharge, the economic impact of the penalty on the violator, and any other matters as justice may require.

28. Complainant originally proposed a penalty of \$112,570.00 against Buchanan for the spill violation. In calculating this penalty, EPA took into consideration, among other things, the fact that the Buchanan employee who had been driving the Tanker at the time of the night of the spill had been speeding and lost control of the Tanker.

#### Penalty

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

29. Buchanan consents to the assessment of a civil penalty of \$101,313.00, payable in two installments over sixty (60) days from the effective date of the Final Order.

30. Respondent shall pay the first installment of \$50,656.50 within thirty (30) days of the effective date of the Final Order.

31. Respondent shall pay a second and final installment of \$50,656.50 within sixty (60) days of the effective date of the Final Order.

32. The Respondent shall pay each installment of the penalty either by the submission of a cashier's or certified check, or by means of an electronic funds transfer ("EFT").

33. If the Respondent pays a penalty installment 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-03-2008-0123**. 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

34. 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 33.

35. 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

36. 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**

37. 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).

38. The provisions of the Final Order shall be binding upon Respondent, its officers, directors, agents, servants, employees, and successors or assigns.

39. 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's 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.

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

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III

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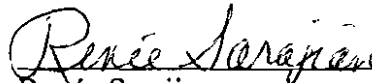
**FINAL ORDER**

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: 6/5/08

  
Renée Sarajian  
Regional Judicial Officer  
EPA, Region III

41. Each individual executing this Consent Agreement below on behalf of a party is duly authorized to bind that party.

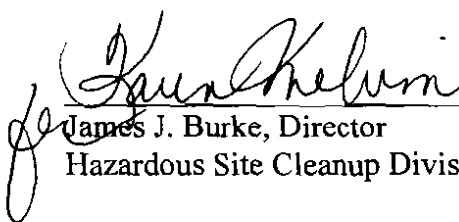
BUCHANAN OILCORPORATION

Date: 5.7.08

  
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Bill R. Lester, President

U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION III

Date: 05/28/08

  
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James J. Burke, Director  
Hazardous Site Cleanup Division