

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III**

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In the Matter of:	:	CONSENT AGREEMENT
	:	
Scully Welding Supply Corporation	:	Proceedings Pursuant to Section 113(r)(1) and 113 of the Clean Air Act, 42 U.S.C. §§ 7412(r)(1) and 7413
309 Oak Lane	:	
Collingdale, Pennsylvania 19023,	:	
	:	
Respondent.	:	Docket No.: CAA-03-2012-019
	:	
Scully Welding Supply Corporation	:	
309 Oak Lane	:	
Collingdale, Pennsylvania 19023,	:	
	:	
Facility.	:	

This Consent Agreement is proposed and entered into under the authority vested in the Administrator of the United States Environmental Protection Agency (“EPA” or the “Agency”) by Section 113 of the Clean Air Act (“CAA”), as amended, 42 U.S.C. § 7413, and under the authority of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules of Practice”), 40 C.F.R. Part 22. The Administrator has delegated these authorities to the Regional Administrator, who has, in turn, delegated them to the Director, Hazardous Site Cleanup Division (“Complainant”).

The parties agree to the commencement and conclusion of this cause of action by issuance of this Consent Agreement and Final Order (referred to collectively as “CAFO”) as prescribed by the Consolidated Rules of Practice pursuant to 40 C.F.R. § 22.13(b), and having consented to entry of this CAFO, agree to comply with the terms of this CAFO.

JURISDICTION

1. The Consolidated Rules of Practice govern this administrative adjudicatory proceeding pursuant to 40 C.F.R. §§ 22.1(a)(7) and 22.1(a)(8).
2. The Regional Judicial Officer has the authority to approve this settlement and conclude this proceeding pursuant to 40 C.F.R. §§ 22.4(b) and 22.18(b)(3).
3. For the purpose of this proceeding only, Scully Welding Supply Corporation (“Respondent” or “Scully”) admits to the jurisdictional allegations in this Consent Agreement and agrees not to contest EPA’s jurisdiction with respect to the execution or enforcement of this Consent Agreement and Final Order.

STATUTORY AND REGULATORY BACKGROUND

4. On November 15, 1990, the President signed into law the Clean Air Act Amendments of 1990. The Clean Air Act Amendments added Section 112(r)(1) to the CAA, 42 U.S.C. § 7412(r)(1).

5. Pursuant to Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), the owners and operators of stationary sources producing, processing, handling or storing substances listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), or any other extremely hazardous substance (“EHS”), have a general duty, in the same manner and to the same extent as 29 U.S.C. § 654, to identify hazards which may result from accidental releases of such substances using appropriate hazard assessment techniques, to design and maintain a safe facility taking such steps as are necessary to prevent releases, and to minimize the consequences of accidental releases which do occur. Section 112(r)(1) is hereinafter referred to as the “General Duty Clause.”

6. The General Duty Clause applies to any stationary source producing, processing, handling, or storing regulated substances, as defined above, or other EHSs. An EHS is any chemical which may, as a result of short-term exposures because of releases to the air, cause death, injury, or property damage due to its toxicity, reactivity, flammability, volatility or corrosivity. Senate Committee on Environment and Public Works, Clean Air Act Amendments of 1989, Senate Rep. No. 228, 101st Cong., 1st Sess. 211 (1989). EHSs include, but are not limited to, regulated substances listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), at 40 C.F.R. § 68.130, and chemicals on the list of extremely hazardous substances published at 40 C.F.R. Part 355, Appendices A and B.

7. Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), authorizes EPA to commence an administrative action to assess civil penalties of not more than \$25,000 per day for each violation of Section 112(r) of the CAA that occurs before January 30, 1997. Section 113(d)(1), as amended by the Debt Collection Improvement Act of 1996, authorizes EPA to commence an administrative action to assess civil penalties of not more than \$32,500 per day for each violation of Section 112(r) of the CAA that occurs after March 15, 2004 through January 12, 2009, and \$37,500 per day for each violation of Section 112(r) of the CAA that occurs after January 12, 2009.

8. Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), defines “stationary source,” in part, as any buildings, structures, equipment, installations, or substance emitting stationary activities which belong to the same industrial group, which are located on one or more contiguous properties, which are under the control of the same person (or persons under common control), and from which an accidental release may occur.

**FINDINGS OF FACT RELATED TO THE ALLEGED
VIOLATION OF SECTION 112(r)(1) OF THE CLEAN AIR ACT**

9. With the exception to Paragraph 3, above, for the purpose of this proceeding only, Respondent neither admits nor denies the following factual allegations and conclusions of law contained in this Consent Agreement.

