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BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	
)	DOCKET NO. CWA-10-2015-0053
A-1 PETROLEUM AND PROPANE, INC.)	
)	CONSENT AGREEMENT
)	FINAL ORDER
Ellensburg, Washington)	
)	
Respondent.)	

I. STATUTORY AUTHORITY

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) of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. § 1321(b)(6). The Administrator has delegated the authority to issue the Final Order contained in Part V of this CAFO to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Regional Judicial Officer in EPA Region 10.

1.2. Pursuant to Section 311(b)(6) of Act, 33 U.S.C. § 1321(b)(6), and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties," 40 C.F.R. Part 22, EPA issues, and A-1 Petroleum and Propane, Inc. ("Respondent") agrees to issuance of, the Final Order contained in Part V of this CAFO.

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this CAFO commences this proceeding, which will conclude when the Final Order contained in Part V of this CAFO becomes effective.

2.2. The Administrator has delegated the authority to sign consent agreements between EPA and the party against whom a Class II penalty is proposed to be assessed pursuant to Section 311(b)(6)(B)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(ii), to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Director of the Office of Compliance and Enforcement, EPA Region 10 (“Complainant”).

2.3. Part III of this CAFO contains a concise statement of the factual and legal basis for the alleged violations of the CWA together with the specific provisions of the CWA and the implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

3.1. Respondent is a petroleum distributor organized under the laws of the State of Washington 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 distribution facility located at 711 South Main Street in Ellensburg, Washington (“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 storm drains located on the Facility property flow to the

Yakima River. In addition, the Facility is located approximately one-quarter mile overland from Wilson Creek, a tributary of the Yakima River.

3.4 The Yakima River is a “navigable water” within the meaning of 40 C.F.R. § 112.2.

3.5 At the time of an EPA inspection conducted on March 25, 2013, 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.

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

3.7 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 and could reasonably be expected to cause substantial harm to the environment, and is therefore subject to the Spill Prevention, Control, and Countermeasure (“SPCC”) regulations at 40 C.F.R. Part 112.

3.8 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.

3.9 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).

3.10 The Facility began operating before August 16, 2002.

3.11 On March 25, 2013, 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.

3.12 EPA alleges that Respondent on March 25, 2013:

- 3.12.1.1 Failed to have on-site and implement an adequate SPCC Plan at the Facility that meets the requirements of 40 C.F.R. §§ 112.3, 112.7 and 112.8;
- 3.12.1.2 Failed to have an SPCC Plan that adequately describes the physical layout of the facility and failed to implement discharge prevention measures, as required by 40 C.F.R. § 112.7(a);
- 3.12.1.3 Failed to provide appropriate secondary containment, as required by 40 C.F.R. § 112.7(c);
- 3.12.1.4 Failed to provide records of inspections and tests at the Facility, as required by 40 C.F.R. § 112.7(e);
- 3.12.1.5 Failed to provide personnel training and briefing records, as required by 40 C.F.R. § 112.7(f);
- 3.12.1.6 Failed to provide adequate security at the Facility, as required by 40 C.F.R. § 112.7(g);
- 3.12.1.7 Failed to have an adequate containment system; failed to have warning signs or barriers in the area adjacent to the loading or unloading rack; and failed to take measures to prevent liquid drainage from tank cars or trucks while in transit, as required by 40 C.F.R. § 112.7(h);

EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$40,000.

4.4. Respondent agrees to pay the total civil penalty set forth in Paragraph 4.3 within 30 days of the effective date of the Final Order contained in Part V of this CAFO.

4.5. Payment under this CAFO must be made by a cashier's check or certified check payable to the order of "Treasurer, United States of America" 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

Respondent must note on the check the title and docket number of this action.

4.6. Respondent must serve photocopies of the check described in Paragraph 4.5 on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-158
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

Kate Spaulding
U.S. Environmental Protection Agency
Region 10, Mail Stop OCE-133
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

4.7. If Respondent fails to pay the penalty assessed by this CAFO in full by its due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. Such failure may also subject Respondent to a civil action to collect the assessed penalty under the CWA, together with interest, fees, costs, and additional penalties described below. In any collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

- 3.12.1.8 Failed to restrain drainage from diked areas and equip facility with a diversion system, as required by 40 C.F.R. § 112.8(b);
- 3.12.1.9 Failed to construct secondary containment adequate to hold the capacity of the largest container; failed to implement an integrity testing and inspection program; and failed to promptly correct visible discharges, as required by 40 C.F.R. § 112.8(c); and
- 3.12.1.10 Failed to take corrective action on partially buried corroded piping, as required by 40 C.F.R. § 112.8(d).

3.13 Respondent's 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)(ii) of the Act, 33 U.S.C. § 1321(b)(6)(B)(ii), not to exceed \$16,000 per violation, except that the maximum amount shall not exceed \$177,500.

