

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF

Montefiore Medical Center
111 East 210 Street and
3400 Bainbridge Avenue
New York, NY 10467

Respondent.

CWA SECTION 311 CLASS II

CONSENT AGREEMENT & FINAL ORDER

Docket No. CWA-02-2012-3801

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2012 OCT -3 P 12:53
REGIONAL HEARING
CLERK

CONSENT AGREEMENT

Stipulations

The parties, in their own capacity or by their attorneys or other authorized representatives, hereby stipulate:

1. Section 311(j)(1)(C) of the Clean Water Act (the "Act"), 33 U.S.C. §1321(j)(1)(C), provides that the President shall issue regulations "establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil . . . from onshore . . . facilities, and to contain such discharges"

2. Initially by Executive Order 11548 (July 20, 1970), 35 Fed. Reg. 11677 (July 22, 1970), and most recently by Section 2(b)(1) of Executive Order 12777 (October 18, 1991), 56 Fed. Reg. 54757 (October 22, 1991), the President delegated to EPA his Section 311(j)(1)(C) authority to issue the regulations referenced in the preceding Paragraph for non-transportation-related onshore facilities.

3. EPA subsequently promulgated the SPCC regulations pursuant to these delegated statutory authorities, and pursuant to its authorities under the Clean Water Act, 33 U.S.C. §1251 *et seq.*, which established certain procedures, methods and requirements incumbent upon each owner and operator of a non-transportation-related onshore facility if such facility, due to its location, could reasonably be expected to discharge oil into or upon the navigable waters of the United States and their adjoining shorelines in such quantity as EPA has determined in 40 C.F.R. §110.3 may be harmful to the public health or welfare or the environment of the United States (“harmful quantity”).

4. In promulgating 40 CFR §110.3, which implements Section 311(b)(4) of the Act, 33 U.S.C. §1321(b)(4), EPA has determined that discharges of harmful quantities include oil discharges that cause either (1) a violation of applicable water quality standards or (2) a film, sheen upon, or discoloration of the surface of the water or adjoining shorelines, or (3) a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

5. Respondent is a not-for-profit privately-owned corporation organized under the laws of the State of New York with a place of business located at 111 East 210 Street and 3400 Bainbridge Avenue, Bronx, New York 10467 (hereinafter referred to collectively as the “Facility”). Respondent is a person within the meaning of Sections 311(a)(7) and 502(5) of the Act, 33 U.S.C. §§ 1321(a)(7) and 1362(5), and 40 CFR § 112.2.

6. Respondent is the owner and operator within the meaning of Section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6), and 40 CFR § 112.2 of an onshore bulk oil storage facility, located at 111 East 210 Street and 3400 Bainbridge Avenue, Bronx, New York 10467, the Respondent’s facility”), which is located near the Bronx River.

7. The facility has an aggregate above-ground storage capacity of greater than 1320 gallons of oil in containers each with a shell capacity of at least 55 gallons.

8. The Bronx River is a navigable water of the United States within the meaning of 40 C.F.R. § 112.2 [and Section 502(7) of the Act, 33 U.S.C. § 1362.(7)].

9. Respondent is engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using or consuming oil or oil products located at the facility.

10. The facility is a “non-transportation-related facility” within the meaning of 40 CFR §112.2 Appendix A, as incorporated by reference within 40 CFR § 112.2.

11. The facility is an “onshore facility” within the meaning of Section 311(a)(10) of the Act, 33 U.S.C. § 1321(a)(10), and 40 CFR § 112.2.

12. The facility is therefore a non-transportation-related onshore facility which, due to its location, could reasonably be expected to discharge oil to a navigable water of the United States (as defined by Section 502(7) of the Act, 33 U.S.C. § 1362(7) and 40 CFR §§ 110.1 and 112.2) or its adjoining shorelines in a harmful quantity (“an SPCC-regulated facility”).

13. Pursuant to Section 311(j)(1)(C) of the Act, E.O. 12777, and 40 C.F.R. §112.1, Respondent, as the owner and operator of an SPCC-regulated facility, is subject to the SPCC regulations.

