



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

1595 WYNKOOP STREET
DENVER, CO 80202-1129

Phone 800-227-8917

http://www.epa.gov/region08

2012 JUL 27 AM 8:20

FILED
EPA REGION VIII
FEDERAL BUILDING

DOCKET NO.: CAA-08-2012-0012

IN THE MATTER OF:

SPOTTED HAWK DEVELOPMENT, LLC.

Respondent

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CONSENT AGREEMENT
FINAL ORDER

Pursuant to 40 C.F.R. §22.13(b) and 22.18, of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order. The Respondent is hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondent of this Consent Agreement and Final Order.

The Parties are hereby **ORDERED** to comply with all of the terms of this **Order**, effective immediately upon receipt by Parties of this **Order**.

SO ORDERED THIS 27th Day of July, 2012

Elyana R. Sutin
Regional Judicial Officer

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY** 2012 JUL 24 PM 2: 38
REGION 8

FILED
REGION 8
RECORDING CLERK

Docket No.: CAA-08-2012-0012

IN THE MATTER OF)
Spotted Hawk Development, LLC,)
Respondent.) **COMPLAINT AND
SETTLEMENT AGREEMENT**

Complainant, United States Environmental Protection Agency, Region 8 (the EPA or Complainant), and Respondent, Spotted Hawk Development, LLC (Respondent) (hereafter sometimes referred to collectively as the Parties or individually as a Party), by their undersigned representatives, hereby consent and agree as follows:

A. PRELIMINARY MATTERS

1. This Complaint and Settlement Agreement (Agreement) is entered into by the Parties to settle alleged violations of the federal Clean Air Act (CAA), and its implementing regulations in 40 C.F.R. Part 52, as well as violations of Section D.2.a and Appendix B of the Parties' August 29, 2011 Consent Agreement, Docket No. CAA-08-2011-0027, (Original Consent Agreement). These alleged violations occurred at the Simba 24-30H well (the Facility), owned and operated by Respondent, on the Fort Berthold Indian Reservation in North Dakota.
2. This proceeding is governed by the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, and the Revocation, Termination or Suspension of Permits (Consolidated Rules) set forth at 40 C.F.R. Part 22.

3. This Agreement is entered into by the Parties for the purpose of simultaneously commencing and concluding this matter, as authorized by 40 C.F.R. §22.13(b), and executed pursuant to 40 C.F.R. §22.18(b)(2) and (3) of the Consolidated Rules.
4. The EPA has jurisdiction over this matter pursuant to section 113(d)(1)(B) of the CAA, 42 U.S.C. §7413(d)(1)(B), as amended on November 15, 1990.
5. Respondent admits the jurisdictional allegations in this Agreement but does not admit the specific factual allegations or legal conclusions made by the Complainant herein.
6. Respondent waives its rights to a hearing before any tribunal and to contest any issue of law or fact set forth in this Agreement.
7. Complainant asserts that settlement of this matter is in the public interest, and Complainant and Respondent agree that settling this case without further litigation and without adjudication of any issue of fact or law is the most appropriate means of resolving this matter.
8. This Agreement, upon incorporation into a Final Order, applies to and is binding upon EPA and upon Respondent, and Respondent's officers, directors, employees, agents, successors and assigns. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this Agreement.
9. This Agreement contains all terms of the settlement agreed to by the Parties.
10. The Facility to which this Agreement relates is located at approximately 20 miles south of Parshall, North Dakota at 47 deg., 46 min., 40.91 sec. North Latitude and 102 deg., 15 min., 4.08 sec., West Longitude.

B. ALLEGED VIOLATIONS

1. Respondent is a limited liability company and therefore a “person” as defined in section 302(e) of the CAA, 42 U.S.C. §7602(e).
2. Respondent owns and operates the Facility described in paragraphs A.1 and A.10, above.
3. Complainant alleges, based on an e-mail message received from Respondent’s attorney on May 17, 2012, that Respondent violated the CAA, 40 C.F.R. section 52.21, and Section D.2.a and Appendix B of the Original Consent Agreement. Specifically, Respondent failed to install a ground pit flare for the tank vents on its Simba 24-30H well tank battery by December 1, 2011.
4. Respondent asserts that on April 27, 2012, it discovered the violation and promptly took steps to remedy its breach. Respondent further asserts that on May 4, 2012, it brought the Facility into compliance with Section D.2.a and Appendix B of the Original Consent Agreement by installing a ground pit flare for the tank vents on its Simba 24-30H well tank battery.
5. Respondent asserts that it is currently in full compliance with the Original Consent Agreement.

