

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219**

Received by
EPA Region 7
Hearing Clerk

BEFORE THE ADMINISTRATOR

In the Matter of)
) Docket No. CWA-07-2023-0078
Inferno Energy, LLC,)
) COMPLAINT AND
Respondent) CONSENT AGREEMENT /
) FINAL ORDER
Proceedings under Section 311(b)(6)(B)(ii))
of the Clean Water Act, 33 U.S.C.)
§ 1321(b)(6)(B)(ii))

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 311(b)(6) of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act (CWA), 33 U.S.C. § 1321(b)(6), as amended by the Oil Pollution Act of 1990, and in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. Part 22.

2. Complainant, the United States Environmental Protection Agency Region 7 (EPA), and Respondent, Inferno Energy, LLC, (Inferno) have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Sections 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

3. The authority to act under Section 311(b)(6)(B)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(ii), is vested in the Administrator of the EPA. The Administrator has delegated this authority to the Regional Administrator, EPA Region 7, who in turn has delegated the authority under Section 311(b)(6) to the Director of the Enforcement and Compliance Division (Complainant).

4. This Complaint and Consent Agreement/Final Order (CAFO) serves as notice that the EPA has reason to believe that Respondent has violated Section 311 of the CWA, 33 U.S.C. § 1321, and regulations promulgated thereunder.

Statutory and Regulatory Framework

5. The objective of the CWA, 33 U.S.C. § 1251 et seq., is to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.”

6. Sections 311(b)(3) and (4) of the CWA, 33 U.S.C. § 1321(b)(3) and (4), prohibit the discharge of oil or hazardous substances into or upon the navigable waters of the United States or

adjoining shorelines in such quantities as have been determined may be harmful to the public health or welfare of the United States.

7. Section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1), and 40 C.F.R. § 112.2 define “oil” as “oil of any kind or in any form, including, but not limited to, petroleum [or] fuel oil”

8. Section 311(b)(4) of the CWA, 33 U.S.C. § 1321(b)(4), authorizes the EPA to promulgate a regulation to define what discharges of oil may be harmful to the public health or welfare or environment of the United States.

9. 40 C.F.R. § 110.3 defines discharges of oil that the Administrator has determined may be harmful to the public health or welfare or the environment of the United States to include discharges of oil that: (a) violate applicable water quality standards, or (b) 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.

10. Section 311(j)(1)(C) of the CWA, 33 U.S.C. § 1321(j)(1)(C), provides in part that the President shall issue regulations establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil and hazardous substances from vessels and from onshore facilities, and to contain such discharges.

11. To implement Section 311(j)(1)(C), the EPA promulgated regulations to prevent oil pollution at 40 C.F.R. Part 112 that set forth the requirements for the preparation and implementation of Spill Prevention, Control, and Countermeasure (SPCC) Plans. The requirements of 40 C.F.R. Part 112 apply to owners and operators of non-transportation-related onshore facilities with an aboveground storage capacity of 1,320 gallons or greater who are engaged in gathering, storing, transferring, distributing, using, or consuming oil or oil products which, due to their locations, 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.

Allegations of Fact and Conclusions of Law

12. Respondent is and was at all relevant times a limited liability company under the laws of, and authorized to conduct business in, the state of Kansas.

13. 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.

14. At all times relevant to this action, Respondent was the owner and/or operator, within the meaning of Section 311(a)(6) of the CWA and 40 C.F.R. § 112.2, of the petroleum production operation located at 2000th Street, Humboldt, KS 66783 (the “Facility”).

15. The Facility stores and produces crude oil with a tank battery that holds oil and produced water storage tanks. The estimated storage capacity of the operation is 20,748 gallons.

16. Drainage from secondary containment at the Facility flows into a tributary to Slack Creek and Slack Creek, a perennial stream. Slack Creek and its tributary are navigable waters of the United States within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7).

17. Respondent is engaged in storing, processing, using or consuming oil or oil products located at the Facility.

18. The Facility is a “non-transportation-related” facility within the meaning of 40 C.F.R. § 112 Appendix A, as incorporated by reference within 40 C.F.R. § 112.2.

19. 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 C.F.R. § 112.2.

20. The Facility is 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 and, therefore, is an SPCC-regulated facility pursuant to Section 311(j)(1)(C) of the Act, Executive Order 12777 and 40 C.F.R. § 112.1.

21. The Facility failed to fully prepare and implement an SPCC plan within six months of operations beginning at the Stoll Lease. The version of the SPCC plan used by Inferno was a holdover SPCC plan used by the previous owners of the facility which was issued in 2008.

22. On or about February 18, 2022, a spill occurred when oil discharged from a bulk storage tank due to a corroded pipe nipple. Approximately fifteen barrels of oil were discharged in the spill and at least seven barrels of oil reached the tributary next to the facility.