14. On December 15, 2011, the Director of the Emergency and Remedial Response Division (“ERRD”) of EPA Region 2 (“Complainant”) issued an Administrative Complaint pursuant to Section 311(b)(6)(B)(ii) of the Clean Water Act (“Act”), 33 U.S.C. §1321(b)(6)(B)(ii), Docket No. CWA-02-2012-3801, alleging that the Respondent was in

violation of the SPCC regulations and proposing a civil penalty of \$131,099. Complainant particularly alleged that:

- A) The Respondent's failure to prepare an adequate SPCC Plan for its facility according to 40 CFR §112.7 as required by 40 CFR §112.3(a), violated regulations issued under Section 311(j) of the Act. Pursuant to Section 311(b)(6)(B)(ii) of the Act and 40 C.F.R. §19.4, the Respondent is liable for civil penalties of up to \$16,000 per day for each day during which the violation continues, up to a maximum of \$177,500.
- B) The Respondent's failure to implement its SPCC plan for its facility as required by 40 C.F.R. §112.3(a), violated regulations issued under Section 311(j) of the Act. Pursuant to Section 311(b)(6)(B)(ii) of the Act and 40 C.F.R. §19.4, the Respondent is liable for civil penalties of up to \$16,000 per day for each day during which the violation continues, up to a maximum of \$177,500.
- C) The Respondent's failure to amend its SPCC plan for its change in facility design as required by [check regulations for citation] 112.5 (a), violated regulations issued under Section 311(j) of the Act. Pursuant to Section 311(b)(6)(B)(ii) of the Act and 40 C.F.R. §19.4, the Respondent is liable for civil penalties of up to \$16,000 per day for each day during which the violation continues, up to a maximum of \$177,500.

Waiver of Rights

15. The Respondent waives the right to appeal any Final Order in this matter pursuant to Section 311(b)(6)(G)(ii) of the Act, 33 U.S.C. §1321(b)(6)(G)(ii), and consents to the issuance of a Final Order without further adjudication.

Jurisdiction

16. For the purpose of this proceeding, Respondent a) admits the jurisdictional allegations of the Complaint as applied to the facility; and b) neither admits nor denies the specific factual allegations contained in the Complaint and Findings of Fact contained herein.

Penalty

17. On May 9, 2012 and August 30, 2012, the parties engaged in settlement negotiations and reached a settlement in principle, whereby the parties agreed to enter into this Consent Agreement and Final Order. Under the Consent Agreement, Respondent consents to the assessment of a penalty of \$20,000 (twenty thousand dollars), and the completion of a supplemental environmental project ("SEP") valued at no less than \$252,115.

Payment Terms

18. Respondent shall pay, by cashiers or certified check, a civil penalty in the amount of twenty thousand dollars (\$ 20,000), payable to the "Treasurer of the United States of America" in accordance with the following payment information and schedule:

The check shall be identified with a notation of the name and docket number of this case, set forth in the caption on the first page of this document. The check shall be mailed to:

U.S. Environmental Protection Agency
PO Box 979077
St. Louis, MO 63197-9000

The Respondent shall send copies of the check to the following recipients:

Melva J. Hayden, Esq.
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency
Region 2
290 Broadway - 16th Floor
New York, New York 10007-1866

And

Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 2
290 Broadway - 16th Floor
New York, New York 10007-1866

Payment must be received at the above address on or before 45 calendar days after the date of signature of the Final Order at the end of this document (the date by which payment must be received shall hereafter be referred to as the “due date”).

19. Failure by the Respondent to pay the penalty assessed by the Final Order in full by its due date may subject Respondent to a civil action to collect the total amount of the assessed penalty, plus interest, attorney's fees, costs and an additional quarterly nonpayment penalty pursuant to Section 311(b)(6)(H) of the Act, 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.

Supplemental Environmental Project (SEP)

20. In addition to payment of a cash civil penalty, Respondent voluntarily performed the following work detailed below as an environmentally beneficial SEP (See Attachment A). The work Respondent voluntarily performed went beyond actions required for its return to compliance, and Respondent was not required to perform this work in response to the violations by state or federal law and/or regulations.

a. SEP Description.

At Montefiore's North Division Campus (located in the Wakefield Section of the Bronx, NY), two underground storage tanks (“USTs”), one a 350-gallon capacity tank and the

other a 2,000-gallon capacity tank, are no longer utilized and were replaced with an above ground storage tank ("AST") with the appropriate safeguards to mitigate and prevent any possible leaks to the environment that could be detrimental to the environment and public health.

b. SEP Implementation.

In November 2011, the 350-gallon UST was purged and abandoned, as per a contract with Eastmond and Sons Boiler Repair. The remaining diesel oil was transferred to the existing 2000-gallon UST. The 350-gallon UST was cleaned and washed along with all accessories including the vent and fill lines. The tank was disconnected from all associated piping and back filled with concrete slurry.

