





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY 03-11-14  
REGION III

In The Matter of: :  
: :  
Purvis Brothers, Inc. :  
321 Mars-Valencia Road :  
Mars, PA 16046, : Proceeding under Section 311(j) and  
Respondent. : 311(b)(6)(B)(ii) of the Clean Water Act,  
: 33 U.S.C. § 1321(j) and 1321(b)(6)(B)(ii)  
: :  
: **Docket No. CWA-03-2016-0079**  
Purvis Brothers Mars Bulk Plant :  
321 Mars-Valencia Road :  
Mars, PA 16046, :  
Facility. :  
: :  
\_\_\_\_\_ :

**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)(ii) of the Clean Water Act ("CWA"), as amended, 33 U.S.C. § 1321(b)(6)(B)(ii), and under the authority provided by Section 22.13(b), 22.18(b) and 22.50(a)(1) and (b) of 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. 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 Consolidated Rules of Practice 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, Purvis Brothers, Inc., ("Respondent") admits to the jurisdictional allegations set forth in this Consent Agreement.
4. Respondent neither admits nor denies the specific factual allegations, findings of fact, and conclusions of law 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.

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 attorney's fees.

**Statutory and Regulatory Authority**

8. Congress enacted the CWA, 33 U.S.C. §§ 1251 *et seq.*, in 1972. 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.
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 the Oil Pollution Prevention Regulations, codified at 40 C.F.R. Part 112 (the "Regulations").
11. Pursuant to 40 C.F.R. § 112.1, an owner or operator of a non-transportation-related onshore or offshore facility with an above-ground oil storage capacity exceeding 1,320 gallons, 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 is subject to Part 112.
12. According to 40 C.F.R. § 112.3, an owner or operator of an onshore or offshore facility subject to Part 112 must prepare in writing and implement a Spill Prevention, Control, and Countermeasure (SPCC) plan, in accordance with § 112.7 and any other applicable section, including but not limited to § 112.8.
13. For violations of Section 311(j) of the CWA, 33 U.S.C. § 1321(j), EPA has authority, under Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6), as amended by the Debt Collection Improvement Act and implemented by 40 C.F.R. Part 19, *Adjustment of Civil Monetary Penalties for Inflation*, to file a Class II Administrative Complaint seeking a civil penalty of \$16,000 per day for each day during which a violation continues, up to a maximum of \$187,500, for violations occurring after December 6, 2013.

**Findings of Fact and Conclusions of Law**

14. Respondent is a corporation with a principal place of business located at 321 Mars-Valencia Road, Mars, PA 16046.
15. 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.
16. Respondent is engaged in receiving, storing and distributing wholesale and retail petroleum products to area customers, at its facility located at 321 Mars-Valencia Road, Butler County, Mars, Pennsylvania 16046 ("Facility").
17. Respondent is the owner and/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.
18. The Facility began operations around 1928.
19. Respondent has owned and/or operated the Facility since approximately 1961.
20. The Facility has a total aboveground oil storage capacity of approximately 179,345 gallons.
21. The Facility is located near Breakneck Creek, which flows into the Connoquenessing Creek, which flows into the Beaver River, which joins the Ohio River.
22. The Facility includes a storm drain system that discharges into the Breakneck Creek, through which oil could reasonably be expected to discharge in harmful quantities.
23. Breakneck Creek, Connoquenessing Creek, Beaver River, and the Ohio River are navigable waters 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.
24. 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.
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 Regulations codified at 40 C.F.R. Part 112.

