



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

1595 WYNKOOP STREET
DENVER, CO 80202-1129
Phone 800-227-8917
<http://www.epa.gov/region08>

2016 NOV 28 PM 4: 18

FILED
EPA REGION VIII
HEARING CLERK

DOCKET NO.: CWA-08-2017-0004

IN THE MATTER OF:)	
)	
REX OIL COMPANY, INC.)	FINAL ORDER
)	
)	
)	
RESPONDENT)	

Pursuant to 40 C.F.R. § 22.13(b) and §§ 22.18(b)(2) and (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 28th DAY OF November, 2016.

Elyana Sutin
Regional Judicial Officer

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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IN THE MATTER OF:)
)
Rex Oil Company, Inc.)
1970 East 68th Avenue)
Denver, CO 80229)
)
Respondent)
_____)

FILED
ENVIRONMENTAL VIII
HEARING CLERK

COMBINED COMPLAINT AND
CONSENT AGREEMENT

Docket No. CWA-08-2017-0004

Complainant, United States Environmental Protection Agency, Region 8, and Respondent, Rex Oil Company, Inc., by their undersigned representatives, hereby consent and agree as follows:

I. STATUTORY AUTHORITY

1. This Combined Complaint and Consent Agreement (Agreement) is issued pursuant to section 311(b)(6) of the Clean Water Act (Act), 33 U.S.C. § 1321(b)(6), and 40 C.F.R. § 22.13(b). Section 311(b)(6) of the Act, 33 U.S.C. § 1321(b)(6), authorizes the Administrator of the EPA to issue a complaint that assesses civil penalties for violations of section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3), which authority has been properly delegated to the undersigned officials. 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. Part 22, governs such proceedings. According to 40 C.F.R. § 22.13(b), a proceeding subject to the Consolidated Rules may be simultaneously commenced and concluded by the issuance of a consent agreement and final order pursuant to 40 C.F.R. § 22.18(b)(2) and (3).

II. PARTIES BOUND

2. This Agreement shall apply to and be binding upon the EPA and shall be binding upon the Respondent, its officers, directors, agents, successors, and assigns. Any change in the ownership or legal status of Respondent or the business organization, structure or status of Respondent, including, but not limited to, any transfer of assets or real or personal property, shall not alter its responsibilities under this Agreement.

III. STATEMENT OF PARTIES

3. Respondent stipulates to the EPA's jurisdiction and venue over the matters contained in this Agreement; however, Respondent neither admits nor denies the specific factual allegations contained herein.

4. Respondent waives its right to a hearing before any tribunal to contest any issue of law or fact set forth in this Agreement, and waives its right to appeal a final order (Final Order) approving this settlement.

5. The signatories to this Agreement certify that they are authorized to execute and legally bind the parties they represent to this Agreement.

6. This Agreement contains all terms of the settlement agreed to by the parties.

7. The EPA and Respondent agree that settlement of this matter is in the public interest, and that execution of this Agreement and issuance of the Final Order without further litigation and without adjudication of any issue of fact or law is the most appropriate means of resolving this matter.

IV. STATUTORY AND REGULATORY FRAMEWORK

8. The objective of the Act is to restore and maintain the chemical, physical, and biological integrity of the nation's waters. 33 U.S.C. § 1251(a).

9. Section 311(b)(3) of the Act, in pertinent part, prohibits the discharge of any oil or hazardous substances into or upon the navigable waters of the United States or their adjoining shorelines in such quantities as may be harmful as determined by the President. 33 U.S.C. § 1321(b)(3) and (4).

10. The term “discharge” is defined in section 311(a)(2) of the Act to include “any spilling, leaking, pumping, pouring, emitting, emptying or dumping....” 33 U.S.C. § 1321(a)(2).

11. The term “oil” is defined in section 311(a)(1) of the Act as “oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil.” 33 U.S.C. § 1321(a)(1) and 40 C.F.R. § 112.2.

