

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

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In The Matter of: : **CONSENT AGREEMENT**
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: :
Heath Oil, Inc. : **PROCEEDING UNDER SECTION 311**
5821 U.S. Route 322 : **OF THE CLEAN WATER ACT, AS**
Franklin, Pennsylvania 16323, : **AMENDED, TO ASSESS A CLASS I**
: **CIVIL PENALTY FOR SPCC**
Respondent. : **VIOLATIONS**
: :
5609 State Route 8 : **Docket No. CWA-03-2011-0287**
Harrisville, Pennsylvania 16038, : :
: :
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)(i) of the Clean Water Act (“CWA”), as amended, 33 U.S.C. § 1321(b)(6)(B)(i), and under the authority provided by Section 22.18(b) of the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/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 cause of action by issuance of this Consent Agreement and Final Order (which are collectively referred to herein as the “CA/FO”), as prescribed by the Part 22 Rules pursuant to 40 C.F.R. § 22.13(b), and having consented to the entry of this CA/FO, agree to comply with the terms of this CA/FO.
3. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this Consent Agreement.
4. Respondent neither admits nor denies the specific factual allegations 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 and issuance of this CA/FO, or the enforcement of the CA/FO.

6. For the 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 consents to the issuance of this CA/FO and agrees to comply with its terms.
8. Respondent shall bear its own costs and attorneys fees.

Statutory Authority

9. 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.
10. 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.
11. Pursuant to its delegated authority under Section 311(j) of the CWA, EPA promulgated Oil Pollution Prevention Regulations, 40 C.F.R. § 112, 38 Fed. Reg. 34165 (Dec. 11, 1973), effective January 10, 1974 (“1973 regulations”).
12. On July 17, 2002, EPA promulgated an amendment to the 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. 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.
13. The deadlines for complying with the 2002, 2006, 2008, and 2009 Regulations have been extended several times. However, under the current provisions of 40 C.F.R. § 112.3(a), an owner or operator of a facility that was in operation on or before August 16, 2002, that 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 refer to the 1973 Regulations.
14. The 1973 Regulations at 40 C.F.R. § 112.1(b) state that “. . . this part applies 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 and oil products, and which, due to their location, could reasonably be expected to discharge oil in harmful quantities, as defined in Part 110 of this chapter, into or upon the navigable waters of the United States or adjoining shorelines.”

15. 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)(i) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(i), to assess a Class I penalty in the amount of \$10,000 per violation, not to exceed a maximum penalty of \$25,000. 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 March 15, 2004 through January 12, 2009, are subject to a statutory maximum of \$11,000 per violation, not to exceed a maximum penalty of \$32,500.

Findings of Fact and Conclusions of Law

16. Respondent is a corporation organized under the laws of Pennsylvania, with its principal place of business located at 5821 U.S. Route 322 in Franklin, Pennsylvania.
17. 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.
18. Respondent is engaged in storing, transferring, or distributing oil or oil products located at an onshore bulk oil storage facility located at 5609 State Route 8 in Harrisville, Pennsylvania (the “Facility”).
19. Respondent has owned and operated the Facility since approximately 1970.
20. 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.
21. The Facility has a total above-ground oil storage capacity of greater than or equal to 4,700,000 gallons.
22. The Facility is located approximately 0.5 miles west of the East Branch of Wolf Creek, which drains into Wolf Creek, a tributary of Slippery Rock Creek.
23. Both Wolf Creek and Slippery Rock Creek are navigable waters of the United States, and therefore, the East Branch of Wolf Creek 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.
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. The Facility is located such that a discharge from the Facility could impact Wolf Creek and Slippery Rock Creek and its adjoining shorelines, possibly causing injury to fish, wildlife, and sensitive environments.

26. Due to the location of the Facility, EPA has determined that 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.
27. 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.
28. 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 4,700,000-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 EPA has determined could be reasonably expected to discharge oil in harmful quantities into or upon the navigable waters of the United States or adjoining shorelines.
29. EPA conducted a compliance inspection at the Facility on July 26, 2007 ("the Inspection").
30. At the time of the Inspection, the Facility had an emergency and spill response plan entitled "Preparedness, Prevention and Contingency Plan" ("PPC Plan") dated June 6, 2005.
31. As required by 40 C.F.R. § 112.3, the owner or operator of a SPCC-regulated facility must prepare an SPCC plan in accordance with the Oil Pollution Prevention Regulations.
32. EPA believes that, at the time of the Inspection, the PPC Plan for the Facility did not include all of the elements required by the Oil Pollution Prevention Regulations to be included in an SPCC plan. Specifically, the PCC Plan did not include the following:
 - (a) provisions for a plan review every three years, as required by 40 C.F.R. § 112.5(b);
 - (b) a prediction of the direction, rate of flow, and total quantity of oil which could be discharged from the Facility, as required by 40 C.F.R. § 112.7(b);
 - (c) a list and diagram of all bulk storage tanks located at the Facility, including tanks storing oil/water mixtures and trailers/tank trucks, as required by 40 C.F.R. § 112.7(e)(2); and
 - (d) a substantial harm certification, as required by 40 C.F.R. § 112.20(e).
33. EPA determined, based on discussions with Facility personnel during and after the Inspection and its review of documentation provided by Respondent, that at the time of the Inspection Respondent had failed to prepare an SPCC plan consistent with the Oil Pollution Prevention Regulations and that the four deficiencies in the PPC Plan constitute four violations of the requirements of the Oil Pollution Prevention Regulations at 40 C.F.R. Part 112.