In March 2012, the newly installed 6000-gallon AST was put in service and the 2000-gallon UST was abandoned. The remaining diesel oil from the 2000-gallon tank was transferred to the 6000-gallon tank. The 2000-gallon tank was then abandoned following the same procedure as the 350-gallon UST tank. The newly installed 6000-gallon AST is equipped with a containment dike sized for 150% capacity. The dike is sealed with rain hoods and is equipped with a leak detection system to monitor the interstitial space. The tank is equipped with an automatic tank gauging system connected to remote indoor monitoring station. The fill port is located within a locked spill containment basin. All associated piping is above ground from the tank to the emergency generator.

In April 2012, a Spill Prevention Control and Countermeasure ("SPCC") plan was completed and the Hospital conducted monitoring and reporting to the Environment of Care ("EOC") Committee on a monthly basis. This plan was put into place in April 2012, and the

staff was trained during an in-service presentation on the SPCC plan. The New York State Department of Environmental Conservation—Petroleum Bulk Storage (“PBS”) certificate for the facility was also updated to reflect these changes.

c. **SEP Cost:** The total expenditure for the SEP, at cost to the Respondent shall be not less than \$252,115. Respondent shall include documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report. The SEP costs shall not be deductible from the Respondent’s federal or state taxes.

d. **Certification:** Respondent hereby certifies that, as of the date of this Consent Agreement and Final Order, Respondent is not required to perform or develop the SEP by any federal, state or local law or regulation; nor is Respondent or Third Party (if applicable) required to perform or develop the SEP by any other agreement, grant or as injunctive relief in this or any other case. Respondent further certifies that it has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP.

e. **SEP Completion Report:** Respondent shall submit a SEP Completion Report to EPA by no later than ninety (90) days from the effective date of the CA/FO. The SEP Completion Report shall contain the following information:

- i) **itemized costs.** In itemizing its costs in the SEP Completion Report, Respondent shall clearly identify and provide acceptable documentation for all eligible SEP costs. Where the SEP Completion Report includes costs not eligible for SEP credit, those costs must be clearly identified as such. For purposes of this paragraph, “acceptable documentation” includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made. Canceled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made, and;

- ii) certification that the SEP has been fully implemented pursuant to the provisions of this Consent Agreement and Final Order, and;
- iii) description of the environmental, ecological and public health benefits resulting from implementation of the SEP (with a quantification of the benefits and pollutant reductions, if feasible).

21. In all documents or reports, including, without limitation, any SEP reports, submitted to EPA pursuant to this Consent Agreement, Respondent shall, by its officers, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and complete by signing the following statement:

"I hereby certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment."

22. Public Statements: Any public statement, oral or written, in print, film, or other media, made by Respondent making reference to the SEP shall include the following language:

"This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for violations of the Clean Water Act."

23. EPA Acceptance of SEP Completion Report:

- a. After receipt of the SEP Completion Report described in subparagraph e. above, EPA will notify Respondent, in writing, regarding: (i) any deficiencies in the SEP Completion Report itself along with a grant of an additional thirty (30) days for Respondent to correct any deficiencies; or, (ii) indicate that EPA concludes that the project has been completed satisfactorily; or, (iii) determine that the project has not been completed satisfactorily and seek stipulated penalties in accordance with Paragraph 24 below.

24. Stipulated Penalties:

- a. In the event that Respondent fails to comply with any of the terms or provisions of

this Agreement relating to the performance of the SEP described in Paragraph 20 above and/or to the extent that the actual expenditures for the SEP do not equal or exceed the cost of the SEP described in Paragraph 20 above, Respondent shall be liable for stipulated penalties according to the provisions set forth below.

- b. If the SEP is satisfactorily completed in accordance with Paragraph 20 above but Respondent expends less than the agreed to \$252,115 for the SEP project. Respondent shall pay a stipulated penalty equal to the difference between the amount of eligible SEP costs incurred by the Respondent and \$252,115.
- c. For failure to submit the SEP Completion Report required by Paragraph 20 above, Respondent shall pay a stipulated penalty in the amount of \$100 for each day after the report was due until the report is submitted.

General Provisions

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

26. The Final Order does not constitute a waiver, suspension or modification of the requirements of Section 311 of the Act, 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 total penalty pursuant to this Consent Agreement and Final Order resolves only Respondent's liability for federal civil penalties for the violations and facts alleged in the Administrative Complaint.

