



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

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FILED  
EPA REGION VIII  
HEARING CLERK

DOCKET NO.: CWA-08-2016-0019

IN THE MATTER OF:

UCH-MHS

1400 East Boulder Street  
Colorado Springs, Colorado 80909

RESPONDENT

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FINAL ORDER

Pursuant to 40 C.F.R. §22.13(b) and 22.18(b)(2)(3), of EPA’s Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order.

The Respondent is hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon filing this Consent Agreement and Final Order.

SO ORDERED THIS 29<sup>th</sup> DAY OF September, 2016.

Elyana Sutin  
Regional Judicial Officer

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8**

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1400 East Boulder Street )  
Colorado Springs, Colorado 80909 )  
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Respondent. )  
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**COMBINED COMPLAINT AND  
CONSENT AGREEMENT**

**Proceeding to Assess Civil Penalty  
Under Section 311  
of the Clean Water Act**

The U.S. Environmental Protection Agency, Region 8 (EPA), and UCH-MHS (Respondent), by their undersigned representatives, hereby consent and agree as follows:

**I. AUTHORITY**

1. This proceeding is subject to the EPA's "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits," 40 C.F.R. part 22. This Combined Complaint and Consent Agreement (CCCA) is entered into by the parties for the purpose of simultaneously commencing and concluding this matter, as authorized by 40 C.F.R. § 22.13(b), and is executed pursuant to 40 C.F.R. § 22.18(b)(2) and (3).
2. EPA has jurisdiction over this matter pursuant to section 311(b)(6)(B)(i) of the Clean Water Act (CWA), 33 U.S.C. § 1321(b)(6)(B)(i).

**II. PARTIES BOUND**

3. This CCCA, upon incorporation into a Final Order, applies to and is binding upon EPA and upon Respondent, and Respondent's officers, directors, agents, successors and assigns. Each signatory to this CCCA certifies that they are authorized to execute and legally bind the party they represent to this CCCA.

**III. STATEMENT OF THE PARTIES**

4. For the purposes of this settlement only, Respondent admits the jurisdictional allegations contained herein and neither admits nor denies EPA's specific factual allegations and legal conclusions.
5. Respondent waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this CCCA, including any right of judicial review under the Administrative Procedure Act, 5 U.S.C. §§ 701 – 706.

6. EPA asserts that settlement of this matter is in the public interest, and EPA and Respondent agree that entry of this CCCA and its incorporation into a Final Order without further litigation and without adjudication of any issue of fact or law will avoid prolonged and complicated litigation between the parties.
7. The parties reserve any and all rights and defenses they may have against any person or entity not a party to this CCCA.
8. This CCCA, upon incorporation into a Final Order and full satisfaction by the parties, shall be a complete and full resolution of Respondent's liability for federal civil penalties for the violations alleged below.

#### **IV. GENERAL ALLEGATIONS**

9. Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), prohibits discharging oil into or upon the navigable waters of the United States in such quantities as may be harmful as determined under section 311(b)(4) of the CWA, 33 U.S.C. § 1321(b)(4).
10. For purposes of section 311(b)(4) of the CWA, 33 U.S.C. § 1321(b)(4), EPA has determined, in 40 C.F.R. § 110.3, that a discharge of oil may be harmful to the public health or welfare or the environment of the United States if that discharge (a) violates applicable water quality standards or (b) causes a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or causes a sludge or emulsion to be deposited beneath the surface of the water or upon the adjoining shorelines.
11. Section 311(b)(4) of the CWA, 33 U.S.C. § 1321(b)(4), directed the President to make the determination referenced in paragraph 10, above. The President delegated the authority to make this determination to the Administrator of the EPA by Executive Order No. 12777 (56 Fed. Reg. 54757, October 21, 1991) and Executive Order No. 11735 (38 Fed. Reg. 21243, August 7, 1973).

#### **V. SPECIFIC ALLEGATIONS**

13. Respondent is a domestic non-profit organized under the laws of the State of Colorado. Respondent's principal office is located in Colorado Springs, Colorado.
14. Respondent is a "person" within the meaning of sections 311(a)(7) and 502(5) of the CWA, 33 U.S.C. §§ 1321(a)(7) and 1362(5).
15. At all times relevant to this CCCA, Respondent owned and operated an "onshore facility" as defined in section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10) and 40 C.F.R. § 112.2, known as the location on-site of the underground storage tank (Facility). The Facility is located at 1400 East Boulder, Colorado Springs, Colorado. At all times relevant to this CCCA, the Facility stored oil that was used to fuel helicopters.
16. Respondent states that it leased and began operating the premises of the Facility on October 1, 2012.