10. Respondent is a company incorporated in the Commonwealth of Pennsylvania with its principal place of business located at 309 Oak Lane in Collingdale, Pennsylvania 19023.

11. The Respondent is the owner of a retail gas facility located at 309 Oak Lane in Collingdale, Pennsylvania ("Facility").

12. Scully has been the owner or operator of the Facility since approximately 1947.

13. At all times relevant to this Consent Agreement, Respondent stored Chemolene (propylene), methanol, and propane at the Facility.

14. EPA conducted an inspection of the Facility on September 9, 2010 and October 6, 2010 to determine Respondent's compliance with Section 112(r)(1) of the CAA.

15. On March 28, 2012, EPA sent a letter to Scully requesting Scully to show cause as to why penalties against it were not warranted under Section 113 of the CAA. Respondent responded to EPA on July 17, 2012 concerning Scully's compliance with the General Duty Clause. Scully previously submitted information and responded to EPA on October 6, 2010; January 3, 2010; April 7, 2012; and April 18, 2012.

16. Complainant alleges, based on its inspection and review of information obtained from Respondent pertaining to the Facility, that Respondent failed to satisfy the requirements of the General Duty Clause with respect to the storage and handling of Chemolene, methanol, and propane by failing to design and maintain a facility to redress the hazards posed by the storage and handling of EHSs and by failing to minimize the consequences of accidental releases that may occur. Specifically, Complainant alleges that Respondent failed to comply with the General Duty Clause as follows:

A. Respondent allegedly failed to provide a sufficient minimum distance between its Chemolene and methanol tanks and adjoining property line. To redress hazards posed by the storage of flammable liquids, storage tanks should be placed to provide protection comparable to that outlined in National Fire Protection Association ("NFPA") 30, Flammable and Combustible Liquids Code, Section 22.4.1.1. Complainant alleges that the Chemolene and methanol tanks were located too close to Respondent's property line, presenting a fire hazard to the property adjoining the Facility.

B. Respondent allegedly failed to provide a means to prevent an accidental release of flammable liquid from endangering important facilities and adjoining property or from reaching waterways. To redress hazards posed by the storage of flammable liquids, storage tanks

should be designed with protection equivalent to NFPA 30 Flammable and Combustible Liquids Code, Section 22.11. Complainant alleges that the methanol tank should have had either secondary containment or diversion to a remote impounding area.

C. Respondent allegedly failed to provide adequate training to employees handling liquefied petroleum gas. To redress hazards posed by the storage of flammable liquids posed by the transfer of liquid petroleum gas, employees should be trained in a manner equivalent to NFPA 58 Liquefied Petroleum Gas Code, Section 7.2.2.1.

D. Respondent allegedly failed to provide proper electrical equipment and wiring for the liquid petroleum gas cylinder shed. To redress hazards posed by sparking sources located near combustible material, electrical equipment and wiring should be installed in a manner equivalent to NFPA Code 58 Liquid Petroleum Gas Code, Section 6.22.2.2.

CONCLUSIONS OF LAW RELATED TO THE ALLEGED VIOLATION OF SECTION 112(r)(1) OF THE CLEAN AIR ACT

17. The findings of fact contained in Paragraphs 9 through 16 of this CAFO are incorporated by reference herein as though fully set forth at length.

18. Chemolene (propylene), methane, and propane are “regulated substances” in threshold quantities listed in 40 C.F.R. § 68.130 and thus are “regulated substances”, pursuant to Section 112(r)(3) of the CAA, and are “extremely hazardous substances” for purposes of the Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

19. The Facility is a “stationary source,” as defined by Section 111 of the CAA, 42 U.S.C. § 7411(a)(3).

20. Respondent is subject to the requirements of Section 112(r)(1) of the CAA, 40 U.S.C. § 7412(r)(1) because it is the owner and/or operator of a stationary source that stores EHSs at its Facility.

21. Based on observations made during the inspection and review of documentation provided by Respondent, EPA has alleged that Scully violated the General Duty of Clause of the CAA, 42 U.S.C. § 7412(r)(1), by failing to design and maintain a safe facility, taking such steps as are necessary to prevent releases, and to minimize the consequences of accidental releases that do occur.

22. Scully’s alleged violation of the General Duty Clause of the CAA, 42 U.S.C. § 7412(r)(1) subjects it to the assessment of penalties under Section 113 of the CAA, 42 U.S.C. § 7413.

SETTLEMENT

23. In full settlement of Complainant’s claims for civil penalties for the violation alleged in this Consent Agreement, Respondent agrees to pay a civil penalty of **\$60,791** plus

\$149.90 in interest for a total amount of **\$60,940.90**. The civil penalty amount shall become due and payable immediately upon Respondent’s receipt of a true and correct copy of this CAFO. Respondent agrees to pay the above civil penalty in full by remitting installment payments in accordance with Paragraph 26, below.

