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BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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HEARINGS CLERK
EPA -- REGION 10

In the Matter of:)	DOCKET NO. CWA-10-2013-0012
)	
Carson Oil Company, Inc.)	
North Bend, Oregon)	CONSENT AGREEMENT AND
)	FINAL ORDER
)	
Respondent.)	

1. AUTHORITIES

1.1. 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 Section 311(b)(6)(B)(i) of the Clean Water Act (Act), 33 U.S.C. § 1321(b)(6)(B)(i), as amended by the Oil Pollution Act of 1990. The Administrator has delegated the authority to issue the Final Order contained in Part 5 of this CAFO to the Regional Administrator of EPA Region 10, who in turn has delegated this authority to the Regional Judicial Officer.

1.2. In accordance with Section 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, EPA hereby issues, and Carson Oil Company, Inc. (Respondent) hereby agrees to issuance of, the Final Order contained in Part 5 of this CAFO.

1.3. Section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3), prohibits the discharge of oil or a hazardous substance 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.

1.4. The Oil Pollution Prevention regulations that implement Section 311(j) of the Act, 40 C.F.R. Part 112, establish requirements for preventing the discharge of oil. These

requirements apply to owners and operators of non-transportation-related facilities engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing or consuming oil or oil products that, due to facility location, could reasonably be expected to discharge oil in harmful quantities to navigable waters of the United States or adjoining shorelines.

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

1.6. “Oil” is defined in Section 311(a)(1) of the Act, 33 U.S.C. § 1321(a)(1), as oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse and oil mixed with wastes other than dredged spoil.

1.7. Pursuant to Section 311(b)(4) of the Act, 33 U.S.C. § 1321(b)(4), EPA, acting through its delegated authority under Executive Order No. 11735, 38 Fed. Reg. 21243 (Aug. 7, 1973), has determined by regulation that the quantities of oil which 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. 40 C.F.R. § 110.3.

1.8. Under 40 C.F.R. § 112.3, the owner or operator of an onshore facility that became operational on or before August 16, 2002, that due to its location could reasonably be expected to discharge oil in harmful quantities into or upon the navigable waters of the United States and adjoining shorelines shall have prepared and implemented a Spill Prevention, Control and Countermeasure (SPCC) Plan in accordance with 40 C.F.R. Part 112.

1.9. Under 40 C.F.R. § 112.7, the SPCC Plan shall be prepared “in accordance with good engineering practices” and have the full approval of management with authority to commit the necessary resources to implement the plan.

1.10. Section 311(b)(6)(B)(i) of Act, 33 U.S.C. § 1321(b)(6)(B)(i), and 40 C.F.R. Part 19 authorize EPA to assess a civil penalty not to exceed \$16,000 per violation against any owner, operator or person in charge of an onshore facility from which oil or a hazardous substance is discharged in violation of Section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3), and/or who fails or refuses to comply with any regulation issued under Section 311(j) of the Act, 33 U.S.C. § 1321(j).

2. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.45(b), issuance of this CAFO commences this proceeding, which will conclude when the Final Order contained in Part 5 of this CAFO becomes effective.

2.2. A concise statement of the factual bases for alleging violations of the Act, together with specific references to the provisions of the Act and implementing regulations Respondent is alleged to have violated, appears in Part 3 of this CAFO.

3. ALLEGATIONS

Oil Spill Violation

3.1. Respondent is a corporation organized under the laws of the State of Oregon and is a “person” within the meaning of Section 311(a)(7) of the Act, 33 U.S.C. § 1321(a)(7).

3.2. Respondent is the “owner or operator,” within the meaning of Section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6), of a petroleum storage and distribution facility located at 280 Newmark Street in North Bend, Oregon (“Facility”).

3.3. 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 is located approximately 100 feet from Coos Bay, which empties into the Pacific Ocean.

3.4. On January 14, 2011, one of Respondent’s employees spilled approximately 29 gallons of diesel fuel from the Facility during refueling. The spilled diesel entered Coos Bay in the State of Oregon.

