

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX**

	)	
<b>IN THE MATTER OF:</b>	)	
	)	U.S. EPA Docket No.
<b>U.S. Lubricants, Inc.</b>	)	<b>OPA-09-2019-0045</b>
4000 E. Washington Blvd.	)	
Commerce, CA	)	
	)	Clean Water Act Section 311
	)	Class II Administrative Penalty
<b>Respondent.</b>	)	Consent Agreement and Final Order
	)	
	)	Proceeding under
	)	40 C.F.R. §§ 22.13 and 22.18
	)	
_____	)	

**CONSENT AGREEMENT**

**A. PRELIMINARY STATEMENT**

1. This is a civil administrative enforcement action initiated pursuant to Section 311(b)(6)(B)(ii) of the Clean Water Act (“CWA”), 33 U.S.C. § 1321(b)(6)(B)(ii), as amended by the Oil Pollution Act of 1990, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules”), 40 C.F.R. Part 22. Complainant is the United States Environmental Protection Agency, Region IX (“EPA”). Respondent is U.S. Lubricants, Inc., a California corporation (“Respondent”).

2. This Consent Agreement and Final Order issued pursuant to 40 C.F.R. §§ 22.13 and 22.18 (“CA/FO”) simultaneously commences and concludes this proceeding, wherein EPA alleges that Respondent violated Sections 311(j)(1)(C) and (j)(5) of the CWA, 33 U.S.C. §§ 1321(j)(1)(C) and (j)(5), and their implementing regulations.

**B. STATUTORY AND REGULATORY FRAMEWORK**

3. Section 311(j)(1)(C) of the CWA, 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 offshore facilities, and to contain such discharges . . . .” Section 311(j)(5) of the CWA, 33 U.S.C. § 1321(j)(5), provides that the President shall issue regulations which require an owner or operator of a . . . facility . . . to prepare and submit to the President a plan for responding, to the maximum extent practicable, to the worst case discharge, and to a substantial threat of such a discharge, of oil or a hazardous substance.”

4. Initially by Executive Order 11548 (Jul. 20, 1970), 35 Fed. Reg. 11,677 (Jul. 22, 1970), and most recently by Section 2(b)(1) of Executive Order 12777 (Oct. 18, 1991), 56 Fed. Reg. 54,757 (Oct. 22, 1991), the President delegated to EPA the authority under Sections 311(j)(1)(C) and (j)(5) of the CWA, 33 U.S.C. §§ 1321(j)(1)(C) and (j)(5), to issue the regulations referred to in the preceding Paragraph for non-transportation-related onshore facilities.

5. EPA subsequently promulgated regulations codified at 40 C.F.R. Part 112, as amended by 67 Fed. Reg. 47,042 *et seq.* (Jul. 17, 2002) (“Oil Pollution Prevention Regulations”), pursuant to its delegated statutory authorities, and pursuant to its authorities under the CWA, 33 U.S.C. §§ 1251 *et seq.*

6. The Oil Pollution Prevention Regulations establish certain procedures, methods, and requirements, applicable to every owner and operator of a non-transportation related onshore facility, where the facility, due to its location, could reasonably be expected to discharge oil into

or on navigable waters or their adjoining shorelines in such quantities as may be harmful to the public health or welfare or the environment of the United States. *See* 40 C.F.R. § 112.1(b).

7. In promulgating 40 C.F.R. § 110.3, which implements Section 311(b)(4) of the CWA, 33 U.S.C. § 1321(b)(4), EPA determined that an oil discharge is of a harmful quantity if it either “(a) violate[s] applicable water quality standards, or (b) cause[s] a film or sheen upon, or discoloration of the surface of the water or adjoining shorelines, or a sludge or emulsion to be deposited beneath the surface of the water or on adjoining shorelines.”

