



discharge of oil from non-transportation onshore facilities into the waters of the United States or adjoining shorelines. Owners or operators of onshore facilities that, due to their location could reasonably be expected to discharge oil in "harmful quantities" into the waters of the U.S., must prepare and implement a SPCC plan as required by 40 C.F.R. § 112.3(a).

4. The Oil Pollution Prevention Regulations also require facilities that could reasonably be expected to cause "substantial harm" to the environment by discharging oil into or on waters of the U.S., prepare and submit to EPA a FRP, as required by 40 C.F.R. § 112.20.

5. Section 311(b)(6)(A)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(A)(ii), provides for the assessment of penalties for owners, operators or persons in charge of onshore facilities that fail or refuse to comply with any regulation issued under Section 311(j) of the CWA, 33 U.S.C. § 1321(j), such as the Oil Pollution Prevention regulations.

6. Under Section 311(b)(6)(B)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(ii), EPA may seek Class II administrative civil penalties for violations of Section 311(b)(6)(A)(ii) of the CWA, in an amount that may not exceed \$10,000 per day for each day during which the violation continues, up to a maximum amount not exceeding \$125,000. Pursuant to the *Civil Monetary Penalty Inflation Adjustment Rule*, 85 Fed. Reg. 1751 (January 13, 2020), those amounts have risen to \$19,277 per day for each violation, up to a maximum of \$240,960, for violations that occurred after November 2, 2015 and are assessed after January 15, 2019.

#### **Findings of Fact**

1. The oil storage facility owned and operated by Anthony Troiano & Sons, Inc., is located at 188 Moody Road, Enfield, Connecticut (also known as Troiano Oil Company) (the "Facility").
2. The Facility is located adjacent to wetlands and approximately 600 feet east of an unnamed brook, where it discharges into Freshwater Brook. Freshwater Brook flows into

Freshwater Pond near the village of Thompsonville. Freshwater Pond discharges to the Connecticut River.

3. The Facility receives oil from pipeline and tanker trucks, stores oil in a 1,015,000-gallon, field erected, aboveground oil storage tank ("AST"), and transfers/distributes oil from a loading rack into tanker trucks. The total aboveground storage capacity at the Facility is 1,015,000 gallons.

4. On July 6 and August 25, 2020, EPA sent Troiano Oil Company information requests issued pursuant to EPA's authority under Sections 308 and 311(m) and 308 of the CWA, 33 U.S.C. §§ 1318 and 1321(m). EPA received responses from Troiano on July 30 and September 8, 2020.

5. Based on information provided by Troiano, EPA determined that the Facility is subject to the Oil Pollution Prevention regulations and required to have prepared and implemented an SPCC Plan and FRP.

6. Based on information provided by Troiano, the Facility failed to have an adequate SPCC Plan and failed to have sufficient secondary spill containment for the AST, off-loading areas, and loading rack, as required by the Oil Pollution Prevention regulations.

7. Based on information provided by Troiano, the Facility is required to have, and failed to have an FRP, as required by the Oil Pollution Prevention regulations.

#### **Conclusions of Law**

1. The Facility is an "onshore facility," as defined in Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(b)(10), and 40 C.F.R. § 112.2.

2. Anthony Troiano & Sons, Inc. is a "person" as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

3. Troiano is engaged in storing and distributing "oil," within the meaning of 40 C.F.R. §§ 112.1(b) and 112.2, at the Facility.
4. 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.
5. The Facility is a "non-transportation-related" facility within the meaning of Appendix A of 40 C.F.R. Part 112, as incorporated by reference in 40 C.F.R. § 112.2.
6. The wetlands adjacent to the Facility, the nearby unnamed brook, Freshwater Brook, Freshwater Pond, and the Connecticut River, are all "navigable waters" of the United States as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7).
7. Due to its proximity to navigable waters, as defined above, the Facility could reasonably be expected to discharge oil in harmful quantities (defined in 40 C.F.R. § 110.3 to include discharges causing a film or sheen upon or discoloration of the surface of the water), into a navigable water or its adjacent shoreline.
8. As the owner and operator of a non-transportation-related facility engaged in storing and distributing oil or oil products that could reasonably be expected to discharge oil in quantities that may be harmful to navigable waters of the United States, Troiano is subject to the Oil Pollution Prevention regulations at 40 C.F.R. Part 112.
9. Under 40 C.F.R. § 112.20(c), EPA shall determine whether a facility could, because of its location, reasonably be expected to cause significant and substantial harm to the environment and therefore be subject to the FRP requirements in 40 C.F.R. §§ 112.20 and 112.21.
10. As the Facility has a total oil storage capacity greater than 1,000,000 gallons, and does not have sufficient specific secondary containment for 1,015,000 above ground oil storage tank, and is located at a distance that a discharge from the Facility could cause injury to fish and

wildlife and sensitive environments, the Facility, in accordance with the criteria in 40 C.F.R. § 112.20(f), could reasonably be expected to cause substantial harm to the environment by discharging oil into or on navigable waters or adjoining shorelines.