27. Pursuant to 40 C.F.R. § 112.3, Respondent was required to prepare in writing and implement an SPCC plan, in accordance with 40 C.F.R. § 112.7 and any other applicable section.
28. EPA conducted an SPCC compliance inspection at the Facility on July 11, 2014 (“the Inspection”).
29. EPA believes that, at the time of the Inspection, Respondent failed to adequately implement 40 C.F.R § 112 of the Regulations, as set forth in Paragraph 30, below.
30. During the Inspection, EPA inspectors, made the following observations:
  - a. The Facility’s SPCC Plan was not certified by a licensed professional engineer as to three of the five attestations required by 40 C.F.R. § 112.3(d).
  - b. The Facility’s SPCC plan did not identify the location, contents or capacity of each of the tanks at the Facility, as required by 40 C.F.R. § 112.7(a)(3), which requires that the owner or operator of the facility to describe in the SPCC Plan the physical layout of the facility and include a facility diagram marking the location and contents of each container.
  - c. The Facility did not include secondary containment or diversionary structures for the following oil-storage containers: five 2,000-gallon tanks located in tank farm #2, two 275-gallon kerosene tanks associated with the office and garage of the Facility, and four 55-gallon drums located at the Facility’s three loading racks as required by 40 C.F.R. § 112.7(c), which requires containment and/or diversionary structures or equipment to prevent an oil discharge from reaching a navigable water.
  - d. The Facility lacked secondary containment for bulk storage tank installations, as required by 40 C.F.R. § 112.8(c)(2), including the following tanks: the five 2,000-gallon tanks located in tank farm #2, and two 275-gallon kerosene tanks associated with the office and garage of the Facility. Purvis failed to comply with 40 C.F.R. § 112.8(c)(2), which requires that the owner or operator construct all bulk storage tanks installations so that they provide a secondary means of containment for the entire capacity of the largest single container and sufficient freeboard to contain precipitation and to make sure that diked areas are sufficiently impervious to contain discharged oil.
  - e. Purvis did not keep records of any discharge of rainwater that bypasses the Facility treatment system as required by 40 C.F.R. § 112.8(c)(3)(iv), which requires the owner or operator to keep adequate records of drainage of rainwater from the facility.

f. The configuration of the ten 1,000-gallon tanks and five 2,000-gallon tanks located inside the garage in tank farm #2 were positioned very close to each other, and there was a wooden structure above the ten 1,000-gallon tanks used as a storage area. Inspection of the entire exterior surfaces of the tanks, required by 40 C.F.R. §112.8(c)(6), was impossible because the configuration of the tanks did not provide access to all sides of each tank. In addition, facility personnel could not produce comparison records of integrity testing during the Inspection. Purvis failed to comply with 40 C.F.R. §112.8(c)(6), which requires the owner or operator to, among other things, regularly test or inspect aboveground containers for integrity and whenever material repairs are made to the containers; to have personnel with the appropriate qualifications for performing tests and inspections; to determine the frequency and type of testing and inspections, in accordance with industry standards; to keep comparison records; to inspect container supports and foundations; and frequently inspect the outside of containers for deterioration, discharges, or accumulation of oil inside diked areas.

g. Some of the piping in tank farm #1 was partially buried, which did not allow for complete inspection of the pipes as required by 40 C.F.R. § 112.8(d)(4), which requires regular inspection of aboveground pipes. Further, the partially buried piping did not allow for protection from corrosion as required by 40 C.F.R. § 112.8(d)(3), which requires proper design of pipe supports to minimize abrasion and corrosion and allow for expansion and contraction.

31. EPA determined, based on the Inspection, discussions with Facility personnel during and after the Inspection, and review of documentation provided by Respondent, that Respondent failed to adequately prepare and implement an SPCC plan for the Facility, in accordance with the regulations at 40 C.F.R. § 112.7 and § 112.8, in violation of 40 C.F.R. § 112.3 and in response to which EPA may seek penalties pursuant to Section 311(b)(6)(B)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(ii).

#### Penalty

32. 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 **\$46,769.00**.
33. The 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 allegations regarding 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. The applicable statutory factors were applied in accordance with EPA's *Civil Penalty Policy for Section 311(b)(3) and Section 311(j) of the Clean Water Act* (August 1998).

**Payment Terms**

34. In order to avoid the assessment of interest, administrative costs, and late payment penalties in connection with the civil penalty described in this CAFO, Respondent shall pay the civil penalty of **\$46,769.00**. The civil penalty amount shall become due and payable immediately upon Respondent's receipt of a true copy of this CAFO. Respondent agrees to pay the civil penalty in full by remitting installment payments, in accordance with Paragraph 35, below.
35. 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-03-2016-0079) 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-03-2016-79" should be included in the "Court Order # or Bill #" field, and "3" should be included as the Region number.
36. 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.
37. Interest on the civil penalty will begin to accrue on the date that this CAFO, when fully executed, 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).
38. 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.
39. A penalty charge of six percent per year will be assessed monthly on any portion of a 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).
40. In order to avoid the assessment of administrative costs for overdue debts, as described above, Respondent must remit payment for the civil penalty in accordance with the payment deadline set forth above.
41. 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

Suzanne Parent (3RC42)  
Associate Regional Counsel  
U.S. EPA, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

42. Failure by Respondent to pay the penalty assessed by the Final Order in full 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.

