UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

In The Matter of:	:	ADMINISTRATIVE COMPLAINT AND OPPORTUNITY TO REQUEST HEARING AND CONFERENCE
Peninsula Oil Company, Inc. Wilco Bulk Plant 901 Nanticoke Avenue Seaford, DE 19973	:	Proceeding to Assess Class II Civil Penalties Under Section 311(b)(6)(B) of the Clean Water Act, as amended, 33 U.S.C. § 1321(b)(6)(B).
Blades Bulk Plant 40 South Market Street Seaford, DE 19973	:	Docket No. CWA-03-2009-0288
Respondent.	:	

I. STATUTORY AUTHORITY

1. This Administrative Complaint and Opportunity to Request Hearing and Conference ("Complaint") is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 311(b)(6)(B) of the Clean Water Act, as amended, ("CWA"), 33 U.S.C. § 1321(b)(6)(B). 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 Administrator of EPA has determined that Class II penalty proceedings for violations of Section 311(b)(3), 33 U.S.C. § 1321(b)(3), and regulations issued under Section 311(j), 33 U.S.C. § 1321(j), and other provisions of the CWA, shall be conducted 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" ("Consolidated Rules"), 40 C.F.R. Part 22.

3. Therefore, pursuant to Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6), and in accordance with the Consolidated Rules, Complainant hereby requests that the Regional Administrator assess civil penalties against Respondent Peninsula Oil Company, Inc., ("Respondent"), for its failure to: (1) implement a facility response drills and exercises program in violation of 40 C.F.R. § 112.21 (2008) at the Wilco Bulk Plant; (2) provide sufficiently impervious secondary containment in violation of 40 C.F.R.§§ 112.7(e)(2)(ii) at the Wilco Bulk Plant; (3) implement adequate facility transfer operations, pumping, and in-plant processes in violation of 40 C.F.R. §§ 112.7(e)(3)(iii) and 112.7(e)(3)(iv) at the Wilco Bulk Plant; (4) implement adequate facility transfer operations, pumping, and in-plant processes in violation of 40 C.F.R. §§ 112.7(e)(3)(iii) and 112.7(e)(3)(iv) at the Blades Bulk Plant; (5) create and retain records of required facility inspections in violation of 40 C.F.R. § 112.7(e)(8) at the Wilco Bulk Plant; and (6) create and retain records of required facility inspections in violation of 40 C.F.R. § 112.7(e)(8) at the Blades Bulk Plant.

4. Congress enacted the CWA, 33 U.S.C. §§ 1251-1387, 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.

5. The authority in Section 311(j)(1)(C) of the CWA was delegated to the Administrator of the EPA and, in 1973, the EPA Administrator promulgated spill prevention regulations. 40 C.F.R. §§ 112.1-112.7.

6. In 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 facilities.

A. Facility Response Plans ("FRP") Regulations

7. Congress amended Section 311 of the CWA by enacting the Oil Pollution Act of 1990 ("OPA"), which required, in part, that the President promulgate regulations which would mitigate potential harm caused by vessels, and onshore and offshore oil facilities that, because of their location, could reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters of the United States or adjoining shorelines ("substantial harm facilities"). 33 U.S.C. §§ 1321(j)(5)(A). Specifically, Congress directed the President to promulgate regulations requiring the owners or operators of substantial harm facilities to submit to the President plans for responding to worst case oil discharges and substantial threats of such discharges.

B. Drills and Exercises Requirements Under the FRP Program

8. Pursuant to Section 311(j)(5)(A) of the CWA, the EPA Administrator amended 40 C.F.R. Part 112 in 1994 by promulgating oil spill response regulations requiring non-transportation substantial harm facilities to, inter alia, develop and implement a facility response plan ("FRP"), an oil spill response training program, and a program of oil spill response drills and exercises. These regulations are codified at 40 C.F.R. §§ 112.20 and 112.21 (2008), and became effective on August 30, 1994.

9. Pursuant to 40 C.F.R. § 112.20(h)(4) (2008), owners or operators of onshore storage and distribution facilities must determine whether, because of the facility's storage capacity and location, that facility could reasonably be expected to cause substantial harm to the environment by discharging oil into or on navigable waters or adjoining shorelines pursuant to criteria established by EPA in 40 C.F.R. § 112.20(f)(1) (2008).

