



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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FILED
EPA REGION VIII
HEARING CLERK

DOCKET NO.: CWA-08-2017-0022

IN THE MATTER OF:)	
)	
PETROLEUM WHOLESALE, L.P.)	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 11th DAY OF September, 2017.

Kathrin E. Hall
Kathrin E. Hall
Regional Judicial Officer

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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HEARING CLERK

IN THE MATTER OF:)	
)	Docket No. CWA-08-2017-0022
PETROLEUM WHOLESALE, L.P.)	
8550 Technology Forest Place)	
The Woodlands, Texas 77381-1174)	
)	
Respondent.)	
)	COMBINED COMPLAINT AND
)	CONSENT AGREEMENT UNDER
)	SECTION 311(j) OF THE CLEAN
)	WATER ACT

I. PRELIMINARY STATEMENT

1. This proceeding is subject to the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, 40 Code of Federal Regulations (C.F.R.) part 22 (Consolidated Rules of Practice). This Combined Complaint and Consent Agreement (Agreement) 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. Complainant is the U.S. Environmental Protection Agency (EPA). On the EPA's behalf, the undersigned officials, are delegated authority to settle civil administrative penalty proceedings under section 311(b)(6)(A) of the Act, 33 U.S.C. § 1321(b)(6)(A).

II. JURISDICTION

3. The EPA has jurisdiction over this matter pursuant to section 311(b)(6)(B)(i) of the Clean Water Act (the Act), 33 U.S.C. § 1321(b)(6)(B)(i).
4. For the purposes of this settlement only, Respondent admits to the jurisdiction of the EPA over the allegations contained herein.

III. GOVERNING LAW

5. Section 311(j)(1)(C) of the Act, 33 U.S.C. § 1321(j)(1)(C), directed the President to issue regulations "establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil ... from vessels and from onshore and offshore facilities, and to contain such discharges . . ."
6. In response to the directive referenced in Paragraph 5, above, the EPA promulgated 40 C.F.R. part 112.

7. A facility subject to 40 C.F.R. part 112 is required to prepare a written Spill Prevention Control and Countermeasure (SPCC) Plan and to adhere to the discharge prevention and containment procedures specified in that regulation.

IV. STIPULATED FACTS

8. Respondent is Petroleum Wholesale L.P., a Texas partnership doing business in the state of Colorado.
9. Respondent's principal office is located in the Woodlands, Texas.
10. 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).
11. Respondent owns and operates a "facility" as defined in 40 C.F.R. § 112.2, including, but not limited to, "any fixed onshore building, property ... pipe ... oil storage ... [or] oil distribution." The facility is known as Sunmart # 525 located at 1695 North Watkins Road, Watkins, Colorado (hereinafter the Watkins Facility).
12. The Watkins Facility includes six storage containers as defined in 40 C.F.R. § 112.2. The Watkins Facility has a total aboveground storage capacity of 88,882 gallons of gasoline and diesel fuel (oil) and is subject to the SPCC regulations.
13. Respondent acquired ownership of the Watkins Facility on January 29, 2015.
14. Commencing on January 29, 2015, Respondent became an "owner or operator" of the Watkins Facility as defined in section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6).
15. Respondent is engaged in storing, transferring, and/or distributing oil at the Watkins Facility.
16. The Watkins Facility is an "onshore facility" as defined in section 311(a)(10) of the Act, 33 U.S.C. § 1321(a)(10), and a "non-transportation related" facility as defined in 40 C.F.R. § 112.2.
17. The oil referenced in Paragraph 12, above, meets the definition of "oil" in section 311(a)(1) of the Act, 33 U.S.C. § 1321(a)(1) and 40 C.F.R. § 112.2.

V. VIOLATIONS ALLEGED

18. The location of the Watkins Facility, is reasonably expected to discharge oil and/or other pollutants into an unnamed tributary of Box Elder Creek, then to the South Platte 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.
19. The South Platte River is a "navigable water" as defined in section 502(7) of the Act, 33 U.S.C. § 1362(7) and 40 C.F.R. §§ 110.1 and 112.2.
20. At all times after January 29, 2015, the Watkins Facility has been subject to the SPCC requirements at 40 C.F.R. part 112.