IV. CONSENT AGREEMENT

- 4.1. Respondent admits the jurisdictional allegations of this CAFO.
- 4.2. Respondent neither admits nor denies the other factual allegations and legal conclusions contained in this CAFO.
- 4.3. As required by Section 311(b)(8) of the CWA, 33 U.S.C. § 1321(b)(8), EPA has taken into account the seriousness of the alleged violations; Respondent's economic benefit of noncompliance; the degree of culpability involved; any other penalty for the same incident; any history of prior violations; the nature, extent, and degree of success of any efforts of the violator to minimize or mitigate the effects of a discharge; the economic impact of the penalty on the violator; and any other matters as justice may require. After considering all of these factors,

4.7.1. Interest. Pursuant to Section 311(b)(6)(H) of the CWA, 33 U.S.C. § 1321(b)(6)(H), any unpaid portion of the assessed penalty shall bear interest at a rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the Final Order set forth in Part V provided, however, that no interest shall be payable on any portion of the assessed penalty that is paid within 30 days of the effective date of the Final Order.

4.7.2. Attorneys Fees, Collection Costs, Nonpayment Penalty. Pursuant to Section 311(b)(6)(H) of the CWA, 33 U.S.C. § 1321(b)(6)(H), if Respondent fails to pay on a timely basis the penalty set forth in Paragraph 4.3, 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 20% of the aggregate amount of Respondent's penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.

4.8. The penalty described in Paragraph 4.3, including any additional costs incurred under Paragraph 4.7 above, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.9. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this CAFO and to bind Respondent to this document.

4.10. The undersigned representative of Respondent also certifies that, as of the date of Respondent's signature of this CAFO, Respondent has corrected the violation(s) alleged in Part III above.

4.11. Except as described in Subparagraph 4.7.2, above, each party shall bear its own costs in bringing or defending this action.

4.12. Respondent expressly waives any right to contest the allegations and waives any right to appeal the Final Order set forth in Part V.

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

4.14. The above provisions are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

FOR RESPONDENT:

A-1 PETROLEUM AND PROPANE, INC.

DATED:

FOR COMPLAINANT:

EDWARD J. KOWALSKI, Director
Office of Compliance and Enforcement
EPA Region 10

4.10. The undersigned representative of Respondent also certifies that, as of the date of Respondent's signature of this CAFO, Respondent has corrected the violation(s) alleged in Part III above.

4.11. Except as described in Subparagraph 4.7.2, above, each party shall bear its own costs in bringing or defending this action.

4.12. Respondent expressly waives any right to contest the allegations and waives any right to appeal the Final Order set forth in Part V.

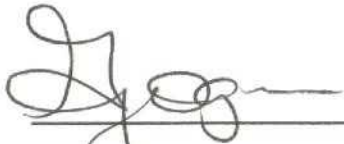
4.13. The provisions of this CAFO shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.14. The above provisions are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

9-9-15

FOR RESPONDENT:




A-1 PETROLEUM AND PROPANE, INC.

DATED:

9/16/2015

FOR COMPLAINANT:



EDWARD J. KOWALSKI, Director
Office of Compliance and Enforcement
EPA Region 10

V. FINAL ORDER


5.1. The terms of the foregoing Parts I-IV are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

5.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to the CWA for the violations alleged in Part III. 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 or other equitable relief or criminal sanctions for any violations of law. This CAFO resolves only those causes of action alleged in Part III above. This CAFO does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of the CWA and regulations promulgated or permits issued thereunder.

5.3. Pursuant to Section 311(b)(6)(C)(i) of the CWA, 33 U.S.C. § 1321(b)(6)(C)(i) and 40 C.F.R. § 22.45(b), EPA has issued public notice of and provided reasonable opportunity to comment on its intent to assess an administrative penalty against Respondent. More than 40 days have elapsed since issuance of this public notice and EPA has received no petition to set aside the Consent Agreement contained herein.

5.4. This Final Order shall become effective upon filing.

SO ORDERED this 17th day of September, 2015.


M. SOCORRO RODRIGUEZ
Regional Judicial Officer
EPA Region 10

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in **In the Matter of: A-1 Petroleum and Propane, DOCKET NO.: CWA-10-2015-0053**, was filed with the Regional Hearing Clerk on the date below.


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

Stephanie L. Mairs
Office of Regional Counsel
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-158
1200 Sixth Avenue, Suite 900
Seattle, WA 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 on the date below, to:

Douglas S. Morrison
Environmental Law Northwest
17371 NE 67th Court Suite 208
Redmond, WA 98052

DATED this 17 day of September 2015.



Teresa Luna
Regional Hearing Clerk
EPA Region 10