UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

In The Matter of:	:	ADMINISTRATIVE COMPLAINT AND OPPORTUNITY TO REQUEST HEARING AND CONFERENCE
Oehlert Brothers, Inc. 1203 South Township Line Road Royersford, PA 19468	:	Proceeding to Assess Class II Civil Penalties Under Section 311(b)(6)(B) of the Clean Water Act, as amended, 33 U.S.C. § 1321(b)(6)(B).
Respondent.	:	Docket No. CWA-03-2008-0425

I. STATUTORY AUTHORITY

1. This Administrative Complaint and Opportunity to Request Hearing and Conference ("Complaint") is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 311(b)(6)(B) of the Clean Water Act, as amended, ("CWA"), 33 U.S.C. § 1321(b)(6)(B). 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 Administrator of EPA has determined that Class II penalty proceedings for violations of Section 311(b)(3), 33 U.S.C. § 1321(b)(3), and regulations issued under Section 311(j), 33 U.S.C. § 1321(j), and other provisions of the CWA shall be conducted 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" ("Consolidated Rules"), 40 C.F.R. Part 22.

3. Therefore, pursuant to Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6), and in accordance with the Consolidated Rules, Complainant hereby requests that the Regional Administrator assess civil penalties against Respondent Oehlert Brothers, Inc., ("Respondent"), for its failure to: (1) implement a facility response training and a drills and exercises program in violation of 40 C.F.R. § 112.21; (2) retain records of training, drainage events, and inspections in accordance with 40 C.F.R. §§ 112.7(c)(2)(iii) and 112.7(e)(8); (3) retain records of facility inspections in violation of 40 C.F.R. § 112.7(e)(8); and (4) provide complete discussions pertaining to security and bulk storage containers in violation of 40 C.F.R. § 112.3.

A. Facility Response Plans ("FRP") Regulations

4. Congress enacted the CWA, 33 U.S.C. §§ 1251-1387, 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.

5. The authority in Section 311(j)(1)(C) of the CWA was delegated to the Administrator of the EPA and, in 1973, the EPA Administrator promulgated spill prevention regulations. 40 C.F.R. §§ 112.1-112.7.

6. Congress amended Section 311 of the CWA by enacting the Oil Pollution Act of 1990 ("OPA"), which required, in part, that the President promulgate regulations which would mitigate potential harm caused by vessels, and onshore and offshore oil facilities that, because of their location, could reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters of the United States or adjoining shorelines

("substantial harm facilities"). 33 U.S.C. § 1321(j)(5)(A). Specifically, Congress directed the President to promulgate regulations requiring the owners or operators of substantial harm facilities to submit to the President plans for responding to worst case oil discharges and substantial threats of such discharges.

7. In 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 facilities.

B. Drill and Exercise Requirements Under the FRP Program

8. Pursuant to Section 311(c)(1)(C) and (j)(5)(A) of the CWA, the EPA Administrator amended 40 C.F.R. Part 112 in 1994 by promulgating oil spill response regulations requiring non-transportation substantial harm facilities to, inter alia, develop and implement a facility response plan ("FRP"), an oil spill response training program, and a program of oil spill response drills and exercises. These regulations are codified at 40 C.F.R. §§ 112.20 and 112.21, and became effective on August 30, 1994.

9. Pursuant to 40 C.F.R. § 112.20, owners or operators of onshore storage and distribution facilities must determine whether, because of the facility's storage capacity and location, that facility could reasonably be expected to cause substantial harm to the environment by discharging oil into or on navigable waters or adjoining shorelines pursuant to criteria established by EPA in 40 C.F.R. § 112.20(f)(1).

10. A facility is classified as a substantial harm facility if: (1) the facility transfers oil over water to or from vessels and has a total oil storage capacity greater than or equal to 42,000 gallons; or (2) the facility's total oil storage capacity is greater than or equal to 1,000,000 gallons

and one of the following is true: (a) the facility does not have sufficient secondary containment to contain the capacity of the largest above-ground oil storage tank plus freeboard for precipitation within each storage area; (b) the facility is located at a distance (as calculated from the appropriate formula in 40 C.F.R. Part 112, Appendix C) such that a discharge from the facility could cause injury to fish and wildlife and sensitive environments; (c) the facility is located at a distance (as calculated from the appropriate formula in 40 C.F.R. Appendix C) such that a discharge from the facility would shut down a public drinking water intake; or (d) the facility has had a reportable oil spill of at least 10,000 gallons within the last five years. 40 C.F.R. § 112.20(f)(1)(ii).

