



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

January 22, 2009

VIA FEDERAL EXPRESS ONLY

Kristen Kelly Wilson
DelBello Donnelan Weingarten
One North Lexington Avenue
White Plains, New York 10601

Re: Consent Agreement for the City of Yonkers, Docket No. CWA-02-2008-3809

Dear Ms. Wilson:

As requested in your letter dated January 15, 2009, enclosed is the signed and fully executed Consent Agreement and Final Order for the above mentioned matter. If you have any questions, please do not hesitate to call me. You may call me at (212) 637-3244 or e-mail me at orrell.nadine@epa.gov.

Sincerely,

A handwritten signature in cursive script that reads "Nadine Orrell".

Nadine Orrell
Assistant Regional Counsel

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REGION 2
2009 JAN 27 PM 4:04
REGIONAL HEARING
CLERK

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG-011
2009 JAN 27 PM 4: 04
REGIONAL HEARING
D/FRK

IN THE MATTER OF

City of Yonkers
City Hall
40 South Broadway
Yonkers, New York 10701

Respondent

**CWA SECTION 311 CLASS I
CONSENT AGREEMENT
AND FINAL ORDER**

Docket No. CWA-02-2008-3809

CONSENT AGREEMENT

Stipulations

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

1. Section 311(j)(1)(C) of the Clean Water Act (the "Act"), 33 U.S.C. § 1321(j)(1)(C), provides that the President shall issue regulations "establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil . . . from onshore . . . facilities, and to contain such discharges"

2. Initially by Executive Order 11548 (July 20, 1970), 35 Fed. Reg. 11677 (July 22, 1970), and most recently by Section 2(b)(1) of Executive Order 12777 (October 18, 1991), 56 Fed. Reg. 54757 (October 22, 1991), the President delegated to EPA his Section 311(j)(1)(C) authority to issue the regulations referenced in the preceding Paragraph for non-transportation-related onshore facilities.

3. EPA subsequently promulgated the SPCC regulations pursuant to these delegated statutory authorities, and pursuant to its authorities under the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, which established certain procedures, methods and requirements incumbent upon each owner and operator of a non-transportation-related onshore facility if such facility, due to its location, could reasonably be expected to discharge oil into or upon the navigable waters of the United States and their adjoining shorelines in such quantity as EPA has determined in 40 C.F.R. § 110.3 may be harmful to the public health or welfare or the environment of the United States ("harmful quantity").

4. In promulgating 40 CFR § 110.3, which implements Section 311(b)(4) of the Act, 33 U.S.C. § 1321(b)(4), EPA has determined that discharges of harmful quantities include oil discharges that cause either (1) a violation of applicable water quality standards, or (2) a film, sheen upon, or discoloration of the surface of the water or adjoining shorelines, or (3) a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

5. Respondent is a municipal corporation organized under the laws of the State of New York, with its place of business located in the Yonkers City Hall at 40 South Broadway in Yonkers, New York 10701. Respondent is a person within the meaning of Sections 311(a)(7) and 502(5) of the Act, 33 U.S.C. §§ 1321(a)(7) and 1362(5), and 40 CFR § 112.2.

6. Respondent is the owner and operator within the meaning of Section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6), and 40 CFR § 112.2 of a bulk oil storage facility, located on the Respondent's premises at 1130 Nepperhan Avenue in Yonkers, New York ("the Facility").

7. The facility has an aggregate above-ground storage capacity of greater than 1320 gallons of oil in containers, each with a shell capacity of at least 55 gallons.

8. The Saw Mill River is a navigable water of the United States within the meaning of 40 C.F.R. § 112.2 [and Section 502(7) of the Act, 33 U.S.C. § 1362.(7)].

9. Respondent is engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using or consuming oil or oil products located at the Facility.

10. The Facility is a “non-transportation-related facility” within the meaning of 40 CFR § 112.2 Appendix A, as incorporated by reference within 40 CFR § 112.2.

11. The Facility 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.

12. The facility is therefore a non-transportation-related onshore facility which, due to its location, could reasonably be expected to discharge oil to a navigable water of the United States (as defined by Section 502(7) of the Act, 33 U.S.C. § 1362(7) and 40 CFR §§ 110.1 and 112.2) or its adjoining shorelines in a harmful quantity (“an SPCC-regulated facility”).

13. Pursuant to Section 311(j)(1)(C) of the Act, E.O. 12777, and 40 C.F.R. § 112.1, Respondent, as the owner and operator of an SPCC-regulated facility, is subject to the SPCC regulations.

14. On September 30, 2008, the Director of the Emergency and Remedial Response Division (“ERRD”) of EPA Region 2 (“Complainant”) issued an Administrative Complaint pursuant to Section 311(b)(6)(B)(ii) of the Clean Water Act (“Act”), 33 U.S.C. §1321(b)(6)(B)(ii), Docket No. CWA-02-2008-3809 alleging that the Respondent was in violation of the SPCC regulations and proposing a civil penalty of \$22,400. Complainant particularly alleged that:

- A) During an SPCC inspection of the Respondent's facility by the Complainant on May 6, 2008, the Complainant determined that the Respondent had failed to prepare a written SPCC Plan, in violation of 40 CFR § 112.3(a).
- B) During that May 6, 2008, SPCC inspection of the Respondent's facility, the Complainant also determined that the Respondent had failed to fully implement the SPCC Plan, in violation of 40 CFR § 112.3(a).
- C) Pursuant to Section 311(b)(6)(B)(ii) of the Act and 40 C.F.R. §19.4, the Respondent is liable for civil penalties of up to \$11,000 per day for each day during which the violation continues, up to a maximum of \$157,500.

