

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF:

Sail Energy, LLC d/b/a Rinker Oil and
Propane
29 Water Street
Cuba, New York 14727

Respondent.

Proceeding Pursuant to Section 311(b)(6) of
the Clean Water Act, 33 U.S.C. § 1321(b)(6).

CONSENT AGREEMENT
AND
FINAL ORDER

Docket No. CWA-02-2024-3801

I. PRELIMINARY STATEMENT

WHEREAS, Complainant, the United States Environmental Protection Agency (“EPA” or “Complainant”) Region 2 and Sail Energy, LLC d/b/a Rinker Oil and Propane (“Rinker” or “Respondent”) (together referred to as “the Parties”), having agreed that settlement of this matter is in the public interest, and that entry of this Consent Agreement and Final Order (“CA/FO”) without further litigation is the most appropriate means of resolving this matter;

WHEREAS, Respondent has separately agreed to the compliance plan in Attachment A (the “Compliance Plan”) which is hereby incorporated by reference into this CA/FO in its entirety;

WHEREAS, EPA has calculated a penalty amount based on only some of the deficiencies found in the 2022 inspection, with the understanding that Respondent is actively curing deficiencies in accordance with the Compliance Plan.

NOW, THEREFORE, before the taking of any testimony, upon the pleadings, without adjudication of any issue of fact or law, and upon consent and agreement of the Parties, it is hereby agreed, and ordered as follows:

II. PROCEDURAL AND FACTUAL FINDINGS

1. The following findings of fact are made pursuant to the authority vested in the Administrator of the EPA by the Clean Water Act, 33 U.S.C. § 1251 *et. seq.* (“CWA”), which authority has been duly delegated to the Regional Administrator of EPA Region 2, and re-delegated to the undersigned Director, Superfund and Emergency Management Division of EPA Region 2.

2. The parties agree to settlement of this matter before the filing of a complaint, and therefore this proceeding is simultaneously commenced and concluded by the issuance of a consent agreement and final order pursuant to Sections 22.18(b)(2) and (3) of the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits” (“CROP”). 40 C.F.R. § 22.13(b).
3. This CA/FO resolves alleged violations for failure or refusal to comply with the Spill Prevention Control and Countermeasure (“SPCC”) regulations at 40 C.F.R. Part 112, issued pursuant to Section 311(j) of the CWA, and enforceable pursuant to Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6).
4. Respondent is a New York corporation that owns or operates a commercial bulk storage facility located at 29 Water Street, Cuba, New York (“the Facility”). The Facility is used as an oil and propane supplier and has a total of 281,785 gallons of SPCC-regulated oil storage, including a primary storage tank with a capacity of 273,635 gallons, other tanks and drum storage totaling 7,150 gallons, and a 1,000-gallon storage tank containing heating oil for on-site use. The facility has five underground storage tanks whose storage is not SPCC-regulated.
5. Respondent is a “person” within the meaning of Section 311(a)(7) of the CWA, 33 U.S.C. § 1321(a)(7), and 40 C.F.R. § 112.2.
6. The Facility is an “onshore facility” as defined in Section 211(a)(10) of the CWA, 33 U.S.C. 1321(a)(10), and due to its location, the Facility could reasonably be expected to discharge oil to a small manmade canal that flows into Griffin Creek and eventually into Oil Creek, but no discharge of oil in such quantities as “may be harmful”, as described in 40 CFR § 112.1(b) and 40 CFR 110.3, has been documented. Griffin Creek and Oil Creek (part of the Allegheny River Basin) are navigable waters of the United States as defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7).
7. The Facility is a “non-transportation-related” facility as defined by the Memorandum of Understanding between the Secretary of Transportation and the Administrator of the EPA (Nov. 24, 1971). 40 C.F.R. Part 112, Appendix A.
8. In late 2021, Respondent purchased the assets comprising the Facility from a prior owner and began operating the Facility as defined by Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6).
9. 40 C.F.R. § 112.3(a) requires owners or operators of SPCC-regulated facilities that began operations before August 16, 2002, to prepare and implement a written SPCC Plan in accordance with 40 C.F.R. §§ 112.7 and 112.8.
10. Pursuant to Section 308 of the CWA, 33 U.S.C. § 1318, EPA conducted a SPCC inspection at the Facility on August 17, 2022 (“SPCC Inspection”). Respondent is

required to maintain certain records to show it had properly implemented its SPCC Plan at the Facility. At the time of the SPCC Inspection, Respondent failed to produce certain required records, including: records showing that it schedules and conducts discharge prevention briefings for oil-handling personnel at least once a year, constituting a failure to adhere to the regulatory requirements set forth in 40 C.F.R. § 112.7(f)(3); records signed by the appropriate supervisor or inspector, with the SPCC Plan for a period of three years to show that it conducts inspections and tests in accordance with written procedures that it or the certifying engineer developed for the Facility per 40 C.F.R. § 112.7(e); records showing that accumulated rainwater in diked areas is inspected to ensure that its presence will not cause a discharge per 40 C.F.R. § 112.1(b); and proper records of drainage events per 40 C.F.R. § 112.8(c)(3)(iv).