21. On February 24, 2016, the EPA inspected the Watkins Facility for compliance with SPCC requirements.

22. During this inspection, the EPA found alleged violations of the SPCC requirements under 40 C.F.R. part 112. The technical violations of the part 112 regulations are as follows:

- a. Failure to conduct annual trainings for personnel each year to ensure personnel understanding of the SPCC Plan, in violation of 40 C.F.R. § 112.7(f)(3);
- b. Failure to provide adequate secondary containment for the loading/unloading area, in violation of 40 C.F.R. § 112.7(c);
- c. No training of oil handling personnel on discharge prevention, in violation of 40 C.F.R. § 112.7(f)(1);
- d. Failure to conduct spill prevention briefings at least annually, in violation of 40 C.F.R. § 112.7(f)(3);
- e. Grossly inadequate secondary containment that would fail to “provide a secondary means of containment for the entire capacity of the largest single container and sufficient freeboard to contain precipitation” in violation of 40 C.F.R. § 112.8(c)(2);
- f. Failure to conduct regular integrity testing of aboveground storage containers and integrity testing after material repairs, including comparison records, in violation of 40 C.F.R. § 112.8(c)(6);
- g. Failure to conduct frequent inspections of the outside of containers for “signs of deterioration, discharges or accumulation of oil” inside the diked areas, in violation of 40 C.F.R. § 112.8(c)(6);
- h. No liquid level sensing devices or overflow prevention systems provided, in violation of 40 C.F.R. § 112.8(c)(8);
- i. Failure to remove visible discharges and accumulations of oil, in violation of 40 C.F.R. § 112.8(c)(10); and
- j. No secondary containment for mobile or portable containers and the containers were not located or positioned to prevent a discharge, in violation of 40 C.F.R. § 112.8(c)(11).

23. On February 24, 2016, the EPA completed a review of a SPCC Plan for the Watkins Facility dated August 28, 2011, provided by Respondent and determined that the SPCC Plan was in violation of requirements under 40 C.F.R. part 112. Specifically, the SPCC Plan had the following alleged violations:

- a. Failure to include certification by a Professional Engineer that the SPCC Plan is adequate for the Watkins Facility, in violation of 40 C.F.R. § 112.3(d);

- b. As owner and operator of the Watkins Facility, Respondent's SPCC Plan documentation log fails to include a statement that the SPCC Plan was reviewed upon new ownership. The SPCC Plan also lacks a location for signature of the review documentation log, in violation of 40 C.F.R. § 112.5(b);
- c. The SPCC Plan listed technical deficiencies that were not yet implemented but did not provide a schedule for the details ". . . of installation and operational start up," in violation of 40 C.F.R. § 112.7;
- d. The SPCC Plan contained diagram of the Watkins Facility; however, the Plan did not (1) identify the location and contents of each fixed oil storage container or the storage area where the mobile or portable containers are located; (2) identify the location of underground storage tanks; and (3) identify all connecting piping from the tanks to the dispensers, in violation of 40 C.F.R. § 112.7(a)(3);
- e. Failure to identify the fixed containers configuration and contents of the tanks. The mobile and portable containers, types of oil, and anticipated storage capacities located at the Watkins Facility are not accurately reflected in the SPCC Plan, in violation of 40 C.F.R. § 112.7(a)(3)(i);
- f. The SPCC Plan did not contain any current contact information or phone numbers for the Watkins Facility response coordinator, the name or phone number of the current owner, and appropriate federal, state, and local agency contacts in the event of a discharge, in violation of 40 C.F.R. § 112.7(a)(3)(vi);
- g. Failure to organize SPCC Plan such that portions of the Plan describing procedures to be used during a discharge can be "readily usable in an emergency," in violation of 40 C.F.R. § 112.7(a)(5);
- h. Failure to keep and maintain inspection records in accordance with 40 C.F.R. § 112.7(e);
- i. An inadequate discussion of conformance with "applicable more stringent State rules, regulations, and guidelines and other effective discharge prevention and containment procedures . . .", in violation of 40 C.F.R. § 112.7(j);
- j. Failure to describe how liquid and drainage from diked storage areas are restrained and how a controlled discharge would occur, in violation of 40 C.F.R. § 112.8(b)(1);
- k. The SPCC plan did not describe the diversion ditches on either side of the secondary containment which diverge drainage from undiked areas with a potential for discharge into the impoundment pond, in violation with 40 C.F.R. § 112.8(b)(3);
- l. Failure to include provisions for the inspection of retained rainwater to ensure presence of precipitation will not cause a discharge, in violation of 40 C.F.R. § 112.8(c)(3)(ii);