23. The discharged oil flowed from the facility into a tributary and then into an impoundment where it discharged from the impoundment into Slack Creek.

24. The February 18, 2022, spill was reported to the National Response Center (NRC) and to the Kansas Department of Health and Environment (KDHE) on February 21, 2022. The Kansas Corporation Commission and the Kansas Department of Health and Environment responded on February 21, 2022.

25. On February 22, 2022, EPA response staff arrived at the Stoll Lease and confirmed discharged oil had impacted the waterbodies. At the time the EPA arrived, Inferno had one vacuum truck, an excavator, and a skid steer at the scene in an attempt to clean up the spill. This response was assessed as insufficient by EPA. The EPA issued Inferno a Notice of Federal Interest during the visit and requested a more extensive clean-up effort. Inferno, after discussion with EPA, hired Environmental Works who installed two hard booms above Slack Creek on February 23, 2022, and then left the site. Clean-up was subsequently conducted by Inferno Energy and was coordinated and overseen by the KDHE, Kansas Corporation Commission (KCC), and EPA as oil was removed from the impacted waterbodies.

26. On March 2, 2022, representatives of the EPA inspected the Facility to determine its compliance with the SPCC regulations of 40 C.F.R. Part 112 and obtained information about the Facility.

27. The EPA’s findings about the facility and its SPCC plan were documented in an inspection report. The EPA transmitted a copy of this inspection report to Respondent on March 28, 2022.

Findings of Violation

Count 1: Unauthorized Discharge

28. Section 311(b) of the CWA, 33 U.S.C. § 1321, prohibits the discharge of oil in or onto “navigable waters of the United States”. Pursuant to 40 C.F.R. § 110.3, such discharges include discharges of oil that violate applicable water quality standards or cause a film or a 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.

29. On or about February 18, 2022, crude oil spilled from a bulk storage tank at the facility. This oil discharged into a tributary next to the facility which flowed into Slack Creek, causing a film or sheen upon the surface of the water.

30. Respondent’s discharge of oil from the Facility into Slack Creek and its tributary was in a quantity that has been determined may be harmful under 40 C.F.R § 110.3, which is a violation of Sections 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3).

Count 2: Failure to Fully Implement an SPCC Plan

31. 40 C.F.R § 112.3 requires Respondent to fully prepare and implement an SPCC plan.

32. The EPA’s inspection documented Respondent’s failure to fully implement an SPCC Plan at the Facility as required by 40 C.F.R. 112.3, as follows:

- a. Respondent failed to fully implement an SPCC plan within six months of beginning operations at the Stoll Lease, in violation of 40 C.F.R. § 112.3(a).
- b. The facility diagram included in Respondent’s SPCC plan did not include the location of all transfer stations and connecting pipes in violation of 40 C.F.R. § 112.7(a)(3).
- c. Respondent failed to have adequate secondary containment and/or describe secondary containment in the Plan (for sized containment; including for bulk storage containers, oil-filled operational equipment, piping and related appurtenances, and transfer areas, equipment, and activities), in violation of 40 C.F.R. § 112.7(c).
- d. Respondent did not keep records of all inspections and tests conducted in accordance with the SPCC plan and signed by the appropriate supervisor or inspector for a period of three years in violation of 40 C.F.R. § 112.7(e).
- e. Respondent failed to (1) train oil-handling personnel in the operation and maintenance of equipment to prevent discharges, discharge procedure protocols, applicable pollution control laws, rules, and regulations, general facility operations; and the contents of the facility SPCC Plan; (2) designate a person at each applicable facility who is accountable for discharge prevention and who reports to facility management; and (3) schedule and conduct discharge prevention briefings for oil-handling personnel at least once a year to assure adequate understanding of the SPCC Plan for that facility, in violation of 40 C.F.R. § 112.7(f).

f. Respondent failed to provide a secondary means of containment for the entire capacity of the largest single container and sufficient freeboard to contain precipitation, in violation of 40 C.F.R. § 112.9(c)(2).

g. Respondent failed to inspect, periodically and upon a regular schedule, all aboveground valves and piping associated with transfer operations, including the general condition of flange joints, valve glands and bodies, drip pans, pipe supports, pumping well polish rod stuffing boxes bleeder and gauge valves, and other such items, in violation of 40 C.F.R. § 112.9(d)(1).

33. Respondent's failure to fully prepare and implement an SPCC Plan is a violation of 40 C.F.R. § 112.3, 40 C.F.R. § 112.7, 40 C.F.R. § 112.9 and Section 311(j) of CWA, 33 U.S.C. § 1321(j).

