

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX**

IN THE MATTER OF:	U.S EPA Docket No. CWA-09-2020-0072
Lanai Oil Company, Inc.	Clean Water Act Section 311 Class II Consent Agreement and Final Order
Respondent	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 Lanai Oil Company, Inc. located at Kaunalapau Highway, Lanai, County of Maui, Hawaii (“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 the Respondent violated Section 311(j)(1)(C) of the CWA, 33 U.S.C. § 1321(j)(1)(C), and its 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”

4. Initially by Executive Order 11548 (July 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 Section 311(j)(1)(C) of the CWA, 33 U.S.C. § 1321(j)(1)(C), 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.* 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).

6. 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 cause[s] a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.”

C. GENERAL ALLEGATIONS

7. Respondent, Lanai Oil Company, Inc., operates a facility located at Kaunalapau Highway, Lanai, County of Maui, Hawaii (the “Lanai Facility”).

8. Since 1986, Lanai Oil Company, Inc. has been operating a bulk fuel storage and distribution terminal whereby it stores and distributes diesel and gasoline to customers on the Island of Lanai.

9. The Facility’s aggregate above-ground storage capacity is greater than 1,320 gallons of oil, stored in aboveground storage tanks (“ASTs”).

10. 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.

11. Respondent, Lanai Oil Company, Inc., is a corporation under the laws of Hawaii with a bulk oil storage and distribution terminal located at Kaunalapau Highway, Lanai, County of Maui, Hawaii.

12. Respondent is therefore an “operator” of the Facility within the meaning of Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6) (“‘operator’ means . . . any person . . . operating [an] onshore facility”), and 40 C.F.R. § 112.2.

13. The Lanai Facility is located approximately 200 feet from Kaunalapau Harbor and the Pacific Ocean. The Kaunalapau Harbor and the Pacific Ocean are considered “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.

14. The Facility is therefore 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 (a Spill Prevention, Control, and Countermeasure (SPCC)-regulated facility).

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

16. On November 5, 2018, EPA conducted an inspection of the Facility to determine Respondent's compliance with the Oil Pollution Prevention Regulations, which include requirements for SPCC planning.

17. Respondent entered into an Administrative Order on Consent (EPA Docket No. OPA-311-09-2020-001) with EPA, effective May 15, 2020, to come into full compliance with the Oil Pollution Prevention Regulations at this Facility.

D. ALLEGED VIOLATIONS

18. Paragraphs 1-17 above are incorporated herein by reference.

19. On November 5, 2018, EPA Region IX inspected the Lanai Facility to evaluate compliance with the requirements of 40 C.F.R. Part 112. Based on that inspection and the review of documentation provided by the Respondent, EPA determined that the Respondent had not prepared an adequate SPCC Plan or implemented all requirements of 40 C.F.R. Part 112. For instance, Respondent failed to conduct a review and evaluation of the SPCC plan at least once every five (5) years, conduct integrity testing of the aboveground storage tanks ("AST's"), and properly permanently close out of service ASTs.

E. CIVIL PENALTY

20. The Complainant proposes that Respondent be assessed, and Respondent agrees to pay SEVENTY-ONE THOUSAND ONE-HUNDRED SIXTY-SIX DOLLARS (\$71,166), plus interest, as the civil penalty for the violations alleged herein.

21. 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, *see* 40 C.F.R. § 19.4, and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (“2015 Act”), *see* 28 U.S.C. § 2461, note.

22. Respondent must pay the penalty and interest in accordance with the following payment schedule:

<i>Deadline to Submit Payment</i>	<i>Amount of Payment (Fractional Penalty Amount + Interest)</i>
No later than 90 DAYS after the effective date of this CAFO	\$24,077.83 (\$23,722 + 355.83)
No later than 225 DAYS after the effective date of this CAFO	\$24,315.05 (\$23,722 + 593.05)
No later than 360 DAYS after the effective date of this CAFO	\$24,196.44 (\$23,722 + 474.44)

23. The payment schedule is based on Respondent’s COVID-19 certified statement, dated July 6, 2020. Any false statement made in Respondent’s COVID-19 certified statement will result in voiding the payment schedule, and Respondent will be required to pay the full amount due within (1) 30 days of the Effective Date of this CAFO, or (2) within 30 days from when EPA determines the certification contains a false statement, whichever date is sooner.