11. If a facility is determined to be a substantial harm facility under these criteria, the spill response regulations require the owner or operator of the facility to prepare and submit to the EPA a FRP which details the facility's emergency plans for responding to an oil spill.

12. To meet the requirements of 40 C.F.R. § 112.20, a facility must identify areas within the facility where discharges could occur and the potential effects of the discharges pursuant to 40 C.F.R. § 112.20(h)(4). The FRP must address response planning, including the small discharge scenario (2,100 gallons) per 40 C.F.R. § 112.20(h)(5)(iii) and must identify response resources that meet the requirements of 40 C.F.R. Part 112, Appendix E. 40 C.F.R. § 112.20(h)(3)(I).

13. Pursuant to 40 C.F.R. Part 112, Appendix E, § 3.0, an FRP must, inter alia, identify sufficient response resources to respond to a discharge of less than or equal to 2,100 gallons.

14. The spill response regulations require the owner or operator of a substantial harm facility to develop and implement a program of facility response drills and exercises for oil spill

response. 40 C.F.R. § 112.21(a) and (c). A program of oil spill drills/exercise must follow either the National Preparedness for Response Exercise Program Guidelines ("PREP Guidelines" or an alternative program approved by the Administrator of the applicable EPA Region. 40 C.F.R. § 112.21(c).

C. Oil Pollution Prevention Regulations

15. In 1974, EPA promulgated 40 C.F.R. Part 112 ("Oil Pollution Prevention Regulations"), 38 Fed.Reg. 34165 (Dec. 11, 1973), which went into effect on January 10, 1974.

16. The Oil Pollution Prevention Regulations were revised in part in 2002, 67 Fed. Reg. 47042 (July 17, 2002), and the changes went into effect August 16, 2002.

17. The Oil Pollution Prevention Regulations again were revised in part in 2006, 71 Fed. Reg. 77266 (Dec. 26, 2006), with the changes scheduled to go into effect on February 26, 2007. The implementation deadline subsequently was extended to July 1, 2009. 72 Fed.Reg. 27443 (May 16, 2007).

18. The Oil Pollution Prevention Regulations, 40 C.F.R. Part 112 (1974), which implement Section 311(j) of the CWA, 33 U.S.C. § 1321(j), apply 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 or oil products ("Part 112 Facilities").

19. 40 C.F.R. Part 112 (1974) sets forth procedures, methods and requirements to prevent the discharge of oil from Part 112 Facilities into or upon the navigable waters of the United States and adjoining shorelines in such quantities that, as determined by regulation, may

be harmful to the public health or welfare or to the environment.

20. 40 C.F.R. § 112.3(a) (1974) requires owners and operators of onshore and offshore facilities becoming operational on or before the effective date of the regulations (January 10, 1974), that could reasonably be expected to discharge oil in harmful quantities into or upon the navigable waters of the United States or adjoining shorelines, to prepare Spill Prevention, Control and Countermeasure ("SPCC") Plans not later than July 10, 1974, and to implement those plans as soon as possible but not later than January 10, 1975. In addition, 40 C.F.R. § 112.3(b) (1974), requires owners and operators of onshore and offshore facilities becoming operational after the effective date of the regulations (January 10, 1974), that could reasonably be expected to discharge oil in harmful quantities into or upon the navigable waters of the United States or adjoining shorelines, to prepare SPCC Plans not later than six months after the facilities become operational. 40 C.F.R. § 112.3(a) (2003), requires owners and operators of onshore and offshore facilities that were operational on or before August 16, 2002, to maintain their existing SPCC Plans as required by 40 C.F.R. § 112.3(b) (1974).