- m. Inadequate maintenance of drainage events records, in violation of 40 C.F.R. § 112.8(c)(3)(iv);
 - n. Failure to accurately reflect overflow protections. At the Watkins Facility, some of the tanks have dial gauges and some have site glasses. The SPCC Plan provides conflicting information that there are no overflow protections, in violation of 40 C.F.R. § 112.8(c)(8); and
 - o. Failure to address aboveground and buried piping in the SPCC Plan, in violation of 40 C.F.R. § 112.8(d).
24. Each of the deficiencies described in subparagraphs 22(a)-(j) and 23(a)-(o), above, constitute a separate violation of section 311(j) of the Act, 33 U.S.C. § 1321(j), and 40 C.F.R. part 112, for which Respondent is liable for civil administrative penalties pursuant to 311(b)(6)(A)(ii) of the Act, 33 U.S.C. § 1321(b)(6)(A)(ii).

VI. CIVIL PENALTY

25. 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 authorizes the EPA to assess Class I administrative penalties of up to \$45,268 for violations that occurred after November 2, 2015, and where penalties are assessed on or after January 15, 2017.
26. After consideration of the facts of this case as they relate to the factors set forth in section 311(b)(8) of the Act, 33 U.S.C. § 1321(b)(8), the parties agree to an administrative penalty of \$39,000.00 for the violations alleged herein.
27. Respondent agrees to:
- a. pay the civil penalty of \$39,000.00 within 30 calendar days of the Effective Date of this Agreement;
 - b. pay the civil penalty of \$39,000.00 using any method, or combination of methods, provided on the website <http://www2.epa.gov/financial/additional-instructions-making-payments-epa>, and identifying each and every payment with the “Docket No.”
 - c. send a copy of the check or notification of wire transfer or online payment, within 24 hours of the time of payment, to the EPA Region 8 Regional Hearing Clerk and Donna K. Inman (at the addresses provided below). A transmittal letter identifying the case title and docket number must accompany the remittance and each of the copies of the check or notification.

Regional Hearing Clerk
U.S. Environmental Protection Agency (8RC)
1595 Wynkoop Street
Denver, Colorado 80202-1129

and

Donna K. Inman

U.S. Environmental Protection Agency (8ENF-W-WO)
1595 Wynkoop Street
Denver, Colorado 80202-1129

28. If Respondent fails to timely pay any portion of the penalty assessed under this Agreement, the EPA may:

- a. request the Attorney General to bring a civil action in an appropriate district court to recover: the amount assessed; interest at rates established pursuant to 26 U.S.C. § 6621(a)(2), from the Effective Date of this Agreement; the United States' enforcement expenses; and a 20 percent quarterly nonpayment penalty, authorized by 33 U.S.C. § 1321(b)(6)(H);
- b. refer the debt to a credit reporting agency or a collection agency, 33 U.S.C. § 1321(b)(6)(H), 40 C.F.R. §§ 13.13, 13.14, and 13.33;
- c. collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to referral to the Internal Revenue Service for offset against income tax refunds, 40 C.F.R. part 13, subparts C and H; and
- d. suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with the EPA or engaging in programs the EPA sponsors or funds, 40 C.F.R. § 13.17.

VII. GENERAL PROVISIONS

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

30. Respondent:

- a. admits to the stipulated facts in this Agreement;
- b. neither admits nor denies the allegations contained herein;
- c. agrees to pay the administrative civil penalty;
- d. agrees to waive any rights to contest the allegations; and
- e. agrees to waive 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 Agreement and subsequently issued Final Order, including any right of judicial review under the Administrative Procedure Act, 5 U.S.C. §§ 701 -706.