12. The definition of “oil” under section 311(a)(1), 33 U.S.C. § 1321(a)(1), includes red-dyed diesel fuel.

13. The term “navigable waters” is defined in section 502(7) of the Act as “waters of the United States, including the territorial seas.” 33 U.S.C. § 1362(7).

14. For discharges of oil prohibited by section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), “navigable waters” are further defined to include, inter alia: all waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce; intrastate lakes, rivers, and streams (including intermittent streams) that are or could be used by interstate or foreign travelers for recreational or other purposes; and tributaries of the foregoing waters. 40 C.F.R. § 110.1.

15. In accordance with section 311(b)(4) of the Act, the EPA has determined, by regulation, those quantities of oil that may be harmful to the public health or welfare or the environment of the United States 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. 33 U.S.C. § 1321(b)(4) and 40 C.F.R. § 110.3.

16. The term “onshore facility” is defined in section 311(a)(10) of the Act as “any facility (including, but not limited to, motor vehicles and rolling stock) of any kind located in, on, or under, any land within the United States other than submerged land.” 33 U.S.C. § 1321(a)(10).

17. According to section 311(a)(7) of the Act, “person” includes an individual, firm, corporation, association, and a partnership. 33 U.S.C. § 1321(a)(7).

V. GENERAL ALLEGATIONS

18. Respondent is and was at all relevant times a corporation organized under the laws of Colorado with an office located at 1970 East 68th Avenue, Denver, CO 80229.

19. The Respondent’s registered agent is Eric Balenseifen, with the address referenced in Paragraph 18, *supra*, on file with the Colorado Secretary of State.

20. Respondent is and was at all times relevant to this Agreement a “person” within the meaning of section 311(a)(7) of the Act, 33 U.S.C. § 1321(a)(7).

21. At all relevant times, Respondent owned and operated the truck tractor and the tanker trailer involved in the release referenced in Paragraphs 27, *infra*.

22. The tanker trailer and truck tractor referenced in Paragraph 21, *supra*, were at all relevant times “onshore facilities” within the meaning of section 311(a)(10) of the Act, 33 U.S.C. § 1321(a)(10).

23. Boulder Creek is a permanently flowing stream with a defined bed, bank, and ordinary high water mark.

24. The Boulder Creek flows northeast and joins the St. Vrain Creek before flowing into the South Platte River, a navigable-in-fact “water of the United States” within the meaning

of 40 C.F.R. § 110.1 and Section 502(7) of the CWA, 33 U.S.C. §§ 1362(7).

25. Boulder Creek and St. Vrain Creek are “waters of the United States” within the meaning of 40 C.F.R. § 110.1 and Section 502(7) of the CWA, 33 U.S.C. §§ 1362(7).

VI. SPECIFIC ALLEGATIONS

26. On December 2, 2013, the truck tractor pulling the tanker trailer owned and operated by the Respondent was involved in a single vehicle roll-over accident on Colorado State Highway 119. The tanker trailer was filled with approximately 4,000 gallons of red-dyed diesel fuel.

27. The tanker trailer referenced in Paragraph 21 ruptured, releasing approximately 4,000 gallons of red-dyed diesel, which flowed along the east- and west-bound lanes of the highway and proceeded to flow down an embankment on the east-bound side of the highway reaching the Boulder Creek in two different areas.

28. The Colorado State Police (CSP) identified two locations where the red-dyed fuel spill impacted the Boulder Creek and CSP observed a sheen on December 2 and 3, 2013.

VII. VIOLATION

29. Paragraphs 1 through 28 of this Agreement are re-alleged and incorporated herein by reference.

30. The release of red-dyed diesel referenced in Paragraphs 27 and 28 was at all relevant times a “discharge” within the meaning of section 311(a)(2) of the Act, 33 U.S.C. § 1321(a)(2).

31. The discharged red-dyed diesel referenced in Paragraph 27 was at all relevant times “oil” within the meaning of section 311(a)(1) of the Act, 33 U.S.C. § 1321(a)(1).

32. The oil that was discharged into the Boulder Creek referenced in Paragraph 28 was discharged in "quantities as may be harmful" within the meaning of section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3), and 40 C.F.R. § 110.3.

