



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

AUG 21 2008

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

W. Jonathan Sweeten, Esq.
Rendigs, Fry, Kiely & Dennis, LLP
One West Fourth St., Ste. 900
Cincinnati, Ohio 45202-3688

Dear Mr. Sweeten

Enclosed is a copy of the Consent Agreement and Final Order (CA/FO) that resolves the March 30, 2006, discharge of oil from a tanker truck owned by your client, Perry Oil Company, Inc., into or upon the unnamed tributary to Lick Creek near London, Kentucky. Please note that pursuant to Paragraph 14, your client has 30 days from the effective date of the CA/FO to submit its payment of the \$14,595.00 penalty.

If you have questions regarding the CA/FO, please contact me at (404) 562-9567.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael T. Newton".

Michael T. Newton
Associate Regional Counsel

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

HEARINGS CLERK

2008 AUG 21 AM 10:57

RECEIVED
EPA REGION 4

IN THE MATTER OF)
)
Perry Oil Company, Inc.)
1767 East Main Street)
Hazard, Kentucky 41702)
)
Respondent.)
)
Docket No.: CWA-04-2008-5136(b)

This Consent Agreement is proposed and entered into under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 311(b)(6)(B)(ii) of the Clean Water Act ("Act"), 33 U.S.C. § 1321(b)(6)(B)(ii), as amended by the Oil Pollution Act of 1990, and under the authority provided by 40 C.F.R. §§ 22.13(b) and 22.18(b)(2). The Administrator has delegated these authorities to the Regional Administrator of EPA, Region 4, who has in turn delegated them to the Director of the RCRA Division of EPA, Region 4 ("Complainant").

CONSENT AGREEMENT

Stipulations

The parties, in their own capacity or by their attorneys or other authorized representatives, hereby stipulate:

1. Respondent, Perry Oil Company, Inc., is a corporation organized under the laws of the Commonwealth of Kentucky with a place of business located at 1767 East Main Street, Hazard, Kentucky 41702. The 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. § 110.1.

2. The Respondent was the owner within the meaning of Section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6), and 40 C.F.R. § 110.1 of a facility which was a tanker truck located at or near the Hal Rogers Parkway approximately 5 miles east of London, Kentucky in Laurel County, Kentucky ("the facility") at the time of the discharge.

3. The facility is an onshore facility within the meaning of Section 311(a)(10) of the Act, 33 U.S.C. § 1321(a)(10).

4. The unnamed tributary to Lick Creek and Lick Creek, which is a tributary to Laurel Creek, which is a tributary to Laurel River, which is a tributary to the Cumberland River, are navigable waters as defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 110.1 and are subject to the jurisdiction of Section 311 of the Act.

5. Section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3), prohibits the discharge of oil into or upon the navigable waters of the United States or adjoining shorelines in such quantities that have been determined may be harmful to the public health or welfare or environment of the United States.

6. For purposes of Section 311(b)(3) and (b)(4) of the Act, 33 U.S.C. § 1321(b)(3) and (b)(4), discharges of oil into or upon the navigable waters of the United States in such quantities that have been determined may be harmful to the public health or welfare or environment of the United States are defined in 40 C.F.R. § 110.3 to include discharges of oil that (1) violate applicable water quality standards or (2) cause a film or a 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 the adjoining shorelines.

7. Respondent admits the jurisdictional statements contained herein.

Allegations

Complainant alleges, and Respondent neither admits nor denies, that:

8. On March 30, 2006, Respondent discharged approximately 7,000 gallons of oil, as defined in Section 311(a)(1) of the Act, 33 U.S.C. § 1321(a)(1), and 40 C.F.R. § 110.1, from its facility into or upon the unnamed tributary to Lick Creek and thence to Lick Creek and adjoining shorelines.

9. Respondent's March 30, 2006, discharge of oil from its facility, a tanker truck, was the result of an accident involving Respondent's tanker truck and another vehicle. According to the police report, the accident was caused by the other vehicle.

10. Respondent's March 30, 2006, discharge of oil from its facility caused a sheen upon or discoloration of the surface or the adjoining shoreline of the unnamed tributary to Lick Creek and Lick Creek and, therefore, was in a quantity that has been determined may be harmful under 40 C.F.R § 110.3, in violation of Section 311(b)(3) of the Act.

Waiver of Rights

11. Respondent waives the right to contest the allegations contained herein, to a hearing under Section 311(b)(6)(B)(i) of the Act, 33 U.S.C. § 1321(b)(6)(B)(i), to appeal any Final Order in this matter under Section 311(b)(6)(G)(i) of the Act, 33 U.S.C. § 1321(b)(6)(G)(i), and consents to the issuance of a Final Order without further adjudication.

12. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during any discussions with, or to be served with and reply to, any memorandum or communication addressed to EPA officials where the purpose of such discussion, memorandum or communication is to persuade such official to accept and issue this Consent Agreement or the Final Order.

