

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 9

****FILED****
28 JULY 2021
U.S. EPA - REGION IX

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IN THE MATTER OF:))
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Hawaii Fueling Facilities Corporation))
Signature Flight Support Corporation))
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))
Honolulu, Hawaii))
))
))
Respondents.))
_____)

**CONSENT AGREEMENT AND
FINAL ORDER PURSUANT
TO 40 C.F.R. §§ 22.13(b) and
22.18**

Docket No. OPA-09-2021-0047

CONSENT AGREEMENT

A. Preliminary Statement

1. This Consent Agreement and Final Order (“CA/FO”) is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Sections 311(b)(6)(A) and (B)(ii) of the Clean Water Act (“Act”), 33 U.S.C. § 1321(b)(6)(A), and (B)(ii), as amended by the Oil Pollution Act of 1990, and under the authority provided by 40 C.F.R. § 22.18(b)(2). The Administrator has delegated these authorities to the Regional Administrator of EPA Region 9, who has in turn delegated them to the Director of the Enforcement and Compliance Assurance Division (“Complainant”).
2. Complainant initiates this proceeding against Hawaii Fueling Facilities Corporation and Signature Flight Support Corporation (together, “Respondents”) for alleged violations of Section 311(j) of the Act, 33 U.S.C. § 1321(j), and its implementing regulations, at the bulk fuel storage facility located at 6 Sand Island Access Road in Honolulu, Hawaii (the “Facility”). Complainant and Respondents are hereinafter collectively referred to as the “Parties.”
3. This CA/FO simultaneously commences and concludes this penalty proceeding as authorized by 40 C.F.R. § 22.13(b).

B. Statutory and Regulatory Framework

4. Section 311(j)(1)(C) of the Act, 33 U.S.C. § 1321(j)(1)(C), provides that the President shall issue regulations “establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil . . . from onshore facilities . . . and to contain such discharges”
5. Initially by Executive Order 11548 (July 20, 1970), 35 Fed. Reg. 11677 (July 22, 1970), and most recently by Section 2(b)(1) of Executive Order 12777 (October 18, 1991), 56 Fed. Reg. 54757 (October 22, 1991), the President delegated to EPA Section 311(j)(1)(C) authority to issue the regulations referenced in the preceding Paragraph for non-transportation-related onshore facilities.
6. EPA subsequently promulgated regulations, codified at 40 C.F.R. Part 112 (the “Oil Pollution Prevention regulations”), pursuant to these delegated statutory authorities and pursuant to its authorities under the Act, 33 U.S.C. § 1251 *et seq.*, which set forth certain procedures, methods and requirements, including requirements for Spill Prevention, Control, and Countermeasure (“SPCC”) planning, applicable to an owner or operator of an onshore facility, which, due to its location, reasonably could be expected to discharge oil into or on navigable waters and their adjoining shorelines in such quantities as EPA has determined in 40 C.F.R. Part 110 may be harmful to the public health or welfare or the environment of the United States.
7. “Navigable waters” are defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7) and 40 C.F.R. § 112.2 (1993).
8. In promulgating 40 C.F.R. § 110.3, which implements Section 311(b)(4) of the Act, 33 U.S.C. § 1321(b)(4), EPA has determined that the 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 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.

C. General Allegations

10. Hawaii Fueling Facilities Corporation is a corporation organized under the laws of Hawaii. Respondent HFFC 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), and 40 C.F.R. § 112.2.

11. Signature Flight Support LLC f/k/a Signature Flight Support Corporation is a corporation organized under the laws of Delaware and registered in Hawaii. Respondent SFSC 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), and 40 C.F.R. § 112.2.
12. HFFC owns the assets at the Facility and utilizes the Facility for the receipt, storage, and distribution of jet fuel to the Honolulu International Airport operations.
13. Beginning on or before November 2004, Respondent HFFC has been 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.
14. Effective February 1, 2017, SFSC was contracted by HFFC to provide certain operation, maintenance, and administrative services at the Facility, and that contract is effective until at least March 31, 2021.
15. Beginning on or before February 1, 2017, and continuing to the present, SFSC has been the “operator” of the Facility within the meaning of Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6), and 40 C.F.R. § 112.2.
16. The Facility is “non-transportation-related” within the meaning of 40 C.F.R. § 112.2.
17. 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.
18. Jet fuel is “oil” within the meaning of Section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1), and 40 C.F.R. § 112.2.
19. The Facility has several above-ground oil storage tanks with an aggregate maximum above-ground oil storage capacity of approximately 42,125,950 gallons.
20. Primary containment for the jet fuel stored at the Facility is provided by sixteen bulk aboveground storage tanks located on three contiguous lots within the Facility: Lot 2, Lot 3, and Lot 3.5. There are seven aboveground storage tanks on Lot 2, five on Lot 3, and four on Lot 3.5.
21. The Facility is in close proximity to “navigable waters” of the United States within the meaning of Section 502(7) of the Act, U.S.C. § 1362(7) and 40 C.F.R. § 112.2 (1993); specifically, the Facility is located approximately 200 feet from Ke’ehi Lagoon, which connects to Mamala Bay and the Pacific Ocean. Ke’ehi Lagoon, Mamala Bay, and the