33. Section 311(b)(6)(B)(i) of the Act, 33 U.S.C. § 1321(b)(6)(B)(i), and 40 C.F.R. part 19 authorize the assessment of a Class I civil penalty not to exceed \$16,000 per violation, up to a maximum civil penalty of \$37,500, for violations of section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3), occurring after January 12, 2009, and through December 6, 2013.

VIII. PAYMENT OF CIVIL PENALTY

34. Respondent, by signing this Agreement, herein certifies to the EPA that Respondent is now in compliance with each of the relevant provisions of the Act that formed the basis of the Complaint.

35. Based on the foregoing allegations and pursuant to the authority of section 311(b)(6)(B)(i) of the Act, 33 U.S.C. §1321(b)(6)(B)(i), and 40 CFR section 19.4, the EPA proposes the assessment of administrative penalties against Respondent in the amount of thirty-two thousand dollars (\$32,000).

36. Respondent consents to the issuance of the Final Order and consents for the purpose of settlement to pay a civil penalty in the amount of thirty-two thousand dollars (\$32,000) within thirty (30) calendar days from the date written on the Final Order issued by the Regional Judicial Officer that incorporates this Agreement.

a. If the due date of the payment falls on a weekend or legal federal holiday, the due date is the next business day. Payment must be received by 11:00 a.m. Eastern Standard Time to be considered as received that day.

b. Payment shall be made by any of the methods set forth in Appendix 1 to this Agreement.

c. At the same time that each payment is made, notice that the payment has been made shall be provided to:

Darla Hohman (8ENF-UFO) and
U.S. EPA Region 8
1595 Wynkoop
Denver, CO 80202-1129

Melissa Haniewicz
Regional Hearing Clerk (8RC)
U.S. EPA Region 8
1595 Wynkoop
Denver, CO 80202-1129

If a payment is made by cashiers or certified check, the notice shall include a copy of the check. If a payment is made in any other manner, the notice shall include documentation demonstrating that the payment was made.

d. In the event a payment is not received by the specified due date, interest on the late payment shall accrue from the date of the Final Order, not the due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until payment in full is received (e.g., on the 1st late day for the first payment, 30 days of interest accrues).

c. In addition, a handling charge of fifteen dollars (\$15) shall be assessed on the 31st day from the date of the Final Order, and each subsequent 30-day period that the initial payment, or any portion thereof, remains unpaid, and a handling charge of fifteen dollars (\$15) shall be assessed on the 1st day after the due date of each subsequent payment, and each subsequent 30-day period that any such payment, or any portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 90 days of the due date (e.g., the 121st day from the date the Final Order is signed). Payments are first applied to handling charges, 6% penalty interest, late interest, and any balance is then

applied to the outstanding principal amount. Further, Respondent shall be subject to the fees, costs, and nonpayment penalty set forth in section 311(b)(6)(H) of the Act, 33 U.S.C. § 1321(b)(6)(H).

f. If the civil penalty payment required by this Paragraph 36 is not paid within the time specified, the EPA, in its sole, unreviewable discretion, may elect to accelerate any remaining payment, such that the remaining payment(s) will be due within thirty (30) calendar days of Respondent's receipt of notice of such acceleration from the EPA. The provisions of Subparagraphs a through e of this Paragraph 36 shall apply to such accelerated payment.

g. Respondent agrees that the penalty shall never be claimed as a federal or other tax deduction or credit.

37. The civil penalty set forth in Paragraph 35 of this Agreement was determined by the EPA after taking into account all factors identified in section 311(b)(8) of the Act, 33 U.S.C. § 1321(b)(8), i.e., the seriousness of the violation or violations, the economic benefit to the violator, if any, resulting from the violation, 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 the discharge, the economic impact of the penalty on the violator, and any other matters as justice may require.

IX. OTHER TERMS AND CONDITIONS

38. Failure by Respondent to comply with any of the terms of this Agreement shall constitute a breach of this Agreement and may result in referral of the matter to the United States Department of Justice for enforcement of this Agreement and for such other relief as may be appropriate.