11. On October 17, 2022, EPA sent Rinker a deficiency letter (the “October 2022 Letter”) setting forth various deficiencies noted during the SPCC Inspection (see Compliance Plan paragraph c) and provided Rinker with an opportunity to address the noted deficiencies within 30 days.
12. Following the October 2022 Letter, Rinker began taking steps to address the deficiencies referenced above, including by hiring and working with a third party to prepare a new SPCC Plan with the intent of addressing the outstanding SPCC Plan deficiencies (the “2023 Draft SPCC”). The 2023 Draft SPCC was submitted to EPA on December 1, 2023.
13. In March 2024, EPA sent Rinker a letter notifying it of potential CWA violations and providing an opportunity to confer (the “March 2024 Letter”), acknowledging the 2023 Draft SPCC Plan and stating that Rinker had not addressed all of the deficiencies noted in the October 2022 Letter.
14. On April 22, 2024, Rinker and EPA met on a call to discuss the March 2024 Letter and the alleged deficiencies in the October 2022 Letter. Following that call, Rinker took several steps to address some of the deficiencies at the Facility and began working with third parties to determine effective ways to address the deficiency with respect to permeability of the secondary containment area at the Facility.
15. On May 2, 2024, Rinker and EPA met on a call to follow up on the April 22, 2024 call. EPA confirmed that it had received various materials evidencing resolution of some of the deficiencies alleged in the October 2022 Letter; proposed steps were discussed to address the permeability of the secondary containment area at the Facility.
16. On May 20, 2024, Rinker and EPA met on a call (the “May 20 Call”) where Rinker outlined a proposal for addressing the permeability of the secondary containment area at the Facility consistent with the regulation. Rinker committed to taking such steps in carrying out such proposal promptly thereafter consistent with the Compliance Plan.

17. Since the May 20 Call, Rinker has agreed to permanently close tank 5, as defined in 40 CFR 112.2, which would exempt tank 5 from the 40 CFR 112 requirements. Additionally, Rinker has ordered a new, double-wall tank to replace the existing tank 5 at the Facility. These steps are each pursuant to the Compliance Plan and at significant cost to Rinker, and Rinker engaged a third party consultant in June 2024 to update the Facility's current SPCC Plan (the "Draft Updated SPCC") to address the presence and operation of such new tank once it is installed.
18. Rinker anticipates installation of such new tank and finalization of the Draft Updated SPCC Plan prior to the end of December 2024, all in compliance with applicable regulations and addressing all remaining alleged deficiencies in the October 2022 and March 2024 Letters.
19. On September 4, 2024, EPA delivered a letter to Rinker outlining deficiencies it identified during review of the Draft Updated SPCC delivered to EPA by Rinker, and Rinker anticipates finalizing the Draft Updated SPCC to address all deficiencies identified in that letter consistent with the installation of the new tank referenced above.

III. SETTLEMENT TERMS

1. For the purposes of this Consent Agreement, Respondent admits the jurisdictional allegations of this CA/FO and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of this CA/FO.
2. Respondent neither admits nor denies the factual allegations and legal conclusions asserted by EPA in the Procedural and Factual Findings section set forth above.
3. Respondent waives its right to contest the allegations, request a judicial or administrative hearing, or appeal this CA/FO.
4. Respondent consents to the payment of the civil penalty as stated below.
5. Upon consideration of the factors in Section 311(b)(8) of the CWA, 33 U.S.C. § 1321(b)(8), including the history of Respondent's prior violations, the economic impact of the penalty on the Respondent, the degree of culpability involved, environmental impact of a worst-case discharge, economic benefit, inflation, and Respondent's demonstrated progress on, commitment to, investment in, and anticipated completion of the Compliance Plan, EPA has determined that an appropriate civil penalty to settle this matter is in the amount of \$44,500.

IV. TERMS OF PAYMENT

1. Respondent agrees to pay a civil penalty in the amount of Forty-four Thousand Five Hundred Dollars (\$44,500) ("Assessed Penalty") within thirty (30) days after the date of

the Final Order ratifying this Agreement is filed with the Regional Hearing Clerk (“Filing Date”).