10. A facility is classified as a substantial harm facility if: (1) the facility transfers oil over water to or from vessels and has a total oil storage capacity greater than or equal to 42,000 gallons; or (2) the facility's total oil storage capacity is greater than or equal to 1,000,000 gallons and one of the following is true: (a) the facility does not have sufficient secondary containment to contain the capacity of the largest above-ground oil storage tank plus freeboard for precipitation within each storage area; (b) the facility is located at a distance (as calculated from the appropriate formula in 40 C.F.R. Part 112, Appendix C) such that a discharge from the facility could cause injury to fish and wildlife and sensitive environments; (c) the facility is located at a distance (as calculated from the appropriate formula in 40 C.F.R. Part 112, Appendix C) such that a discharge from the facility would shut down a public drinking water intake; or (d) the facility has had a reportable oil spill of at least 10,000 gallons within the last five years. 40 C.F.R. § 112.20(f)(1)(ii) (2008).

11. If a facility is determined to be a substantial harm facility under these criteria, the spill response regulations require the owner or operator of the facility to prepare and submit to the EPA an FRP which details the facility's emergency plans for responding to an oil spill.

12. To meet the requirements of 40 C.F.R. § 112.20 (2008), a facility must identify areas within the facility where discharges could occur and identify the potential effects of the

discharges pursuant to 40 C.F.R. § 112.20(h)(4) (2008). The FRP must address response planning, including the small discharge scenario (2,100 gallons) per 40 C.F.R. § 112.20(h)(5)(iii) (2008) and must identify response resources that meet the requirements of 40 C.F.R. Part 112, Appendix E. 40 C.F.R. § 112.20(h)(3)(I) (2008).

13. Pursuant to 40 C.F.R. Part 112, Appendix E, § 3.0, an FRP must, inter alia, identify sufficient response resources to respond to a discharge of less than or equal to 2,100 gallons.

14. The spill response regulations require the owner or operator of a substantial harm facility to develop and implement a program of facility response drills and exercises for oil spill response. 40 C.F.R. § 112.21(a) and (c) (2008). A program of oil spill drills/exercise must follow either the National Preparedness for Response Exercise Program Guidelines ("PREP Guidelines") or an alternative program approved by the Administrator of the applicable EPA Region. 40 C.F.R. § 112.21(c) (2008).

C. Oil Pollution Prevention Regulations

15. EPA promulgated Oil Pollution Prevention Regulations, 40 C.F.R. Part 112, 38 Fed. Reg. 34165 (Dec. 11, 1973), effective January 10, 1974. These regulations were last codified at 40 C.F.R. Part 112 (2002) (hereinafter, the "1974 Regulations").

16. The Oil Pollution Prevention Regulations were revised in part in 2002, 67 Fed. Reg. 47042 (July 17, 2002) ("2002 Regulations"), which became effective August 16, 2002, and again in 2006, 71 Fed. Reg. 77266 (Dec. 26, 2006) ("2006 Regulations"), which became effective February 26, 2007.

17. As set forth at 74 Fed. Reg. 29136, the date(s) by which facilities that become

operational after August 16, 2002 must comply with the 2002 Regulations and the 2006 Regulations as presently codified currently is November 10, 2010.

18. Pursuant to 40 C.F.R. § 112.3(a)(1) (2006), facilities in operation prior to August, 16, 2002 are required to maintain their Spill Prevention, Control and Countermeasure ("SPCC") plans as required by the 1974 Regulations. Accordingly, for purposes of this Complaint, unless otherwise noted, regulatory requirements cited herein refer to the 1974 Regulations.

19. 40 C.F.R. Part 112 sets forth procedures, methods and requirements to prevent the discharge of oil from Part 112 Facilities into or upon the navigable waters of the United States and adjoining shorelines in such quantities that, as determined by regulation, may be harmful to the public health or welfare or to the environment.

20. The Oil Pollution Prevention Regulations, 40 C.F.R. Part 112, which implement Section 311(j) of the CWA, 33 U.S.C. § 1321(j), apply to owners or operators of non-transportation-related onshore and offshore facilities engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing or consuming oil or oil products ("Part 112 Facilities").

21. 40 C.F.R. § 112.3(a) requires owners and operators of onshore and offshore facilities becoming operational on or before the effective date of the regulations (January 10, 1974), that could reasonably be expected to discharge oil in harmful quantities into or upon the navigable waters of the United States or adjoining shorelines, to prepare SPCC Plans not later than July 10, 1974, and to implement those plans as soon as possible but not later than January 10, 1975. In addition, 40 C.F.R. § 112.3(b) requires owners and operators of onshore and offshore facilities becoming operational after the effective date of the regulations (January 10, 1974), that could

reasonably be expected to discharge oil in harmful quantities into or upon the navigable waters of the United States or adjoining shorelines, to prepare SPCC Plans not later than six months after the facilities become operational.

