

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219

UNITED STATES
ENVIRONMENTAL PROTECTION
AGENCY-REGION 7
2015 JUN 18 AM 10:40

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)	
)	
Village of Spalding, Nebraska)	CONSENT AGREEMENT
)	AND FINAL ORDER
)	
)	Docket No. CWA-07-2015-0030
)	
Respondent.)	
_____)	

The U.S. Environmental Protection Agency, Region 7 (“EPA” or “Complainant”), and Village of Spalding, Nebraska (Respondent) have agreed to a settlement of this action before filing a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b), 22.18(b)(2), and 22.18(b)(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 (Consolidated Rules), 40 C.F.R. §§ 22.13(b), 22.18(b)(2), and 22.18(b)(3).

Stipulations

Jurisdiction

1. This is an administrative action for the assessment of Class II civil penalty instituted pursuant to Section 311(b)(6) of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act (CWA or the Act), 33 U.S.C. § 1321(b)(6), and in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, (Administrative Proceedings Not Governed by Section 554 of the Administrative Procedures Act), 40 C.F.R. Part 22, Subpart I.

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

Parties

3. The Village of Spalding (hereafter “Respondent” or “City”), is a political subdivision of the state of Nebraska and a “municipality” within the meaning of 33 U.S.C. § 1362(4).

4. The authority to take action under Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6), 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 it to the Director of the Air and Waste Management Division of EPA, Region 7 (“Complainant” or “EPA”).

Statutory and Regulatory Framework

5. Section 311(j)(1)(C) of the Act, 33 U.S.C. § 1321(j)(1)(C), provides that the President shall issue regulations “establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil . . . from onshore . . . facilities, and to contain such discharges”

6. Initially by Executive Order 11548 (July 20, 1970), 35 Fed. Reg. 11677 (July 22, 1970), and most recently by Section 2(b)(1) of Executive Order 12777 (October 18, 1991), 56 Fed. Reg. 54757 (October 22, 1991), the President delegated to EPA his Section 311(j)(1)(C) authority to issue the regulations referenced in the preceding Paragraph for non-transportation-related onshore facilities.

7. EPA subsequently promulgated the Spill Prevention Control and Countermeasure (SPCC) regulations pursuant to these delegated statutory authorities, and pursuant to its authorities under the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, which established certain procedures, methods and requirements upon each owner and operator of a non-transportation-related onshore facility if such facility, due to its location, could reasonably be expected to discharge oil into or upon the navigable waters of the United States and their adjoining shorelines in such quantity as EPA has determined in 40 C.F.R. § 110.3 may be harmful to the public health or welfare or the environment of the United States (“harmful quantity”).

8. In promulgating 40 C.F.R. § 110.3, which implements Section 311(b)(4) of the Act, 33 U.S.C. § 1321(b)(4), EPA has determined that discharges of harmful quantities include oil discharges that cause either (1) a violation of applicable water quality standards, or (2) a film, sheen upon, or discoloration of the surface of the water or adjoining shorelines, or (3) a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

Factual Background

9. 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. § 112.2.

10. Respondent is the owner/operator within the meaning of Section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6), and 40 C.F.R. § 112.2, of the Spalding Municipal Light and Power Plant (“facility”), located at 100 Old Mill Road, Spalding, Nebraska.

11. The facility has an aggregate above-ground storage of 9375 gallons of oil.
12. Respondent's facility is located on the Cedar River, which is a navigable water of the United States within the meaning of 40 C.F.R. § 112.2 and Section 502(7) of the Act, 33 U.S.C. § 1362(7).
13. Respondent is engaged in storing, processing, using or consuming oil or oil products located at the facility.
14. 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.
15. 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.
16. 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 ("a SPCC-regulated facility").
17. 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/or operator of a SPCC-regulated facility, is subject to the SPCC regulations.
18. On or about August 24, 2012, EPA conducted an inspection of Respondent's facility.