3.5. Coos Bay is listed as an impaired water under Section 303(d) of the Act, 33 U.S.C. §1313, and provides habitat for several species of wildlife including Coho salmon, steelhead, brown pelicans, bald eagles, marbled murrelets, northern spotted owls, western snowy plovers, Pacific fishers and stellar sea lions. In addition, commercial shellfish fisheries operate here. Coos Bay is a “navigable water” within the meaning of Sections 311(b)(3) and 502(7) of the Act, 33 U.S.C. §§ 1321(b)(3) and 1362(7).

3.6. The January 14, 2011 spill caused a sheen to appear on Coos Bay that was several yards wide and approximately one to two miles long. The spill impacted commercial oyster beds, resulting in the rejection of 850 bushels of oysters by the Clausen Oyster Company due to diesel contamination.

3.7. Respondent’s January 14, 2011 discharge of oil from the Facility into or upon navigable waters of the United States and adjoining shorelines in a quantity that may be harmful, as determined by 40 C.F.R. § 110.3, violated Section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3).

SPCC Violations

3.8. The allegations of the foregoing paragraphs are incorporated herein by reference.

3.9. At the time of an EPA inspection conducted on August 23, 2007, and of a second EPA inspection conducted on July 2, 2011, Respondent 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 Facility.

3.10. The Facility is “non-transportation-related” within the meaning of 40 C.F.R. § 112.2.

3.11. The Facility is a non-transportation facility that, due to location, could reasonably have been expected, at the time of inspection, to discharge oil from an above-ground container to a navigable water of the United States or its adjoining shorelines in a harmful quantity and is therefore subject to the SPCC regulations at 40 C.F.R. Part 112.

3.12. The Facility had, at the time of inspection, an aggregate above-ground storage capacity greater than 1,320 gallons of oil in containers each with a shell capacity of at least 55 gallons.

3.13. Respondent, at the time of inspection, was engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using or consuming oil or oil products at the Facility, as described in 40 C.F.R. § 112.1(b).

3.14. The Facility began operating before August 16, 2002.

3.15. On August 23, 2007, authorized EPA representatives inspected the Facility to determine compliance with Section 311(j) of the Act, and in particular with the requirements of 40 C.F.R. Part 112 related to SPCC Plans.

3.16. EPA alleges that Respondent on August 23, 2007:

- 3.16.1. Failed to have an adequate SPCC Plan at the Facility that meets the requirements of 40 C.F.R. §§ 112.7 and 112.8;
- 3.16.2. Failed to have adequate containment and/or diversionary structures or equipment at the Facility to prevent a discharge, as required by 40 C.F.R. § 112.7(c);
- 3.16.3. Failed to provide records of inspections and tests at each Facility, as required by 40 C.F.R. § 112.7(e);
- 3.16.4. Failed to conduct and document the training of oil-handling personnel at each Facility, as required by 40 C.F.R. § 112.7(f);
- 3.16.5. Failed to have adequate security at the Facility, as required by 40 C.F.R. § 112.7(g);
- 3.16.6. Failed to have adequate containment in place at the loading/unloading area at the Facility, as required by 40 C.F.R. § 112.7(h); and
- 3.16.7. Failed to have adequately engineered supports for piping and records of piping inspections as required by 40 C.F.R. §§ 112.8(d).

3.17. On July 2, 2011, authorized EPA representatives again inspected the Facility to determine compliance with Section 311(j) of the Act, and in particular with the requirements of 40 C.F.R. Part 112 related to SPCC Plans.

3.18. EPA alleges that Respondent on July 2, 2011:

- 3.18.1. Failed to have an adequate SPCC Plan at the Facility that meets the requirements of 40 C.F.R. §§ 112.7 and 112.8;
- 3.18.2. Failed to maintain records of inspections of the condition of accumulations inside secondary containment prior to being discharged as required by 40 C.F.R. § 112.8(b); and

3.18.3. Failed to regularly integrity test aboveground containers as required by 40 C.F.R. § 112.8(c).

3.19. Respondent's January 14, 2011 spill into Coos Bay and its continuing failure to comply with the requirements of 40 C.F.R. Part 112 has subjected it to civil penalties pursuant to Section 311(b)(6)(B)(i) of the Act, 33 U.S.C. § 1321(b)(6)(B)(i), not to exceed \$16,000 per violation.