D. Impervious Secondary Containment

22. Pursuant to 40 C.F.R. § 112.7(e)(2)(ii), bulk storage tank installations are required to be constructed so that a secondary means of containment is provided for the entire contents of the largest single tank plus sufficient freeboard to allow for precipitation.

23. Section 112.7(e)(2)(ii) requires that diked areas be sufficiently impervious to contain spilled oil. Id.

E. Transfer Operations, Pumping, and In-Plant Processes Requirements

24. Pursuant to 40 C.F.R. § 112.7(e)(3)(iii), pipe supports are required to be properly designed to minimize abrasion and corrosion and allow for expansion and contraction.

25. Pursuant to 40 C.F.R. § 112.7(e)(3)(iv), all above-ground pipelines must be subjected to regular examinations by operating personnel at which time the general condition of items, such as flange joints, expansion joints, valve glands and bodies, catch pans, pipeline supports, locking of valves, and metal surfaces should be assessed.

26. Pursuant to 40 C.F.R. § 112.7(e)(8), inspections must be in accordance with written procedures and a record of the inspections, signed by the appropriate supervisor or inspector, should be made part of the SPCC Plan and maintained for a period of at least three (3) years. 40 C.F.R. § 112.7(e)(8).

F. Inspections, Tests and Records

27. Section 112.7(e)(2)(vi) requires that above-ground tanks be subject to periodic testing, that comparison records should be kept where appropriate, and that tank supports and foundations should be included in these inspections. 40 C.F.R. 40 C.F.R. § 112.7(e)(2)(vi).

28. Under the Oil Pollution Prevention Regulations, inspections required by 40 C.F.R. Part 112 are required to be in accordance with written procedures developed for the facility by the owner or operator pursuant to 40 C.F.R.§ 112.7(e)(8) (hereafter "Part 112 records").

29. Pursuant to 40 C.F.R. § 112.7(e)(8), written inspection procedures and records of inspections must be signed by the appropriate supervisor or inspector.

30. Written procedures and a record of the inspections, signed by the appropriate supervisor or inspector, should be made part of the SPCC Plan and maintained for a period of at least three (3) years. 40 C.F.R. § 112.7(e)(8).

G. Definitions

31. "Oil" is defined at Section 311(a)(1), 33 U.S.C. § 1321(a)(1), and 40 C.F.R. § 112.2 for purposes of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), to include any kind of oil in any form, including petroleum, fuel oil, sludge, oil refuse and oil mixed with wastes other than dredge spoil.

32. 40 C.F.R. § 110.3(b) defines "harmful quantity," for purposes of Section 311(b)(4) of the CWA, 33 U.S.C. § 1321(b)(4), to include discharges that cause a film or 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 adjoining shorelines.

33. 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.

34. The definition of "worst case discharge," found at 33 U.S.C. § 1321(a)(24) and 40 C.F.R. § 112.2, means, in the case of an onshore facility, the largest foreseeable discharge that could occur in adverse weather conditions.

35. The definition of "navigable waters," found at 40 C.F.R. § 110.1 and 40 C.F.R. § 112.2, includes "the waters of the United States, including the territorial seas. . . ."

36. 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, to include, among other things, tributaries to waters that could be used for industrial purposes or interstate commerce.

37. The definition of "onshore facility," found at 33 U.S.C. § 1321(a)(10) and 40 C.F.R. § 112.2, means any facility in, on or under any land within the United States, other than submerged land, which is not a transportation-related facility.

38. The definition of "non-transportation-related facility," found in 40 C.F.R. Part 112, Appendix A, and incorporated by reference at 40 C.F.R. § 112.2, includes oil drilling, producing, refining and storage facilities.

39. The definition of "owner or operator," found at 33 U.S.C. § 1321(a)(6) and 40 C.F.R. § 112.2, means, in the case of an onshore facility, any person owning or operating such an onshore facility.

II. GENERAL ALLEGATIONS

40. Respondent is a corporation organized under the laws of the State of Delaware.

41. Respondent operates a place of business operating under Standard Industrial Classification (SIC) code 5171 (Petroleum Bulk Storage and Terminals) located at 901 Nanticoke Avenue, Seaford, Delaware, which is known as the "Wilco Bulk Plant" (hereafter, referred to as the "Wilco Bulk Plant").

42. Respondent operates a place of business operating under Standard Industrial Classification (SIC) code 5171 (Petroleum Bulk Storage and Terminals) located at 40 S. Market Street, Seaford, Delaware, which is known as the "Blades Bulk Plant" (hereafter, referred to as "Blades Bulk Plant").