Pacific Ocean are “navigable waters” within the meaning of section 502(7) of the CWA, 33 U.S.C. § 1362(7) and 40 C.F.R. § 110.1.

22. The Facility is a non-transportation-related facility that, due to its location, could reasonably be expected to discharge oil from an aboveground container to a navigable water of the United States or its adjoining shorelines in a harmful quantity, and is therefore subject to the Oil Pollution Prevention regulations at 40 C.F.R. Part 112.

D. Alleged Violations

Count 1
(Violations of 40 C.F.R. § 112.7(c))

23. Paragraphs 1 through 22, above, are incorporated herein by this reference as if they were set forth here in their entirety.
24. 40 C.F.R. § 112.7(c) requires a facility’s secondary containment to be sufficiently impervious so that any discharge of oil will not escape the containment system until clean-up can occur.
25. Beginning on or before August 2005, the date HFFC first prepared an SPCC Plan for the Facility, continuing since 2017 when SFSC began operating the Facility, Respondents violated 40 C.F.R. § 112.7(c), promulgated pursuant to Section 311(j) of the CWA, 33 U.S.C. § 1321(j), because the SPCC Plan did not provide for a containment system capable of containing oil and constructed so that any discharge from a tank at the Facility would not escape the containment system before cleanup occurred.

Count 2
(Violations of 40 C.F.R. § 112.8(c))

26. Paragraphs 1 through 22, above, are incorporated herein by this reference as if they were set forth here in their entirety.
27. 40 C.F.R. § 112.8(c)(2) requires that all bulk storage tank installations be constructed to provide a secondary means of containment for the entire capacity of the largest single container and sufficient freeboard to contain precipitation. A facility must be constructed to ensure that diked areas are sufficiently impervious to contain discharged oil.
28. Beginning on or before November 2004, when HFFC began operating the Facility, continuing since 2017 when SFSC began operating the Facility, Respondents violated 40

C.F.R. § 112.8(c)(2), promulgated pursuant to Section 311(j) of the CWA, 33 U.S.C. § 1312(j), because the secondary containment system at the Facility could not contain the entire capacity of the largest single container with sufficient freeboard to contain precipitation and because diked areas were not sufficiently impervious to contain discharged oil.

E. Civil Penalty

29. Section 311(b)(6)(B)(ii) of the Act, 33 U.S.C. § 1321(b)(6)(B)(ii), authorizes the administrative assessment of civil penalties in an amount not to exceed \$10,000 per violation, up to a maximum penalty of \$25,000. Pursuant to the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and 40 C.F.R. Part 19, the administrative assessment of civil penalties may not exceed \$19,505 per day for each day during which the violation continues, up to a maximum Class II civil penalty of \$243,808. *See also* 85 Fed. Reg. 83818 (Dec. 23, 2020).

30. Respondents consent to the assessment of and HFFC agrees to pay a civil penalty of **one hundred fifty thousand dollars (\$150,000)** as the civil penalty for the violations alleged herein. The penalty was calculated based on the nature, circumstances, extent and gravity of the violations, Respondents' ability to pay, their prior history of violations, their degree of culpability, and any economic benefit or savings accruing to Respondents as a result of the violations.

F. Parties Bound

31. This CA/FO shall apply to and be binding upon Respondents, successors and assigns, until such time as the civil penalty required under Section E (and any additional civil penalty required under Section H), and any delays in performance and/or stipulated penalties have been resolved. At such time as those matters are concluded, this CA/FO shall terminate and constitute full and complete settlement of the violations alleged herein.

32. No change in ownership or legal status relating to the Facility will in any way alter HFFC's obligations and responsibilities under this CA/FO.

33. The undersigned representative of each Respondent hereby certifies that they are fully authorized by Respondent to enter into and execute this CA/FO, and to legally bind Respondent to it.