8. Under 40 C.F.R. § 112.1(b), owners or operators of onshore facilities that, due to their location, could reasonably be expected to discharge harmful quantities of oil (as defined in 40 C.F.R. § 110.3) into the waters of the United States must prepare and fully implement a Spill Prevention Control and Countermeasure Plan (“SPCC Plan”) for each facility in accordance with 40 C.F.R. § 112.3.

9. A facility that could, because of its location, reasonably be expected to cause substantial harm to the environment by discharging oil into or on navigable waters or adjoining shorelines must also prepare a Facility Response Plan in accordance with 40 C.F.R. § 112.20. EPA has determined through regulatory rulemaking that a facility with total oil storage capacity greater than or equal to 1 million gallons, and which is located at a distance (as calculated using formulas provided in Appendix C to 40 C.F.R. Part 112 or comparable formula) such that a discharge from the facility could cause injury to fish and wildlife and sensitive environments, can reasonably be expected to cause substantial harm to the environment in the event of a spill. 40 C.F.R. § 112.20(f)(ii)(B).

**C. EPA's GENERAL ALLEGATIONS**

10. Respondent owns and operates a bulk storage facility for petroleum products including base oil, lube oil, and transmission oil located at 4000 E. Washington Blvd. in Commerce, California (the "Facility").

11. From March 26, 2012, until at least March 21, 2019, the Facility's aggregate above-ground storage capacity was greater than one million gallons of oil, with oil stored in aboveground storage tanks ("ASTs") ranging in size from 1,800 to 80,000 gallons and in several 55-gallon mobile drums.

12. The Facility is an onshore facility within the meaning of Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10) ("onshore facility" means any facility . . . of any kind located in, on, or under, any land within the United States other than submerged land"), and 40 C.F.R. § 112.2.

13. Respondent is a corporation organized under the laws of California and has owned and operated the Facility since at least 2005. Respondent is a "person" within the meaning of Section 311(a)(7) of the CWA, 33 U.S.C. § 1321(a)(7) ("person" includes an individual, firm, corporation, association, and a partnership") and 40 C.F.R. § 112.2.

14. Respondent is therefore an "owner or operator" of the Facility within the meaning of Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6) ("owner or operator" means . . . any person owning or operating [an] onshore facility"), and 40 C.F.R. § 112.2.

15. The Facility is located approximately 0.5 miles from the Los Angeles River. The Los Angeles River flows approximately 17 miles from the City of Commerce to Long Beach Harbor, where it discharges into the Pacific Ocean. The Los Angeles River, Long Beach Harbor,

and the Pacific Ocean are each “navigable waters” of the United States as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7) and 40 C.F.R. § 110.1.

16. The Facility is a non-transportation-related onshore facility that, due to its location, could reasonably be expected to discharge oil to a navigable water of the United States or its adjoining shorelines in a harmful quantity (an “SPCC-regulated facility”).

17. Pursuant to the CWA, Executive Order 12777, and 40 C.F.R. § 112.1, Respondent, as the owner or operator of an SPCC-regulated facility, is subject to the Oil Pollution Prevention Regulations.

18. EPA has determined that oil discharged from the Facility, if not contained, intercepted or removed before reaching the Los Angeles River, could reasonably be expected to reach the Los Angeles River, and if not contained, intercepted or removed while entering the Los Angeles River, such oil could reasonably be expected to reach Long Beach Harbor, and the Pacific Ocean via this flow pathway.

19. The Golden Shore Marine Reserve is located approximately 17 miles downstream of the Facility near the confluence of the Los Angeles River and Long Beach Harbor.

20. The Golden Shore Marine Reserve is classified as a “Category A” or “Extremely Sensitive” site according to the Los Angeles/Long Beach Area Contingency Plan, meaning it contains one or more of the following: wetlands, estuaries and lagoons with emergent vegetation, sheltered tidal flat, habitats for rare, threatened or endangered species, or sites of significant concentrations of vulnerable and sensitive species.