43. Respondent 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.

44. Respondent 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 of the Wilco Bulk Plant, which is an onshore facility as defined in Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10), and 40 C.F.R. § 112.2, consisting of aboveground storage tanks ("ASTs") with a capacity of 1,629,750 gallons.

45. Respondent 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, of the Blades Bulk Plant, which is an onshore facilities as defined in Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10), and 40 C.F.R. § 112.2, consisting of ASTs with an approximate total capacity of 975,734 gallons.

46. Pursuant to 40 C.F.R. § 112.2, Respondent is engaged in producing, gathering,

storing, processing, refining, transferring, distributing or consuming oil or oil products at the Wilco Bulk Plant and Blades Bulk Plant.

47. Upon information and belief, Respondent has operated the Wilco Bulk Plant since in or around 1957.

48. Upon information and belief, Respondent began operating the Blades Bulk Plant in or around the 1950s.

49. The Wilco Bulk Plant and Blades Bulk Plant are each a "non-transportation related facility" under the definition incorporated by reference at 40 C.F.R. § 112.2, set forth in Appendix A thereto and published at 36 Fed. Reg. 24,080 (Dec. 18, 1971).

50. The Wilco Bulk Plant and Blades Bulk Plant are each 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.

51. In at least 1997, the Respondent received oil shipments at the Wilco Bulk Plant by barge.

52. Until approximately 2000, Respondent received oil shipments at the Blades Bulk Plant by barge.

53. The Nanticoke River is a "navigable water," as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and 40 C.F.R. §§ 110.1 and 112.2.

54. The Nanticoke River and surrounding area is a sensitive environment.

55. The Wilco Bulk Plant borders the Nanticoke River on its southern side and flow from the Facility is in a southernly direction.

56. The Wilco Bulk Plant is located at a distance such that a discharge from the facility could cause injury to fish and wildlife and sensitive environments.

57. Due to its location, the Wilco Bulk Plant could reasonably be expected to discharge oil in harmful quantities, as defined by 40 C.F.R. § 110.3, into or upon a navigable water of the United States or its adjoining shoreline.

58. Due to its oil storage capacity and location, the Wilco Bulk Plant could reasonably be expected to cause substantial harm to the environment, within the meaning of Section 311(j)(5)(B)(iii) of the CWA, 33 U.S.C. § 1321(j)(5)(B)(iii), as determined by evaluating the criteria in 40 C.F.R. § 112.20(f)(1) (2008), by discharging oil into or on navigable waters or adjoining shorelines.

59. The Blades Bulk Plant borders the Nanticoke River.

60. Due to its location, Blades Bulk Plant could reasonably be expected to discharge oil in harmful quantities, as defined by 40 C.F.R. § 110.3, into or upon a navigable water of the United States or its adjoining shoreline.

III. COUNT I - INADEQUATE DRILLS AND EXERCISES - WILCO BULK PLANT

61. The allegations in Paragraphs 1 through 62 are incorporated by reference as if fully set forth herein.

62. Pursuant to Section 311(j)(5) of the CWA, 33 U.S.C. § 1321(j)(5), and 40 C.F.R. § 112.1 and 40 C.F.R. § 112.20 (2008), the Wilco Bulk Plant is subject to the FRP submission requirements of 40 C.F.R. § 112.20 (2008).

63. Respondent's original FRP was submitted to EPA in December 1994 and was approved by EPA in or around 1995 (hereinafter the "Wilco FRP").

64. The Wilco FRP addressed response planning, including the small discharge scenario

(2,100 gallons) as set forth at 40 C.F.R. § 112.20(h)(5)(iii) (2008) and identifed response resources that intended to meet the requirements of 40 C.F.R. Part 112, Appendix E. 40 C.F.R. § 112.20(h)(3)(I) (2008).

65. EPA inspected the Wilco Bulk Plant on April 26, 2007 (hereafter "the Wilco Inspection").

66. During the Inspection, Respondent was unable to demonstrate that it had adequately developed and implemented the required response drills and exercises program.

67. Respondent failed to develop and implement a program of facility response drills and exercises for oil spill response as required by 40 C.F.R. §§ 112.21(a) and 112.21(c) (2008) that followed either the National Preparedness for Response Exercise Guidelines ("PREP Guidelines") or an alternative program approved by the Administrator of the applicable EPA Region in violation of 40 C.F.R. §§ 112.21(a) and 112.21(c) (2008) and, therefore, Respondent is subject to civil penalties of up to $11,000.00 per violation up to a maximum of $157,500.00, pursuant to section 311(b)(6)(B) of the CWA, 33 U.S.C. § 1321(b)(6)(B), and 40 C.F.R. Part 19.

