

1 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
2 REGION IX

3 IN THE MATTER OF:)

4 Sunpol Resins & Polymers, Inc.,)
5 Fairfield, California,)

6 Respondent.)

7 Proceedings under Section 311(b)(6)(B)(ii))
8 of the Clean Water Act, as amended, 33)
9 U.S.C. § 1321(b)(6)(B)(ii).)

) Docket No. OPA-09-2016-0002

) **DECLARATION OF**
) **STEPHEN D. BERNINGER**

**** FILED ****
27APR2016 - 11:30AM
U.S.EPA - Region 09

10 I, Stephen D. Berninger, declare:

11 1. I am an attorney at law, licensed to practice in the State of California. I am an
12 attorney with Region 9 of the United States Environmental Protection Agency ("EPA").

13 2. On or about March 7, 2016, EPA and Respondent entered into the attached
14 Consent Agreement and Proposed Final Order ("proposed CA/FO") to resolve this matter
15 **(Exhibit A)**.

16 3. On March 9, 2016, EPA placed public notice of the proposed CA/FO in this
17 matter on EPA Region 9's website. An archive version of this public notice may still be
18 viewed on EPA Region 9's website at:
19 <https://www3.epa.gov/region9/enforcement/pubnotices/pubnotice-sunpol-resins.html>. (Last
20 viewed on April 20, 2016.) A true and correct copy of this public notice is attached.

21 **(Exhibit B)**.


22 4. The internet public notice contained all the information required by 40 C.F.R.
23 § 22.45(b) and was legally sufficient.

24 5. After the end of the 30-day public comment period on April 8, 2016, I confirmed
25 with the Region 9 Regional Hearing Clerk that no comments had been received in response to

1 the public notice. See attached email from Steven Armsey, Region 9 Regional Hearing Clerk,
2 to me, dated April 15, 2016 (**Exhibit C**).

3 I declare under penalty of perjury, according to the laws of the State of California, that
4 the foregoing is true and correct, and is known to me of my own personal knowledge.

5 Executed this 20th day of April, 2016, in San Francisco, California.

6
7
8  A handwritten signature in cursive script, appearing to read "S. Berninger", is written over a horizontal line.

9 Stephen D. Berninger
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Exhibit A

Consent Agreement and Proposed Final Order

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX

IN THE MATTER OF

Sunpol Resins & Polymers, Inc.
a California corporation,
2475 Crocker Circle
Fairfield, CA,

Respondent.

CWA SECTION 311 CLASS II
CONSENT AGREEMENT
AND FINAL ORDER

Docket No. **OPA-09-2016-0002**

CONSENT AGREEMENT

A. PRELIMINARY STATEMENTS

1. This Consent Agreement and Final Order (“CAFO”) is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 311(b)(6)(A) and (B)(ii) of the Clean Water Act (“CWA” or “Act”), 33 U.S.C. §1321(b)(6)(A), (B)(ii), as amended by the Oil Pollution Act of 1990, and under the authority provided by 40 C.F.R. § 22.18(b)(2). The Administrator has delegated these authorities to the Regional Administrator of EPA Region 9, who has in turn delegated them to the EPA Region 9 Director of the Enforcement Division (“Complainant”).

2. Complainant initiates this proceeding against Sunpol Resins & Polymers, Inc. (“Respondent”) for alleged violation of Section 311(j) of the Act, 33 U.S.C. § 1321(j). Complainant and Respondent are hereinafter collectively referred to as the “Parties.”

3. This CAFO simultaneously commences and concludes this penalty proceeding, as authorized by 40 C.F.R. § 22.13(b).

4. The Parties agree that settlement of this matter is consistent with the Act's objectives, in the public interest, and the most appropriate means of resolving this matter.

NOW THEREFORE, before the taking of any testimony, without adjudication of any issue of fact or law, and upon consent and agreement of the Parties to this Stipulation and Order, it is hereby AGREED, STIPULATED, and ORDERED:

B. GENERAL PROVISIONS

5. EPA has jurisdiction over the subject matter of this action. The Consent Agreement contains the elements of a complaint required by 40 C.F.R. §§ 22.14(a)(1)-(3) and (8).

6. For purposes of this proceeding, Respondent admits the jurisdictional allegations herein and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of this CAFO.

7. Respondent neither admits nor denies the factual allegations set forth herein. Respondent's entry into this CAFO is not and shall not be construed as an admission of any underlying fact or liability associated with or relating to the conduct, actions or violations of law as alleged herein. Consistent with the protections afforded to settlement communications under Rule 408 of the Federal Rules of Evidence, the Parties shall not seek admission of the settlement communications in this matter in any future administrative or judicial proceedings.