4. CONSENT AGREEMENT

4.1. Respondent admits the jurisdictional allegations contained in Part 3 of this CAFO.

4.2. Respondent neither admits nor denies the specific factual allegations contained in Part 3 of this CAFO.

4.3. Respondent expressly waives any rights to contest the allegations and to appeal the Final Order contained herein.

4.4. The provisions of this CAFO shall bind Respondent and its servants, employees, successors and assigns.

4.5. Except as provided in Paragraph 4.10 below, each party shall bear its own costs in bringing or defending this action.

4.6. Pursuant to Section 311(b) of the Act, 33 U.S.C. § 1321(b), EPA has determined and Respondent agrees that an appropriate penalty to settle this action is TWENTY-NINE-THOUSAND-EIGHT-HUNDRED-FORTY-THREE DOLLARS (\$29,843). This penalty amount has been agreed upon in consideration of statutory penalty factors identified in Section 311(b)(8) of the Act, 33 U.S.C. § 1321(b)(8), including Respondent's upgrades to the Facility and agreement to perform a Supplemental Environmental Project (SEP).

4.7. Respondent consents to the issuance of the attached Final Order and to payment of the civil penalty cited in the foregoing paragraph within thirty (30) days of the effective date of the Final Order.

4.8. Payment under this CAFO shall be made by cashier's check or certified check, payable to "Environmental Protection Agency" and bearing the notation "OSLTF-311." Payment sent by the U.S. Postal Service shall be addressed to:

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

Payment sent by express mail via a non-U.S. Postal Service carrier shall be addressed to:

U.S. Bank
Government Lockbox 979077
U.S. E.P.A. Fines and Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101

Respondent shall note on the check the title and docket number as they appear in the caption of this CAFO.

4.9. Respondent shall serve photocopies of the check described above on the Regional Hearing Clerk and EPA at the following two addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
1200 Sixth Avenue, Suite 900
Mail Stop ORC-158
Seattle, WA 98101

Mr. Jeff KenKnight
U.S. Environmental Protection Agency
Manager, NPDES Compliance Unit
1200 Sixth Avenue, Suite 900
Mail Stop OCE-133
Seattle, WA 98101

4.10. If Respondent fails to pay the penalty assessed by paragraph 4.6 of this CAFO in full by its due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. Such a failure may subject Respondent to a civil action to collect the assessed penalty under the Act. In any collection action, the validity, amount and appropriateness of the penalty set out in paragraph 4.6 shall not be subject to review.

4.10.1. Interest. Pursuant to Section 311(b)(6)(H) of the Act, 33 U.S.C. § 1321(b)(6)(H), any unpaid portion of the assessed penalty shall bear interest at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the Final Order contained herein.

4.10.2. Attorneys Fees, Collection Costs, Nonpayment Penalty. Pursuant to Section 311(b)(6)(H) of the Act, 33 U.S.C. § 1321(b)(6)(H), should Respondent fail to pay on a timely basis the amount of the penalty assessed by the Final Order contained herein, Respondent shall pay (in addition to any assessed penalty and interest), attorneys fees and costs for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to twenty percent (20%) of the aggregate amount of Respondent's penalties and nonpayment penalties that are unpaid as of the beginning of such quarter.

4.11. Respondent agrees to implement a SEP consisting of the two elements described in Attachment A to this CAFO, namely: (i) to install an oil-water separator in the existing storm water vault at Respondent's facility located at 62590 Highway 101 in Coos Bay, Oregon; and (ii) to install an alarm in the main storm water vault of the existing oil-water separator at Respondent's facility located at 280 Newmark Street (the Facility) in North Bend, Oregon. Respondent shall complete implementation of the SEP within 90 days of the effective date of the Final Order, in accordance with all provisions described in this Consent Agreement and Attachment A to this CAFO. The Parties agree that this SEP is intended to secure significant environmental benefits by reducing the risk of a release of oil in harmful quantities into the environment.