IV. COUNT II - INADEQUATE BULK STORAGE CONTAINMENT - WILCO BULK PLANT

68. The allegations in Paragraphs 1 through 67 are incorporated by reference as if fully set forth herein.

69. The largest bulk storage tank in the oil storage area at the Wilco Bulk Plant has 425,000 gallons of oil storage capacity.

70. Therefore, pursuant to 40 C.F.R.§ 112.7(e)(2)(ii), Respondent was required to provide sufficiently impervious containment to contain 425,000 gallons of spilled oil plus freeboard.

71. At the time of the Wilco Inspection, and as of June 25, 2008, the secondary containment was not sufficiently impervious to contain spilled oil.

72. On June 2, 2008, Hilles-Carnes Engineering Associates, Inc. ("HCEA"), which previously had conducted permeability testing of the secondary containment, provided a professional assessment of the secondary containment, stating, "It is the professional opinion of HCEA that in consideration of the permeability of the materials presently on site some sort of system should be placed in order to establish a characteristic of containment whereas the berm is concerned."

73. Respondent's failure to provide sufficiently impervious secondary containment is a violation of 40 C.F.R.§ 112.7(e)(2)(ii) and, therefore, Respondent is subject to civil penalties of up to $11,000.00 per violation up to a maximum of $157,500.00, pursuant to section 311(b)(6)(B) of the CWA, 33 U.S.C. § 1321(b)(6)(B), and 40 C.F.R. Part 19.

V. COUNT III - INADEQUATE PIPE SUPPORTS - WILCO BULK PLANT

74. The allegations in Paragraphs 1 through 73 are incorporated by reference as if fully set forth herein.

75. On June 18, 1997, EPA issued to the Respondent a Notice of Non-Compliance (hereafter, the "1997 Wilco NON") for the Wilco Bulk Plant in which EPA noted, in part, a violation of 40 C.F.R. § 112.7(e)(3) for the failure to "[d]esign pipe supports to minimize abrasion and corrosion and allow for expansion and contraction."

76. After issuance of the 1997 NON, the Respondent revised its SPCC Plan for the facility on August 29, 1997 (hereafter the "1997 Wilco Plan").

77. In response to the 1997 Wilco NON, the Respondent sent correspondence to EPA dated August 25, 1997, in which it noted, in part, that "[t]he routine inspection of the pipes and tanks has been modified to check to assure that the pipe supports are in proper order."

78. The 1997 Wilco Plan required that Respondent inspect its piping for, in part, discoloration and corrosion.

79. The 1997 Wilco Plan was in effect at the time of the Wilco Inspection.

80. During the Inspection, the Respondent was unable to produce any records of the required pipe support inspections.

81. Section 112.7(e)(8) requires that a record of inspections be signed by the appropriate supervisor and maintained for a period of three years. 40 C.F.R. § 112.7(e)(8)

82. During the Inspection, EPA inspectors observed wood and cinder block pipe supports at the Facility in a state of disrepair.

83. During the Inspection, EPA inspectors observed significant corrosion and discoloration on piping.

84. The wood and cinder block pipe supports were in a condition such that they did not minimize abrasion and corrosion, and did not allow for expansion and contraction as required by 40 C.F.R. § 112.7(e)(3)(iii).

85. Respondent failed to adequately inspect the Facility's pipe supports and to generate records of such inspections in violation of 40 C.F.R. § 112.7(e)(8) and failed to have in place adequate pipe supports in violation of 40 C.F.R. §§ 112.7(e)(3)(iii) and 112.7(e)(3)(iv), and, therefore, Respondent is subject to civil penalties of up to $11,000.00 per violation up to a maximum of $157,500.00, pursuant to section 311(b)(6)(B) of the CWA, 33 U.S.C. §

1321(b)(6)(B), and 40 C.F.R. Part 19.

VI. COUNT IV - INADEQUATE PIPE SUPPORTS - BLADES BULK PLANT

86. The allegations in Paragraphs 1 through 85 are incorporated by reference as if fully set forth herein.

87. On June 13, 1997, EPA issued to the Respondent a Notice of Non-Compliance (hereafter, the "1997 Blades NON") in which it noted, in part, a violation of 40 C.F.R. § 112.7(e)(3) for the failure to "[d]esign pipe supports to minimize abrasion and corrosion and allow for expansion and contraction."

88. The 1997 Blades NON noted that "[p]iping [was] not properly supported in west tank farm."

89. After issuance of the 1997 Blades NON, the Respondent revised its SPCC Plan for the facility on August 29, 1997 (hereafter the "1997 Blades Plan").