21. Oil storage facilities in operation prior to August 16, 2002, were required to maintain their existing SPCC plans and remain in compliance with all preexisting regulatory requirements prior to the implementation deadline for the amended regulations pursuant to 40 C.F.R. § 112.3(a) (2003).[1]

D. Recordkeeping Requirements for the Drainage of Secondary Containment and for Facility Inspections

[1]Citations to the Oil Pollution Prevention Regulations at 40 C.F.R. Part 112 herein are to the pre-amendment regulations, unless otherwise noted.

22. Under the Oil Pollution Prevention Procedures, where drainage from secondary containment flows directly into a watercourse and not into a wastewater treatment plant, retained storm water must be inspected before it is drained in accordance with 40 C.F.R. §§ 112.7(e)(2)(iii)(B)-(D) .

23. Pursuant to 40 C.F.R. § 112.7(e)(2)(iii)(B), rainwater run-off must be inspected prior to drainage to ensure compliance with applicable water quality standards and to ensure that such discharge will not cause a harmful discharge as defined in 40 C.F.R. Part 110.

24. Pursuant to 40 C.F.R. § 112.7(e)(2)(iii)(C), when draining such rain water, the bypass valve must be opened and resealed under responsible supervision.

25. Pursuant to 40 C.F.R. § 112.7(e)(2)(iii)(D), adequate records must be kept of such drainage events.

26. Pursuant to 40 C.F.R. § 112.7(e)(8), facility inspections must be in accordance with written procedures developed for the facility.

27. Such written procedures and a record of the inspections, signed by the appropriate supervisor or inspector, should be made part of the SPCC Plan and maintained for a period of at least three (3) years. 40 C.F.R. § 112.7(e)(8).

E. Complete Discussions of Security and Bulk Storage Containers Requirement

28. 40 C.F.R.§ 112.3 requires that owner or operators of an onshore or offshore facility subject to this section must prepare a SPCC plan in writing and in accordance with § 112.7 and any other applicable section of this part.

29. 40 C.F.R. § 112.7 requires that SPCC plans be "carefully thought-out" and "prepared

in accordance with good engineering practices."

F. Definitions

30. "Oil" is defined at Section 311(a)(1), 33 U.S.C. § 1321(a)(1), and 40 C.F.R. § 112.2 for purposes of Section 311(b)(3) of the CWA, to include any kind of oil in any form, including petroleum, fuel oil, sludge, oil refuse and oil mixed with wastes other than dredge spoil.

31. 40 C.F.R. § 110.3(b) (1974) (amended 2003) defines "harmful quantity," for purposes of Section 311 of the CWA, 33 U.S.C. § 1321, to include discharges that cause a film or 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 adjoining shorelines."

32. Section 311(a)(2) of the CWA, 33 U.S.C. § 1321(a)(2), defines "discharge" to include any spilling, leaking, pumping, pouring, emitting, or dumping other than federally permitted discharges pursuant to a permit under 33 U.S.C. § 1342.

33. For purposes of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), "navigable water" is defined by 40 C.F.R. §§ 110.1 and 112.2 (1974) (amended 2003), to include, among other things, tributaries to waters that could be used for industrial purposes or interstate commerce.

34. The definition of "worst case discharge," found at 33 U.S.C. § 1321(a)(24) and 40 C.F.R. § 112.2, means, in the case of an onshore facility, the largest foreseeable discharge that could occur in adverse weather conditions.

35. The definition of "onshore facility," found at 33 U.S.C. § 1321(a)(10) and 40 C.F.R. § 112.2, means, any facility in, on or under land within the United States, other than submerged land, which is not a transportation-related facility.

36. The definition of "non-transportation-related facility," found in 40 C.F.R. Part 112, Appendix A and incorporated by reference at 40 C.F.R. § 112.2, includes oil drilling, producing, refining and storage facilities.

37. The definition of "owner or operator," found at 33 U.S.C. § 1321(a)(6) and 40 C.F.R. § 112.2, means, in the case of an onshore facility, any person owning or operating such an onshore facility.

38. The definition of "navigable waters," found at 40 C.F.R. § 110.1 and 40 C.F.R. § 112.2 and 20, includes "the waters of the United States, including the territorial seas. . . ."