4.12. Respondent hereby certifies that, as of the date of this Consent Agreement, Respondent is not required to perform or develop the SEP by any federal, state or local law or regulation; nor is Respondent required to perform or develop the SEP by any other agreement, under a grant, or as injunctive relief in 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. For Federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any cost or expenditures incurred in performing this SEP.

4.13. Respondent hereby certifies that it is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP. Respondent further certifies that, to the best of its knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to EPA within two years of the date of this

settlement (unless the project was barred from funding as statutorily ineligible). For the purposes of this certification, the term “open federal financial assistance transaction” refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee or other mechanism for providing federal financial assistance whose performance period has not yet expired.

4.14. Respondent shall submit a SEP Completion Report to EPA within 30 days of completing all SEP requirements. The SEP Completion Report shall contain the following information:

4.14.1. A description of the SEP as implemented;

4.14.2. Certification that the SEP has been fully implemented pursuant to the provisions of this CAFO;

4.14.3. Itemized costs, documented by copies of purchase orders and receipts or cancelled checks;

4.14.4. A description of any problems encountered and the solutions thereto; and

4.14.5. A description of the environmental and public health benefits resulting from implementation of the SEP.

4.15. Unless otherwise instructed in writing by EPA, Respondent shall submit all notices and reports required by this CAFO by first class mail, overnight mail or hand delivery to:

Derek Schruhl
U.S. Environmental Protection Agency
1200 Sixth Avenue, Suite 900
Mail Stop: OCE-133
Seattle, WA 98101

4.16. Respondent agrees that EPA may inspect Respondent’s records related to the SEP at any reasonable time in order to confirm that the SEP is being undertaken in conformity with the representations made herein.

4.17. Respondent must maintain legible copies of documentation of the underlying data for documents or reports submitted to EPA pursuant to this CAFO until the SEP Completion Report is accepted pursuant to Paragraph 4.18, and Respondent must provide the documentation of any such underlying data to EPA within 15 days of a written request for such information. In all documents or reports including, without limitation, the SEP Completion Report submitted to EPA pursuant to this CAFO, Respondent shall, by a corporate officer, sign and certify under penalty of law that the information contained in such a document or report is true, accurate and not misleading by signing the following statement:

I 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.

4.18. Following receipt of the SEP Report described in Paragraph 4.14 above, EPA will do one of the following: (i) accept the Report; (ii) reject the Report, notify Respondent, in writing, of deficiencies in the Report and provide Respondent an additional 30 days in which to correct any deficiencies; or (iii) reject the Report and seek stipulated penalties in accordance with Paragraphs 4.20 and 4.21.

4.19. In the event the SEP is not completed as contemplated by this CAFO, then stipulated penalties shall be due and payable by Respondent upon demand by EPA in accordance with Paragraphs 4.20 and 4.21, below. Schedules herein may be extended based upon mutual written agreement of the parties.

4.20. If Respondent fails to satisfactorily complete the SEP as required by this CAFO, Respondent shall pay stipulated penalties, upon written demand from EPA, in the following amounts for each day the SEP remains incomplete:

Period of Noncompliance	Penalty Per Violation Per Day
1st through 7 th day	\$ 100.00
8 th through 21 st day	\$ 250.00
22 nd through 30 th day	\$ 500.00
Greater than 30 days	\$ 1,000.00

4.21. If Respondent fails to satisfactorily complete the SEP as set forth in the CAFO, EPA may elect to terminate the SEP if it determines that Respondent is not making a good faith effort to satisfactorily complete the SEP. In addition, if at any time EPA determines that Respondent has abandoned the SEP, it may terminate the SEP. EPA shall provide written notice of SEP termination to Respondent. If EPA terminates the SEP, Respondent shall be liable for a lump sum stipulated penalty of \$79,101, less any amount that Respondent has paid under Paragraph 4.20. If Respondent pays a termination penalty under this Paragraph, it shall not be liable for stipulated penalties under Paragraph 4.20.