90. In response to the 1997 Blades NON, the Respondent sent correspondence to EPA dated August 26, 1997, in which it noted "The routine inspection of the pipes and tanks has been modified to check to assure that the pipe supports are in proper order. This is also defined in the plan."

91. The 1997 Blades Plan required that Respondent inspect its piping for, in part, discoloration and corrosion.

92. EPA inspected the Blades Bulk Plant on April 26, 2007 (hereafter "the Blades Inspection").

93. The 1997 Blades Plan was in effect at the time of the Blades Inspection.

94. During the Blades Inspection, the Respondent was unable to produce any records of the pipe support inspections as required by the 1997 Plan and 40 C.F.R. § 112.7(e)(3)(iv).

95. Section 112.7(e)(8) requires that a record of inspections be signed by the appropriate supervisor and maintained for a period of three years. 40 C.F.R. § 112.7(e)(8).

96. During the Blades Inspection, EPA inspectors observed wood and cinder block pipe supports at the Facility in a state of disrepair.

97. During the Blades Inspection, EPA inspectors observed significant corrosion and discoloration on piping.

98. The wood and cinder block pipe supports were in a condition such that they did not minimize abrasion and corrosion, and did not allow for expansion and contraction as required by 40 C.F.R. § 112.7(e)(3)(iii).

99. Respondent failed to adequately inspect the Blades Bulk Plant's pipe supports and to generate records of such inspections in violation of 40 C.F.R. § 112.7(e)(8) and failed to have in place adequate pipe supports in violation of 40 C.F.R. §§ 112.7(e)(3)(iii) and 112.7(e)(3)(iv), and, therefore, Respondent is subject to civil penalties of up to $11,000.00 per violation up to a maximum of $157,500.00, pursuant to section 311(b)(6)(B) of the CWA, 33 U.S.C. § 1321(b)(6)(B), and 40 C.F.R. Part 19.

VII. COUNT V - INADEQUATE RECORDS AND INSPECTIONS - WILCO BULK PLANT

100. The allegations in Paragraphs 1 through 99 are incorporated by reference as if fully set forth herein.

101. Respondent's 1997 Wilco SPCC Plan required that the Respondent inspect, among other things, its tanks and tank foundations, pipe lines for leaks and damage, valves to ensure they are in the closed position, and also to check hydrostatic test data on all pipe lines.

102. The 1997 Wilco SPCC Plan included multiple checklists which encompass the inspection requirements related to equipment integrity for bulk storage tanks.

103. During the Inspection, the Respondent was unable to produce any records of the required facility inspections.

104. Respondent failed to meet the requirements of 40 C.F.R. § 112.7(e)(8), and, therefore, Respondent is subject to civil penalties of up to $11,000.00 per violation up to a maximum of $157,500.00, pursuant to section 311(b)(6)(B) of the CWA, 33 U.S.C. § 1321(b)(6)(B), and 40 C.F.R. Part 19.

VIII. COUNT VI - INADEQUATE RECORDS AND INSPECTIONS - BLADES BULK PLANT

105. The allegations in Paragraphs 1 through 104 are incorporated by reference as if fully set forth herein.

106. Respondent's 1997 Blades SPCC Plan required that the Respondent inspect, among other things, its tanks and tank foundations, pipe lines for leaks and damage, and valves to ensure they are in the closed position, as well as to check hydrostatic test data on all pipe lines.

107. The 1997 Blades SPCC Plan included multiple checklists which encompass the inspection requirements related to equipment integrity for bulk storage tanks.

108. During the Inspection, the Respondent was unable to produce any records of the required facility inspections.

109. Respondent failed to meet the requirements of 40 C.F.R. § 112.7(e)(8), and, therefore, Respondent is subject to civil penalties of up to $11,000.00 per violation up to a maximum of $157,500.00, pursuant to section 311(b)(6)(B) of the CWA, 33 U.S.C. § 1321(b)(6)(B), and 40 C.F.R. Part 19.

IX. PROPOSED PENALTY

110. Based on the foregoing allegations, and pursuant to the authority of Section 311(b)(6)(B)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(ii), the Complainant proposes that the Regional Administrator assess administrative penalties against the Respondent in the amount of $91,498.00 for Count I and $48,835.00 for Counts II through IV. The total proposed penalty is $140,332.00.

111. The proposed penalty for Counts I through IV, totaling $140,332.00, was determined after taking into account the factors identified at 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 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 violation; the economic impact of the penalty on the violator; and any other factors as justice may require.

