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EPA--REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	
)	DOCKET NO. CWA-10-2013-0013
)	
Ferrell's Fuel Network, Inc.)	
Klamath Falls, 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 Ferrell's Fuel Network, Inc. (Respondent) hereby agrees to issuance of, the Final Order contained in Part 5 of this CAFO.

1.3. 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.

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

1.5. 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.

1.6. 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. § 112.7.

1.7. 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.

1.8. 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 for each day the violation continued against any owner, operator, or person in charge of an onshore facility 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

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), and 40 C.F.R. § 112.2.

3.2. At the time of an EPA inspection conducted on August 30, 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 an oil storage and distribution facility located on property at 977 South Spring Street and an adjacent parcel at 865 South Spring Street, in Klamath Falls, Oregon (the 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 40 C.F.R. § 112.2.

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

3.5. 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.

3.6. 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.

3.7. The Facility is located approximately 2,000 feet from Lake Ewauna. Some overland flow from the Facility enters storm drains on and adjacent to the Facility and proceeds to drain via the city treatment plant to Lake Ewauna, a headwater of the Klamath River. Lake Ewauna and the Kalamth River are “navigable waters” within the meaning of 40 C.F.R. § 112.2.

3.8. 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).

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

3.10. Under 40 C.F.R. § 112.3, the owner or operator of an SPCC-regulated facility that was in operation on or before August 16, 2002, shall have prepared and implemented a written SPCC Plan that complies with 40 C.F.R. Part 112.

3.11. On August 30, 2011, an authorized EPA representative 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.

3.12. EPA alleges that Respondent:

3.12.1. Failed to have an adequate SPCC Plan at the Facility that meets the requirements of 40 C.F.R. §§ 112.3, 112.5, 112.7 and 112.8;

- 3.12.2. 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);
 - 3.12.3. Failed to conduct and document the training of oil-handling personnel at the Facility, as required by 40 C.F.R. § 112.7(f);
 - 3.12.4. Failed to have an adequate warning, barrier or other effective system in place at the loading/unloading area at the Facility, as required by 40 C.F.R. § 112.7(h);
 - 3.12.5. Failed to have ponds, lagoons or catchment basins for tanks and loading rack operated in undiked areas at the Facility, as required by 40 C.F.R. § 112.8 (b);
 - 3.12.6. Failed to implement adequate secondary containment, failed to implement adequate rainwater drainage procedures, and failed to use alarms on bulk storage containers at the Facility, as required by 40 C.F.R. §§ 112.8(c) and 112.12(c).
- 3.13. EPA alleges Respondent's failure to prepare and implement an adequate SPCC Plan for the Facility in accordance with the requirements of 40 C.F.R. §§ 112.3, 112.5, 112.7 and 112.8 violated 40 C.F.R. §112.3.

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-EIGHT-THOUSAND-TWO-HUNDRED DOLLARS (\$28,200). 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).

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, Missouri 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, Washington 98101

Mr. Jeff KenKnight
Manager, NPDES Compliance Unit
1200 Sixth Avenue, Suite 900
Mail Stop OCE-133
Seattle, Washington 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.

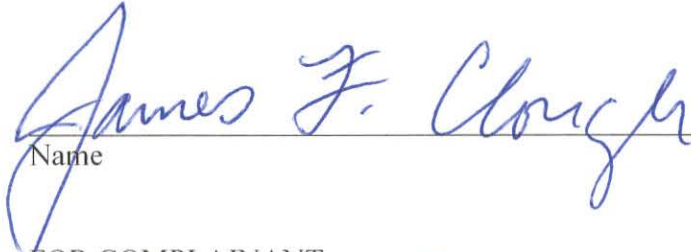
4.11 The penalty described in Paragraph 4.6, including any costs incurred under Paragraph 4.10 above, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.12 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.

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

STIPULATED AND AGREED:

FOR RESPONDENT FERRELL'S FUEL NETWORK, INC.


Name

Dated: 11-1-2012

FOR COMPLAINANT


Edward J. Kowalski, Director

Dated: 11/7/2012

Office of Compliance and Enforcement
U. S. Environmental Protection Agency Region 10


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 9th day of November, 2012.



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

CERTIFICATE OF SERVICE

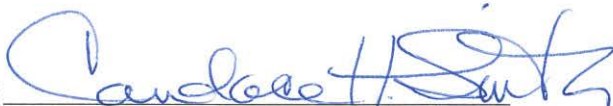
The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of Ferrell's Fuel Network, Inc., Docket No.: CWA-10-2013-0013**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

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

Ms. Stephanie L. Mairs, Esq.
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:

Mr. Tommy A. Brooks, Esq.
Cable Huston
Suite 2000
1001SW Fifth Avenue
Portland, Oregon 97204

DATED this 9th day of Nov, 2012 
Candace H. Smith
Regional Hearing Clerk
EPA Region 10