

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103**

In The Matter of:	:	
	:	
Storm Oil, LLC	:	
3804 Yuma Street, NW	:	
Washington, DC 20016	:	
	:	Proceeding under Sections 311(b)(3),
Respondent,	:	311(j) and 311(b)(6)(B)(ii) of the
	:	Clean Water Act, 33 U.S.C. §§
	:	1321(b)(3), 1321(j)
	:	and 1321(b)(6)(B)(ii)
	:	
	:	
	:	<b>Docket No. CWA-03-2020-0003</b>
Storm Oil, LLC	:	
11401 Somerset Avenue	:	
Beltsville, MD 20705	:	
	:	
Facility.	:	
_____	:	

**CONSENT AGREEMENT**

**PRELIMINARY STATEMENT**

1. This Consent Agreement is entered into by the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region III (“Complainant” or “EPA”) and Storm Oil, LLC (“Respondent”) (collectively the “Parties”), pursuant to Section 311(b)(6)(B)(ii) of the Clean Water Act (“CWA”), as amended, 33 U.S.C. § 1321(b)(6)(B)(ii), and 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. Section 311(b)(6)(B)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(ii), authorizes the Administrator of the U.S. Environmental Protection Agency to assess penalties and undertake other actions required by this Consent Agreement. The Administrator has delegated this authority to the Regional Administrator who, in turn, has delegated it to the Complainant. This Consent Agreement and the attached Final Order (hereinafter jointly referred to as the “CAFO”) resolve Complainant’s civil penalty claims against Respondent under the CWA (or the “Act”) for the violations alleged herein.

2. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant hereby simultaneously commences and resolves this administrative proceeding.

### **JURISDICTION**

3. The U.S. Environmental Protection Agency has jurisdiction over the above-captioned matter, as described in Paragraph 1, above.
4. The Consolidated Rules of Practice govern this administrative adjudicatory proceeding pursuant to 40 C.F.R. § 22.1(a)(6).

### **GENERAL PROVISIONS**

5. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CAFO.
6. Except as provided in Paragraph 5, above, Respondent neither admits nor denies the specific factual allegations set forth in this Consent Agreement.
7. Respondent agrees not to contest the jurisdiction of EPA with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of this CAFO.
8. For purposes of this proceeding only, Respondent hereby expressly waives its right to contest the allegations set forth in this CAFO and waives its right to appeal the accompanying Final Order.
9. Respondent consents to the assessment of the civil penalty stated herein, to the issuance of any specified compliance order herein, and to any conditions specified herein.
10. Respondent shall bear its own costs and attorney's fees in connection with this proceeding.
11. EPA shall provide public notice and an opportunity to comment on the claims set forth in this CAFO in accordance with Section 311(b)(6)(C)(i) of the CWA, 33 U.S.C. § 1321(b)(6)(C)(i), and 40 C.F.R. § 22.45.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

12. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant alleges and adopts the Findings of Fact and Conclusions of Law set forth immediately below.
13. Respondent is a limited liability company with a principal place of business located at

11401 Somerset Avenue, Beltsville, Maryland 20705 (“Facility”).

14. Respondent is a person within the meaning of Sections 311(a)(7) and 502(5) of the CWA, 33 U.S.C. §§ 1321(a)(7) and 1362(5), and 40 C.F.R. § 112.2.
15. The Facility began operations at some point shortly after October 13, 2015, and since that time, Respondent has been the owner and/or operator of the Facility within the meaning of Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6), and 40 C.F.R. § 112.2.
16. During its operations, Respondent was the owner and/or operator of the Facility and was engaged in receiving, storing and recycling waste vegetable oil at this Facility.
17. The Facility is located less than 50 meters from Indian Creek, a tributary to the East Branch of the Anacostia River, which in turn is a tributary to the Anacostia River.