II. GENERAL ALLEGATIONS

39. Respondent is a corporation organized under the laws of the Commonwealth of Pennsylvania.

40. Respondent has a principal place of business operating under Standard Industrial Classification (SIC) code 5983 (Bulk Oil Storage) located at 1203 South Township Line Road, Royersford, Pennslyvania.

41. Respondent is a person within the meaning of Section 311(a)(7) of the CWA, 33 U.S.C. § 1321(a)(7), and 40 C.F.R. § 112.2 (1974) (amended 2003).

42. Respondent is the owner and operator, 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 (1974) (amended 2003) of an onshore facility as defined in Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10), and 40 C.F.R. § 112.2 (1974) (amended 2003), consisting of aboveground storage tanks ("ASTs") with a capacity of 1,100,550 gallons and underground storage tanks ("UST") with a total capacity of 100,000

gallons, which are located at 1203 South Township Line Road, Royersford, Pennsylvania (the "Facility").

43. Pursuant to 40 C.F.R. § 112.2 (1974) (amended 2003), Respondent is engaged in producing, gathering, storing, processing, refining, transferring, distributing or consuming oil or oil products at the Facility.

44. Upon information and belief, Respondent has operated the Facility since 1948.

45. The Facility has an aggregate storage capacity of approximately 1,101,550 gallons of oil.

46. The 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.

47. The Facility is a "non-transportation related facility" under the definition incorporated by reference at 40 C.F.R. § 112.2 (2003), set forth in Appendix A thereto and published at 36 Fed. Reg. 24,080 (Dec. 18, 1971).

48. 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.

49. Mingo Creek and the Schuylkill River are "navigable waters," as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and 40 C.F.R. §§ 110.1 and 112.2.

50. The Facility is located approximately 100 feet from Mingo Creek, a tributary of the Schuylkill River, which is a navigable water of the United States.

51. 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 a navigable water of the United States or its adjoining shoreline.

52. Due to its oil storage capacity and location, the Facility could reasonably be expected to cause substantial harm to the environment, within the meaning of Section 311(j)(5)(B)(iii) of the CWA, 33 U.S.C. § 1321(j)(5)(B)(iii), as determined by evaluating the criteria in 40 C.F.R. § 112.20(f)(1), by discharging oil into or on navigable waters or adjoining shorelines.

III. COUNT I - INADEQUATE DRILLS AND EXERCISES

53. The allegations in Paragraphs 1 through 52 are incorporated by reference as if fully set forth herein.

54. Pursuant to Section 311(j)(5) of the CWA, 33 U.S.C. § 1321(j)(5), and 40 C.F.R. §§ 112.1 and 112.20, the Facility is subject to the FRP submission requirements of 40 C.F.R. § 112.20.

55. Respondent's FRP was approved by EPA on January 31, 1997.

56. EPA inspected the Facility on August 28, 2006 (hereafter the "2006 inspection) and January 15, 2008 (hereafter "the 2008 inspection").

57. During the 2006 inspection, Respondent was unable to demonstrate that it had developed and implemented the required response drills and exercises program.

58. During the 2008 inspection, in response to an inquiry from EPA as to whether Respondent had created and retained the required records of its spill response drills and exercises, a representative of Respondent stated that Respondent had not developed or implemented a program of FRP drills and exercises.

59. Respondent failed to develop and implement a program of facility response drills and exercises for oil spill response as required by 40 C.F.R. §§ 112.21(a) and 112.21(c) that followed

either the PREP Guidelines or an alternative program approved by the Administrator of the applicable EPA Region in violation of 40 C.F.R. §§ 112.21(a) and 112.21(c) and, therefore, Respondent is subject to civil penalties of up to $11,000.00 per violation up to a maximum of $32,500.00, pursuant to section 311(b)(6)(B) of the CWA, 33 U.S.C. § 1321(b)(6)(B), and 40 C.F.R. Part 19.