Alleged Violations

19. Complainant hereby incorporates the allegations contained in Paragraphs 1 through 18 above, as if fully set forth herein.
20. At the time of the inspection, Respondent had failed to fully prepare and implement a SPCC Plan by November 10, 2011. The inspection revealed additional violations as follows:
 - (i) Respondent's Plan was not certified by a Professional Engineer, pursuant to 40 C.F.R. § 112.3(d), including statements which attest (i) that the PE or agent has visited and examined the facility; (ii) that the plan was prepared in accordance with good engineering practice including consideration of applicable industry standards and the requirements of 40 C.F.R. § 112; (iii) that procedures for required inspections and testing have been established; and (iv) that the plan is adequate for the facility.
 - (ii) Appropriate containment and or diversionary structures were not provided to prevent a discharge as described in 40 C.F.R. § 112.1(b), in violation of 40 C.F.R. § 112.7(c) for the bulk storage containers at Respondent's facility. The SPCC

Plan must be prepared to include secondary containment, including what method of 40 C.F.R. § 112.7(c) secondary containment will be used in the fuel/oil transfer areas per the 40 C.F.R. § 112.7(c) requirements.

- (iii) Records of monthly or periodic inspections or tests of the outsides of above ground storage tanks, supports foundations, or diked areas for the accumulation of oil are not being maintained at the facility, in violation of 40 C.F.R. § 112.7(e).
- (iv) The SPCC Plan does not describe how to secure and control access to the oil handling, processing and storage areas, secure master flow and drain valves, 40 C.F.R. § 112.7(g), prevent unauthorized access to starter controls on oil pumps, secure out-of-service and loading/unloading connections of oil pipelines.
- (v) Respondent's facility did not have secondary containment for the 8000 gallon bulk storage tank, in violation of 40 C.F.R. § 112.8(c)(2). In addition, Respondent's SPCC Plan requires integrity testing every five years when the corrosion rate is not known. At the time of the inspection, no corrosion rate was identified for any tank and no record of integrity testing had been maintained by Respondent, in violation of 40 C.F.R. § 112.8(c)(6). Respondent's 8000 gallon bulk storage tank is not equipped with a liquid sensing device in violation of 40 C.F.R. § 112.(c)(8). Appropriate secondary containment was not provided for two, 300 gallon day tanks located outside the generator building, in violation of 40 C.F.R. § 112.8(c)(11).

21. Respondent's failure to fully develop and implement a SPCC plan for the facility in accordance with the requirements of 40 C.F.R. § 112, as described in Paragraph 20, violated 40 C.F.R. § 112.3.

22. In accordance with Section 311(b)(6)(A)(ii) of CWA, 33 U.S.C. § 1321(b)(6)(A)(ii), EPA may assess a civil penalty to any owner or operator in charge of any onshore facility who fails to comply with any regulation issued under Section 311(j) of CWA, 33 U.S.C. § 1321(j).

CONSENT AGREEMENT

23. Respondent and EPA agree to the terms of this Consent Agreement and Final Order and Respondent has read the Consent Agreement, finds it reasonable, consents to its issuance and will comply with the terms of the Final Order.

24. Respondent admits the jurisdictional allegations of this Consent Agreement and Final Order and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order set forth below.

25. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this Consent Agreement and Final Order.

26. 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 the Final Order accompanying this Consent Agreement.

27. Respondent certifies by signing this Consent Agreement and Final Order that, to the best of its knowledge, it is presently in compliance with the CWA and all regulations promulgated thereunder.

28. Nothing in this Consent Agreement shall be construed as a release from any other action under any law and/or regulation administered by EPA. Nothing contained in this Consent Agreement and Final Order shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state and local environmental statutes and regulations and applicable permits.

29. Respondent agrees to undertake the Supplemental Environmental Project ("SEP"), identified in Appendix A, which is enclosed to and incorporated into this Consent Agreement and Final Order. The parties agree that performance of the SEP, set forth in Appendix A, is intended to secure significant environmental restoration and protection.

30. Respondent agrees within thirty (30) days of the effective date of this Final Order, Respondent shall submit a Work Plan to EPA that describes the implementation of the SEP identified in Appendix A. The Work Plan shall include, but not be limited to: (a) the scope of work for the SEP; (b) the start and completion date for the SEP; and (c) the names of persons implementing the SEP and the qualifications of each such person. EPA will review the Work Plan and approve it or provide Respondent written comments. If requested by Respondent, EPA will provide Respondent an opportunity to discuss the written comments. Respondent shall resubmit the Work Plan in a form that responds to EPA's comments within fifteen (15) days after receipt of EPA's written comments. The Work Plan shall become a Final Work Plan upon approval by EPA. Respondent shall complete the SEP consistent with the approved schedule included in the Final Work Plan, but in no event later than twenty-four (24) months from the effective date of this Final Order.