F. ADMISSIONS AND WAIVERS

24. 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.

25. Respondent neither admits nor denies any allegations of fact or law set forth in this CA/FO and does not admit any liability arising out of the occurrences alleged in this CA/FO. In this proceeding, Respondent hereby waives any rights Respondent may have to contest the allegations and 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

26. 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.

27. 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.

28. 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.

29. The undersigned representative of Respondent 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

30. Except as set forth in Administrative Order on Consent (EPA Docket No. OPA-311-09-2020-001) with EPA, effective May 15, 2020, Respondent certifies by signing this CA/FO that, to the best of its knowledge, as of the Effective Date of this CA/FO, it is in compliance with the requirements of Section 311(j) of the Act, 33 U.S.C. § 1321(j), at the Facility.

31. The signatory for Respondent certifies under penalty of law that this certification of compliance is 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

32. Respondent hereby consents to the assessment of, and agrees to pay a civil penalty of SEVENTY-ONE THOUSAND ONE-HUNDRED SIXTY-SIX DOLLARS (\$71,166), plus interest stated herein, 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.

33. 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.

34. Respondent shall submit the payments due under this CA/FO in accordance with one of the options set forth below, and shall reference the 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 cashier's or certified checks in the amounts specified herein (see Section E: Civil Penalty) payable to the "Treasurer, United States of America." The checks 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, payments 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:

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”
*Note: Foreign banks **must** use a United States Bank to send a wire transfer to the US EPA.

ACH (also known as REX or remittance express):

US Treasury REX/Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking
Physical location of US Treasury Facility:
5700 Rivertech Court
Riverdale, MD 20737
Remittance Express (REX): 1-866-234-5681

Online Payment:

Payers can use their credit or debit cards (Visa, MasterCard, American Express & Discover) as well as checking account information to make payments.

This payment option can be accessed from the information below:
www.pay.gov
Enter “sfo1.1” in the search field
Open form and complete required fields

If clarification regarding a particular method of payment remittance is needed, contact the EPA Cincinnati Finance Center at 513-487-2091.

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:

Connor Adams (ECAD 3-2)
Enforcement Division
U.S. EPA, Region IX- Pacific Island Contact Office
300 Ala Moana Boulevard
Honolulu, HI 96850

and

Regional Hearing Clerk
U.S. EPA, Region IX
r9HearingClerk@epa.gov

35. In accordance with the Debt Collection Act of 1982 and U.S. Treasury directive (TFRM 6-8000), failure to pay 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.

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

J. RESERVATION OF RIGHTS

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

38. 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.

39. 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.

40. 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.

41. 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

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

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

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

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

L. EFFECTIVE DATE

46. 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.

IT IS SO AGREED,

For Lanai Oil Company, Inc.:

“/s/” _____ Date: _____

Name: Alexander J.W. McBarnet, Jr.

Title: Vice President / Secretary / Director
Lanai Oil Company, Inc.
16 Hobron Ave.
Kahului, HI 96732

For Complainant U.S. Environmental Protection Agency:

“/s/” _____ Date: _____

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

FINAL ORDER

Pursuant to Section 311(b)(6) of the Clean Water Act, 33 U.S.C. §1321(b)(6) and the delegated authority of the undersigned, and in accordance with the “Consolidated Rule of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, 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.

It is Hereby Ordered that this Consent Agreement and Final Order (EPA Docket No. CWA-09-2020-0072) be entered and that the Respondent shall pay a civil penalty in the amount of \$71,166, plus interest stated herein, in accordance with the terms of this Consent Agreement and Final Order.

Date: _____

Steven L. Jawgiel
Regional Judicial Officer
U.S. EPA, Region IX