C. CIVIL PENALTY

1. Pursuant to an analysis of the facts and circumstances of this case with the statutory factors described in section 113(d)(1)(B) of the CAA, 42 U.S.C. §7413(d)(1)(B), the EPA has determined that an appropriate civil penalty to settle this action is the amount of fifty thousand dollars (\$50,000).
2. Respondent consents to the issuance of a Final Order and consents for the purposes of settlement but without any admission of liability or wrongdoing to the payment of the

civil penalty in the amount of fifty thousand dollars (\$50,000) in the manner described below in this paragraph:

- a. **Payment is due within 30 calendar days from the date of the Final Order**, to be issued by the Regional Judicial Officer, that adopts this Complaint and Settlement Agreement. If the due date falls on a weekend or legal federal holiday, then the due date becomes the next business day. The date the payment is made is considered to be the date processed by the Bank described below. Payments received by 11:00 AM EST are processed on the same day, those received after 11:00 AM are processed on the next business day.
- b. The payment shall be made by making a wire transfer as provided below or remitting a cashier's or certified check, including the name and docket number of this case, for the amount, **payable to "Treasurer, United States of America,"**
to:

CHECK PAYMENT:

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

OVERNIGHT MAIL:

US Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

Contact: Natalie Pearson
314-418-4087

WIRE TRANSFER:

Wire transfers should be directed to the Federal Reserve Bank of New York

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 AD 68010727
Environmental Protection Agency”

ACH (also known as REX or remittance express)

Automated Clearinghouse (ACH) for receiving US currency
PNC Bank
808 17th Street, NW
Washington, DC 20074
Contact B Jesse White 301-887-6548
ABA = 051036706
Transaction Code 22 – checking
Environmental Protection Agency
Account 310006
CTX Format

ON LINE PAYMENT:

There is now an On Line Payment Option, available through the Dept. of Treasury.
This payment option can be accessed from the information below:

WWW.PAY.GOV

Enter sfo 1.1 in the search field. Open form and complete required fields.

A copy of the check, or wire transfer, shall be sent simultaneously to:

Alexis North (8ENF-AT)	and	Tina Artemis
U.S. EPA Region 8		Regional Hearing Clerk (8RC)
Technical Enforcement Program		U.S. EPA Region 8
1595 Wynkoop St.		1595 Wynkoop St.
Denver, CO 80202-1129		Denver, CO 80202-1129

- c. Payment of the penalty in this manner does not relieve Respondent of its obligations to comply with the requirements of the CAA and its implementing regulations.

D. TERMS AND CONDITIONS

1. Failure by Respondent to comply with any of the terms of this Agreement shall constitute a breach of the Agreement and may result in referral of the matter to the Department of Justice for enforcement of this Agreement and for such other relief as may be appropriate.
2. Nothing in this Agreement shall be construed as a waiver by the EPA or any other federal entity of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondent's failure to perform pursuant to the terms of this Agreement.
3. Each undersigned representative of the Parties to this Agreement certifies that he or she is fully authorized by the Party represented to bind the Party to the terms and conditions of this Agreement and to execute and legally bind that Party to this Agreement.
4. The Parties agree to submit this Agreement to the Regional Judicial Officer, with a request that is to be incorporated into a Final Order.
5. This Agreement, upon incorporation into a Final Order by the Regional Judicial Officer and full satisfaction by the Parties, shall be a complete, full and final settlement of the violations alleged in this Agreement.
6. The terms, conditions, and compliance requirements of this Agreement may not be modified or amended except upon the written agreement of the Parties, and approval of the Regional Judicial Officer.
7. Each Party shall bear its own costs and attorneys fees in connection with all issues associated with this Agreement.
8. Respondent remains obligated to comply with all requirements of the Original Consent Agreement and all requirements of the CAA and its implementing regulations.

E. SIGNATURE PAGE

COMPLAINT AND SETTLEMENT AGREEMENT

**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY REGION 8,
Complainant.**

Date: July 24, 2012

for By: Eddie A. Seira
Andrew M. Gaydosh
Assistant Regional Administrator
Office of Enforcement, Compliance and
Environmental Justice

Date: July 18, 2012

By: David Rochlin
David Rochlin
Senior Enforcement Attorney
U.S. EPA, Region 8

**SPOTTED HAWK DEVELOPMENT,
LLC,
Respondent.**

Date: 6-15-12

By: 
Demarco J. Bell
President

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached Complaint and Settlement Agreement in the matter of Spotted Hawk Development, LLC, Docket No. CAA-08-2012-_____, was filed with the Regional Hearing Clerk on July 24, 2012.

Further, the undersigned certifies that, on the same day, a true and correct copy of the document was hand-delivered to Cynthia Reynolds, Director, EPA Air & Toxics Technical Enforcement Program, 1595 Wynkoop Street, Denver, CO 80202 and mailed by first-class U.S. mail to Thomas V. Skinner, counsel for Spotted Hawk Development, LLC, at Jones Day, 77 West Wacker Drive, Chicago, IL 60601-1692.

Date: July 24, 2012

David Rochlin

David Rochlin
Senior Enforcement Attorney
U.S. Environmental Protection Agency

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **COMPLAINT AND SETTLEMENT AGREEMENT** in the matter of **SPOTTED HAWK DEVELOPMENT, LLC.; DOCKET NO.: CAA-08-2012-0012**, was filed with the Regional Hearing Clerk on July 24, 2012, the **FINAL ORDER** was filed on July 27, 2012.


Further, the undersigned certifies that a true and correct copy of the document was delivered to David Rochlin, Senior Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned documents were placed in the United States mail on July 27, 2012, to:

Demarco J. Bell, EVP
Spotted Hawk Development
1650 Tysons Blvd, Ste 900
McLean, Virginia 22102

And emailed to:

Elizabeth Whitsel
U. S. Environmental Protection Agency
Cincinnati Finance Center
26 W. Martin Luther King Drive (MS-0002)
Cincinnati, Ohio 45268

July 27, 2012



Tina Artemis
Paralegal/Regional Hearing Clerk