39. Nothing in this Agreement shall be construed as a waiver by the EPA or any other federal entity of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondent's failure to perform pursuant to the terms of this Agreement.

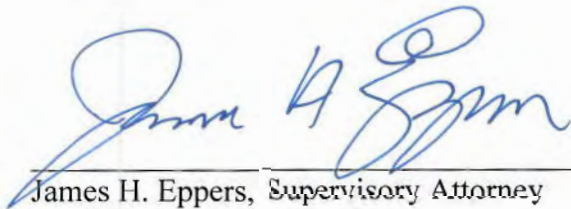
40. This Agreement, upon incorporation into a final order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete, full and final settlement of the civil penalty owed for violations alleged in this Agreement.

41. This Agreement resolves Respondent's liability for federal civil penalties under section 311(b)(6) of the Act, 33 U.S.C. § 1321(b)(6), for the alleged violations contained in this Agreement. This Agreement shall not in any case affect the EPA's right to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law whether or not alleged in this Agreement. This Agreement shall not affect Respondent's right to assert any defense in any action by the EPA to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

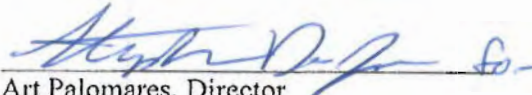
42. Each party shall bear its own costs and attorney fees in connection with all issues associated with this Agreement.

**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8**
Office of Enforcement, Compliance, and
Environmental Justice, Complainant

Date: 11/23/16


By: 
James H. Eppers, Supervisory Attorney
Legal Enforcement Program
Office of Enforcement, Compliance,
and Environmental Justice
U.S. EPA Region 8
Denver, Colorado 80202-1129

Date: 11/22/16

By: 
Art Palomares, Director
Water Technical Enforcement Program
Office of Enforcement, Compliance,
and Environmental Justice
U.S. EPA Region 8
1595 Wynkoop St.
Denver, Colorado 80202-1129

REX OIL COMPANY, INC.

Date: 11-21-2016

By: 

Combined Complaint and Consent Agreement - Appendix 1

The following are acceptable payment methods for the civil penalty required to be paid pursuant to the Agreement.

1. If payment is being made by check, submit the check, including the name, docket number, and the notation, "Oil Spill Liability Trust Fund-311," payable to "**Environmental Protection Agency:**"

Regular Mail:

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

Federal Express, Airborne, or other commercial carrier:

US Bank
Cincinnati Finance Center Box 979077
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

Contact: Craig Steffen
513-487-2091

2. Wire Transfers:

Wire transfers must indicate the name and docket number of this case and be sent directly to the Federal Reserve Bank in New York City with the following information:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

3. ACH (also known as REX or remittance express):

Please indicate the name and docket number of this case on Automated Clearinghouse (ACH) payments to EPA made through the US Treasury using the following information:

US Treasury REX/Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking
Physical location of US Treasury Facility
5700 Rivertech Court
Riverdale, MD 20737

US Treasury Contact Information:
Randolph Maxwell: 202-874-7026
Remittance Express (REX): 1-866-234-5681

4. On-line Payment:

There is now an On Line Payment Option, available through the Dept. of Treasury. This payment option can be accessed from the information below:

www.pay.gov

Enter "sfo 1.1" (without the quotation marks) in the "Search Public Forms" field.

Click on the first link to open the form, complete required fields, and then click on "Submit Data" button at bottom of form.

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **COMBINED COMPLAINT AND CONSENT AGREEMENT** and **FINAL ORDER** in the matter of **REX OIL COMPANY, INC.**; **DOCKET NO.:** CWA-08-2017-0004 was filed with the Regional Hearing Clerk on November 28, 2016.

Further, the undersigned certifies that a true and correct copy of the documents were emailed to, Brenda Morris, Enforcement Attorney. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt on November 28, 2016, to:


Respondent

Rex Oil Company, Inc.
1970 East 68th Avenue
Denver, CO 80229

And emailed to:

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

November 28, 2016


Melissa Haniewicz
Regional Hearing Clerk