4.22. The determination of whether the SEP has been satisfactorily completed and whether the Respondent has made a good faith, timely effort to implement the SEP is reserved to the sole discretion of EPA.

4.23. Respondent shall pay stipulated penalties within 15 days of receipt of a written demand by EPA for such penalties. Payment shall be in accordance with the

provisions of Paragraphs 4.8 and 4.9, above. Interest and late charges shall be paid as stated in Paragraph 4.10, above.

4.24. 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 administrative enforcement action taken by the U.S. Environmental Protection Agency under the Clean Water Act as amended by the Oil Pollution Act of 1990.”

4.25. This CAFO shall not relieve Respondent of its obligation 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 any federal, state or local permit, nor shall it be construed to constitute EPA approval of the equipment or technology installed by Respondent in connection with the SEP under the terms of this CAFO.

4.26. The penalty described in Paragraph 4.6, including any costs incurred under Paragraphs 4.10, 4.20 or 4.21 above, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.27. Respondent represents that it is authorized to execute this CAFO and that the party signing this CAFO on its behalf is authorized to bind Respondent to the terms of this CAFO. This CAFO may be executed in multiple counterparts, each of which shall be deemed to have the same force and effect as an original. A facsimile signature shall be treated as an original.

4.28. Compliance with all the terms and conditions of this CAFO shall result in full settlement and satisfaction of all claims for civil penalties alleged in Section 3 above.

ATTACHMENT A

Supplemental Environmental Project

1. Install an oil-water separator in the existing storm water vault at Respondent's facility located at 62590 Highway 101 in Coos Bay, Oregon. The oil-water separator shall include a filter such that any product that reaches the separator can be filtered before outfall to the inlet approximately 200 feet from the facility, which ultimately flows to Coos Bay.

2. Install an alarm in the main storm water vault of the existing oil-water separator at Respondent's facility located at 280 Newmark Street in North Bend, Oregon. This alarm is to sound upon detection of oil product prior to entering the outfall into the ditch that runs to nearby Coos Bay.

STIPULATED AND AGREED:


FOR RESPONDENT CARSON OIL COMPANY, INC.



Lance Woodbury, President
Carson Oil Company, Inc.

Dated: 12/13/12

FOR COMPLAINANT



Edward J. Kowalski, Director
Office of Compliance and Enforcement
U. S. Environmental Protection Agency Region 10

Dated: 12/28/12

5. FINAL ORDER

5.1. The terms of the foregoing Consent Agreement are hereby ratified and incorporated by reference into this Final Order. Respondent is hereby ordered to comply with the terms of settlement contained in the Consent Agreement.

5.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to the Clean Water Act for the particular violations alleged in Part 3 above. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate injunctive relief or other equitable relief or criminal sanctions for any violations of law. This CAFO does not waive, extinguish or otherwise affect Respondent's obligations to comply with all applicable provisions of the Act and regulations and permits there under.

5.3. This Final Order shall become effective upon filing.

SO ORDERED this 4th day of January, ~~2012~~ ²⁰¹³ Jan


Thomas M. Jahnke
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 10

Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of : Carson Oil Company, Inc. , Docket No.: CWA-10-2013-0012**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:


The undersigned certifies that a true and correct copy of the document was delivered to:

Ms. Stephanie L. Mairs, Esquire
U.S. Environmental Protection Agency
1200 Sixth Avenue, ORC-158
Suite 900
Seattle, Washington 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt to:

Ms. Marti Sharp, Esquire
Carson Oil Company, Inc.
3125 NW 35th Avenue
PO Box 10948
Portland, Oregon 97296-0948

DATED this 4th day of January, 2013


Signature

Candace H. Smith
Regional Hearing Clerk
EPA Region 10