### **Count I (Oil Spill)**

18. The allegations in each of the preceding paragraphs of this CAFO are incorporated by reference as though fully set forth herein.
19. Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), prohibits the discharge of oil or hazardous substances 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.
20. On April 3, 2018, while offloading waste oil from a truck to a storage tank, a leak in a line caused a discharge of approximately 25 gallons of waste vegetable oil from the Facility.
21. Waste vegetable oil is an oil pursuant to Section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1).
22. The discharge entered Indian Creek, a navigable water of the United States as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7).
23. For purposes of Section 311(b)(3) and (b)(4) of the CWA, 33 U.S.C. § 1321(b)(3) and (b)(4), discharges of oil into or upon the navigable waters and adjoining shorelines 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 violate applicable water quality standards or 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 the adjoining shorelines.
24. The discharge on April 3, 2018, caused a sheen upon the surface of Indian Creek.

25. The April 3, 2018, discharge was in a quantity that has been determined may be harmful under 40 C.F.R. § 110.3(b), which implements Section 311(b)(3) and (b)(4) of the CWA, 33 U.S.C. § 1321(b)(3) and (b)(4).
26. Respondent's discharge of oil into or upon Indian Creek in a quantity that has been determined may be harmful under 40 C.F.R. § 110.3, violated Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3).

### **Count II (SPCC)**

27. The allegations in each of the preceding paragraphs of this CAFO are incorporated by reference as though fully set forth herein.
28. Pursuant to its delegated authority under Section 311(j) of the CWA, 33 U.S.C. § 1321(j), EPA promulgated the Oil Pollution Prevention Regulations, codified at 40 C.F.R. Part 112.
29. Pursuant to 40 C.F.R. § 112.1, an owner or operator of a non-transportation-related onshore or offshore facility with an above-ground oil storage capacity exceeding 1,320 gallons, engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using, or consuming oil or oil products, which due to its location, could reasonably be expected to discharge oil in quantities that may be harmful into or upon the navigable waters of the United States or adjoining shorelines is subject to Part 112.
30. According to 40 C.F.R. § 112.3, an owner or operator of an onshore or offshore facility subject to Part 112 must prepare in writing and implement a Spill Prevention, Control, and Countermeasure ("SPCC") plan, in accordance with § 112.7 and any other applicable section.
31. EPA conducted an SPCC compliance inspection ("EPA Inspection") of the Facility on May 1, 2018.
32. At the time of the EPA Inspection, the Facility had a total aboveground oil storage capacity of approximately 115,135 gallons.
33. Indian Creek, the East Branch of the Anacostia River and the Anacostia River are navigable waters of the United States within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7).
34. The Facility is an onshore facility within the meaning of Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10), and 40 C.F.R. § 112.2.
35. Due to its location, the Facility could reasonably be expected to discharge oil in quantities that may be harmful, as defined by 40 C.F.R. § 110.3, into or upon navigable waters of the United States or its adjoining shoreline.

36. Pursuant to 40 C.F.R. § 112.1, Respondent, as the owner and/or operator of the Facility, is subject to the Oil Pollution Prevention Regulations codified at 40 C.F.R. Part 112.
37. Pursuant to 40 C.F.R. § 112.3, Respondent was required to prepare in writing and implement an SPCC plan, in accordance with 40 C.F.R. § 112.7 and any other applicable section.
38. As of the time of the EPA Inspection, Respondent had failed to prepare in writing an SPCC Plan for the Facility, in accordance with 40 C.F.R. § 112.7, and any other applicable section.
39. For the period of time from when the Facility began operations in 2015, up to at least the date of the EPA Inspection, Respondent failed to prepare in writing an SPCC Plan for the Facility.
40. Failure to prepare and implement an SPCC Plan in accordance with 40 C.F.R. § 112.7, and any other applicable section, is a violation of 40 C.F.R. § 112.3, issued pursuant to Section 311(j) of the CWA, 33 U.S.C. § 1321(j).

