



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2009 AUG -5 PM 4: 01
REGIONAL HEARING
CLERK

August 5, 2009

VIA CERTIFIED MAIL ONLY

Paul Scoff, Esq.
Vice President and General Counsel
Sprague Energy Corp.
Two International Drive
Suite 200
Portsmouth, NH 03801

Re: Consent Agreement for Sprague Energy Corp., Docket No. CWA-02-2008-3808

Dear Mr. Scoff:

Enclosed is the signed and fully executed Consent Agreement and Final Order for the above mentioned matter. If you have any questions, please do not hesitate to call me. You may call me at (212) 637-3244 or e-mail me at orrell.nadine@epa.gov.

Sincerely,

A handwritten signature in cursive script that reads "Nadine Orrell".

Nadine Orrell
Assistant Regional Counsel

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. 2
2009 AUG -5 PM 4:07
REGIONAL HEARING
CLERK

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF

Sprague Energy Corp.
2 International Drive Suite 200
Portsmouth, NH 03801

Respondent

CWA SECTION 311 CLASS II
CONSENT AGREEMENT
AND FINAL ORDER

Docket No. CWA-02-2008-3808

CONSENT AGREEMENT

This Consent Agreement is proposed and entered into under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by §§ 311(b)(6)(B) and 311(j) of the Clean Water Act (the "Act"), 33 U.S.C. §§1321(b)(6)(B) and 1321(j)(1)(C). The Administrator has delegated these authorities to the Regional Administrator of EPA, Region 2, who has in turn delegated these authorities to the Director of the Emergency and Remedial Response Division for Region 2, ("Complainant").

Respondent neither admits nor denies the allegations and findings contained in the Consent Agreement and Final Order ("CA/FO") and does not admit any liability to the United States arising out of the matters alleged in the CA/FO:

Complainant and Respondent having agreed that settlement of this matter is in the public interest, and that entry of this Consent Agreement and Final Order without further litigation is the most appropriate means of resolving this matter:

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 as follows:

Stipulations

The parties, in their own capacity or by their attorneys or other authorized representatives, hereby stipulate:

1. Respondent, Sprague Energy Corp., is a corporation organized under the laws of New Hampshire doing business in New York. The 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) and 1362(5), and 40 C.F.R. § 110.1.

2. The Respondent is the owner and operator, within the meaning of Section 311(a)(6) of the Act, 33 U.S.C. §1321(a)(6), and 40 CFR §112.2, of an oil storage facility located at 40 Canal Street, Mount Vernon, New York ("the Facility").

3. Respondent is engaged in storing, blending, transferring, distributing and related sales and marketing activities of oil or oil products located at the Facility.

4. The Facility has an aggregate aboveground storage capacity of greater than 1320 gallons of oil in containers each with a shell capacity of at least 55 gallons.

5. The Facility is located near Hutchinson River, Eastchester Bay and the Long Island Sound.

6. Hutchinson River, Eastchester Bay and the Long Island Sound are navigable waters of the United States, subject to the jurisdiction of Section 311 of the Act as defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 110.1.

7. The Facility is a non-transportation-related facility within the meaning of 40 CFR

§112.2 Appendix A, as incorporated by reference within 40 CFR § 112.2.

8. The Facility is an onshore facility within the meaning of Section 311(a)(10) of the Act, 33 U.S.C. § 1321(a)(10), and 40 CFR § 112.2.

9. The Facility is therefore a non-transportation-related onshore facility which, 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 ("an SPCC-regulated facility").

10. Pursuant to Section 311(j)(1)(C) of the Act, E.O. 12777, and 40 C.F.R. § 112.1, Respondent, as the owner and operator of an SPCC-regulated facility, is subject to the SPCC regulations.

11. Section 311(j)(5)(A) of the Act, 33 U.S.C. § 1321(j)(5)(A), provides that the President shall issue regulations requiring each owner or operator of an onshore facility within the meaning of 40 CFR § 112.2, to submit to the President a plan for responding, to the maximum extent practicable, to a worst case discharge, and to a substantial threat of such a discharge, of oil or a hazardous substance" (a "Facility Response Plan or FRP").

12. As an onshore facility within the meaning of 40 CFR § 112.2, the Facility is an "FRP facility," subject to the Facility Response Plan submission requirements of 40 CFR §112.20 and the Facility must comply with the Facility Response Plan Regulation contained in 40 CFR Part 112.

13. On September 30, 2008, the Complainant issued an Administrative Complaint pursuant to Section 311(b)(6)(B)(ii) of the Clean Water Act, 33 U.S.C. 1321(b)(6)(B)(ii).

Docket No. CWA-02-2006-3808, alleging that the Respondent violated the SPCC and FRP regulations and proposing a civil penalty of \$133,500. The Complaint is herein incorporated by reference.

Waiver of Rights

14. The Respondent waives the right to appeal any Final Order in this matter pursuant to Section 311(b)(6)(G)(ii) of the Act, 33 U.S.C. §1321(b)(6)(G)(ii), and consents to the issuance of a Final Order without further adjudication.

15. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during any discussions with, or to be served with and reply to, any memorandum or communication addressed to EPA officials where the purpose of such discussion, memorandum or communication is to persuade such official to accept and issue this Consent Agreement or the Final Order.

Jurisdiction

16. For the purpose of this proceeding, Respondent a) admits the jurisdictional statements contained herein; b) admits the jurisdictional allegations of the Complaint as applied to the Facility; and c) neither admits nor denies the specific factual allegations contained in the Complaint and Findings of Fact incorporated by reference herein.

Penalty

17. Respondent consents to the assessment of a civil penalty of \$72,000 (seventy-two thousand dollars). Within forty-five (45) days of the effective date of the Final Order, the

Respondent shall pay the civil penalty by means of a cashier's or certified check, by wire transfer or by overnight mail.

Payment Terms

18. Based on the forgoing, the parties, in their own capacity or by their attorneys or authorized representatives, hereby agree that:

19. If paying by check, the Respondent shall submit a cashier's or certified check. If you are paying by check, make the check payable to "Environmental Protection Agency," noting on the check "AOSTLF-311" and docket number "ACWA-02-2008-3808". The check should be sent to the following address:

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

Wire transfers should be directed to the Federal Reserve Bank of New York at the following address:

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"

Overnight mail should be sent to the following address:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
ATTN Box 979077
St. Louis, MO 63101

20. The Respondent shall submit copies of the certified or cashier's check or the wire transfer to the following persons:

Nadine Orrell
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway - 16th Floor
New York, New York 10007

and

Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway - 16th Floor
New York, New York 10007

21. Failure by the Respondent to pay the penalty assessed by the Final Order in full by its due date may subject Respondent to a civil action to collect the total amount of the assessed penalty, plus interest, attorney's fees, costs and an additional quarterly nonpayment penalty pursuant to Section 311(b)(6)(H) of the Act, 33 U.S.C. § 1321(b)(6)(H). In any such collection action, the validity, amount and appropriateness of the penalty agreed to herein shall not be subject to review.

- a. further, if the payment is not received on or before the due date, interest will be assessed at the annual rate established by the Secretary of Treasury pursuant to the Debt Collection Act, 31 U.S.C. § 3717, on the overdue amount from the due date through the date of payment. In addition, a late payment handling charge of \$15.00 will be assessed for each 30 day period (or any portion thereof) following the due date

in which the balance remains unpaid. A 6% per annum penalty also will be applied on any principal amount not paid within 90 days of the due date:

- b. in addition, pursuant to Section 309(g)(9) of the Clean Water Act, 33 U.S.C. Section 1319(g)(9), if payment is not received by the due date, a quarterly nonpayment penalty will be imposed for each calendar quarter during which such nonpayment persists. The quarterly nonpayment penalty is 20% of the aggregate amount of penalties and quarterly nonpayment penalties which are unpaid as of the beginning of such quarter;
- c. Respondent also may be required to pay attorneys fees and costs for collection proceedings in connection with nonpayment.
- d. The penalty to be paid is a civil penalty assessed by the EPA and shall not be deductible from the Respondent's federal or state taxes.

II. B. Supplemental Environmental Project ("SEP")

22. Respondent shall complete the following supplemental environmental project ("SEP"), which the Parties agree is intended to secure significant environmental or public health protection and improvement:

Respondent will expand its first response equipment to reduce the likelihood that similar violations will occur at other industrial operations along the Eastchester Creek and the Hutchinson River. Among these other industrial operations are bulk petroleum facilities, which pose added risk to the waterways. Respondent's facility is positioned so that its location may be used as a launch point for releases emanating in the area, which impact the Eastchester Creek and Hutchinson River. Therefore, Respondent will do the following:

a. Acquire and maintain a boat trailer unit to tow Sprague's response boat to other locations. This will enable the Mount Vernon Fire Department to deploy Respondent's existing response equipment from other sites, if needed in alternate regions; and

Boat Response

Boat Trailer \$ 2,500.00

b. Install permanent lighting equipment to illuminate both the Eastchester Creek and Hutchinson River waterways from Respondent's facility.

Night Response Lighting Enhancement

1,000 watt lighting for Eastchester Creek and Hutchinson River \$15,000.00

The SEP shall be completed no later than October 31, 2009

23. **SEP Cost:** The total expenditure for the SEP, at cost to the Respondent, shall be worth not less than \$17,500. Respondent shall include documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report .

24. **Federal Tax:** For Federal Income Tax purposes Sprague Energy Corp. agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

25. **Certification:** Respondent hereby certifies that, as of the date of this CA/FO, Respondent is not required to perform or develop the SEP by any federal, state or local law or regulation; nor is Respondent or Third Party (if applicable) required to perform or develop the SEP by any other agreement, grant or as injunctive relief in this or any other case. Respondent further certifies that it has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP.