24. The proposed penalty is based upon the statutory penalty factors set forth in Section 113(e)(1) of the CAA, 42 U.S.C. § 7413(e)(1), including the size of the business; the economic impact of the penalty on the business; the violator’s full compliance history; good faith efforts to comply; the duration of the violation; payment by the violator of penalties previously assessed for the same violation; the economic benefit of noncompliance; the seriousness of the violation; and other matters as justice may require.

25. Interest on the civil penalty will begin to accrue on the date that this CAFO is mailed or hand-delivered to the Respondent (“Interest Accrual Date”). EPA will not seek to recover interest on any amount of such civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest on the portion of a civil penalty not paid within such thirty (30) calendar day period will be assessed at the rate of the U.S. Treasury Tax and Loan Rate in accordance with 40 C.F.R. § 13.11(a).

PAYMENT TERMS

26. Payment of the civil penalty assessed herein, which includes any accrued interest, shall be made in the manner and over the time period specified below:

<u>Schedule</u>	<u>Principal</u>		<u>1% Interest</u>		<u>Payment</u>
1 st payment due within 30 calendar days of the Interest Accrual Date	\$30,395.50	+	\$0	=	\$30,395.50
2 nd payment due within 90 calendar days of the Interest Accrual Date	\$15,197.75	+	\$74.95	=	\$15,272.70
3 rd payment due within 180 calendar days of the Interest Accrual Date	\$15,197.75	+	\$74.95	=	\$15,272.70

27. Payment shall be made by a cashier’s or certified check, by an electronic funds transfer (“EFT”), or by on-line payment.

- A. All payments by Respondent shall reference Respondent’s name and address, and the Docket Number of this action, *i.e.*, CAA-03-2012-0199;
- B. All checks shall be made payable to **United States Treasury**;
- C. All payments made by check and sent by regular mail shall be addressed to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000
Heather Russell: (513) 487-2044

- D. All payments made by check and sent by overnight delivery service shall be addressed for delivery to:

U.S. Bank
Government Lockbox 979077
U.S. EPA, Fines & Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

Contact: (314) 418-1028

- E. All payments made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

Cincinnati Finance
US EPA, MS-NWD
26 W. M.L. King Drive
Cincinnati, OH 45268-0001

- F. All payments made by electronic wire transfer shall be directed to:

Federal Reserve Bank of New York
ABA = 021030004
Account No. = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire should read:
D 68010727 Environmental Protection Agency

- G. All electronic payments made through the Automated Clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

US Treasury REX / Cashlink ACH Receiver
ABA = 051036706
Account No.: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 - Checking

Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737
Contact: Jesse White 301-887-6548 or REX, 1-866-234-5681

H. On-Line Payment Option:

WWW.PAY.GOV/PAYGOV

Enter sfo 1.1 in the search field. Open and complete the form.

I. Additional payment guidance is available at:

http://www.epa.gov/ocfo/finservices/make_a_payment.htm

28. Respondent shall submit copies of checks, verifications of wire transfers, or ACH, to the following persons:

Lydia Guy (3RC00)
Regional Hearing Clerk
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

Alexandra Whittaker (3RC42)
Assistant Regional Counsel
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

29. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim. Accordingly, Respondent's failure to make timely payments or to comply with the conditions of this CAFO shall result in the assessment of late payment charges, including interest beyond that required by this CAFO, penalties and/or administrative costs of handling delinquent debts.

30. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue in accordance with 40 C.F.R. § 13.11(b). Pursuant to Appendix B of EPA's *Resource Management Directives – Cash Management*, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) calendar day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) calendar days the penalty remains unpaid.

31. Pursuant to 40 C.F.R. § 13.11(c), a penalty charge of six percent per year will be assessed monthly on any portion of an installment payment that remains delinquent more than ninety (90) calendar days. Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent, in accordance with 31 C.F.R. § 901.9(d).

32. In order to avoid the assessment of administrative costs for overdue debts, as described above, Respondent must remit installment payments for the civil penalty and accrued interest in accordance with the payment schedule set forth above. In order to avoid the

assessment of late payment penalty charges, as described above, Respondent must remit all installment payments no later than ninety (90) calendar days after the date each such payment is due.

33. Failure of Respondent to pay the penalty assessed by the Final Order in full within 180 days of the Interest Accrual Date may subject Respondent to a civil action to collect the assessed penalties, plus interest, pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5). In any such collection action, the validity amount, and appropriateness of the penalty shall not be subject to review.