#### **CIVIL PENALTY**

41. In settlement of EPA's claims for civil penalties for the violations alleged in this Consent Agreement, Respondent consents to the assessment of a civil penalty in the amount of **FORTY-TWO THOUSAND TWO HUNDRED THIRTY-SEVEN** dollars (\$42,237.00), which Respondent shall be liable to pay in accordance with the terms set forth below.
42. The civil penalty is based upon EPA's consideration of a number of factors, including the penalty criteria ("statutory factors") set forth in Section 311(b)(8) of the CWA, 33 U.S.C. § 1321(b)(8), including the seriousness of the violation; the economic benefit to the violator, if any; the degree of culpability; history of prior violations, if any; any other penalty for the same incident; the nature, extent, and degree of success of the violator's mitigation efforts; the economic impact of the penalty on the violator; and other matters as justice may require. These factors were applied to the particular facts and circumstances of this case with specific reference to EPA's *Civil Penalty Policy for Section 311(b)(3) and Section 311(j) of the Clean Water Act* (August 1998) which reflects the statutory penalty criteria and factors set forth at Section 311(b)(8) of the CWA, 33 U.S.C. § 1321(b)(8), the appropriate *Adjustment of Civil Monetary Penalties for Inflation*, pursuant to 40 C.F.R. Part 19, and the applicable EPA memoranda addressing EPA's civil penalty policies to account for inflation.
43. The timeframe within which to pay the civil penalty is based upon an analysis of Respondent's ability to pay. This analysis was based upon information submitted to EPA by Respondent, specifically tax returns for three years and associated financial information.

44. Based upon this financial analysis, EPA has determined that the Respondent is to make payments of the civil penalty, which includes assessed interest, in the following manner:

- a. The first payment is due within 30 days of the Effective Date of this CAFO in the amount of \$2,365.39;
- b. The second payment is due within 60 days of the Effective Date of this CAFO in the amount of \$2,332.16, plus \$33.23 in interest, for a second installment payment of \$2,365.39;
- c. The third payment is due within 90 days of the Effective Date of this CAFO in the amount of \$2,333.06, plus \$32.33 in interest, for a third installment payment of \$2,365.39;
- d. The fourth payment is due within 120 days of the Effective Date of this CAFO in the amount of \$2,335.07, plus \$30.32 in interest, for a fourth installment payment of \$2,365.39;
- e. The fifth payment is due within 150 days of the Effective Date of this CAFO in the amount of \$2,338.91, plus \$26.48 in interest, for a fifth installment payment of \$2,365.39;
- f. The sixth payment is due within 180 days of the Effective Date of this CAFO in the amount of \$2,339.10, plus \$26.29 in interest, for a sixth installment payment of \$2,365.39;
- g. The seventh payment is due within 210 days of the Effective Date of this CAFO in the amount of \$2,341.90, plus \$23.49 in interest, for a seventh installment payment of \$2,365.39;
- h. The eighth payment is due within 240 days of the Effective Date of this CAFO in the amount of \$2,343.13, plus \$22.26 in interest, for an eighth installment payment of \$2,365.39;
- i. The ninth payment is due within 270 days of the Effective Date of this CAFO in the amount of \$2,345.80, plus \$19.59 in interest, for a ninth installment payment of \$2,365.39;
- j. The tenth payment is due within 300 days of the Effective Date of this CAFO in the amount of \$2,347.17, plus \$18.22 in interest, for a tenth installment payment of \$2,365.39;
- k. The eleventh payment is due within 330 days of the Effective Date of this CAFO in the amount of \$2,349.19, plus \$16.20 in interest, for an eleventh installment payment of \$2,365.39;
- l. The twelfth payment is due within 360 days of the Effective Date of this CAFO in the amount of \$2,351.67, plus \$13.72 in interest, for a twelfth installment payment of \$2,365.39;
- m. The thirteenth payment is due within 390 days of the Effective Date of this CAFO in the amount of \$2,353.24, plus \$12.15 in interest, for a thirteenth installment payment of \$2,365.39;
- n. The fourteenth payment is due within 420 days of the Effective Date of this CAFO in the amount of \$2,355.59, plus \$9.80 in interest, for a fourteenth installment payment of \$2,365.39;
- o. The fifteenth payment is due within 450 days of the Effective Date of this CAFO