IV. COUNT II - INADEQUATE BULK STORAGE CONTAINER PROCEDURES

60. The allegations in Paragraphs 1 through 59 are incorporated by reference as if fully set forth herein.

61. Respondent has diked secondary containment for its 1,000,000 gallon oil AST.

62. Drainage from the diked secondary containment area flows directly to Mingo Creek.

63. Respondent's SPCC Plan states that "dike field drainage time is recorded by the performing facility personnel."

64. During the 2008 inspection, a representative of the Respondent stated that Respondent drained its secondary containment every time it rained, but failed to retain records of such drainage events.

65. During the 2008 inspection, EPA observed and Respondent stated that Respondent has not generated records of its oil storage area inspections.

66. Respondent failed to create and retain SPCC-related records of drainage events and inspections and, therefore, failed to implement the requirements of 40 C.F.R. §§ 112.7(e)(2)(iii) and 112.7(e)(8) and, therefore, Respondent is subject to civil penalties of up to $11,000.00 per violation up to a maximum of $32,500.00, pursuant to section 311(b)(6)(B) of the CWA, 33 U.S.C. § 1321(b)(6)(B), and 40 C.F.R. Part 19.

V. COUNT III - INADEQUATE INSPECTIONS, TESTS, AND RECORDS UNDER THE OIL POLLUTION PREVENTION PROCEDURES

67. The allegations in Paragraphs 1 through 66 are incorporated by reference as if fully set forth herein.

68. Respondent's SPCC Plan dated February 22, 2006 provides various Facility inspections that must occur, and provides that a written record of such inspections are "to be performed at a minimum of once (1) every month and should be made part of the. . . Plan and maintained in the Plan for a minimum of five (5) years."

69. During the 2006 inspection, Respondent was unable to show that it had created and retained records of its oil storage area inspections pursuant to 40 C.F.R. § 112.7(e)(8).

70. During the 2008 inspection, Respondent stated that it had completed required oil storage area inspections, but did not generate records of such events.

71. Respondent's failure to retain records of oil storage area inspections is a violation of 40 C.F.R. § 112.7(e)(8) and, therefore, Respondent is subject to civil penalties of up to $11,000.00 per violation up to a maximum of $32,500.00, pursuant to section 311(b)(6)(B) of the CWA, 33 U.S.C. § 1321(b)(6)(B), and 40 C.F.R. Part 19.

VI. COUNT IV - FAILURE TO PROVIDE COMPLETE DISCUSSIONS IN ITS SPCC PLAN PERTAINING TO SECURITY AND BULK STORAGE CONTAINERS UNDER THE OIL POLLUTION PREVENTION PROCEDURES

72. The allegations in Paragraphs 1 through 71 are incorporated by reference as if fully set forth herein.

73. Respondent owns five (5) oil delivery trucks (hereafter, the "delivery trucks").

74. During the 2008 inspection, EPA observed delivery trucks that were being used as oil storage.

75. On information and belief, the delivery trucks are regularly used as oil storage when not being used for delivery purposes, including over night when the Facility is not in operation.

76. As a result of a SPCC Plan review, EPA determined that Respondent's SPCC Plan failed to discuss this storage practice and fails to discuss security measures for delivery truck oil storage.

77. EPA has established that a description of the physical layout of the facility, including the location of all bulk storage tanks, is part of a carefully thought out plan prepared in accordance with good engineering practices.

78. Discussions pertaining to security and bulk storage requirements are necessary for a SPCC plan to be "carefully thought-out" and "prepared in accordance with good engineering practices" as required by 40 C.F.R. § 112.3.

79. For its failure to include a discussion of security and bulk storage in its SPCC plan as required by 40 C.F.R. § 112.3, Respondent is subject to civil penalties of up to $11,000.00 per violation up to a maximum of $32,500.00, pursuant to section 311(b)(6)(B) of the CWA, 33 U.S.C. § 1321(b)(6)(B), and 40 C.F.R. Part 19.

