

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

In The Matter of: :
: :
Gulf Oil Limited Partnership : **CONSENT AGREEMENT**
100 Crossing Blvd. : :
Framingham, Massachusetts 01702, : :
: :
Respondent. : :
: **PROCEEDING UNDER SECTION 311**
: **OF THE CLEAN WATER ACT, AS**
Gulf Oil, Limited Partnership : **AMENDED, TO ASSESS A CLASS**
2451 Main Street : **CIVIL PENALTY**
Whitehall, Pennsylvania 18052, : :
: :
Facility. : **Docket No. CWA-03-2013-0151**

CONSENT AGREEMENT

1. This Consent Agreement is proposed and entered into under the authority of 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 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, findings of fact, 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.

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EPA REGION III, PHILA, PA
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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 the 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 extended several times and ultimately became effective on 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 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, must maintain and implement the facility’s Spill Prevention, Control and Countermeasure (“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 any owner or operator of a 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)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(ii), to assess a Class II penalty in the amount of up to \$10,000 per day of violation, not to exceed a maximum penalty of \$125,000. 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 a Class II penalty of \$16,000 per day of violation, not to exceed a maximum penalty of \$177,500.

Findings of Fact and Conclusions of Law

15. Respondent is a limited partnership with a place of business located at 100 Crossing Blvd, Framingham, Massachusetts 01702.
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 gasoline, distillate fuels, and denatured ethanol at its facility located at 2451 Main Street, Whitehall, Pennsylvania 18052 (“Facility”).
18. Respondent is the owner and 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 the year 1993.
20. The Facility has a total aboveground oil storage capacity of approximately 12,855,560 gallons.
21. The Facility is located approximately 0.4 miles west of the Lehigh River. A storm water drainage line installed by the fence line of the Facility drains into the Lehigh River.
22. The Lehigh 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 12,855,210-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 September 16, 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)(2), and 112.8(d)(1) of the Oil Pollution Prevention Regulations, as set forth in more detail in paragraphs 30 through 33, below, each of which constitutes a separate violation.
30. Section 112.8(c)(2) of the Oil Pollution Prevention Regulations, 40 C.F.R. § 112.8(c)(2), provides:

The owner or operator of the Facility must construct all bulk storage tank 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.
31. Respondent allegedly failed to adequately implement Section 112.8(c)(2) as follows:

During the Inspection, EPA allegedly observed that the secondary containment at the Facility for tank No. 109 lacked sufficient capacity to contain the entire

capacity of the tank plus sufficient freeboard to contain precipitation, in violation of Section 112.8(c)(2) of the Oil Pollution Prevention Regulations.

Respondent's June 2012 Facility Response Plan identified that tanks No. 110 and 113 allegedly lacked sufficient capacity to contain the entire capacity of the tank plus sufficient freeboard to contain precipitation, in violation of Section 112.8(c)(2) of the Oil Pollution Prevention Regulations

32. Section 112.8(d)(1) of the Oil Pollution Prevention Regulations, 40 C.F.R. § 112.8(d)(1), provides:

The owner or operator of the Facility must inspect exposed buried piping and take corrective action if there is corrosion damage.

33. Respondent allegedly failed to adequately implement Section 112.8(d)(1) as follows:

During the Inspection, EPA allegedly observed severely corroded exposed underground oil pipelines in the product transfer pumping area at the Facility, in violation of Section 112.8(d)(1) of the Oil Pollution Prevention Regulations.

34. The alleged violation of 112.8(d)(1) referenced in paragraph 33 above, likely began soon after the underground oil pipeline was unearthed in 1994 but no later than December 31, 2007.

35. 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

36. 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 **\$45,880.51**. The civil penalty amount is due and payable within thirty (30) days of Respondent's receipt of a true and correct copy of this CAFO.
37. 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.
38. 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-03-2013-0151) 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-03-2013-0151” should be included in the “Court Order # or Bill #” field, and “3” should be included as the Region number.

39. 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.
40. Interest on the civil penalty will 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).
41. 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.
42. 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).
43. 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.
44. 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 | Jefferie E. Garcia (3RC42)
Senior Assistant Regional Counsel
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029 |
|--|--|
45. 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

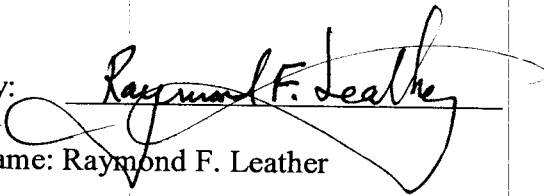
Section 311(b)(6)(H) of the CWA, 33 U.S.C. § 1321(b)(6)(H). In any such collection action, the validity, amount and appropriateness of the penalty agreed to herein shall not be subject to review.

General Provisions

46. 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.
47. The provisions of this Consent Agreement and the Final Order, if issued, shall be binding upon Respondent and Respondent's successors or assigns.
48. 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.
49. 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 alleged liability for federal civil penalties for the violations and facts alleged in this Consent Agreement.
50. 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, Gulf Oil Limited Partnership

Date: 6.5.13

By: 
Name: Raymond F. Leather

Title: Vice President, Environmental Affairs

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

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: 7/10/13

By: Linda Duetz for

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

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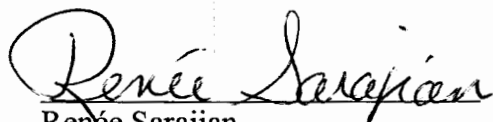
FINAL ORDER

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 pay the \$45,880.51 penalty and otherwise comply with the terms of the foregoing Consent Agreement.

Date: 7/16/13



Renee Sarajian
Regional Judicial Officer/Presiding Officer

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

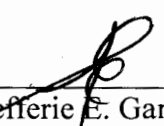
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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the date provided below, I hand-delivered and filed the original of the signed Consent Agreement and Final Order with the Regional Hearing Clerk, U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029, and that true and correct copies of the Consent Agreement and Final Order were sent by first class mail to:

Lyn Lustig, Esquire
Cumberland Gulf Group of Companies
100 Crossing Boulevard, Framingham, MA 01702

7/17/13
DATE


Jefferie E. Garcia (3RC42)
Assistant Regional Counsel
Counsel for Complainant
(215) 814-2697