- in the amount of \$2,357.29, plus \$8.10 in interest, for a fifteenth installment payment of \$2,365.39;
- p. The sixteenth payment is due within 480 days of the Effective Date of this CAFO in the amount of \$2,359.32, plus \$6.07 in interest, for a sixteenth installment payment of \$2,365.39;
  - q. The seventeenth payment is due within 510 days of the Effective Date of this CAFO in the amount of \$2,361.74, plus \$3.65 in interest, for a seventeenth installment payment of \$2,365.39; and
  - r. The eighteenth and final payment is due within 540 days of the Effective Date of this CAFO in the amount of \$2,327.27, plus \$2.00 in interest, for an eighteenth and final installment payment of \$2,329.27.
45. Pursuant to the above schedule, Respondent will remit total principal payments for the civil penalty in the amount of forty-two thousand two hundred thirty-seven dollars (\$42,237) and total interest payments in the amount of three hundred three dollars and ninety cents (\$303.90). Respondent consents, for purposes of settlement, to the payment of interest specified in this and the foregoing paragraph.
46. If Respondent fails to make one of the installment payments in accordance with the schedule set forth in Paragraph 44, above, the entire unpaid balance of the penalty and all accrued interest shall become due immediately upon such failure, and Respondent shall immediately pay the entire remaining balance of the civil penalty along with any interest that has accrued up to the time of such payment. In addition, Respondent shall be liable and shall pay administrative handling charges and late payment penalty charges as described in Paragraphs 52 and 53 below, in the even of any such failure or default.
47. Respondent may, at any time after commencement of payments under the installment schedule set forth in Paragraph 44, above, elect to pay the entire principal balance, together with accrued interest to the date of such full payment.
48. Payment of the civil penalty amount, and any associated interest, administrative fees, and late payment penalties owed, shall be made by either cashier's check, certified check or electronic wire transfer, in the following manner:
- a. All payments by Respondent shall include reference to Respondent's name and address, and the Docket Number of this action, *i.e.*, CWA-03-2020-0003;
  - b. All checks shall be made payable to the **"Environmental Protection Agency," and bearing the notation "OSLTF-311."**
  - c. All payments made by check and sent by regular mail shall be addressed and mailed to:

U.S. Environmental Protection Agency  
Cincinnati Finance Center  
P.O. Box 979077

St. Louis, MO 63197-9000

- d. 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: 866-234-5681

- e. For additional information concerning other acceptable methods of payment of the civil penalty amount see:

<https://www.epa.gov/financial/makepayment>

- f. A copy of Respondent's check or other documentation of payment of the penalty using the method selected by Respondent for payment shall be sent simultaneously to:

Daniel L. Isales (3RC50)  
Environmental Science Center  
U.S. EPA, Region III  
701 Mapes Road  
Fort Meade, MD 20755-5350  
[isales.daniel@epa.gov](mailto:isales.daniel@epa.gov)

49. 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, as more fully described below. Accordingly, Respondent's failure to make timely payment of the penalty as specified herein shall result in the assessment of late payment charges including interest, penalties and/or administrative costs of handling delinquent debts.
50. Payment of the civil penalty is due and payable immediately upon receipt by Respondent of a true and correct copy of the fully executed and filed CAFO. Receipt by Respondent or Respondent's legal counsel of such copy of the fully executed CAFO, with a date stamp indicating the date on which the CAFO was filed with the Regional Hearing Clerk, shall constitute receipt of written initial notice that a debt is owed EPA by Respondent in accordance with 40 C.F.R. § 13.9(a).



51. **INTEREST:** Interest on the civil penalty assessed in this CAFO will begin to accrue on the effective date of this CAFO. However, EPA will not seek to recover interest on any amount of the civil penalties that is paid within thirty (30) calendar days after the effective date of this CAFO. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R § 13.11(a). Accordingly, interest payments on each outstanding installment of the civil penalty assessed herein are set forth in Paragraph 44 of this CAFO.
52. **ADMINISTRATIVE COSTS:** The costs of the EPA's administrative handling of overdue debts will be charged and assessed monthly throughout the period a debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives – Case Management*, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.
53. **LATE PAYMENT PENALTY:** A late payment penalty of six percent per year will be assessed monthly on any portion of the civil penalty that remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).
54. Respondent agrees not to deduct for federal tax purposes the civil penalty assessed in this CAFO.