Consent Agreement

General Provisions

34. Respondent and the EPA agree to the terms of this CAFO and Respondent agrees to comply with the terms of this CAFO.

35. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above and its right to appeal any portion of this CAFO.

36. Respondent and Complainant agree to bear their own costs and attorney's fees incurred as a result of this action.

37. Respondent agrees that, in settlement of the claims alleged in this CAFO, Respondent shall pay a civil penalty of \$50,000, as set forth in the Penalty section below.

38. Respondent admits the jurisdictional allegations of this CAFO and agrees not to contest the EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order portion of this CAFO.

39. Respondent admits the jurisdictional allegations of this CAFO and agrees not to contest the EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order portion of this CAFO. Respondent neither admits nor denies the factual allegations and, in all other respects, legal conclusions asserted by the EPA.

40. Respondent certifies by the signing of this CAFO that Respondent is in compliance with all requirements of the CWA.

41. The effect of settlement is conditional upon the accuracy of Respondent's representations to the EPA in this CAFO.

Reservation of Rights

42. This CAFO addresses all civil and administrative claims for the CWA violations alleged above. With respect to matters not addressed in this CAFO, the EPA reserves the right to take any enforcement action pursuant to the CWA and its implementing regulations, or any other available legal authority, including without limitation, the right to seek injunctive relief, penalties and damages.

43. Nothing contained in this CAFO shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

44. Notwithstanding any other provision of this CAFO, the EPA reserves the right to enforce the terms of this CAFO by initiating a judicial or administrative action pursuant to Section 311 of the CWA, 33 U.S.C. § 1321, and to seek penalties against Respondent or to seek any other remedy allowed by law.

Penalty

45. Respondent agrees to pay a civil penalty of **\$50,000** pursuant to the authority of Section 311 of the CWA, 33 U.S.C. § 1321, within thirty (30) days of the Effective Date of this CAFO.

46. The payment of penalties must reference docket number CWA-07-2023-0078 and be remitted to:

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

or by alternate payment method described at <http://www.epa.gov/financial/makepayment>.

47. Copies of the checks or verification of another payment method for the penalty payments remitted shall be emailed to:

Adam Hilbert
Attorney Advisor
U.S. Environmental Protection Agency Region 7
Hilbert.adam@epa.gov

and

Regional Hearing Clerk
U.S. Environmental Protection Agency Region 7
r7_hearing_clerk_filings@epa.gov

48. Should the civil penalty not be paid as provided above, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. The interest will be assessed on the overdue amount from the due date through the date of payment.

49. Respondent understands that its failure to timely pay any portion of the civil penalty described in herein may result in the commencement of a civil action in the United States District Court for the District of Kansas to recover the full remaining balance, along with penalties and accumulated interest.

50. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this CAFO shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

Signatories

51. The undersigned for each party has the authority to bind each respective party to the terms and conditions of this CAFO. The CAFO may be signed in part and counterpart by each party.

Parties Bound

52. This CAFO shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this CAFO.

Definitions

53. Terms used in this order that are defined in the CWA or EPA regulations promulgated under the CWA have the meanings assigned to them in the CWA or those regulations, unless otherwise provided in this Order.

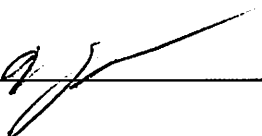
Executed Agreement Filed

54. This executed Complaint and Consent Agreement and Final Order shall be filed with the Regional Hearing Clerk, U.S. Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219.

Electronic Service

55. Respondent consents to receiving the filed Consent Agreement/Final Order electronically at the following email address: bobcatloader@sbcglobal.net.

For the Respondent, Inferno Energy, LLC.:

Signature:  _____

Date: 5-10-23

Name: Wacey Douglas

Title: Member

For the Complainant, U.S. Environmental Protection Agency, Region 7:

David Cozad
Director
Enforcement and Compliance Assurance Division

Adam Hilbert
Attorney-Advisor
Office of Regional Counsel

FINAL ORDER

Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits, 40 C.F.R. Part 22, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

The Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.

Date

Karina Borromeo
Regional Judicial Officer

Certificate of Service

I certify that on the date noted below I delivered a true and correct copy of this Findings of Violation and Administrative Order for Compliance on Consent by electronic mail, to:

Copy via Email to Complainant:

Adam Hilbert
Office of Regional Counsel
U.S. Environmental Protection Agency Region 7
hilbert.adam@epa.gov

Copy via Email to Respondent:

Wacey Douglas
Inferno Energy, LLC
bobcatloader@sbcglobal.net

Copy via Email to Respondent's Counsel:

Chris Steincamp
Depew, Gillen, Rathburn & McInteer, LC
Chris@depewgillen.com

Date

Signature