VII. PROPOSED PENALTY

80. Based on the foregoing allegations, and pursuant to the authority of Section 311(b)(6)(B)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(ii), the Complainant proposes that the Regional Administrator assess administrative penalties against the Respondent in the following

amounts: Count I – $92,216.18 for the failure to have developed and implemented a drills and exercises program pursuant to 40 C.F.R. § 112.21; Counts II and III – $35,641.50 for the failure to retain records of training, drainage events, and inspections in accordance with 40 C.F.R. §§ 112.7(e)(2)(iii) and 112.7(e)(8), and for the failure to retain records of facility inspections in violation of 40 C.F.R. § 112.7(e)(8); Count IV - $14,000.00 for the failure to provide complete discussions pertaining to security and bulk storage containers in violation of 40 C.F.R. § 112.3.

81. The proposed penalty for Counts I through IV, totaling $141,857.68 was determined after taking into account the factors identified at 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 resulting from the violation, the degree of culpability involved, any other penalty for the same incident, any history of prior violations, the nature, extent, and degree of success of any efforts of the violator to minimize or mitigate the effects of the violation, the economic impact of the penalty on the violator, and any other factors as justice may require.

82. The proposed penalties may be adjusted by Complainant if the Respondent establishes a bona fide issue of an inability to pay or other defenses relevant to the appropriate amount of the proposed penalties.

VIII. ANSWER TO THE ADMINISTRATIVE COMPLAINT AND OPPORTUNITY TO REQUEST A HEARING

83. Pursuant to Section311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6), and Section 22.15(c) of the Consolidated Rules, the Respondent may request a hearing. The procedures for the hearing, if one is held, are set out in the Consolidated Rules.

84. If the Respondent contests any material fact upon which the Complaint is based;

contends that the proposed penalties are inappropriate; or contends that it is entitled to judgment as a matter of law, it shall file an original and one copy of a written answer to the Complaint ("Answer") with the Regional Hearing Clerk and shall serve copies of its Answer on all other parties. Any Answer to the Complaint must be filed within thirty (30) days after service of this Administrative Complaint with:

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 Answer 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

85. The Respondent's Answer shall clearly and directly admit, deny or explain each of the factual allegations contained in the Administrative Complaint with regard to which Respondent has knowledge. Where Respondent has no knowledge of a particular factual allegation, Respondent shall so state and the allegation shall be deemed denied. Failure to admit, deny, or explain any material factual allegation contained in the Administrative Complaint constitutes an admission of the allegation. Respondent's Answer shall also state: (1) the circumstances or arguments which are alleged to constitute the grounds of defense; (2) the facts

which Respondent disputes; (3) the basis for opposing any proposed relief; and (4) whether a hearing is requested.

86. If Respondent fails to submit an Answer within thirty (30) days of receipt of this Administrative Complaint, and the case is not otherwise disposed of through settlement, Respondent may be found in default. For purposes of this action, a default constitutes an admission of all facts alleged in the Administrative Complaint and a waiver of the right to a hearing to contest such factual allegations.

IX. PUBLIC NOTICE

87. Pursuant to Section 311(b)(6)(C) of the CWA, 33 U.S.C. § 1321(b)(6)(C), in the event of the proposed settlement of this matter, including quick resolution pursuant to Section X below, the Complainant will provide public notice of and reasonable opportunity to comment on the proposed issuance of a Final Order assessing administrative penalties against the Respondent. If a hearing is held on this matter, members of the public who submitted timely comments on this penalty proposal shall have the right under Section 311(b)(6)(C) of the CWA, 33 U.S.C. § 1321(b)(6)(C), to be heard and present evidence at the hearing.

X. SETTLEMENT AND QUICK RESOLUTION

88. In accordance with Section 22.18(a) of the Consolidated Rules of Practice, the Respondent may resolve this proceeding at any time by either (1) paying the full penalty requested in Paragraph 81, or (2) filing a written statement with the Regional Hearing Clerk at the address provided above agreeing to pay, and subsequently pay within 60 days of your receipt of this Complaint, the full penalty requested in Paragraph 81. If Respondent pays or agrees to pay within sixty days the specific penalty proposed in this Complaint within 30 days of receiving

this Complaint, then, pursuant to the Consolidated Rules of Practice, no Answer need be filed.