112. The proposed penalty may be adjusted by Complainant if the Respondent establishes a bona fide issue of an inability to pay or other defenses relevant to the appropriate amount of the proposed penalties.

X. ANSWER TO THE ADMINISTRATIVE COMPLAINT AND OPPORTUNITY TO REQUEST A HEARING

113. Pursuant to Section 311(b)(6)(C) of the CWA, 33 U.S.C. § 1321(b)(6)(C), and Section 22.15(c) of the Consolidated Rules, the Respondent may request a hearing. The procedures for the hearing, if one is held, are set out in the Consolidated Rules.

114. If the Respondent contests any material fact upon which the Complaint is based; contends that the proposed penalties are inappropriate; or contends that it is entitled to judgment as a matter of law, it shall file an original and one copy of a written answer to the Complaint ("Answer") with the Regional Hearing Clerk and shall serve copies of its Answer on all other parties. Any Answer to the Complaint must be filed within thirty (30) days after service of this Complaint with:

Lydia Guy
Regional Hearing Clerk (3RC00)
U.S. Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103-2029

The Respondent must also provide a copy of its Answer to the attorney representing EPA in this matter at the following address:

James F. Van Orden
Assistant Regional Counsel (3RC42)
U.S. Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103-2029
(215) 814-2693

115. The Respondent's Answer shall clearly and directly admit, deny or explain each of

the factual allegations contained in the Complaint with regard to which Respondent has knowledge. Where Respondent has no knowledge of a particular factual allegation, Respondent shall so state and the allegation shall be deemed denied. Failure to admit, deny, or explain any material factual allegation contained in the Complaint constitutes an admission of the allegation. Respondent's Answer shall also state: (1) the circumstances or arguments which are alleged to constitute the grounds of defense; (2) the facts which Respondent disputes; (3) the basis for opposing any proposed relief; and (4) whether a hearing is requested.

116. If Respondent fails to submit an Answer within thirty (30) days of receipt of this Administrative Complaint, and the case is not otherwise disposed of through settlement, Respondent may be found in default. For purposes of this action, a default constitutes an admission of all facts alleged in the Complaint and a waiver of the right to a hearing to contest such factual allegations.

XI. PUBLIC NOTICE

117. Pursuant to Section 311(b)(6)(C) of the CWA, 33 U.S.C. § 1321(b)(6)(C), in the event of the proposed settlement of this matter, including quick resolution pursuant to Section IX below, the Complainant will provide public notice of and reasonable opportunity to comment on the proposed issuance of a Final Order assessing administrative penalties against the Respondent. If a hearing is held on this matter, members of the public who submitted timely comments on this penalty proposal shall have the right under Section 311(b)(6)(C) of the CWA, 33 U.S.C. § 1321(b)(6)(C), to be heard and present evidence at the hearing.

XII. SETTLEMENT AND QUICK RESOLUTION

118. In accordance with Section 22.18(a) of the Consolidated Rules of Practice, the

Respondent may resolve this proceeding at any time by either: (1) paying the full penalty requested in Paragraph 110; or (2) filing a written statement with the Regional Hearing Clerk at the address provided above agreeing to pay, and subsequently paying within (sixty) 60 days of Respondent's receipt of this Complaint, the full penalty proposed in Paragraph 110. If Respondent pays or agrees to pay within sixty (60) days the specific penalty proposed in this Complaint within thirty (30) days of receiving this Complaint, then, pursuant to the Consolidated Rules of Practice, no Answer need be filed.

119. If Respondent wishes to resolve this proceeding by paying the penalty proposed in this Complaint instead of filing an Answer, but needs additional time to pay the penalty, pursuant to 40 C.F.R. § 22.18(a)(2), Respondent may file a written statement with the Regional Hearing Clerk within thirty (30) days after receiving this Complaint, stating that Respondent agrees to pay the proposed penalty in accordance with 40 C.F.R. § 22.18(a)(1). Such written statement need not contain any response to, or admission of, the allegations in the Complaint. Such statement shall be filed with the Regional Hearing Clerk (3RC00), U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029, and a copy shall be provided to James F. Van Orden (3RC42), Assistant Regional Counsel, at the address below. Within sixty (60) days of receiving the Complaint, Respondent shall pay the full amount of the proposed penalty in accordance with the instructions provided in Paragraph 122.

120. Failure to make such payment within 60 days of receipt of the Complaint may subject the Respondent to default pursuant to 40 C.F.R. § 22.17.