8. Respondent agrees not to contest the terms and conditions set forth in this CAFO in this or subsequent proceedings, and agrees not to appeal the Final Order set forth below.

9. Respondent explicitly waives its right to a hearing on any issue of fact or law set forth herein.

10. This CAFO, inclusive of all exhibits and attachments, is the entire agreement between the Parties to resolve EPA's civil penalty claim against Respondent for the specific CWA violations alleged herein. Full compliance with this CAFO shall constitute full settlement only of Respondent's federal civil penalty liability for the CWA violations specifically alleged herein.

11. This CAFO 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 penalty pursuant to this Consent Agreement resolves only Respondent's civil liability for the violations and facts alleged in this Consent Agreement.

12. Respondent certifies by signing this CAFO that, to the best of its knowledge, it is in compliance with the requirements of Section 311(j) of the Act, 33 U.S.C. § 1321(j).

13. Except as set forth in Paragraph 38, the Parties agree to bear their own costs and attorneys' fees.

14. This CAFO shall in no way affect the right of EPA or the United States against any third party or the right of any third party against Respondent. This CAFO does not create any right in or grant any cause of action to any third party.

15. This CAFO shall apply to and be binding upon Respondent, successors, and assigns. Changes in ownership, including but not limited to any transfer of assets or real or personal property, shall not alter Respondent's obligations under this CAFO.

16. This Consent Agreement may be executed and transmitted by facsimile, email or other electronic means, and in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one instrument. If any portion of this Consent Agreement is determined to be unenforceable by a competent court or tribunal, it is the Parties' intent that the remaining portions shall remain in full force and effect.

17. Respondent's signatory to this CAFO certifies that he or she is fully authorized to enter into and bind Respondent to the terms of the CAFO.

C. STATUTORY AND REGULATORY FRAMEWORK

18. Section 311(j)(1)(C) of 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"

19. 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.

20. EPA subsequently promulgated regulations, codified at 40 C.F.R. Part 112 (the “Oil Pollution Prevention regulations”) pursuant to these delegated statutory authorities and pursuant to its authorities under the CWA, 33 U.S.C. § 1251 *et seq.*, which set forth certain procedures, methods and requirements, including requirements for Spill Prevention, Countermeasure and Control (“SPCC”) planning, applicable to an owner or operator of an onshore facility, which, due to its location, reasonably could be expected to discharge oil into or on navigable waters and their adjoining shorelines in such quantities as EPA has determined in 40 C.F.R. Part 110 may be harmful to the public health or welfare or the environment of the United States.

21. “Navigable waters” are defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7) and 40 C.F.R. § 112.2.

22. In promulgating 40 C.F.R. § 110.3, which implements Section 311(b)(4) of the Act, 33 U.S.C. § 1321(b)(4), EPA has determined that the quantities of oil that may be harmful to the public health or welfare or the environment of the United States include discharges of oil 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.

D. GENERAL ALLEGATIONS

23. At the time of an EPA inspection conducted on March 29, 2012, Respondent was the “owner or operator” within the meaning of Section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6), of a polymer and resins manufacturing facility located at 2475 Crocker Circle, Fairfield, California (“Facility”).

24. 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 C.F.R. § 112.2.

25. The Facility is “non-transportation-related” within the meaning of 40 C.F.R. § 112.2.

26. 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 C.F.R. § 112.2.

27. Respondent, at the time of EPA’s March 29, 2012 inspection, was engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using or consuming oil or oil products at the Facility, as described in 40 C.F.R. § 112.1(b).

28. The Facility had, at the time of inspection, several above-ground oil storage tanks with an aggregate maximum above-ground oil storage capacity of approximately 420,000 gallons.

29. The Facility is in close proximity to “navigable waters” of the United States within the meaning of Section 502(7) of the Act, U.S.C. § 1362(7) and 40 C.F.R. § 112.2; specifically, area surface drainage and storm drains on and/or near the Facility lead to creeks and intermittent streams, which lead to the Suisun Marsh (approximately a mile from the Facility), which is

connected to San Francisco Bay.

30. The Facility is a non-transportation-related facility that, due to its location, could reasonably have been expected, at the time of inspection, to discharge oil from an above-ground container to a navigable water of the United States or its adjoining shorelines in a harmful quantity, and is therefore subject to the Oil Pollution Prevention regulations at 40 C.F.R.

Part 112.

31. EPA alleges that Respondent failed to prepare an appropriate written SPCC Plan, reviewed and certified by a licensed Professional Engineer, in accordance with 40 C.F.R. § 112.7, as required by 40 C.F.R. § 112.3; the Facility did not have adequate secondary containment in certain areas of the Facility, in accordance with 40 C.F.R. § 112.7(c) and (h) and § 112.8(b) and (c); inspection records were not properly kept, as required by 40 C.F.R. § 112.7(e); and there was inadequate personnel training, as required by 40 C.F.R. § 112.7(f).