Montefiore Medical Center

Date: 9/27/12

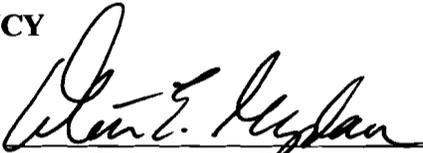
Print Name: Philip Ozuah

Print Title: EVP & COO

BY: 

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 9/27/2012

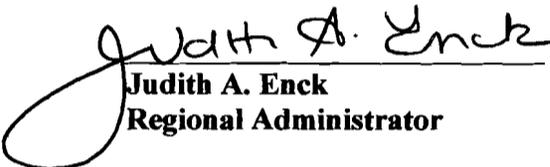
BY: 
**Walter E. Mugdan, Director
Emergency and
Remedial Response Division**

FINAL ORDER

Pursuant to Section 311(b)(6) of the Act, 33 U.S.C. §1321(b)(6) and the delegated authority of the undersigned, and in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits, codified at 40 CFR Part 22, the forgoing Consent Agreement is hereby approved and incorporated by reference into this Final Order, and the Stipulations by the parties are adopted as Findings in this Final Order.

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

Date: 9/28/12


Judith A. Enck
Regional Administrator

**ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

**CONSENT AGREEMENT
AND
FINAL ORDER**

IN THE MATTER OF
Montefiore Medical Center
111 East 210 Street and 3400 Bainbridge Avenue
Bronx, New York 10467
Respondent

DOCKET NO.
CWA-02-2012-3801

Proceeding Pursuant to §311(b)(6) of the Clean
Water Act, 33 U.S.C. '1321(b)(6) for SPCC
Violations

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing fully executed CONSENT AGREEMENT and FINAL ORDER, bearing the above-referenced docket-number, in the following manner to the respective addresses below:

Original and One Copy By Hand:

Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 2
290 Broadway, 16th Floor
New York, N.Y. 10007-1866

Copy by Certified Mail, Return Receipt Requested:

Montefiore Medical Center
Attn: Mr. Edward F. Pflieger, P.E.
Vice-President - Facilities
111 East 210 Street
Bronx, New York, 10467

Date: 10/3/12

Signature: 

Montefiore SPCC USEPA Supplemental Environmental Project (SEP) Proposal:

At Montefiore North Division Campus (Wakefield), the two underground storage tanks (USTs) are no longer utilized and were replaced with an above ground storage tank (AST) with the appropriate safeguards to mitigate and prevent any possible leaks to the environment that could be detrimental to the public and environment.

Goals and Objectives of this action:

This SEP is an environmental beneficial project, since it falls into the category of Pollution Prevention, which delineates the goal and objectives to reduce the generation of pollution through "Source Reduction".

Benefits of this action:

- Benefit the public and environment
- Reduced Emissions to more than one media
- Implemented Pollution Prevention techniques and practices

Methodology of Implementation:

The 350-gallon UST at Wakefield was voluntarily purged and abandoned in November 2011, as per a contract with Eastmond and Sons Boiler Repair. The remaining diesel oil was transferred to the existing 2000-gallon UST. The 350-gallon UST was cleaned and washed along with all accessories including the vent and fill lines. The tank was disconnected from all associated piping and back filled with concrete slurry.

The newly installed 6000-gallon AST was put in service and the 2000-gallon UST was abandoned in March 2012. The remaining diesel oil from the 2000-gallon tank was transferred to the 6000 Gallon tank. The 2000-gallon tank was then abandoned following the same procedure as the 350-gallon UST tank.

The newly installed 6000-gallon AST is equipped with a containment dike sized for 150% capacity. The dike is sealed with rain hoods and is equipped with a leak detection system to monitor the interstitial space. The tank is equipped with an automatic tank gauging system connected to remote indoor monitoring station. The fill port is located within a locked spill containment basin. All associated piping is above ground from the tank to the emergency generator.

A Spill Prevention Control and Countermeasure (SPCC) plan was completed and the Hospital conducted monitoring and reporting to the Environment of Care (EOC) committee on a monthly basis. This plan was put into place in April 2012, and the staff was trained during an in-service presentation on the SPCC plan. The New York

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State Department of Environmental Conservation—Petroleum Bulk Storage (PBS) certificate for the facility was also updated to reflect these changes.

Nexus of the SEP to the SPCC Violations:

This SEP advances the objectives of the statutes that are the basis of the SPCC violations charged to the Hospital by the USEPA pursuant to the Clean Water Act regulations. This SEP Proposal meets the following legal requirements:

- To improve, protect, or reduce risks to public health, or the environment at large since replacement of the USTs with upgraded ASTs prevents pollution from potential leaks and spills. Furthermore, since the Wakefield facility is in proximity to the Bronx River, this action has the benefit of protecting important nearby surface waters.
- There is a relationship between the SEP and the CWA violations
- The actions proposed are voluntary
- The actions were implemented after and in response to the EPA violation

Timeframe and Cost:

The total cost for this work was \$252,115.00 which was completed in March 2012.

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In the Matter of Montefiore Medical Center, Consent Agreement Final Order, Docket No. CWA – 02-2012-3801