

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

In The Matter of: : **CONSENT AGREEMENT**
:
Taylor Oil Company, Inc. : **PROCEEDING UNDER SECTION 3**
941 Isabella Street : **OF THE CLEAN WATER ACT, AS**
Salisbury, Maryland 21801, : **AMENDED, TO ASSESS A CLASS II**
:
Respondent, : **CIVIL PENALTY**
:
and : **Docket No. CWA-03-2011-0297**
:
Taylor Oil Company, Inc. :
335 Lake Street :
Salisbury, Maryland 21801 :
:
Facility. :
:
_____ :

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EPA REGION III PHILA. PA

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)(ii) of the Clean Water Act (“CWA”), as amended, 33 U.S.C. § 1321(b)(6)(B)(ii), 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 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 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 the jurisdictional allegations set forth in this Consent Agreement.
4. Respondent neither admits nor denies the specific factual allegations, 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.
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 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 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 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 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.

13. 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.”
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 \$10,000 per day for each day during which the violation continues, 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 \$16,000 per day for each day during which the violation continues, not to exceed a maximum penalty of \$177,500.

Findings of Fact and Conclusions of Law

15. Respondent is a corporation organized under the laws of Maryland, with a place of business located at 941 Isabella Street in Salisbury, Maryland.
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 storing, transferring, or distributing oil or oil products located at an onshore used oil processing facility located at 335 Lake Street in Salisbury, Maryland (“Facility”).
18. Respondent is the owner or 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 at least the year 1972.
20. The Facility has a total aboveground oil storage capacity of approximately 436,636 gallons.
21. The Facility is contiguous to the Wicomico River.
22. The Wicomico 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 436,636-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 could be reasonably 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 May 28, 2009 ("the Inspection").
29. At the time of the Inspection, the Facility had an SPCC plan dated February 2008, which stated that the loading rack/unloading area is surrounded by a four-inch rollover berm that provides sufficient containment for the largest compartment of the tank truck loading or unloading at the Facility.
30. Pursuant to 40 C.F.R. § 112.7(h)(1), the Respondent must implement a containment system at the Facility Tank Car and Truck Loading/Unloading Rack to hold at least the maximum capacity of any single compartment of a tank car or tank truck loaded or unloaded at the Facility.
31. EPA determined, based on 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, because the four-inch rollover berm did not function as adequate secondary containment. Respondent, therefore, violated the requirements of 40 C.F.R. § 112.7(h)(1).

Penalty

32. In settlement of Complainant's claims for civil penalties for the violation alleged in this Consent Agreement, Respondent agrees to pay a civil penalty of **\$25,431.00** plus **\$84.81** in interest for a total amount of **\$25,515.81**. The civil penalty amount shall become due and payable immediately upon Respondent's receipt of a true and correct copy of this CAFO. Respondent agrees to pay the

above civil penalty in full by remitting installment payments in accordance with Paragraph 34, below.

33. 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; the degree of culpability; the nature, extent, and degree of success of the Respondent’s mitigation efforts; the economic impact of the penalty on the violator; and other matters as justice may require.

Payment Terms

34. Payment of the civil penalty assessed herein, which includes any accrued interest, shall be made in the manner and over the time period specified below:

<u>Schedule</u>	<u>Principal</u>		<u>1% Interest</u>		<u>Payment</u>
1 st payment due within 30 days of the Interest Accrual Date	\$2,835.09	+	\$0	=	\$2,835.09
2 nd payment due within 60 days of the Interest Accrual Date	\$2,816.26	+	\$18.83	=	\$2,835.09
3 rd payment due within 90 days of the Interest Accrual Date	\$2,818.61	+	\$16.48	=	\$2,835.09
4 th payment due within 120 days of the Interest Accrual Date	\$2,820.96	+	\$14.13	=	\$2,835.09
5 th payment due within 150 days of the Interest Accrual Date	\$2,823.31	+	\$11.78	=	\$2,835.09
6 th payment due within 180 days of the Interest Accrual Date	\$2,825.66	+	\$9.43	=	\$2,835.09
7 th payment due within 210 days of the Interest Accrual Date	\$2,828.01	+	\$7.08	=	\$2,835.09

8th payment due \$2,830.37 + \$4.72 = \$2,835.09
within 240 days of the
Interest Accrual Date

9th payment due \$2,832.73 + \$2.36 = \$2,835.09
within 270 days of the
Interest Accrual Date