21. On May 30, 2017, EPA Region IX inspected the Facility to evaluate compliance with the requirements of the Oil Pollution Prevention Regulations codified at 40 C.F.R. Part 112.

22. Respondent entered into an Administrative Order on Consent (EPA Docket No. OPA-311-09-2019-001) with EPA, effective May 24, 2019, to come into full compliance with the Oil Pollution Prevention Regulations at this Facility.

**D. ALLEGED VIOLATIONS**

23. EPA's allegations in Paragraphs 1-22 above are incorporated herein by reference.

24. As of May 30, 2017, Respondent failed to comply with applicable SPCC requirements of the Oil Pollution Prevention Regulations, specifically by: 1) failing to have its SPCC Plan certified by a Professional Engineer as required by 40 C.F.R. § 112.3(d); 2) failing to address loading/unloading rack containment in the Facility's SPCC Plan as required by 40 C.F.R. § 112.7(h); 3) failing to provide adequate secondary containment for tank farm areas and bulk storage containers as required by 40 C.F.R. § 112.7(c) and 112.8(c)(2); 4) failing to perform regular tank integrity testing as required by 40 C.F.R. § 112.8(c)(6); 5) failing to secure terminal connections when not in use, and failure of the SPCC Plan to address capping or blank flanging of termination connections at transfer points and marking as to origin of piping when piping is not in service (or is in standby service for an extended time) as required by 40 C.F.R. § 112.8(d)(2); 6) failing to provide adequate security for piping at the rail spur as required by 40 C.F.R. § 112.7(g); 7) failing to maintain records of inspections and tests as required under 40 C.F.R. § 112.8(c)(6); and 8) failing, in the Facility's SPCC Plan, to address proper design of pipe supports to minimize abrasion and corrosion and allow for expansion and contraction as required by 40 C.F.R. § 112.8(d)(3).

25. In addition, as of May 30, 2017, Respondent violated the Facility Response Plan requirement of the Oil Pollution Prevention Regulations by failing to prepare a Facility Response Plan as required by 40 C.F.R. § 112.20.

26. On information and belief, Respondent violated certain of these requirements for at least five years preceding EPA's inspection, and will remain in violation of certain of such requirements until the work required under the Administrative Order on Consent, EPA Docket No. OPA-311-09-2019-001, is complete.

**E. CIVIL PENALTY**

27. The Complainant proposes that the Respondent be assessed, and Respondent agrees to pay, ONE HUNDRED NINETY-SIX THOUSAND, THREE HUNDRED AND FOURTEEN DOLLARS (\$196,314.00) as the civil penalty for the violations alleged herein.

28. The proposed penalty was calculated in accordance with the Civil Penalty Policy for Section 311(b)(3) and Section 311(j) of the Clean Water Act, dated August 1998, and was adjusted for inflation in accordance with the Debt Collection Improvement Act of 1993, 40 C.F.R. § 19.4, and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 ("2015 Act"), 28 U.S.C. § 2461.

**F. ADMISSIONS AND WAIVERS**

29. For purposes of this proceeding, Respondent admits and agrees that EPA has jurisdiction and authority over the subject matter of the action commenced in this CA/FO and over Respondent. Respondent consents to and agrees not to contest EPA's jurisdiction and authority to enter into and issue this CA/FO to enforce its terms. Further, Respondent will not contest EPA's jurisdiction and authority to compel compliance with this CA/FO in any enforcement proceedings, either administrative or judicial, or to impose sanctions for violations of this CA/FO.

30. Except in an action to enforce this CA/FO, Respondent neither admits nor denies any allegations of fact or law set forth in Section D of this CA/FO and does not admit any

liability arising out of the occurrences alleged in this CA/FO. Respondent hereby waives any rights Respondent may have to appeal the Final Order attached to this Consent Agreement and made part of the CA/FO. Respondent hereby consents to the terms of this CA/FO and the issuance of this CA/FO without adjudication.