Waiver of Rights

15. The Respondent waives the right to appeal any Final Order in this matter pursuant to Section 311(b)(6)(G)(ii) of the Act, 33 U.S.C. §1321(b)(6)(G)(ii), and consents to the issuance of a Final Order without further adjudication.

Jurisdiction

16. For the purpose of this proceeding, Respondent a) admits the jurisdictional allegations of the Complaint as applied to the facility; and b) neither admits nor denies the specific factual allegations contained in the Complaint and Findings of Fact contained herein.

Penalty

17. Respondent consents to the assessment of a civil penalty of fourteen thousand dollars (\$14,000) within thirty (30) days after the date that Complainant signs the Final Order.

Payment Terms

The check shall be identified with a notation of the name and docket number of this case, set forth in the caption on the first page of this document. The check shall be mailed to:

U.S. Environmental Protection Agency
PO Box 979077
St Louis MO 63197-9000

18. The Respondent shall also send copies of the payment to the each of the following:

Nadine Orrell, Esq.
Office of Regional Counsel
U.S. Environmental Protection Agency
Region 2
290 Broadway - 16th Floor
New York, New York 10007

and

Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 2
290 Broadway - 16th Floor
New York, New York 10007

Payment must be received at the above address within thirty (30) days after the date that Complainant signs the Final Order.

19. Failure by the Respondent to pay the penalty assessed by the Final Order in full by the due date may subject Respondent to a civil action to collect the total amount of 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

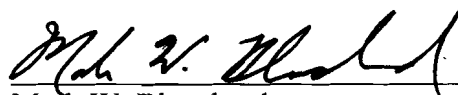
20. The provisions of the Final Order shall be binding upon Respondent and Respondent's officers, directors, agents, servants, employees, successors and/or assigns.

21. 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 total penalty pursuant to this Consent Agreement resolves only Respondent's liability for federal civil penalties for the violations and facts alleged in the Administrative Complaint.

22. The Respondent has agreed to undertake certain remedial actions by dates certain in order to come into compliance with all applicable requirements of Section 311(j) of the Act and SPCC regulation at 40 C.F.R. Part 112. A listing of those agreed upon actions and the dates by which they will be accomplished is set out in Attachment A to this Consent Agreement and Final Order.

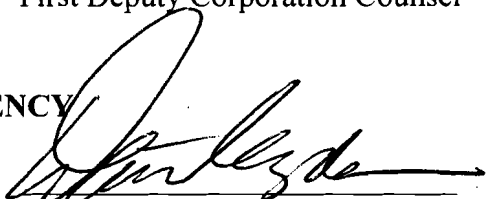
CITY OF YONKERS

Date: 1/13/09


Mark W. Blanchard
First Deputy Corporation Counsel

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 1/22/09


Walter Mugdan, Director
Emergency and Remedial Response
Division

Attachment A

City of Yonkers Yonkers, NJ

Compliance Actions

Compliance Dates

- | | |
|---|---------------|
| 1. Provide certified SPCC Plan. | May 15, 2009 |
| 2. Provide appropriate containment and/or diversionary structures or equipment to prevent a discharge from loading and unloading areas. | July 15, 2009 |
| 3. Conduct inspections and tests in accordance with written procedures, and maintain with the SPCC plan for a period of three years. | May 15, 2009 |
| 4. Conduct spill prevention briefings for oil-handling personnel at least once a year and documented appropriately. | May 15, 2009 |
| 5. Promptly remove accumulations of oil in diked areas. | Completed |
| 6. Provide sufficient secondary containment for mobile/portable storage tanks, including drums. | July 15, 2009 |

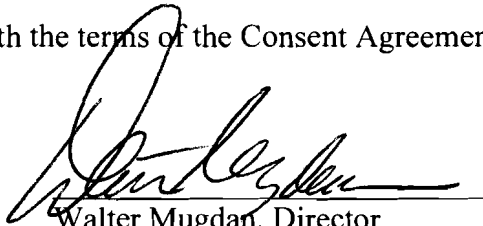
FINAL ORDER

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

Date:

1/22/09



Walter Mugdan, Director
Emergency and
Remedial Response Division

**ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

IN THE MATTER OF

City of Yonkers
City Hall
40 South Broadway
Yonkers, New York 10701

Respondent

CONSENT AGREEMENT
AND
FINAL ORDER

DOCKET NO.
CWA-02-2008-3809

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing fully executed CONSENT AGREEMENT and FINAL ORDER, bearing the above-referenced docket-number, in the following manner to the respective addresses below:


Original and One Copy By Hand:

U.S. Environmental Protection Agency - Region II
290 Broadway, 16th Floor, Office of Regional Hearing Clerk
New York, N.Y. 10007-1866

Copy by Certified Mail, Return Receipt Requested:

Mark W. Blanchard
First Deputy Corporation Counsel
PO Box 187
Columbus, NJ 08022

Date: JAN 23 2009


(Signature)

Ana Madera
(Print Name)