17. Respondent is therefore an “owner or operator” of the Facility as defined in section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6).
18. The oil referenced in paragraph 15, above, meets the definition of “oil” in section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1) and 40 C.F.R. § 112.2.
19. When discharged into water, the oil referenced in paragraphs 15 and 18, above, also meets the definition of “pollutant” in section 502(6) of the CWA, 33 U.S.C. § 1362(6).
20. Due to its location, the Facility could reasonably be expected to discharge oil and/or other pollutants to Fountain Creek and then into the Arkansas River and/or its tributaries and/or its adjoining shorelines in quantities that would a) violate applicable water quality standards or (b) cause a film or a sheen upon or discoloration of the surface of the navigable waters of the United States or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of such waters or their adjoining shorelines.
21. Fountain Creek is a tributary of the Arkansas River.
22. The Arkansas River is navigable-in-fact water.
23. The Arkansas River is a “navigable water” as defined in section 502(7) of the CWA, 33 U.S.C. § 1362(7) and 40 C.F.R. §§ 110.1 and 112.2.
24. On or about May 10, 2013, Respondent discovered a discharge of approximately 21 barrels of jet fuel oil (912 gallon) from a 6,000 gallon capacity underground storage tank at the Facility.
25. EPA learned of the discharge referenced in paragraph 24, above, after Connie O’Flynn, UCH-MHS Safety Manager, reported it to the National Response Center (NRC Report No. 1046768) on May 10, 2013, at approximately 11:58 pm.
26. Respondent initiated containment and recovery activities; however, 912 gallons were discharged from the underground storage tank. Respondent collected and recycled 340 of the 912 gallons from the surface. The remaining 572 gallons were discharged into the storm sewer system which then flowed 250 feet before entering Shooks Run, a tributary of Fountain Creek. Fountain Creek flows into the Arkansas River.
27. The discharge referenced in paragraphs 24 and 25, above, violated water quality standards, caused a film or sheen upon or discoloration of the surface of the water and/or its adjoining shorelines and/or caused a sludge or emulsion to be deposited beneath the surface of the water(s) and/or upon the adjoining shorelines of Fountain Creek.
28. On or about January 12, 2016, EPA sent Respondent an information request under section 308 of the CWA, 33 U.S.C. § 1318, to investigate the discharge referenced in paragraph 24, above.
29. The EPA determined, following review of information provided by Respondent to the information

request referenced in paragraph 28, above, that Respondent's discharge of 912 gallons of jet fuel was a violation of section 311 of the CWA.

## **VI. EPA'S FINDINGS OF VIOLATION**

30. The release of jet fuel referenced in paragraph 24, above, was at all relevant times a "discharge" within the meaning of section 311(a)(2) of the CWA, 33 U.S.C. § 1321(a)(2).
31. The discharged jet fuel referenced in paragraph 24, above, was at all relevant times "oil" within the meaning of section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(2).
32. The oil that was discharged into Shooks Run, a tributary of Fountain Creek, which is a tributary of the Arkansas River as a result of the jet fuel release referenced in paragraph 24, above, was discharged in "quantities that may be harmful" within the meaning of 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), and 40 C.F.R. § 110.3.
33. Therefore, Respondent's discharge of oil referenced in paragraph 24, above, constitutes a violation of section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3).

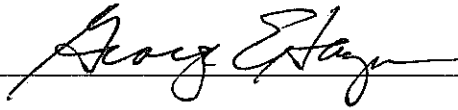
## **VII. CIVIL PENALTY**

34. Pursuant to section 311(b)(6)(A) of the CWA, 33 U.S.C. § 1321(b)(6)(A), and after consideration of the facts of this case as they relate to the factors set forth in section 311(b)(8) of the CWA, 33 U.S.C. § 1321(b)(8), EPA has determined that a civil penalty of \$8,500 is appropriate to settle this matter.
35. Respondent consents and agrees to pay a civil penalty in the amount of eight thousand five hundred dollars (\$8,500) in the manner described below:
  - a. Payment shall be in a single payment of \$8,500, due no later than thirty (30) calendar days from the date of the Final Order. If the due date for the payment falls on a weekend or federal holiday, then the due date is the next business day. The date the payment is made is considered to be the date processed by U.S. Bank, as described below. Payment must be received by 11:00 a.m. Eastern Standard Time to be considered as received that day.
  - b. The payment shall be made by remitting a check or making a wire transfer or on-line payment. The check or other payment shall designate the name and docket number of this case, be in the amount stated in the preceding paragraph, and be payable to "Oil Spill Liability Trust Fund - 311." The payment shall be remitted as follows:

If remitted by regular U.S. mail:

UCH-MHS  
Respondent

Date: 9/20/16

By: 

George E. Hayes  
President/CEO, UCH-MHS

## CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **COMBINED COMPLAINT AND CONSENT AGREEMENT** in the matter of **UCH-MHS; DOCKET NO.: CWA-08-2016-0019** was filed with the Regional Hearing Clerk on September 27, 2016. The **FINAL ORDER** was filed with the Regional Hearing Clerk on 9/29/16.


Further, the undersigned certifies that a true and correct copy of the documents were emailed to, Lauren Hammond, Enforcement Attorney. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt on 9/29/16, to:

Respondent

Barbara Shelton  
UCH-MHS  
1400 East Boulder Street  
Colorado Springs, Colorado 80909

And emailed to:

Jessica Farmer  
U. S. Environmental Protection Agency  
Cincinnati Finance Center  
26 W. Martin Luther King Drive (MS-0002)  
Cincinnati, Ohio 45268

  
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John F. Pickens II  
Acting Regional Hearing Clerk