E. CIVIL PENALTY

32. Section 311(b)(6)(B)(ii) of the Act, 33 U.S.C. § 1321(b)(6)(B)(ii), authorizes the administrative assessment of civil penalties in an amount not to exceed \$10,000 per day for each day during which the violation continues, up to a maximum penalty of \$125,000. Pursuant to the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and 40 C.F.R. Part 19, the administrative assessment of civil penalties may not exceed \$16,000 per day for each day during which the violation continues, up to a maximum Class II civil penalty of \$187,500. See also 78 Fed. Reg. 66643 (November 6, 2013).

33. Respondent consents to the assessment of and agrees to pay a civil penalty of FORTY-ONE THOUSAND SIX HUNDRED DOLLARS (\$41,600.00) in full settlement of the federal civil penalty claims set forth in this CAFO. The penalty was calculated based on the nature, circumstances, extent and gravity of the violations, Respondent's ability to pay, its prior history of violations, its degree of culpability, and any economic benefit or savings accruing to Respondent as a result of the violations.

F. PAYMENT TERMS

34. Payment of the civil penalty shall be made within thirty (30) days of the Effective Date of the CAFO. The date by which payment must be received by the United States shall be the "due date" for the payment.

35. Respondent shall make the payment by cashier's check, certified check or electronic funds transfer ("EFT") payable to the "U.S. Environmental Protection Agency," with the notation "OSLTF - 311" and the docket number of this CAFO. Payment by check 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 paying by EFT, the Respondent shall transfer the payment to:

Federal Reserve Bank of NY
ABA 021030004
Account 68010727
33 Liberty Street
New York, N.Y. 10045

Field Tag 4200 of the EFT message shall read "D 68010727 Environmental Protection Agency."

36. Respondent shall provide written notice of payment, referencing the title and docket number of this case and attaching a photocopy of the penalty payment, via certified mail or private delivery service, postmarked within thirty (30) days after the due date of such payment to the following persons:

Steven Armsey
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 9
75 Hawthorne Street (ORC-1)
San Francisco, California 94105

and to:

Peter Reich
U.S. Environmental Protection Agency (ENF-8-2)
Region 9
75 Hawthorne Street
San Francisco, California 94105

37. If payment is not received by the due date, interest on any overdue amount will accrue from the Effective Date of this CA/FO at the current rate published by the United States Treasury as described at 40 C.F.R. § 13.11. Payment of any interest shall be made in accordance with Paragraphs 35 and 36 above.

38. Respondent's failure to pay the full penalty when due may subject Respondent to a civil action to collect the assessed penalties, plus interest, attorneys' fees, costs and additional quarterly nonpayment penalties 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 and of this CAFO shall not be subject to review.

39. The penalty specified in this CAFO shall represent a civil penalty assessed by EPA and shall not be deducted from Respondent's or any other person or entity's federal, state or local taxes.

G. EFFECTIVE AND TERMINATION DATES


40. This CAFO shall take effect on the date the Final Order is filed with the Regional Hearing Clerk ("Effective Date"), and shall terminate when Respondent has fully complied with its terms.

H. PUBLIC NOTICE

41. EPA's consent to this Consent Agreement is subject to the requirements of Section 309(g)(4) of the Act, 33 U.S.C. §1319(g)(4), and 40 C.F.R. § 22.45(b), that EPA provide public notice of and a reasonable opportunity for comment on the Consent Agreement and proposed Final Order. EPA reserves the right to withdraw the Consent Agreement and proposed Final Order in response to public comments that petition EPA to set aside the Consent Agreement and proposed Final Order on the basis that material evidence was not considered. 40 C.F.R. § 22.45(c)(4). In such case, Respondent's obligations under this document shall terminate, and EPA may pursue any and all enforcement options as provided by law. If no comment is received during the comment period regarding the Consent Agreement, EPA shall file the Final Order.

CONSENTING PARTIES

For Respondent Sunpol Resins & Polymers, Inc.:

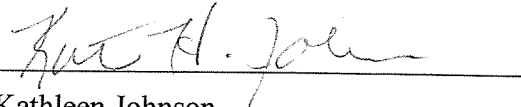


Date: 1/27/14

Name: Barry Bromstedt

Title: PRESIDENT - SUNPOL RESINS & POLYMERS, INC.

For Complainant U.S. Environmental Protection Agency



Date: 3/3/16

Kathleen Johnson
Director, Enforcement Division
U.S. Environmental Protection Agency Region 9
75 Hawthorne Street
San Francisco, CA 94105

[Page intentionally left blank]

Exhibit B
Public Notice



Pacific Southwest, Region 9

Serving: Arizona, California, Hawaii, Nevada, Pacific Islands, Tribal Nations

Notice of Proposed Settlement of Clean Water Act Class II Administrative Penalty Matter and Opportunity to Comment in the Matter of Sunpol Resins, Inc.