31. Nothing herein shall be construed to limit the power of the EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.
32. The provisions of this Agreement shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representative, successors, and assigns. From the Effective Date of this Agreement until full payment of the civil penalty, Respondent must give written notice and a copy of this Agreement to any successors in interest, prior to any transfer of ownership, or control of any portion, of the Watkins Facility. Simultaneously with such notice, Respondent shall provide written notice of such transfer, assignment, or delegation to the EPA. In the event of any such transfer, assignment, or delegation, Respondent shall not be released from the obligations or liabilities of this Agreement unless the EPA has provided written approval of the release of said obligations or liabilities.
33. By signing this Agreement, Respondent certifies that the information it has supplied concerning this matter was at the time of submission, true, accurate, and complete for each such submission, response, and statement. Respondent acknowledges that there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.
34. Each party will bear its own attorney's fees, costs, and disbursements incurred in this proceeding.
35. Penalties paid pursuant to this Agreement shall not be deductible for purposes of federal taxes.
36. This Agreement constitutes the entire agreement and understanding of the parties and supersedes any prior agreements or understandings, whether written or oral, among the parties with respect to the subject matter hereof, with the exception of the Final Order to be issued by the Regional Judicial Officer.
37. In accordance with 40 C.F.R. § 22.18(c), this Agreement, upon incorporation into a Final Order, and full payment of the penalty assessed shall be a complete and full resolution of Respondent's liability for federal civil penalties for the violations alleged, above.
38. A violation of the Final Order may result in civil judicial action for an injunction or civil penalties as provided in section 309(b) of the Act, 33 U.S.C. § 1319(b), as well as criminal sanctions as provided in 309(c) of the Act, 33 U.S.C. § 1319(c). The EPA may use the information submitted under this Order in an administrative, civil judicial, or criminal action.

VIII. CONTINUING OBLIGATION TO COMPLY

39. Neither assessment nor payment of the administrative penalty shall affect Respondent's continuing obligation to comply with the Act and any regulation, order, or permit issued pursuant to the Act, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit.

IX. EFFECTIVE DATE

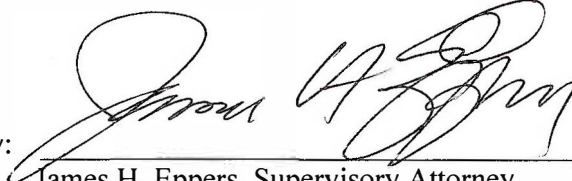
40. Respondent and the EPA agree to the issuance of a Final Order ratifying this Agreement. Upon filing, the Regional Judicial Officer will transmit a copy of the filed Agreement to Respondent. The “Effective Date” of this Agreement is the date of issuance of a Final Order by the Regional Judicial Officer.

**ENVIRONMENTAL PROTECTION AGENCY
REGION 8
Complainant**

Date:

9/2/17

By:



James H. Eppers, Supervisory Attorney
Legal Enforcement Program
Office of Enforcement, Compliance,
and Environmental Justice
United States Environmental Protection Agency, Region 8
1595 Wynkoop Street (8ENF-L)
Denver, Colorado 80202-1129

Date:

9/3/17

By:



Kenneth Champagne, Chief
OPA and Wetlands Enforcement Unit
Technical Enforcement Program
Office of Enforcement, Compliance,
and Environmental Justice
United States Environmental Protection Agency, Region 8
1595 Wynkoop Street (8ENF-)
Denver, Colorado 80202-1129

PETROLEUM WHOLESALE, L.P.
Respondent

By: PWI GP, LLP
General Partner

By: PWI Holdings, LLP

Date: 9-7-2017

By: _____
John Cook
Managing Partner



CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **COMBINED COMPLAINT AND CONSENT AGREEMENT and FINAL ORDER** in the matter of **PETROLEUM WHOLESALE, L.P.; DOCKET NO.: CWA-08-2017-0022** was filed with the Regional Hearing Clerk on September 14, 2017.

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 September 14, 2017, to:

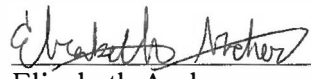
Respondent

Mr. John Cook
Managing Partner
Petroleum Wholesale, L.P.
8550 Technology Forest Place
The Woodlands, Texas 77381-1174

And emailed to:

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

September 14, 2017


Elizabeth Archer
Acting Regional Hearing Clerk