TOTAL: \$25,515.81

35. 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-03-2011-0297) 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," 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-03-2011-0297" should be included in the "Court Order # or Bill #" field, and "3" should be included as the Region number.
36. 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.
37. Interest on the civil penalty should 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).
38. 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.
39. A penalty charge of six percent per year will be assessed monthly on any portion of an installment 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).
40. In order to avoid the assessment of administrative costs for overdue debts, as described above, Respondent must remit installment payments for the civil penalty and accrued interest in accordance with the payment schedule set forth above. In order to avoid the assessment of late payment penalty charges, as described above, Respondent must remit all installment payments no later than 90 days after the date each such payment is due.

41. 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

Suzanne M. Parent (3RC42)
Senior Assistant Regional Counsel
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

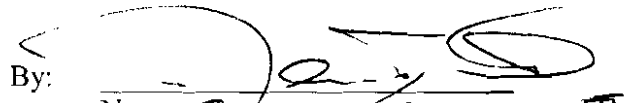
42. Failure by Respondent to pay the penalty assessed by the Final Order in full within 12 months of the Interest Accrual Date may subject Respondent to a civil action to collect the assessed penalty, plus interest, attorney's fees, costs and an additional quarterly nonpayment penalty pursuant to Section 311(b)(6)(H) of the 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

43. 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.
44. The provisions of this Consent Agreement and the Final Order, if issued, shall be binding upon Respondent and Respondent's successors or assigns.
45. 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.
46. The Effective Date of this Consent Agreement is the date on which the Final Order is filed with the Regional Hearing Clerk.
47. Pursuant to Section 311(b)(6)(C) of the CWA, 33 U.S.C. § 1321(b)(6)(C), the Complainant has provided public notice of and reasonable opportunity to comment on the proposed issuance of an administrative penalty against the Respondent. The period for public comment has expired.

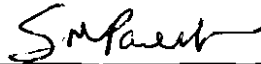
For the Respondent, Taylor Oil Company, Inc.

Date: 9/20/2011

By: 
Name: JAMES W TAYLOR III
Title: President

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


Date: 9/26/11

By: 

Suzanne M. Parent
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, Director
Hazardous Site Cleanup Division
EPA Region III

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

In The Matter of:

Taylor Oil Company, Inc.
941 Isabella Street
Salisbury, Maryland 21801,

Respondent,

and

Taylor Oil Company, Inc.
335 Lake Street
Salisbury, Maryland 21801

Facility.

FINAL ORDER

**PROCEEDING UNDER SECTION 309
OF THE CLEAN WATER ACT, AS
AMENDED, TO ASSESS A CLASS II
CIVIL PENALTY**

Docket No. CWA-03-2011-0297

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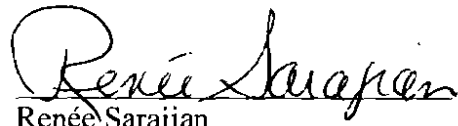
FINAL ORDER

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 Clean Water Act.

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

Date: 9/29/11


Renee Sarajian
Regional Judicial Officer/Presiding Officer

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

In The Matter of:

Taylor Oil Company, Inc.
941 Isabella Street
Salisbury, Maryland 21801,

Respondent,

and

Taylor Oil Company, Inc.
335 Lake Street
Salisbury, Maryland 21801

Facility.

CONSENT AGREEMENT

**PROCEEDING UNDER SECTION 309
OF THE CLEAN WATER ACT, AS
AMENDED, TO ASSESS A CLASS II
CIVIL PENALTY**

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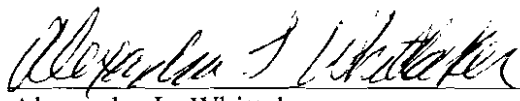
CERTIFICATE OF SERVICE

I hereby certify that the original and one copy of the foregoing Consent Agreement and Final Order ("CAFO") in the above-captioned matter have been filed with the EPA Region III Regional Hearing Clerk and that copies of the CAFO were sent via UPS to:

Duvall & Duvall LLP
Attention: Richard Duvall
112 West Main Street
P.O. Box 3077
Salisbury, Maryland 21803

I further certify that I have sent a copy of the CAFO by electronic pdf to Respondent's Counsel Richard Duvall on this day, September 29, 2011.

9-29-11
Date


Alexandra L. Whittaker
U.S. Environmental Protection
Agency, Region III