2. Respondent shall pay the Assessed Penalty and any interest, fees, and other charges due, if any, using any method, or combination of appropriate methods, as provided on the EPA website: <https://www.epa.gov/financial/makepayment>. For additional instructions see: <https://www.epa.gov/financial/additional-instructions-making-payments-epa>.
3. When making a payment, Respondent shall:
 - a. Identify every payment with Respondent’s name, and reference the “Oil Spill Liability Trust Fund – 311” or “OSLTF – 311,” and reference “Docket No. CWA-02-2024-3801.”
 - b. Concurrently with any payments or within 24 hours of any payment, Respondent shall serve proof of such payment to the following persons, via electronic email:

Regional Hearing Clerk
 U.S. Environmental Protection Agency, Region 2
Maples.Karen@epa.gov

Douglas Kodama
 Branch Manager
 Response and Prevention Branch
 U.S. Environmental Protection Agency EPA, Region 2
Kodama.Doug@epa.gov

and

U.S. Environmental Protection Agency
 Cincinnati Finance Center
 Via electronic mail to:
CINWD_AcctsReceivable@epa.gov

“Proof of payment” means, as applicable, a copy of the check, confirmation of credit card or debit card payments, or confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with the appropriate docket number and Respondent’s name.

4. Interest, Charges, and Penalties on Late Payments. Pursuant to 33 U.S.C. § 1321(b)(6)(H), 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to timely pay any portion of the Assessed Penalty per this Agreement, the entire unpaid balance of the Assessed Penalty and all accrued interest shall become immediately due and owing, and EPA is authorized to recover the following amounts.

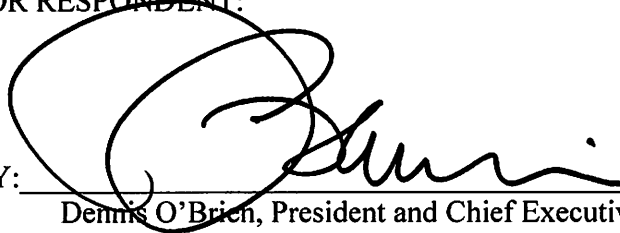
In the Matter of:
 Sail Energy, LLC d/b/a Rinker Oil and Propane
 Docket No. CWA-02-2024-3801
 13991938_4

- a. Interest. Interest begins to accrue from the Filing Date. If the Assessed Penalty is paid within thirty (30) days, interest accrued is waived. If the Assessed Penalty is not paid in full within thirty (30) days, interest will continue to accrue until the unpaid portion of the Assessed Penalty as well as any interest, penalties, and other charges are paid in full. Interest will be assessed at prevailing rates, per 33 U.S.C. § 1321(b)(6)(H). The rate of interest is the IRS standard underpayment rate, which is equal to the federal short-term rate plus 3 percentage points.
 - b. Handling Charges. The United States' enforcement expenses including, but not limited to, attorneys' fees and costs of collection proceedings.
 - c. Late Payment Penalty. A twenty percent (20%) quarterly non-payment penalty.
5. Late Penalty Actions. In addition to the amounts described in the prior Paragraph, if Respondent fails to timely pay any portion of the Assessed Penalty, interest, or other charges and penalties per this Agreement, EPA may take additional actions. Such actions EPA may take include, but are not limited to, the following.
 - a. Refer the debt to a credit reporting agency or a collection agency, per 40 C.F.R. §§ 13.13 and 13.14.
 - b. Collect the debt by administrative offset (i.e., the withholding of money payable by the United States government to, or held by the United States government for, a person to satisfy the debt the person owes the United States government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, per 40 C.F.R. Part 13, Subparts C and H.
 - c. Suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds, per 40 C.F.R. § 13.17.
 - d. Request that the Attorney General bring a civil action in the appropriate district court to recover the full remaining balance of the Assessed Penalty, in addition to interest and the amounts described above, per to 33 U.S.C. § 1321(b)(6)(H). In any such action, the validity, amount, and appropriateness of the Assessed Penalty shall not be subject to review.
6. Allocation of Payments. Pursuant to 31 C.F.R. § 901.9(f) and 40 C.F.R. § 13.11(d), a partial payment of debt will be applied first to outstanding handling charges, second to late penalty charges, third to accrued interest, and last to the principal that is the outstanding Assessed Penalty amount.
7. Tax Treatment of Penalties. Penalties, interest, and other charges paid pursuant to this Agreement shall not be deductible for purposes of federal or state taxes.