Comment Opens: March 9, 2016

Public Comment Closes: April 8, 2016

In The Matter of Sunpol Resins and Polymers, Inc., Docket No: OPA-09-2016-0002

Complainant:

Kathleen Johnson
Director, Enforcement Division
U.S. EPA, Region IX
75 Hawthorne Street
San Francisco, CA 94105

Respondent's name and mailing address:

Sunpol Resins, Inc.
2475 Crocker Circle
Fairfield, CA 94533

Description of Business or Activity Conducted by the Respondent: Resins Manufacturing

Alleged Violation: In the Consent Agreement, EPA alleges that, as of EPA's inspection on March 29, 2012, Respondent had failed to comply with the applicable Oil Spill Prevention, Control and Countermeasure (SPCC) Rule requirements of the Clean Water Act. Specifically, as required by 40 CFR 112.3(a), the owner/operator of a facility subject to the SPCC regulations must develop, certify and implement a SPCC Plan meeting all the applicable technical requirements of the SPCC rule. At the time of the inspection, no SPCC plan was in place. Additionally, as required by 40 CFR 112.7 and 112.8, Sunpol failed to provide general containment and/or drainage controls for oil transfer activities and had inadequate sized containment for bulk aboveground storage tanks. Along with a penalty assessment in the amount of \$41,600.00 and enforcement of the SPCC Rule requirements, the facility has been brought into full compliance, and the potential for environmental harm in the form of an oil spill to the Suisun Marsh and surrounding environments has been averted.

Proposed Settlement Penalty: \$41,600.00

Name, Mailing Address, Telephone Number, and Email Address of Regional Hearing Clerk:

Steven Armsey
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street (ORC-1)
San Francisco, CA 94105
(415) 972-3919
rshearingclerk@epa.gov

Instructions for Submitting Comments

Please provide the following information along with your comments and submit them in accordance with Part 22: Your full name, mailing address, telephone number, email address, the Docket Number (Docket No. OPA-09-2016-0002), and a concise statement of the basis for, and relevant facts, supporting any comment for the case to which you are commenting.

Persons wishing to comment on this case, including comments on the amount or basis of the proposed penalty, are invited to submit a statement to the EPA Regional Administrator, attention of the Regional Hearing Clerk (address above), within 30 days of this public notice. All comments received within this 30-day period will be considered prior to the issuance of the final order. See 40 C.F.R. § 22.45(b). If the 30th day of the comment period falls on a Saturday, Sunday, or federal holiday, the deadline shall be extended to the next business day. In order to provide opportunity for public comment and in accordance with 40 C.F.R. § 22.45(b), EPA will not take final action in this proceeding prior to forty (40) days after issuance of this notice.

For More Information

Persons wishing to receive a copy of 40 C.F.R. Part 22 or review the [Consent Agreement and Proposed Final Order \(PDF\)](#) (12 pp, 340K) may contact the Regional Hearing Clerk identified above. Please note that the federal regulations are available online at the [Code of Federal Regulations \(CFR\)](#) Web site. During the comment period, the public record for the proceeding may also be inspected during business hours at the office of the Regional Hearing Clerk (address above).

Last updated on Wednesday, March 09, 2016

Exhibit C

Email from Regional Hearing Clerk

Berninger, Stephen

From: Armsey, Steven
Sent: Friday, April 15, 2016 3:45 PM
To: Berninger, Stephen
Subject: Re: Sunpol Resins & Polymers / OPA-09-2016-0002

Stephen:

No public comments received for Sunpol Resins and Polymers (OPA-09-2016-0002) by U.S. Postal service (hard copy) or via email at R9HearingClerk@epa.gov – Thanks.

*Steven Armsey
Regional Hearing Clerk
Office of Regional Counsel
EPA – Region 9
75 Hawthorne Street
San Francisco, CA 94105
(415) 972 - 3919*

From: Berninger, Stephen
Sent: Monday, April 11, 2016 2:08 PM
To: R9HearingClerk <R9HearingClerk@epa.gov>
Subject: Sunpol Resins & Polymers / OPA-09-2016-0002

Would you please confirm whether any public comments were received regarding the above-referenced matter? Per the public notice announcement (<https://www3.epa.gov/region9/enforcement/pubnotices/pubnotice-sunpol-resins.html>), the comment period closed on April 8, 2016.

Thank you.

Steve Berninger
Assistant Regional Counsel
EPA Region IX
75 Hawthorne St., ORC-1
San Francisco, CA 94105
berninger.stephen@epa.gov
(415) 972-3909