121. In accordance with 40 C.F.R. § 22.18(a)(3), upon receipt of payment in full, the Regional Judicial Officer or Regional Administrator shall issue a Final Order. Payment by

Respondent shall constitute a waiver of Respondent's right to contest the allegations contained in this Complaint and to appeal the final order.

122. Payment shall be made by a cashier's or certified check, or by an electronic funds transfer ("EFT"). If paying by check, the Respondent shall submit a cashier's or certified check, payable to "Environmental Protection Agency," and bearing the notation "OSLTF – 311." If the 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

If the Respondent sends payment by a private delivery service, the payment shall be addressed to:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101
Attn: Natalie Pearson (314/418-4087)

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

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.

If paying through the Department of Treasury's Online Payment system, please access www.pay.gov, enter sfo 1.1 in the search field. Open the form and complete the required fields and make the payment. Note that the type of payment is "civil penalty," the docket number "CWA-03-2009-0289" should be included in the "Court Order # or Bill #" field and 3 should be included as the Region number.

If paying by check, the Respondent shall note on the penalty payment check the title and docket number of this case. The 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 person:

Lydia Guy
Regional Hearing Clerk (3RC00)
U.S. Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103-2029

The Respondent must also provide a copy of its check to the attorney representing EPA in this matter at the following address:

James F. Van Orden
Assistant Regional Counsel (3RC42)
U.S. Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103-2029
(215) 814-2693

XIII. EX PARTE COMMUNICATIONS

123. The following EPA offices, and the staffs thereof, are designated as the trial staff to represent EPA as a party in this case: the Region III Office of Regional Counsel; the Region III Hazardous Site Cleanup Division; the Office of the EPA Assistant Administrator for Solid Waste

and Emergency Response; and the Office of the EPA Assistant Administrator for Enforcement and Compliance Assurance. Please be advised that, pursuant to Section 22.8 of the Consolidated Rules, from the date of this Complaint until the final Agency decision in this case, the Administrator, the members of the Environmental Appeals Board, the Regional Administrator, the Presiding Officer, or any person who is likely to advise these officials on any decision in the proceeding, shall not have any ex parte communication about the merits of the proceeding with the Respondent, a representative of Respondent, or any person outside EPA having an interest in the proceeding, or with any EPA staff member who performs a prosecutorial or investigative function in this proceeding or a factually related proceeding. Any communication addressed to the Administrator, the members of the Environmental Appeals Board, the Regional Administrator, or the Presiding Officer during the pendency of the proceeding and relating to the merits thereof, by or on behalf of any party, shall be regarded as argument made in the proceeding, and shall be served upon all other parties.

XIV. INFORMAL CONFERENCE

124. Respondent may request an informal conference concerning the alleged violations and the amount of the proposed penalty. The request for an informal conference does not extend the thirty (30) day period in which the Respondent must submit its written Answer to preserve the right to a hearing. To request an informal conference relating to this Administrative Complaint, Respondent should contact James F. Van Orden, Assistant Regional Counsel, at (215) 814-2693.

Signed this 29th day of September, 2009.

Kathryn Hodgkiss, Acting Director
Hazardous Site Cleanup Division

Upon information and belief, I certify this Administrative Complaint as a legally sufficient pleading:

Date: Sept. 28, 2009

James F. Van Orden
Assistant Regional Counsel

Upon information and belief, I certify this Administrative Complaint as a legally sufficient pleading:

Date: Sept. 28, 2009

Dina A. Kasper
Assistant Regional Counsel

OF COUNSEL:
James F. Van Orden
Assistant Regional Counsel
United States Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103-2029
Phone: 215-814-2693
Fax: 215-814-2603

Dina A. Kasper
Assistant Regional Counsel
United States Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103-2029
Phone: 215-814-2688
Fax: 215-814-2603

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

In The Matter of:	:	**ADMINISTRATIVE COMPLAINT AND OPPORTUNITY TO REQUEST HEARING AND CONFERENCE**
Peninsula Oil Company, Inc.	:	Proceeding to Assess Class II Civil Penalties Under Section 311 of the Clean Water Act, *as amended*, 33 U.S.C. § 1321.
40 South Market Street **Seaford, DE 19973**	:	
Respondent.	:	Docket No. CWA-03-2009-0288

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on this date I served a true and correct copy of Complainant's Administrative Complaint and Opportunity to Request Hearing and Conference to the following:

FILED VIA HAND DELIVERY

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

SERVED VIA FEDERAL EXPRESS

John Willey, President
Peninsula Oil Company, Inc.
40 South Market Street
Seaford, DE 19973

Date: Sept 30, 2009

Dina A. Kasper
Dina A. Kasper
Assistant Regional Counsel
Counsel for Complainant