**G. PARTIES BOUND**

31. This CA/FO shall apply to and be binding upon Respondent and its agents, successors, and assigns, and upon all persons acting under or for Respondent, until such time as the civil penalty required under Section E has been paid in accordance with Section I, and any delays in performance and/or stipulated penalties have been resolved. At such time as those matters are concluded, this CA/FO shall terminate and constitute full settlement of the violations alleged herein.

32. No change in ownership or corporate, partnership, or legal status relating to the Facility will in any way alter Respondent's obligations and responsibilities under this CA/FO.

33. Until termination of this CA/FO, Respondent shall give notice of this CA/FO to any successor in interest prior to transfer of Respondent's ownership or operation of the Facility and shall notify EPA at least seven (7) days prior to such transfer.

34. Respondent's undersigned representative hereby certifies that he or she is fully authorized by Respondent to enter into this CA/FO and to execute and legally bind Respondent to it.

**H. CERTIFICATION OF COMPLIANCE**

35. Respondent certifies, as set forth in Paragraph 36, by signing this CA/FO that, to the best of its knowledge, as of the date of execution by Respondent of this CA/FO, and except as provided in the Administrative Order on Consent, Docket No. OPA-311-09-2019-001, entered



into between EPA and Respondent on May 24, 2019, it is in compliance with the requirements of Section 311(j) of the Act, 33 U.S.C. § 1321(j), at the Facility.

36. Respondent's signatory certifies under penalty of law that this certification of compliance with the requirements of Section 311(j), 33 U.S.C. § 1321(j), is, to the best of the signatory's knowledge, based upon true, accurate, and complete information, which the signatory can verify personally or regarding which the signatory has inquired of the person or persons directly responsible for gathering the information.

**I. PAYMENT OF CIVIL PENALTY**

37. Respondent hereby consents to the assessment of, and agrees to pay, a civil penalty of ONE HUNDRED NINETY-SIX THOUSAND, THREE HUNDRED AND FOURTEEN DOLLARS (\$196,314.00) in settlement of the violations set forth in this CA/FO. This CA/FO constitutes a settlement of all claims alleged in this CA/FO.

38. Respondent shall pay the civil penalty within sixty (60) days of the Effective Date of this CA/FO. The Effective Date of this CA/FO is the date that the Final Order is filed with the Regional Hearing Clerk after it is signed by the Regional Judicial Officer.

39. Respondent shall submit the payment due under this CA/FO in accordance with one of the options set forth below and shall reference Respondent's name and state that payment is being made pursuant to this CA/FO.

**a. Payments**

1. Check Payment. If paying by check, Respondent shall submit a cashier's or certified check in the amount of \$196,314.00, payable to the "Treasurer, United States of America." The check shall specify in the notation section the docket number of this case. The cover

letter transmitting each check should include Respondent's name, the case title, the docket number, and the amount of the penalty.

A check sent by regular U.S. Postal Service mail should be addressed to:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

A check sent by overnight mail should be addressed to:

U.S. Environmental Protection Agency  
Government Lockbox 979077  
U.S. EPA Fines and Penalties  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, MO 63101  
Contact: Craig Steffen (513-487-2091)

2. Electronic Transfer. Alternatively, payment may be made by electronic transfer. Respondent's name, the case title and the docket number shall be provided as part of the payment transmittal. An electronic payment shall be made as follows:

Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the following information:

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"

ACH (also known as REX or remittance express):

Automated Clearinghouse (ACH) for receiving US currency

PNC Bank  
808 17<sup>th</sup> Street, NW  
Washington, DC 20074  
Contact – Jesse White (301-877-6548)  
ABA = 051036706  
Transaction Code 22 – checking  
Environmental Protection Agency  
Account 31006  
CTX Format