89. If Respondent wishes to resolve this proceeding by paying the penalty proposed in this Complaint instead of filing an Answer, but needs additional time to pay the penalty, pursuant to 40 C.F.R. § 22.18(a)(2), Respondent may file a written statement with the Regional Hearing Clerk within 30 days after receiving this Complaint, stating that Respondent agrees to pay the proposed penalty in accordance with 40 C.F.R. § 22.18(a)(1). Such written statement need not contain any response to, or admission of, the allegations in the Complaint. Such statement shall be filed with the Regional Hearing Clerk (3RC00), U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029, and a copy shall be provided to James F. Van Orden (3RC42), Assistant Regional Counsel, at the address below. Within 60 days of receiving the Complaint, Respondent shall pay the full amount of the proposed penalty in accordance with Paragraph 92.

90. Failure to make such payment within 60 days of receipt of the Complaint may subject the Respondent to default pursuant to 40 C.F.R. § 22.17.

91. In accordance with 40 C.F.R. § 22.18(a)(3), upon receipt of payment in full, the Regional Judicial Officer or Regional Administrator shall issue a Final Order. Payment by Respondent shall constitute a waiver of Respondent's right to contest the allegations contained in this Complaint and to appeal the final order.

92. Payment shall be made by a cashier's or certified check, or by an 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 make the transfer 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 $141,857.68. Note that the type of payment is "civil penalty," the docket number "CWA-03-2008-0425" should be included in the "Court Order # or Bill #" field and 3 should be included as the Region number.

93. 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

XI. EX PARTE COMMUNICATIONS

94. The following EPA offices, and the staffs thereof, are designated as the trial staff to represent EPA as a party in this case: the Region III Office of Regional Counsel; the Region III Hazardous Site Cleanup Division; the Office of the EPA Assistant Administrator for Solid Waste and Emergency Response; and the Office of the EPA Assistant Administrator for Enforcement and Compliance Assurance. Please be advised that, pursuant to Section 22.8 of the Consolidated Rules, from the date of this Complaint until the final Agency decision in this case, the Administrator, the members of the Environmental Appeals Board, the Regional Administrator, the Presiding Officer, or any person who is likely to advise these officials on any decision in the proceeding, shall not have any ex parte communication about the merits of the proceeding with the Respondent, a representative of Respondent, or any person outside EPA having an interest in

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

XI. EX PARTE COMMUNICATIONS

94. The following EPA offices, and the staffs thereof, are designated as the trial staff to represent EPA as a party in this case: the Region III Office of Regional Counsel; the Region III Hazardous Site Cleanup Division; the Office of the EPA Assistant Administrator for Solid Waste and Emergency Response; and the Office of the EPA Assistant Administrator for Enforcement and Compliance Assurance. Please be advised that, pursuant to Section 22.8 of the Consolidated Rules, from the date of this Complaint until the final Agency decision in this case, the Administrator, the members of the Environmental Appeals Board, the Regional Administrator, the Presiding Officer, or any person who is likely to advise these officials on any decision in the proceeding, shall not have any ex parte communication about the merits of the proceeding with the Respondent, a representative of Respondent, or any person outside EPA having an interest in

the proceeding, or with any EPA staff member who performs a prosecutorial or investigative function in this proceeding or a factually related proceeding. Any communication addressed to the Administrator, the members of the Environmental Appeals Board, the Regional Administrator, or the Presiding Officer during the pendency of the proceeding and relating to the merits thereof, by or on behalf of any party, shall be regarded as argument made in the proceeding, and shall be served upon all other parties.

XII. INFORMAL CONFERENCE

95. Respondent may request an informal conference concerning the alleged violations and the amount of the proposed penalty. The request for an informal conference does not extend the thirty (30) day period in which the Respondent must submit its written Answer to preserve the right to a hearing. To request an informal conference relating to this Administrative Complaint, Respondent should contact James F. Van Orden, Assistant Regional Counsel, at (215) 814-2693.

Signed this 30th day of September, 2008.

James J. Burke, Director
Hazardous Site Cleanup Division

Upon information and belief, I certify this Administrative Complaint as a legally sufficient pleading:

Date: Sept 30, 2008

James F. Van Orden
Assistant Regional Counsel

OF COUNSEL:

United States Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103-2029
Phone: 215-814-2632
Fax: 215-814-2603