11. Because Troiano could reasonably be expected to cause substantial harm to the environment by discharging oil into or on navigable waters or adjoining shorelines, EPA has determined that Facility is subject to the FRP requirements at 40 CFR §§ 112.20 and 112.21.

12. From, at least mid-2017, the time of internal ownership transfer, to April 4, 2020, the Respondent failed to prepare and implement a SPCC plan in accordance with the Oil Pollution Prevention regulations, in violation of 40 C.F.R. Part 112 and, therefore, Section 311 of the Clean Water Act, 33 U.S.C. § 1321(j).

13. From mid-2017, the time of internal ownership transfer, to the present, the Facility has failed to have sufficient spill containment for aboveground oil storage tanks, loading station, and oil truck loading rack, in violation of 40 C.F.R. Part 112 and, therefore, Section 311 of the Clean Water Act, 33 U.S.C. § 1321(j).

14. From at least mid-2017, the time of internal ownership transfer, to the present, Respondent failed to prepare a FRP for its Facility in violation of 40 C.F.R. Part 112 and, therefore, Section 311 of the Clean Water Act, 33 U.S.C. § 1321(j).

15. Pursuant to Section 311(b)(6)(B)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(ii), as amended by the *Civil Monetary Penalty Inflation Adjustment Rule*, 85 Fed. Reg. 1751 (January 13, 2020), Respondent is subject to Class II administrative civil penalties for violations of Section 311(j) of \$19,277 per day for each violation, up to a maximum of \$240,960, for violations that occurred after November 2, 2015 and are assessed after January 15, 2019.

### **Consent Agreement**

16. EPA and Respondents agree that settlement of this cause of action is in the public interest and that entry of this CAFO without further litigation is the most appropriate means of resolving this matter. Therefore, before taking any testimony, upon the pleadings, without adjudication of any issue of fact or law, and upon consent and agreement of the parties, it is hereby ordered and adjudged as follows:

17. Troiano admits the jurisdictional allegations set forth in this CAFO and waives any defenses it might have as to jurisdiction and venue.

18. Troiano neither admits nor denies the factual or non-jurisdictional allegations contained herein.

### **Waiver of Rights**

19. Troiano waives the right to a hearing under Section 311(b)(6)(B)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(ii), and to any appeal of the Final Order in this matter under Sections 311(b)(6)(G)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(G)(ii). Troiano consents to the issuance of a Final Order without further adjudication.

### **Penalty**

20. EPA proposes, and Troiano consents to, the assessment of a civil penalty of \$66,000 for the violations alleged in this CAFO.

21. In agreeing to the penalty described in the previous paragraph, EPA has taken into account the statutory penalty factors at Section 311(b)(8) of the CWA, 33 U.S.C. § 1321(b)(8).

22. Troiano shall pay the penalty of \$66,000 for violations of Section 311 of the CWA, 33 U.S.C. § 1321, within ten (10) days of the date this Consent Agreement becomes final.

23. Troiano shall make the payment by cashier's or certified check, or by wire transfer.

Troiano shall include the case name and docket number (*In the Matter of Anthony Troiano & Sons, Inc.*; Docket No. CWA-01-2021-0003) on the face of the check or wire transfer confirmation. A check should be payable to "Treasurer, United States of America" and shall be remitted as follows:

If remitted by regular U.S. mail:

U.S. Environmental Protection Agency / Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, Missouri 63197-9000

If remitted by any overnight commercial carrier:

U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, Missouri 63101

If remitted by wire transfer: Any wire transfer must be sent directly to the Federal Reserve Bank in New York City using the following information:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, New York 10045  
Field Tag 4200 of the Fedwire message should read:  
"D 68010727 Environmental Protection Agency"

In addition, at the time of payment, Troiano should also forward notice of payment of the civil penalty as well as copies of the payment check or payment receipt to:

Wanda Santiago, Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 1  
5 Post Office Square, Suite 100  
Mail Code: 04-6  
Boston, Massachusetts 02109-3912

and

Tonia Bandrowicz, Senior Enforcement Counsel  
U.S. Environmental Protection Agency, Region 1  
5 Post Office Square, Suite 100  
Mail Code: 04-4  
Boston, Massachusetts 02109-3912

24. Pursuant to Section 311(b)(6)(H) of the CWA, 33 U.S.C. § 1321(b)(6)(H), a failure by Troiano to pay the penalty assessed by this CAFO in full by its due date shall subject Troiano to a civil action to collect the assessed penalty, plus interest at the prevailing rates, from the date this Agreement becomes final. The rate of interest assessed shall be at the rate set forth in 31 C.F.R. § 901.9(b), promulgated under 31 U.S.C. § 3717. Any person who fails to pay on a timely basis the amount of an assessed penalty shall be required to pay, in addition to such amount and interest, attorney's fees, costs for collection proceedings, and a quarterly nonpenalty payment for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to twenty percent of the aggregate amount of such person's penalties and nonpayment penalties that are unpaid as of the beginning of such quarter. In any such collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

#### **General Provisions**

25. The provisions of this CAFO shall apply to and be binding on Troiano, its officers, directors, successors, and assigns.

26. The civil penalty provided under this CAFO, and any interest, nonpayment penalties, and charges described in this CAFO, shall represent penalties assessed by EPA within the meaning of 26 U.S.C. § 162(f) and are not tax deductible for purposes of federal, state, or local law. Accordingly, Troiano agrees to treat all payments made pursuant to this CAFO as penalties within the meaning of 26 C.F.R. § 1.162-21, and further agree not to use those



payments in any way as, or in furtherance of, a tax deduction under federal, state, or local law.

27. This CAFO does not constitute a waiver, suspension, or modification of the requirements of the CWA or any regulations or permits promulgated thereunder. Payment of the penalty pursuant to this CAFO resolves only Troiano's liability for federal civil penalties for the violations and facts alleged in this CAFO.

28. This CAFO in no way relieves Troiano or its employees of any criminal liability, and EPA reserves all its other criminal and civil enforcement authorities, including the authority to seek injunctive relief and the authority to undertake any action against Troiano in response to conditions which may present an imminent and substantial endangerment to the public health, welfare, or the environment.

29. Nothing in this agreement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Troiano's violation of this CAFO or of the statutes and regulations upon which the Complaint and this CAFO is based, or for Troiano's violation of any applicable provision of law.

30. Except as described in paragraph 24 above, the parties shall bear their own costs and fees in this action, including attorney's fees, and specifically waive any right to recover such costs from the other party pursuant to the Equal Access to Justice Act, 5 U.S.C § 504, or other applicable laws.

31. Troiano's obligations under the CAFO shall end when it has paid in full the scheduled civil penalty, and any interest and nonpayment penalties, required by this CAFO.

32. The terms, conditions, and requirements of this CAFO may not be modified or amended except upon the written agreement of all parties, and approval of a Regional Administrator or his or her properly authorized delegate.

33. Each undersigned representative of the parties to this Consent Agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this CAFO and to execute and legally bind that party to it.

FOR ANTHONY TROIANO & SONS, INC.

  
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Frank J. Troiano, Owner

Date: 12/16/20

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY:

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Karen McGuire, Director  
Division of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency, Region 1

Date: \_\_\_\_\_

**FINAL ORDER**

1. EPA has provided public a thirty-day opportunity for public notice and comment on this proposed CAFO, pursuant to Section 311(b)(6)(C)(i) of the CWA, 33 U.S.C. § 1321(b)(6)(C)(i), and 40 C.F.R. § 22.45(b).

2. The foregoing Consent Agreement is hereby ratified and incorporated by reference into this Final Order.

3. Troiano is hereby ordered to comply with the terms of the above Consent Agreement, which will become final thirty (30) days from the date it is signed by the Regional Judicial Officer unless a petition to set aside the Final Order is filed by a commenter pursuant to Section 311(b)(6)(C)(iii) of the CWA, 33 U.S.C. § 1321(b)(6)(C)(iii), and 40 C.F.R. Part 22.

Date: \_\_\_\_\_

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Sharon Wells  
Acting Regional Judicial Officer  
U.S. Environmental Protection Agency, Region 1