

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX

IN THE MATTER OF

**The SoCo Group, Inc.,
a California corporation,
5962 Priestly Drive
Carlsbad, CA 92008,**

Respondent.

**CWA SECTION 311 CLASS II
CONSENT AGREEMENT
AND FINAL ORDER**

Docket No. OPA-09-2017-0004

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 Sections 311(b)(6)(A) and (b)(6)(B)(ii) of the Clean Water Act (“CWA” or “Act”), 33 U.S.C. §§ 1321(b)(6)(A), (b)(6)(B)(ii), as amended by the Oil Pollution Act of 1990, and under the authority provided by Section 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 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 The SoCo Group, Inc. (“Respondent”) for the alleged violation of Section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3). 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.

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 or relating to the conduct, actions, or violations of law as alleged herein; nor shall the settlement communications in this matter be admissible 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. Except as set forth in Paragraph 33, the Parties agree to bear their own costs and attorneys' fees.

13. 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.

14. 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.

15. 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.

16. 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

17. Section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3), prohibits "[t]he discharge of oil or hazardous substances into or upon the navigable waters of the United States [and] adjoining shorelines . . . in such quantities as may be harmful"

18. "Navigable waters" are defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 110.1.

19. 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

20. Respondent is a petroleum marketing and distribution company with a principal place of business at 5962 Priestly Drive, Carlsbad, CA 92008.

21. 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), 1362(5).

22. Respondent is or was the “owner or operator” within the meaning of Section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6), of the fuel tank truck that overturned on an overpass above the San Diego River on May 13, 2016.

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

24. The fuel that the tank truck was transporting when it overturned was “oil” within the meaning of Section 311(a)(1) of the Act, 33 U.S.C. § 1321(a)(1).

25. The San Diego River is a “navigable water of the United States,” as defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 110.1.

26. EPA alleges that on May 13, 2016, Respondent’s overturned tank truck discharged oil in such quantities as “may be harmful,” as defined in 40 C.F.R. § 110.3(b), into or upon the navigable waters of the United States and adjoining shorelines in violation of Section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3).

E. CIVIL PENALTY

27. 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 \$18,107 per day for each day during which the violation continues, up to a maximum Class II civil penalty of \$226,338. See also 82

Fed. Reg. 3633 (Jan. 12, 2017).

28. Respondent consents to the assessment of and agrees to pay a civil penalty of FIFTY-NINE THOUSAND THREE-HUNDRED AND EIGHTY-SIX DOLLARS AND NINETY-TWO CENTS (\$59,386.92) 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

29. Respondent shall submit payment of the civil penalty within thirty (30) days of the Effective Date of the CAFO.

30. 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.”

31. 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 payment of the civil penalty 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
Region 9
75 Hawthorne Street (ENF-8-2)
San Francisco, California 94105

32. If payment is not received within thirty (30) days of the Effective 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 30 and 31 above.

33. Respondent’s failure to pay the full penalty within thirty (30) days of the Effective Date 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.

34. 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

35. 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

36. 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 The SoCo Group, Inc.:

//s//

Date: _____ 4/27/2017 _____

Name: _____ Angus McDonald _____

Title: _____ President _____

For Complainant U.S. Environmental Protection Agency

//s// Thanne Berg (acting for)

Date: _____ 6/2/2017 _____

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

FINAL ORDER

Pursuant to Section 311(b)(6) of the Act, 33 U.S.C. § 1321(b)(6), and the delegated authority of the undersigned, 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 Consent Agreement. This order shall become effective upon filing and shall constitute a full adjudication of the allegations stated in the Consent Agreement.

Date: _____

Steven Jawgiel
Regional Judicial Officer
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, CA 94105