G. Payment of Civil Penalty

34. HFFC shall submit payment of the **one hundred fifty thousand dollars (\$150,000)** within thirty (30) days of the Effective Date as specified in Paragraph 57 of this CA/FO.
35. HFFC shall make required payments by cashier's check, certified check or electronic funds transfer ("EFT") payable to the "U.S. Environmental Protection Agency," with the notation "OSLTF - 311" and the docket number of this CA/FO. Payment by check shall be addressed to:

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

If paying by EFT, HFFC shall transfer the payment to:

Federal Reserve Bank of NY
ABA 021030004
Account 68010727
33 Liberty Street
New York, N.Y. 10045

Field Tag 4200 of the EFT message shall read "D 68010727 Environmental Protection Agency."

36. **Notification.** Within seven (7) days after the due date of the payment, a copy of each check, or notification that the payment has been made by one of the other methods listed above, including proof of the date payment was made, shall be sent with a transmittal letter, indicating Respondents' name, the case title, and docket number, to each of the following:

Steven Armsey
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street (ORC-1)
San Francisco, California 94105
R9HearingClerk@epa.gov

and to:

Connor Adams
U.S. Environmental Protection Agency, Region 9
Adams.Connor@epa.gov

37. If payment is not received by the due date, interest on any overdue amount will accrue from the Effective Date of this CA/FO at the current rate published by the United States Treasury as described at 40 C.F.R. § 13.11. In addition, a six percent (6%) per annum penalty will be applied on any principal amount not paid within ninety (90) days of the due date. Payment of any interest shall be made in accordance with Paragraphs 35 and 36 above.
38. HFFC's failure to make timely payment in full within the time provided in Paragraph 34 may subject HFFC to a civil action to collect the assessed penalties, plus interest, attorneys' fees, costs and additional quarterly nonpayment penalties pursuant to Section 311(b)(6)(H) of the Act, 33 U.S.C. § 1321(b)(6)(H). In any such collection action, the validity, amount and appropriateness of the penalty and of this CA/FO shall not be subject to review.
39. The civil penalty and any interest, late handling fees, or late penalty payments provided for in the CA/FO shall not be deducted from Respondents' or any other person or entity's federal, state, or local taxes.

H. Delay in Performance/Stipulated Penalties

40. In the event HFFC fails to meet any requirement set forth in this CA/FO, HFFC shall pay stipulated penalties as set forth below. Compliance by HFFC shall include completion of any activity under this CA/FO in a manner acceptable to EPA and within the time specified in and approved under this CA/FO.
41. For failure to submit a payment to EPA by the time required in this CA/FO: five hundred dollars (\$500) per day for the first to the fifteenth day of delay, one thousand dollars (\$1,000) per day for the sixteenth to the thirtieth day of delay, and five thousand (\$5,000) per day for each day of delay thereafter.
42. Stipulated penalties shall begin to accrue on the day after performance is due and shall continue to accrue through the final day until performance is complete. HFFC shall pay stipulated penalties within fifteen (15) days of receipt of a written demand by Complainant for such penalties. Payment of stipulated penalties shall be made in

accordance with the procedure set forth for payment of penalties in Section G of this CA/FO.

43. If a stipulated penalty is not paid in full, interest shall begin to accrue on the unpaid balance at the end of the fifteen-day period at the current rate published by the United States Treasury, as described at 40 C.F.R. § 13.11. Complainant reserves the right to take any additional action, including but not limited to, imposition of civil penalties to enforce compliance with this CA/FO or the Act and its implementing regulations.
44. The payment of stipulated penalties specified in this Section shall not be deducted by Respondents or any other person or entity for federal, state, or local taxation purposes.
45. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this CA/FO.

I. Admissions and Waivers of Rights

46. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding, Respondents: (i) admit that EPA has jurisdiction over the subject matter of this CA/FO and over Respondents; (ii) neither admit nor deny the specific factual allegations contained in the CA/FO; (iii) consent to any and all conditions specified in this CA/FO and to the assessment of the civil administrative penalty under Section E of this CA/FO; (iv) waive any right to contest the allegations contained in Section C of the CA/FO; and (v) waive the right to appeal the proposed final order contained in this CA/FO.
47. Complainant and Respondent agree that settlement of this matter is in the public interest and that entry of this CA/FO without further litigation is the most appropriate means of resolving this matter.

J. Reservation of Rights

48. Except as addressed by this CA/FO, EPA hereby reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, including any right EPA may have to require that Respondents perform tasks in addition to those required by this CA/FO. EPA further reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, which may pertain to Respondents' failure to comply with any of the requirements of this CA/FO, including, without limitation, the assessment of penalties under Section 311(b) of the Act, 33 U.S.C. § 1321(b). This CA/FO shall not be construed as a covenant not to sue, a release, waiver

or limitation of any rights, remedies, powers, or authorities, civil or criminal, which EPA has under the Act, or any other statutory, regulatory, or common law enforcement authority of the United States, except as otherwise set forth herein.

