



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

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG.II
2009 JUN 16 PM 1:39
REGIONAL HEARING
CLERK

Brady, Brady & Reilly, LLC
Attn: Kathleen M. Reilly, Esq.
377 Kearny Avenue
Kearny, New Jersey 07032

June 16, 2009

Subject: Mid Atlantic Vegetable Shortening Co., Inc.

Dear Ms. Reilly:

Enclosed herewith is the Consent Agreement/Final Order (CAFO) for the subject case. Payment of the penalty has been received by the EPA Finance Office.

Please contact me at (212) 637-3236 if you have any questions with respect to this document. Thank you.

Yours truly,

A handwritten signature in cursive script that reads "Timothy C. Murphy".

Timothy C. Murphy

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2

IN THE MATTER OF

**Mid Atlantic Vegetable
Shortening Co. Inc.
125 Sanford Avenue
Kearny, NJ 07032,**

Respondent.

**CWA SECTION 311 CLASS II
CONSENT AGREEMENT & FINAL ORDER**

Docket No. CWA-02-2007-3812

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 corporation organized under the laws of the State of New Jersey with a place of business located at 125 Sanford Avenue, Kearny, NJ 07032. 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 an onshore bulk oil storage facility, located

at 125 Sanford Avenue, Kearney, NJ 07032., the Respondent's premises ("the Facility"), located near Frank Creek and Passaic River.

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. Frank Creek and the Passaic River are navigable waters 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 August 28, 2007, 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-02-2007-3812, alleging that the Respondent was in violation of the SPCC regulations and proposing a civil penalty of \$77,000. Complainant particularly alleged that:

- A) The Respondent's failure to prepare an SPCC Plan for its facility as required by 40 CFR §112.7 and §112.8, consistent with 40 CFR §112.3(a), violated regulations issued under Section 311(j) of the Act. 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.
- B) The Respondent's failure to implement its SPCC plan for its facility, as required by 40 C.F.R. §112.3(a), violated regulations issued under Section 311(j) of the Act. 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.
- C) The Respondent's failure to review and evaluate the SPCC plan every five years as required by 40 CFR §112.5(a), violated regulations issued under Section 311(j) of the Act. 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.
- D) The Respondent's failure to amend the SPCC Plan following changes in facility design, construction, operation, or maintenance that materially affects its potential for a discharge, as required by 40 CFR §112.5(a), violated regulations issued under Section 311(j) of the Act. 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 \$40,000 (Forty thousand dollars).

Payment Terms

Respondent shall pay, by cashiers or certified check, a civil penalty in the amount of forty thousand dollars (\$ 40,000), payable to the "Treasurer of the United States of America". 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
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St Louis MO 63197-9000

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

Timothy C. Murphy, 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 on or before 45 calendar days after the date of signature of the Final Order at the end of this document (the date by which payment must be received shall hereafter be referred to as the “due date”).

19. 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 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

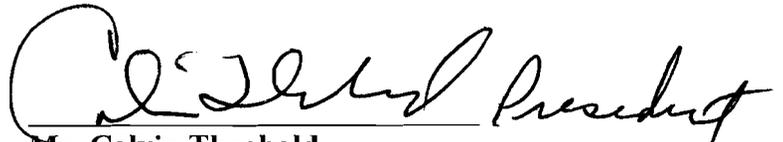
20. The provisions of the Final Order shall be binding upon Respondent and Respondent's officers, directors, agents, servants, employees, and successors or assigns.

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.

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.

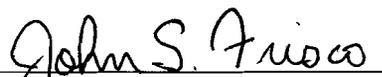
Mid Atlantic Vegetable Shortening Co. Inc.

Date: 3-9-09


Mr. Calvin Theobald,
President

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 6/9/09


for Walter E. Mugdan, Director
Emergency and
Remedial Response Division

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: 6/12/09



George Pavlou
Acting Regional Administrator

U.S. ENVIRONMENTAL
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REGIONAL HEARING
CLERK

**ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

CONSENT AGREEMENT
AND
FINAL ORDER

DOCKET NO.
CWA-02-2007-3812

Mid Atlantic Vegetable Shortening Co. Inc.
125 Sanford Avenue
Kearny, New Jersey 07032
Respondent

Proceeding Pursuant to §311(b)(6) of the Clean
Water Act, 33 U.S.C. §1321(b)(6) for SPCC
Violations

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, 17th Floor, Office of Regional Hearing Clerk
New York, N.Y. 10007-1866

Copy by Certified Mail, Return Receipt Requested:

Brady, Brady & Reilly, LLC
Attn: Kathleen M. Reilly, Esq.
377 Kearny Avenue
Kearny, N.J. 07032

Date: June 16, 2009

Ana Madera
(Print Name)
Ana Madera
(Signature)