31. Respondent shall notify EPA in writing within one week after the completion of the SEP. Within forty-five (45) days after the completion of the SEP, Respondent shall submit to EPA a SEP Completion Report that shall include, but not be limited to, the following:

- a. A description of the activities that Respondent completed in its implementation of the SEP Work Plan.
- b. A signed and notarized certification that it has not deducted the SEP cost from its taxes.
- c. A signed and notarized certification that none of the cost incurred in implementation of the SEP was funded in any part by a federal grant or other form of federal financial assistance.
- d. An itemized accounting of the costs incurred per project in performance of the

SEP. The itemization shall be submitted with the following statement, signed by Respondent:

I certify that the information accompanying this submittal is true, accurate, and complete. I am aware that there are significant penalties for submitting false information to the United States, its agencies and departments, including the possibility of fine and imprisonment for knowing violations.

32. Respondent shall pay stipulated penalties in the following circumstances:

a. Except as provided in subparagraphs (b) and (c) below, for a SEP, which has not been completed satisfactorily as determined by EPA, Respondent shall pay a stipulated penalty to the United States in the amount of Nine Thousand Seven Hundred and Fifty Dollars (\$9750), along with interest accrued at the statutory rate.

b. If the SEP is not completed satisfactorily, but Respondent made good faith and timely efforts to complete the project and certifies, with supporting documentation, that at least 80% of the amount of money required to be spent for the project was expended on the SEP, Respondent shall not pay any stipulated penalty.

c. If the SEP is satisfactorily completed, but the Respondent spent less than 80% of the amount of money required to be spent for the project, Respondent shall pay a stipulated penalty equal to the difference between the amount of the estimated SEP cost set forth in Attachment 1 and the amount expended in implementing the SEP.

d. If no SEP is implemented and the penalty of Four Thousand Six Hundred and Fifty Dollars (\$4650) is not made within thirty (30) days of the effective date of this Consent Agreement and Final Order, Respondent shall pay a stipulated penalty of Five Hundred Dollars (\$500) in addition to that which is due, along with interest accrued at the statutory rate.

33. Payment of the stipulated penalties shall be immediately due and payable upon notice by EPA. Respondent's failure to pay any portion of the penalty assessed herein in accordance with the provisions of this Final Order may result in commencement of a civil action in Federal District Court to recover the total penalty required by the terms of the Final Order, together with interest thereon at the applicable statutory rate. Payment of the stipulated penalties shall be by cashier's or certified check made payable to the "United States Treasury" and shall be remitted to:

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

The check shall note the case title and the docket number. A copy of the check shall be sent to Melissa A.C. Bagley, Assistant Regional Counsel, EPA, Region 7, 11201 Renner Boulevard, Lenexa, Kansas 66219.

34. 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 required to perform or develop the SEP by agreement, grant, or as injunctive relief in any other enforcement action or in compliance with state or local requirements. Respondent further certifies that Respondent has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP.

35. EPA and its authorized representatives shall have access to the property Respondent owns that is the location of the SEP at all reasonable times to monitor Respondent's implementation of the SEP. Respondent shall use its best efforts to obtain for EPA access to property not owned by Respondent that is the location of a SEP at all reasonable times to monitor Respondent's implementation of the SEP. Best efforts shall include payment of reasonable costs to obtain access. Nothing herein shall be construed to limit EPA's access authority under the CWA or any other law.

36. Respondent agrees that it will not deduct the cost of the SEP, as set forth in Appendix A, from its taxes.

37. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of a civil penalty of Four Thousand Six Hundred and Fifty Dollars (\$4650). Payment of this civil penalty shall resolve all civil and administrative claims for all violations of CWA alleged in this document.