GENERAL PROVISIONS

34. Respondent certifies by the signing of this CAFO that, to the best of its knowledge, the Facility is presently in compliance with respect to the violation addressed herein, as required pursuant to Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

35. The provisions of this CAFO shall be binding upon Respondent, its officers, directors, agents, servants, employees, and successors or assigns. By his or her signature below, the person signing this Consent Agreement on behalf of the Respondent is acknowledging that he or she is fully authorized by the party represented to execute this Consent Agreement and to legally bind said Respondent to the terms and conditions of the Consent Agreement and accompanying Final Order.

36. This CAFO does not constitute a waiver, suspension or modification of the requirements of Section 112(r)(1) of the CAA, 42 U.S.C. §7612(r)(1).

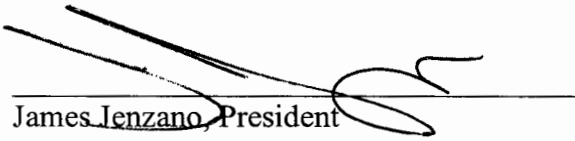
37. This CAFO is a complete and final settlement of all civil and administrative claims, penalties, and causes of action set forth in this CAFO for alleged violation of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1). Nothing herein shall be construed to limit the authority of EPA to undertake action against any person, including the Respondent, in response to any condition, which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. Nothing in this CAFO shall be construed to limit the United States' authority to pursue criminal sanctions.

38. This settlement shall constitute full and final satisfaction of all civil claims for penalties which Complainant has under CAA for the violation alleged in this CAFO.

39. Each party to this action shall bear its own costs and attorney's fees.

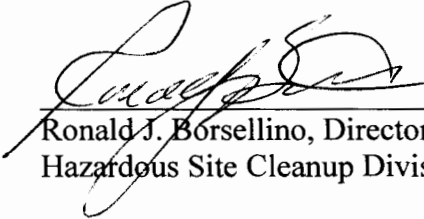
40. The Effective Date of this Consent Agreement is the date on which the Final Order is filed with the Regional Hearing Clerk.

FOR SCULLY WELDING SUPPLY CORPORATION


James Jenzano, President

9-26-2012
Date

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY



Ronald J. Borsellino, Director
Hazardous Site Cleanup Division

9/27/12

Date

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III**

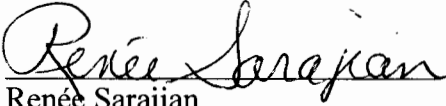
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	:	
Scully Welding Supply Corporation	:	Proceedings Pursuant to Section 112(r) and
309 Oak Lane	:	113 of the Clean Air Act, 42 U.S.C.
Collingdale, Pennsylvania 19023	:	§§ 7412(r) and 7413
	:	
Respondent,	:	Docket No.: CAA-03-2012-0199
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	:	
Scully Welding Supply Corporation	:	
309 Oak Lane	:	
Collingdale, Pennsylvania 19023,	:	
	:	
Facility.	:	
	:	

Pursuant to Section 113 of the Clean Air Act, 42 U.S.C. § 7413, and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits," codified at 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. The Respondent is ordered to comply with the terms of the referenced Consent Agreement.

Effective Date

This Final Order shall become effective upon the date of its filing with the Regional Hearing Clerk.

Date: 9/28/12


Renee Sarajian
Regional Judicial Officer/Presiding Officer

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

In the Matter of: :
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Scully Welding Supply Corporation :
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CONSENT AGREEMENT

Proceedings Pursuant to Section 113(r)(1) and 113 of the Clean Air Act, 42 U.S.C. §§ 7412(r)(1) and 7413

Docket No.: CAA-03-2012-019

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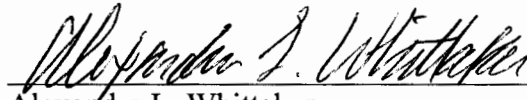
CERTIFICATE OF SERVICE

I hereby certify that the original and one copy of the foregoing Consent Agreement and Final Order ("CAFO") in the above-captioned matter have been filed with the EPA Region III Regional Hearing Clerk and that copies of the CAFO were sent via UPS to:

Buchanan Ingersoll & Rooney PC
Attention: James O'Toole Jr.
Two Liberty Place
50 S. 16th Street, Ste. 3200
Philadelphia, Pennsylvania 19102-2555

I further certify that I have sent a copy of the CAFO by electronic pdf to Respondent's Counsel, James O'Toole Jr., on this day.

9/28/12
Date



Alexandra L. Whittaker
U.S. Environmental Protection Agency, Region III