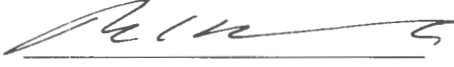
#### **General Provisions**

43. 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.
44. The provisions of this Consent Agreement and the Final Order, if issued, shall be binding upon Respondent and Respondent's successors or assigns.
45. This Consent Agreement and the accompanying Final Order resolve only the civil penalty claims for the specific violations alleged in this Consent Agreement. 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. Nor shall anything in this Consent Agreement and the accompanying Final Order be construed to limit the United States authority to pursue criminal sanctions. In addition this settlement is subject to all limitations on the scope of resolution and the reservation of rights set forth in 40 C.F.R. § 22.18(c). Further, Complainant reserves any rights and remedies available to it under the CWA, the regulations promulgated thereunder, and any other federal laws or regulations for which Complainant has jurisdiction, to enforce the provisions of this Consent Agreement and accompanying Final Order following its filing with the Regional Hearing Clerk. 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.

46. The effective date of this Consent Agreement and the accompanying Final Order (which is signed by the Regional Administrator of EPA Region III), shall be the date the CAFO is filed with the EPA Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.

**For the Respondent, Purvis Brothers, Inc.**

Date: 3-14-16

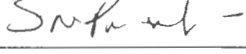
By: 

Name: MAC E. PURVIS, JR.

Title: President


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

Date: 4/12/16

By:   
Suzanne M. Parent  
Associate Regional Counsel

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

Date: 4/14/16

By:   
Dominique Lueckenhoff, Acting Director  
Hazardous Site Cleanup Division  
EPA Region III

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
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**FINAL ORDER**

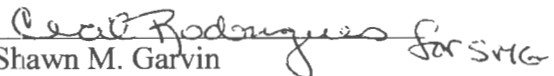
Complainant, the Director of the Hazardous Site Cleanup Division, U.S. Environmental Protection Agency, Region III, and Respondent, Purvis Brothers, Inc., have executed a document entitled "Consent Agreement," which I hereby ratify as a Consent Agreement in accordance with the "Consolidated Rules of 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 references to Section 22.13(b), 22.18(b)(2) and (3), 22.1(a)(6) and (b), and 22.45. 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 on the representations of the parties in the attached Consent Agreement, the penalty agreed to herein is based upon consideration of, *inter alia*, the statutory penalty factors in Section 311(b)(8) of the CWA, 33 U.S.C. § 1321(b)(8), which were applied in accordance with EPA's *Civil Penalty Policy for Section 311(b)(3) and Section 311(j) of the Clean Water Act* (August 1998).

NOW, THEREFORE, PURSUANT TO Section 311(b)(6)(B)(ii) of the CWA, as amended, and the Consolidated Rules of Practice, IT IS HEREBY ORDERED that Respondent pay a civil penalty of **\$46,769.00**, plus any applicable interest, as specified in the Consent Agreement, and comply with the terms and conditions of the Consent Agreement.

The effective date of the foregoing Consent Agreement and this Final Order, signed by the Regional Administrator of the U.S. Environmental Protection Agency, Region III, is the date on which this Final Order is filed with the Regional Hearing Clerk.

Date: 4/23/2016

  
Shawn M. Garvin  
Regional Administrator, Region III

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III

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REGIONAL HEARING CLERK  
EPA REGION III, PHILA. PA

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Proceeding under Section 311(j) and  
311(b)(6)(B)(ii) of the Clean Water Act,  
33 U.S.C. § 1321(j) and 1321(b)(6)(B)(ii)

Docket No. CWA-03-2016-0079

**CERTIFICATE OF SERVICE**

I hereby certify that the original and one copy of the foregoing Consent Agreement and Final Order ("CAFO") in the above-captioned matter have been filed with the EPA Region III Regional Hearing Clerk and that a copy of the CAFO was sent by UPS overnight mail to:

Mr. Robert L. Burns, Jr.  
Buchanan Ingersoll & Rooney PC  
One Oxford Centre  
301 Grant Street, 20th Floor  
Pittsburgh, PA 15219-1410

I further certify that I have sent a pdf copy of the CAFO by electronic pdf to Respondent's counsel, Robert L. Burns, Jr., at robert.burns@bipc.com, on this day.

4/25/16  
Date

  
Lauren E. Ziegler  
Assistant Regional Counsel  
U.S. Environmental Protection Agency, Region III