#### **GENERAL SETTLEMENT CONDITIONS**

55. By signing this Consent Agreement, Respondent acknowledges that this CAFO will be available to the public and represents that, to the best of Respondent's knowledge and belief, this CAFO does not contain any confidential business information or personally identifiable information from Respondent.
56. Respondent certifies that any information or representation it has supplied or made to EPA concerning this matter was, at the time of submission true, accurate, and complete and that there has been no material change regarding the truthfulness, accuracy or completeness of such information or representation. EPA shall have the right to institute further actions to recover appropriate relief if EPA obtains evidence that any information provided and/or representations made by Respondent to the EPA regarding matters relevant to this CAFO, including information about respondent's ability to pay a penalty, are false or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action that EPA may have, civil or criminal, under law or equity in such event. Respondent and its officers, directors and agents are aware that the submission of false or misleading information to the United States government may subject a person to separate civil and/or criminal liability.

### **CERTIFICATION OF COMPLIANCE**

57. Respondent certifies to EPA, upon personal investigation and to the best of its knowledge and belief, that it currently is in compliance with regard to the violations alleged in this Consent Agreement.

### **OTHER APPLICABLE LAWS**

58. Nothing in this CAFO shall relieve Respondent of its obligation to comply with all applicable federal, state, and local laws and regulations, nor shall it restrict EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on the validity of any federal, state or local permit. This CAFO does not constitute a waiver, suspension or modification of the requirements of the CWA, or any regulations promulgated thereunder.

### **RESERVATION OF RIGHTS**

59. This CAFO resolves only EPA's claims for civil penalties for the specific violations alleged against Respondent in this CAFO. EPA reserves the right to commence action against any person, including 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. This settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice, 40 C.F.R. § 22.18(c). EPA reserves any rights and remedies available to it under the CWA, the regulations promulgated thereunder and any other federal law or regulation to enforce the terms of this CAFO after its effective date. Respondent reserves whatever rights or defenses it may have to defend itself in any such action.

### **EXECUTION /PARTIES BOUND**

60. This CAFO shall apply to and be binding upon the EPA, the Respondent and the officers, directors, employees, contractors, successors, agents and assigns of Respondent. By his or her signature below, the person who signs this Consent Agreement on behalf of Respondent is acknowledging that he or she is fully authorized by the Respondent to execute this Consent Agreement and to legally bind Respondent to the terms and conditions of this CAFO.

### **EFFECTIVE DATE**

61. Pursuant to 40 C.F.R. § 22.45(b), this CAFO shall be issued only after a 40-day public notice and comment period is concluded. This CAFO will become final and effective thirty (30) days after having been signed by the Regional Administrator or his delegate, the Regional Judicial Officer, and filed with the Regional Hearing Clerk.

**ENTIRE AGREEMENT**

62. This CAFO constitutes the entire agreement and understanding between the Parties regarding settlement of all claims for civil penalties pertaining to the specific violations alleged herein and there are no representations, warranties, covenants, terms, or conditions agreed upon between the Parties other than those expressed in this CAFO.

In Re: Storm Oil, LLC  
EPA Docket No. CWA-03-2020-0003

For Respondent:        STORM OIL, LLC

Date: \_\_\_\_\_

By: \_\_\_\_\_

Bentley Storm  
President, Storm Oil, LLC

For the Complainant:

After reviewing the Consent Agreement and other pertinent matters, I, the undersigned Director of the Enforcement and Compliance Assurance Division of the United States Environmental Protection Agency, Region III, agree to the terms and conditions of this Consent Agreement and recommend that the Regional Administrator, or his/her designee, the Regional Judicial Officer, issue the attached Final Order.

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Karen Melvin  
Director, Enforcement and Compliance  
Assurance Division  
U.S. EPA – Region III  
Complainant

Attorney for Complainant:

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Daniel L. Isales  
Assistant Regional Counsel  
U.S. EPA – Region III