Penalty

13. The Complainant proposes, and Respondent consents to, the assessment of a civil penalty of **\$14,595.00**.

Payment Terms

Based on the forgoing, the parties, in their own capacity or by their attorneys or authorized representatives, hereby agree that:

14. No later than 30 days after the effective date of the Final Order, the Respondent shall pay the amount of \$14,595.00 by means of a cashier's or certified check, or by wire transfer. 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:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

If the Respondent sends payment by wire transfer, the wire transfer should be directed to the Federal Reserve Bank of New York

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

15. 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 copies of the check (or, in the case

of a wire transfer, a copy of the wire transfer confirmation) to the following people:

Patricia Bullock
Regional Hearing Clerk
U.S. EPA- Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, GA 30303-8960

Doug McCurry, Chief
North Enforcement and Compliance Section
RCRA and OPA Enforcement and Compliance Branch
RCRA Division
U.S. EPA- Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, GA 30303-8960

16. Respondent's failure 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 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

17. Complainant reserves the right, pursuant to 40 CFR § 22.45(c)(4)(iii), to withdraw this Consent Agreement and proposed Final Order within 15 days of receipt of a Commenter's petition requesting, pursuant to 40 CFR § 22.45(c)(4)(ii), that the Regional Administrator set aside the Consent Agreement and proposed Final Order on the basis that material evidence was not considered.

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

19. 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 penalty pursuant to this Consent Agreement resolves only Respondent's liability for federal civil penalties for the violations and facts stipulated to and alleged herein.

20. The undersigned representative of Respondent hereby certifies that he is fully authorized to enter into the terms and conditions of this Consent Agreement and attached Final Order and to execute and legally bind Respondent to this Consent Agreement and attached Final Order.

21. A copy of any documents that Respondent files in this action shall be sent to the following attorney who represents EPA in this matter and who is authorized to receive service for EPA in the proceeding:

Michael T. Newton,
Associate Regional Counsel
U.S. EPA – Region 4
61 Forsyth Street, SW
Atlanta, Georgia 30303-8960
404-562-9567

22. A copy of any documents that Complainant files in this action shall be sent to the following individual who represents the Respondent in this matter and who is to receive service for the Respondent in this proceeding:

W. Jonathan Sweeten, Esq.
Rendigs, Fry, Kiely & Dennis, LLP
One West Fourth St., Ste. 900
Cincinnati, Ohio 45202-3688
513-381-9345

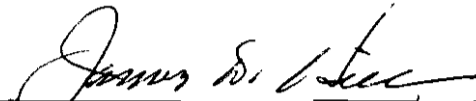
Effective Date

23. This Consent Agreement and attached Final Order is effective upon the filing of the Final Order with the Regional Hearing Clerk.

CONSENTED AND AGREED TO:

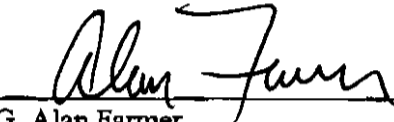
PERRY OIL COMPANY, INC.

Date: 7-18-08


Name: JAMES D. HILL
Title: PRESIDENT

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 8/7/08


G. Alan Farmer
Director
RCRA Division

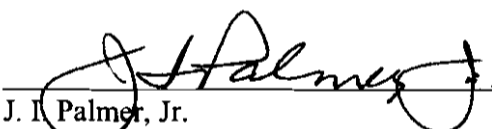
**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

| | | |
|-------------------------|---|---------------------------------|
| IN THE MATTER OF |) | CWA SECTION 311 CLASS II |
| |) | CONSENT AGREEMENT AND |
| Perry Oil Company, Inc. |) | FINAL ORDER |
| 1767 East Main Street |) | UNDER 40 C.F.R. § 22.13(b) |
| Hazard, Kentucky 41702 |) | |
| |) | |
| Respondent. |) | Docket No.: CWA-04-2008-5136(b) |
| <hr/> | | |

FINAL ORDER

The foregoing Consent Agreement is hereby approved, ratified and incorporated by reference into this Final Order in accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, 40 C.F.R. Part 22. The Respondent is hereby ORDERED to comply with all of the terms of the foregoing Consent Agreement effective immediately upon filing of this Consent Agreement and Final Order with the Regional Hearing Clerk. This Order disposes of this matter pursuant to 40 C.F.R. §§ 22.18 and 22.31.

BEING AGREED, IT IS SO ORDERED this 20th day of August, 2008.

BY: 
J. I. Palmer, Jr.
Regional Administrator
EPA Region 4

In the Matter of. Perry Oil Company, Inc.
Docket Number: CWA-04-2008-5136(b)

CERTIFICATE OF SERVICE

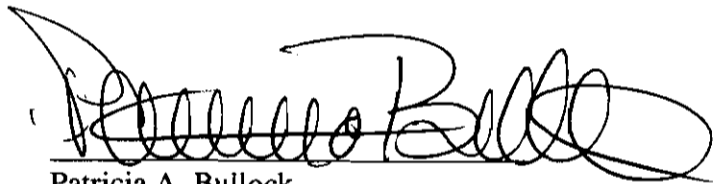
I hereby certify that on AUG 21 2008, I filed the foregoing Consent Agreement and the attached Final Order (CA/FO), in the Matter of. Perry Oil Company, Inc, Docket Number: CWA-04-2008-5136(b), and that on AUG 21 2008 I served a true and correct copy of the CA/FO on the parties listed below in the manner indicated:

Via Certified Mail - Return Receipt Requested

W. Jonathan Sweeten, Esq.
Rendigs, Fry, Kiely & Dennis, LLP
One West Fourth St., Ste. 900
Cincinnati, Ohio 45202-3688

Via EPA's internal mail

Michael T. Newton
Associate Regional Counsel
U.S. EPA - Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303



Patricia A. Bullock
Regional Hearing Clerk
U.S. EPA - Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303
(404) 562-9511