Penalty

34. 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 \$25,347.00. The civil penalty amount shall become due and payable immediately upon Respondent's receipt of an executed copy of this CA/FO.
35. The proposed 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 seriousness of the violation; the economic benefit to the violator resulting from the violation; the degree of culpability involved; any history of prior violations; the nature, extent and degree of success of any efforts of the violator to minimize or mitigate the effects of the discharge; the economic impact of the penalty on the violator; and other matters as justice may require.

Payment Terms

36. In order to avoid the assessment of interest, administrative costs, and late payment penalties in connection with the civil penalties described in this CA/FO, Respondent shall pay the civil penalty of \$25,347.00, no later than thirty (30) days after the effective date of the Final Order (the "final due date"). Payment of the civil penalty, plus any accrued interest, 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 penalty payment check the title and docket number (CWA-03-2011-0287) 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: Natalie Pearson (314/418-4087)

- 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," enter sfo 1.1 in the search field, and open the form and complete the required fields and make payments. Note that the type of payment is "civil penalty," the docket number "CWA-03-2011-0287" should be included in the "Court Order # or Bill #" field and "3" should be included as the Region number.

37. 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 CA/FO shall result in the assessment of late payment charges including additional interest, penalties, and/or administrative costs of handling delinquent debts.
38. Interest on the civil penalty shall begin to accrue on the date that this CA/FO 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).
39. 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.
40. 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
Regional Hearing Clerk (3RC00)
U.S. Environmental Protection Agency,
Region III
1650 Arch Street
Philadelphia, PA 19103-2029

Cynthia T. Weiss
Senior Assistant Regional Counsel (3RC42)
U.S. Environmental Protection Agency,
Region III
1650 Arch Street
Philadelphia, PA 19103-2029

41. Failure by Respondent to pay the penalty assessed by the Final Order in full by the final due date set forth herein 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

42. 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 this Consent Agreement.
43. The provisions of the Final Order, if issued, shall be binding upon Respondent and Respondent's successors or assigns.
44. 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 liability for federal civil penalties for the violations and facts alleged in this Consent Agreement.
45. As used in this Consent Agreement, the term "Effective Date" shall mean the date on which the Final Order is filed with the Regional Hearing Clerk.

*Heath Oil, Inc.
Docket No. CWA-03-2011-0287*

For the Respondent, Heath Oil, Inc.

Date: 9/19/11

By: 
Daniel Heath
President

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

Date: 9/19/11

By: Cynthia T. Weiss
Cynthia T. Weiss
Senior Assistant 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: September 27, 2011

By: Ronald J. Borsellino
Ronald J. Borsellino, Director
Hazardous Site Cleanup Division
EPA Region III

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

In The Matter of: : **FINAL ORDER**
: :
: :
Heath Oil, Inc. : **PROCEEDING UNDER SECTION 311**
5821 U.S. Route 322 : **OF THE CLEAN WATER ACT, AS**
Franklin, Pennsylvania 16323, : **AMENDED, TO ASSESS A CLASS I**
: **CIVIL PENALTY FOR SPCC**
Respondent. : **VIOLATIONS**
: :
5609 State Route 8 : **Docket No. CWA-03-2011-0287**
Harrisville, Pennsylvania 16038, : :
: :
Facility. : :
_____ : :


FINAL ORDER

Pursuant to Section 311(b)(6) of the Clean Water Act, 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 Clean Water Act.

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

Date: 9/28/11


Renée Sarajian
Regional Judicial Officer/Presiding Officer

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

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In The Matter of:	:	CERTIFICATE OF SERVICE
	:	
Heath Oil, Inc.	:	PROCEEDING UNDER SECTION 311
5821 U.S. Route 322	:	OF THE CLEAN WATER ACT, AS
Franklin, Pennsylvania 16323,	:	AMENDED, TO ASSESS A CLASS I
	:	CIVIL PENALTY
Respondent.	:	
	:	
5609 State Route 8	:	Docket No. CWA-03-2011-0287
Harrisville, Pennsylvania 16038,	:	
	:	
Facility.	:	
_____	:	

CERTIFICATE OF SERVICE

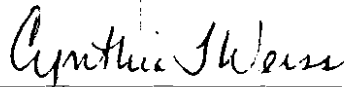
I, the undersigned, hereby certify that on the date provided below, I hand-delivered and filed the original of Consent Agreement and Final Order, along with enclosures and/or attachments, for the above-referenced matter, with the Regional Hearing Clerk, EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029, and that a true and correct copy of the Consent Agreement and Final Order, along with its enclosures and/or attachments, was sent:

Via certified mail, return receipt requested, to:

Matthew L. Wolford
638 West Sixth Street
Eric, PA 16507

SEP 28 2011

Date:



Cynthia T. Weiss (3RC42)
Senior Assistant Regional Counsel