**b. Notification.** A copy of each check, or notification that the payment has been made by one of the other methods listed above, including proof of the date payment was made, shall be sent with a transmittal letter, indicating Respondent’s name, the case title, and docket number, to each of the following:

Peter Reich (ENF-3-2)  
Enforcement and Compliance Assurance Division  
U.S. EPA, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

and

Steven Armsey  
Regional Hearing Clerk (ORC-1)  
U.S. EPA, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

40. In accordance with the Debt Collection Act of 1982 and U.S. Treasury directive (TFRM 6-8000), failure to send the penalty by the due date will result in imposition of interest from the effective date of this CA/FO at the current interest rate published by the U.S. Treasury, as described at 40 C.F.R. § 13.11. In addition, a twelve percent (12%) per annum penalty will be applied on any principal amount not paid within ninety (90) days of the due date.

41. The penalties specified in this CA/FO shall represent civil penalties assessed by EPA and shall not be deducted by Respondent or any other person or entity for federal, state, or local taxation purposes.

**J. RESERVATION OF RIGHTS**

42. Except as addressed in this CA/FO, EPA expressly reserves all rights and defenses that it may have.

43. Except as addressed by this CA/FO, EPA hereby reserves all of its statutory and regulatory powers, authorities, rights, and remedies, both legal and equitable, including any right EPA may have to require that Respondent perform tasks in addition to those required by this CA/FO. EPA further reserves all of its statutory and regulatory powers, authorities, rights, and remedies, both legal and equitable, which may pertain to Respondent's failure to comply with any of the requirements of this CA/FO, including, without limitation, the assessment of penalties under Section 311(b) of the CWA, 33 U.S.C. § 1321(b). This CA/FO shall not be construed as a covenant not to sue, a release, waiver, or limitation of any rights, remedies, powers, or authorities, civil or criminal, which EPA has under the CWA, or any other statutory, regulatory, or common law enforcement authority of the United States, except as otherwise set forth herein.

44. Compliance by Respondent with the terms of this CA/FO shall not relieve Respondent of its obligations to comply with any applicable local, state, or federal laws and regulations.

45. The entry of this CA/FO and Respondent's consent to comply shall not limit or otherwise preclude EPA from taking, nor limit or otherwise preclude Respondent from asserting rights and defenses, in additional enforcement actions should EPA determine that such actions are warranted except as they relate to Respondent's liability for federal civil penalties for the

specific alleged violations and facts as set forth in Section D of this CA/FO. Full payment of the penalty proposed herein shall resolve Respondent's liability for federal civil penalties for the violations and facts alleged herein.

46. Except in an action to enforce this CA/FO, Respondent expressly reserves all rights to assert that neither this CA/FO nor anything in this CA/FO shall be admissible in any proceeding as evidence of an admission by, or to prove the liability of Respondent for the allegations stated herein.

**K. MISCELLANEOUS**

47. This CA/FO may be amended or modified only by written agreement executed by both EPA and the Respondent.

48. The headings in this CA/FO are for convenience of reference only and shall not affect interpretation of this CA/FO.

49. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in this proceeding.

50. EPA and Respondent consent to entry of this CA/FO without further notice.

**K. EFFECTIVE DATE**

51. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.13(b), this CA/FO shall be effective on the date that the Final Order contained in this CA/FO, having been approved and issued by the Regional Judicial Officer, is filed with the Regional Hearing Clerk.

**L. PUBLIC NOTICE**

52. 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 the 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.

**IT IS SO AGREED,**

**For Respondent U.S. Lubricants, Inc., a California Corporation**

/s/ William F. Barkett Date: 6/26/2019

Name: William F. Barkett

Title: Vice President

**For Complainant U.S. Environmental Protection Agency:**

/s/ Amy C. Miller Date: 7/17/2019

Amy C. Miller  
Director, Enforcement and Compliance Assurance Division  
U.S. Environmental Protection Agency Region 9  
75 Hawthorne Street  
San Francisco, CA 94105