26. **SEP Completion Report:** Respondent shall complete the SEP by October 31, 2009, and shall submit a SEP Completion Report to EPA no later than December 31, 2009. The SEP Completion Report shall contain the following information: the year, make and model of the boat trailer that Respondent acquires and a description of the lighting equipment obtained.

27. In all documents or reports, including, without limitation, any SEP reports, submitted to EPA pursuant to this Consent Agreement, Respondent shall, by its officers, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and complete by signing the following statement:

"I hereby certify under penalty of law that I have examined and am familiar with the information

submitted in this document and all attachments and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.”

28. **Public Statements:** Any public statement, oral or written, in print, film, or other media, made by Respondent making reference to the SEP shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for violations of the Clean Water Act

29. **Stipulated Penalties:**

- a. In the event that Respondent fails to comply with any of the terms or provisions of this Agreement relating to the performance of the SEP described in Section II.B above and/or to the extent that the actual expenditures for the SEP do not equal or exceed the cost of the SEP described in Paragraph 22 above, Respondent shall be liable for stipulated penalties according to the provisions set forth below:
 - i. If the SEP is satisfactorily completed in accordance with Paragraph 22 above but Respondent expends less than the agreed to \$17,500 for the SEP project, Respondent shall pay a stipulated penalty equal to the difference between the amount of eligible SEP costs incurred by the Respondent and \$17,500.
 - ii. If the SEP is not completed in accordance with Paragraph 22 but: (a) Respondent certifies, with supporting documentation, the amount of eligible costs expended on the SEP, and (b) EPA determines that the Respondent made good faith and timely efforts to complete the project, then, Respondent shall pay a stipulated penalty that is the difference between the eligible SEP costs incurred by Respondent and \$17,500. If Respondent documents that it, together with the third party (if applicable), did all that they could to ensure timely completion of the SEP but the SEP is not timely completed because of action, or inaction, on the part of the state government or a court, then it shall be deemed that the Respondent made good faith and timely efforts to complete the SEP project.
 - iii. If Respondent halts or abandons work on the SEP as described in Paragraph 22, above and after the Work Plan has been approved by EPA, prior to its completion, Respondent shall pay a stipulated penalty of \$100

and shall also pay the difference of eligible costs incurred and \$17,500.

- vi. For failure to submit the SEP Completion Report required by Paragraph 26 above, Respondent shall pay a stipulated penalty in the amount of \$100 for each day after the report was due until the report is submitted.
- b. The determinations of whether the SEP has been satisfactorily completed and whether the Respondent has made a good faith, timely effort to implement the SEP shall be in the sole discretion of EPA.
- c. Respondent shall pay stipulated penalties within thirty (30) days after receipt of written demand by EPA for such penalties. Payment of stipulated penalties shall be made payable to the "Treasurer of the United States of America." Such check shall be mailed to:

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

The check shall be identified with a notation of the name and docket number of this case, set forth in the caption on the first page of this document.

A copy of the check and any transmittal letter shall be sent to each of the following:

John Higgins, Chief
Oil Program Team, Response and Prevention Branch
Emergency Response and Remedial Division
U.S. EPA, Region 2
2890 Woodbridge Avenue
Edison, New Jersey 08837-3679

General Provisions

30. The provisions of the Final Order shall be binding upon Respondent and Respondent's officers, directors, agents, servants, employees, and successors or assigns.

31. The Final Order does not constitute a waiver, suspension or modification of the requirements of Section 311 of the Act, 33 U.S.C. §1321, or any promulgating regulations 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 total penalty pursuant to this Consent Agreement resolves only Respondent's liability for federal civil penalties for the violations and facts alleged in the Administrative Complaint.

SPRAGUE ENERGY CORP.

Date: 2/27/09

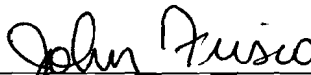


Burt Russell
Vice President

APPROVED  Sprague Legal Dept.

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 8/4/09


Walter Mugdan, Director
Emergency and
Remedial Response Division

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, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits, codified at 40 CFR Part 22, the foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order, and the Stipulations by the parties are adopted as Findings in this Final Order.

The Respondent is ordered to comply with the terms of the Consent Agreement.

Date:

8/4/09



George Pavlou
Acting Regional Administrator

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF

Sprague Energy Corp.
2 International Drive Suite 200
Portsmouth, NH 03801

Respondent

CWA SECTION 311 CLASS II
CONSENT AGREEMENT
AND FINAL ORDER

Docket No. CWA-02-2008-3808

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing fully executed CONSENT AGREEMENT and FINAL ORDER, bearing the above-referenced docket-number, in the following manner to the respective addresses below:

Original and One Copy By Hand:

U.S. Environmental Protection Agency - Region 2
290 Broadway, 16th Floor, Office of Regional Hearing Clerk
New York, N.Y. 10007-1866

Copy by Certified Mail, Return Receipt Requested:

Paul Scoff, Esq.
Vice President and General Counsel
Sprague Energy Corp.
Two International Drive, Suite 200
Portsmouth, NH 03801

Date: **AUG 5 - 2009**


Secretary