

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

IN THE MATTER OF

West Virginia Oil Gathering Corp.
Brooksville Station
State Route 5
Sheridan District, Big Bend
Calhoun County, WV

Respondent.

**CWA SECTION 311 CLASS I
CONSENT AGREEMENT
AND FINAL ORDER
UNDER 40 CFR § 22.13(b)**

Docket No. CWA-03-2008-0155

LEGAL AUTHORITY

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, as amended, ("Act"), 33 U.S.C. § 1321(b)(6)(B)(i), and under the authority provided by 40 CFR §§ 22.13(b) and 22.18(b)(2). The Administrator has delegated these authorities to the Regional Administrator of EPA, Region III, who has in turn delegated them to the Director of the Region's Hazardous Site Cleanup Division ("Complainant").

CONSENT AGREEMENT

Stipulations

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

2. Respondent is a corporation duly organized and existing under the laws of West Virginia with a place of business located at 9320 Blackrun Road, Nashport, Ohio, and a mailing

address of Post Office Box 430, Frazeyburg, Ohio, 43822-0430. The Respondent is a person within the meaning of Section 311(a)(7) of the Act, 33 U.S.C. §1321(a)(7), and 40 CFR §112.2.

3. Respondent is the owner and operator of the Brooksville Station, an oil collection and staging area, (hereinafter, "the Brooksville Station" or "the Facility"), which 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. The Brooksville Station is located approximately seven (7) miles northwest of Grantsville in the Sheridan District, Calhoun County, West Virginia.

4. The Little Kanawha River is a navigable water of the United States as defined in Section 502(7) of the Act, 33 U.S.C. §1362(7), and 40 CFR §110.1.

5. Section 311(b)(3) of the Act prohibits the discharge of oil or a hazardous substance into or upon the navigable waters of the United States or adjoining shorelines in such quantities that have been determined may be harmful to the public health or welfare or environment of the United States.

6. For purposes of Section 311(b)(3) and (b)(4) of the Act, 33 U.S.C. §1321(b)(3) and (b)(4), discharges of oil into or upon the navigable waters of the United States in such quantities that have been determined may be harmful to the public health or welfare or environment of the United States are defined in 40 CFR §110.3 to include discharges of oil that violate applicable water quality standards or cause a film or a 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 the adjoining shorelines.

7. On or about November 28, 2007, approximately five (5) barrels of crude oil were

released from Respondent's Fiberspar crude oil gathering pipeline at the Brooksville Station. WVOG attributed this discharge to pipe failure that occurred approximately twenty (20) feet north of the north pig-launching station.

8. The November 28, 2007 discharged oil reached the shoreline of the Little Kanawha River, and approximately two (2) barrels of crude oil entered the waters of the Little Kanawha River, which is a navigable water of the United States as defined in Section 502(7) of the Act, 33 U.S.C. §1362(7), and 40 C.F.R. §110.1.

9. The Little Kanawha River is a tributary of the Ohio River, which also is a navigable water of the United States as defined in Section 502(7) of the Act, 33 U.S.C. §1362(7), and 40 C.F.R. §110.1.

10. Respondent's discharge of crude oil on or about November 28, 2007, from its Facility caused a sheen upon or discoloration of the surface of the Little Kanawha River, and, therefore, was in a quantity that has been determined may be harmful under 40 C.F.R. §110.3, which implements Section 311(b)(3) and (b)(4) of the Act, 33 U.S.C. §1321(b)(3) and (b)(4).

11. Respondent's discharge of oil from its Facility into or upon the Little Kanawha River and the adjoining shoreline, in a quantity that has been determined may be harmful under 40 C.F.R. §110.3, on or about November 28, 2007, violated Section 311(b)(3) of the CWA, 33 U.S.C. §1321(b)(3).

Waiver of Rights

12. Respondent admits to the jurisdiction of EPA in this matter and waives the right to a hearing under Section 311(b)(6)(B)(i) of the Act and to appeal any Final Order in this matter

under Section 311(b)(6)(G)(i) of the Act, 33 U.S.C. §1321(b)(6)(G)(i), and consents to the issuance of a Final Order without further adjudication.

Penalty

13. The Complainant proposes, and Respondent consents to, the assessment of a civil penalty of \$3,375.00.

Payment Terms

Based on the foregoing, the parties, in their own capacity or by their attorneys or authorized representatives, hereby agree that:

14. Within thirty days of the effective date of the Final Order, the Respondent shall pay the amount of \$3,375.00 by means of a cashier's or certified check, or by 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 transfer \$3,375.00 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 a payment of \$3,375.00. Note that the type of payment is "civil penalty," the docket number "CWA-03-2008-0155" should be included in the "Court Order # or Bill #" field and 3 should be included as the Region number.

15. 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

16. 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 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.

General Provisions

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

18. 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 penalty pursuant to this Consent Agreement resolves only Respondent's liability for federal civil penalties for the violations of the Act and facts stipulated to herein.

19. The provisions of the Final Order shall be binding upon Respondent, and its successors or assigns. The undersigned officer of Respondent represents and warrants that he or

she has the authority to bind WVOG, and its successors or assigns.

20. Each party to this action shall bear its own costs and attorney's fees.

WEST VIRGINIA OIL GATHERING CORP.

Date: MARCH - 31 - 2008

Michael P. McKee

V. P. - GENERAL MANAGER

**Name/Title, Authorized
Representative of Respondent]**

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 4/22/04

James J. Burke

**James J. Burke, Director
Hazardous Site Cleanup Division**

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FINAL ORDER

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

Effective Date

2. This Final Order shall become effective on the date it is filed with the Regional Hearing Clerk.

Date: 5/6/08


Renee Sarajian
Regional Judicial Officer