38. Respondent shall pay the penalty within thirty (30) days of the Effective Date of this Consent Agreement and Final Order. Payment shall be by cashier's or certified check made payable to the "Environmental Protection Agency – OSLTF-311" and remitted to:

U.S. EPA
P.O. Box 979077
St. Louis, MO 63197-9000.

39. The Respondent shall reference the Docket Number CWA-07-2015-0030 and In the Matter of Village of Spalding, Nebraska on the check. A copy of each check shall also be mailed to:

Regional Hearing Clerk
United States Environmental Protection Agency
Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

and

Melissa Bagley
Office of Regional Counsel
United States Environmental Protection Agency
Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

40. Respondent's failure to pay any portion of the civil penalty in accordance with the provisions of this Consent Agreement and Final Order may result in commencement of a civil action in Federal District Court to recover the total penalty, together with interest thereon at the applicable statutory rate.

41. Each party shall bear its own costs and attorneys' fees in the action resolved by this Consent Agreement and Final Order.

42. Each signatory of this Agreement certifies that he or she is fully authorized to enter into the terms of this Consent Agreement and Final Order.

43. The effect of the settlement described above is conditioned upon the accuracy of the Respondent's representations to EPA, as memorialized in Paragraph 27 above.

44. Notwithstanding any other provision of this Consent Agreement and Final Order, EPA reserves the right to enforce the terms of the Final Order portion of this Consent Agreement and Final Order by initiating a judicial or administrative action under 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.

45. Complainant reserves the right to take enforcement action against Respondent for any future violations of the CWA and its implementing regulations and to enforce the terms and conditions of this Consent Agreement and Final Order.

46. This Consent Agreement and Final Order shall be effective upon filing of the Final Order. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

47. This executed Consent Agreement and Final Order shall be filed with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 7, 11201 Renner Boulevard, Lenexa, Kansas, 66219.

48. This Final Order portion of this Consent Agreement and Final Order 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 the Consent Agreement and Final Order.

For the Respondent:

3-10-15

Date



Printed Name Gene Hitchler

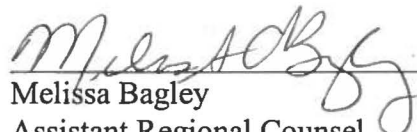
Title Chairman

For the United States Environmental Protection Agency - Region 7

6/9/15
Date



John Smith
Deputy Director
Air and Waste Management Division



Melissa Bagley
Assistant Regional Counsel

FINAL ORDER

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. The Respondent is ordered to comply with the terms of the above Consent Agreement, effective immediately.

IT IS SO ORDERED.



Karina Borrromeo
Regional Judicial Officer

Date: June 18, 2015

APPENDIX A: SUPPLEMENTAL ENVIRONMENTAL PROJECT DESCRIPTION

Background

The Village of Spalding is responsible for providing street and parking lot lights throughout the Spalding Street area. Currently, the Village, like most other communities, employs outdated, relative high-energy demand 250 watt high pressure sodium (HPS) lamps.

Supplemental Environmental Project

The Village of Spalding will replace thirty (30) standard street/parking lot light fixtures with energy-efficient, light-emitting diodes (LED). The project is expected to reduce energy consumption by approximately 50 percent based upon studies by the Climate Group/USDOE. This sustainability initiative will help to reduce greenhouse gas emissions from City government operations. Compared to the current standard high-pressure sodium lights currently on streets, which last six years, LEDs can last up to 20 years before needing replacement. This will reduce maintenance costs, minimize solid waste, and better protect public safety through fewer outages.

Supplemental Environmental Project Location

The location of this project is St. Joseph Street, Village of Spalding, Nebraska.

Total Supplemental Environmental Project Cost

The City will spend at least \$9750.

Schedule for Implementation of the Supplemental Environmental Project

The City shall spend at least \$9750 to implement this SEP within two years of the effective date of this Order.

IN THE MATTER OF Village of Spalding, Nebraska, Respondent
Docket No. CWA-07-2015-0030

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Order was sent this day in the following manner to the addressees:

Copy by email to Attorney for Complainant:

bagley.melissa@epa.gov

Copy by First Class Mail to:

Bob Molt
Chairman
Village Board of Spalding
P.O. Box 268
Spalding, Nebraska 68665

Dated: 6/18/15



Kathy Robinson
Hearing Clerk, Region 7