V. GENERAL PROVISIONS

1. Respondent and the EPA agree to the terms of this CA/FO, and Respondent agrees to comply with the terms of the Settlement Terms portion of this CA/FO, including with respect to completion of the Compliance Plan.
2. The provisions of this CA/FO shall be binding upon Respondent, its officers, directors, agents, servants, authorized representatives and successors or assigns, including, but not limited to, subsequent purchasers. No transfer of ownership or operation shall relieve Respondent of its obligation to comply with this CA/FO.
3. Nothing in this CA/FO shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this Agreement or of the statutes and regulations upon which this Agreement is based, or for Respondent's violation of any applicable provision of law, excluding the matters addressed in this CA/FO.
4. This CA/FO shall not relieve Respondent of its obligations to comply with all applicable provisions of Federal, state, or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to Federal, state, or local permit.
5. This CA/FO constitutes a settlement by EPA of all claims for civil penalties pursuant to the CWA and all regulations promulgated under the authority of the CWA for the matters addressed herein. Nothing in this CA/FO is intended to, nor shall be construed to, operate in any way to resolve any criminal liability of Respondent. Compliance with this CA/FO shall not be a defense to any actions subsequently commenced pursuant to Federal laws and regulations administered by EPA, and it is the responsibility of Respondent to comply with such laws and regulations.
6. Each undersigned representative of the Parties to this Consent Agreement certifies that he or she is fully authorized by the Party represented to enter into the terms and conditions of this Consent Agreement and to execute and legally bind that party to it.
7. Respondent and EPA agree to conciliate the matters set forth in this CA/FO without the necessity of a formal hearing, and each party shall bear its own costs, disbursements and attorney's fees in connection with the action resolved by this CA/FO.
8. Respondent consents to service upon it by electronic delivery of a copy of this CA/FO by an EPA employee other than the Regional Hearing Clerk.

FOR RESPONDENT:

BY:  DATE: Sept. 17, 2024
Dennis O'Brien, President and Chief Executive Officer
Sail Energy, LLC d/b/a Rinker Oil and Propane

FOR COMPLAINANT:

BY: _____ DATE: _____
Pat Evangelista, Division Director
Superfund Emergency Management Division
U.S. Environmental Protection Agency, Region 2

VI. FINAL ORDER

The Regional Administrator of the United States Environmental Protection Agency, Region 2, vested by authority delegated by the Administrator of the United States Environmental Protection Agency (“EPA”) and having further re-delegated such authority to the Superfund Emergency Management Division Director, Region 2, EPA, ratifies the foregoing Consent Agreement. The Agreement entered into by the parties is hereby approved, incorporated herein, and issued as an Order. The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, United States Environmental Protection Agency, Region 2, New York, New York.

DATED: _____

Pat Evangelista, Division Director
Superfund Emergency Management Division
U.S. Environmental Protection Agency, Region 2
290 Broadway
New York, NY 10007-1866

ATTACHMENT A

COMPLIANCE PLAN

Sail Energy, LLC d/b/a Rinker Oil and Propane (“Respondent” or “Rinker”), plans to take all necessary actions to be in full compliance with all provisions of the SPCC regulations at 40 § C.F.R. Part 112 and to remedy all violations noted in the October 17, 2022 deficiency letter from EPA to Rinker, no later than December 31, 2024, including but not limited to:

- a. Remedy the issue that the diked area surrounding tank 5 is not sufficient to contain discharged oil; and thus, bring itself into compliance with the regulatory requirements set forth in 40 C.F.R. § 112.8(c)(2).
- b. Maintain certain records required to show proper implementation of its SPCC Plan at the Facility, including adherence to the requirements of 40 C.F.R. § 112.7(e) (inspections and tests), 40 C.F.R. § 112.7(f)(3) (discharge prevention briefings), 40 C.F.R. § 112.1(b) (inspection of accumulated rainwater in diked areas), and 40 C.F.R. § 112.8(c)(3)(iv) (retain proper records of drainage events).
- c. Remedy the deficiencies set forth in the October 2022 deficiency letter, including:
 - i. failure to prepare a SPCC Plan in accordance with 40 C.F.R. § 112.7;
 - ii. failure to prepare a SPCC Plan in accordance with 40 C.F.R. § 112.5;
 - iii. failure to prepare a SPCC Plan in accordance with 40 C.F.R. § 112.8;
 - iv. failure to implement a SPCC Plan in accordance with 40 C.F.R. § 112.7;
 - v. failure to amend a SPCC plan following changes at the Facility in accordance with 40 C.F.R. § 112.5(a);
 - vi. failure to review and evaluate a SPCC Plan every five years in accordance with 40 C.F.R. § 112.5(b);
 - vii. failure to implement a SPCC Plan in accordance with 40 C.F.R. § 112.8, including that secondary containment around one tank at the Facility did not appear sufficiently impervious to contain discharged oil;
 - viii. and failure to prepare a SPCC Plan in accordance with 40 C.F.R. § 112.20(e).