49. Compliance by Respondents with the terms of this CA/FO shall not relieve Respondents of their obligations to comply with any applicable local, state or federal laws and regulations. This CA/FO is not intended to be nor shall it be construed as a permit. This CA/FO does not relieve Respondents of any obligation to obtain and comply with any local, state, or federal permits nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit.
50. The entry of this CA/FO and Respondents' consent to comply shall not limit or otherwise preclude EPA from taking additional enforcement actions should EPA determine that such actions are warranted except as it relates to those matters resolved by this CA/FO. Full payment of the penalty proposed herein shall resolve Respondents' liability for federal civil penalties for the violations and facts alleged herein.
51. EPA reserves its right to seek reimbursement from HFFC for such additional costs as may be incurred by the United States in the event of delay of performance as provided by this CA/FO.

K. Miscellaneous

52. This CA/FO may be amended or modified only by written agreement executed by both EPA and Respondents.
53. The headings in this CA/FO are for convenience of reference only and shall not affect interpretation of this CA/FO.
54. The CA/FO may be executed and transmitted by facsimile, email or other electronic means, and in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one instrument. If any portion of this CA/FO is determined to be unenforceable by a competent court or tribunal, it is the Parties' intent that the remaining portions shall remain in full force and effect.
55. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in this proceeding.
56. EPA and Respondents consent to entry of this CA/FO without further notice.

L. Effective Date

57. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.13(b), this CA/FO shall take effect on the date the Final Order contained in this CA/FO, having been approved and issued by the Regional Judicial Officer, is filed with the Regional Hearing Clerk.

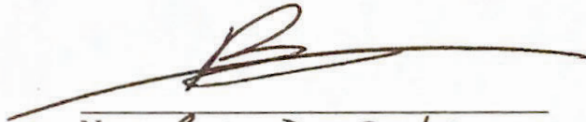
M. Public Notice

58. Pursuant to Section 311(b)(6)(C) of the Act, 33 U.S.C. § 1321(b)(6)(C), and 40 C.F.R. § 22.45(b), this Consent Agreement is subject to public notice and comment prior to issuance of the proposed Final Order. Complainant reserves the right to withhold or withdraw consent to this Consent Agreement if public comments disclose relevant and material information that was not considered by Complainant in entering into this Consent Agreement. Respondents may withdraw from this Consent Agreement only upon receipt of written notice from EPA that it no longer supports entry of this Consent Agreement.

In the Matter of Hawaii Fueling Facilities Corporation and Signature Flight Support Corporation
Honolulu, Hawaii

IT IS SO AGREED,

For Respondent Hawaii Fueling Facilities Corporation:

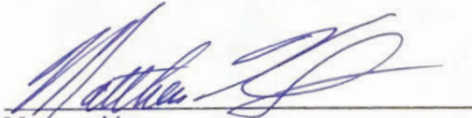


Name: Bruno Dos Santos
Title: President

Date: 4/28/21

IT IS SO AGREED,

For Respondent Signature Flight Support Corporation:



Name: MATTHEW KLEIN as
Title: Senior legal Counsel

Date: May 7, 2021

For Complainant U.S. Environmental Protection Agency:

AMY MILLER- Digitally signed by
BOWEN AMY MILLER-BOWEN
Date: 2021.05.24
10:37:54 -07'00'

Date: _____

Amy C. Miller-Bowen
Director, Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 9

FINAL ORDER

Pursuant to Section 311(b)(6) of the Clean Water Act, 33 U.S.C. § 1321(b)(6) and the delegated authority of the undersigned, and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits,” codified at 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order.

The Respondents are ordered to comply with the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), this order shall become effective upon filing, and shall constitute a full adjudication of the allegations stated in the Consent Agreement.

STEVEN JAWGIEL

Digitally signed by STEVEN
JAWGIEL

Date: 2021.07.28 08:48:24 -07'00'

Date: _____

Steven L. Jawgiel
Regional Judicial Officer
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, CA 94105

1 **CERTIFICATE OF SERVICE**

2 This is to certify that the forgoing order issued by the Regional Judicial Officer in the
3 matter of Hawaii Fueling Facilities Corporation and Signature Flight Support Corporation
4 (OPA-09-2021-0047) has been filed with the Regional Hearing Clerk and a copy was
5 served on Respondent and on Complainant as indicated below:

6 ELECTRONIC MAIL

7 For Respondent:

8 Bruno Dos Santos, President
9 Hawaii Fueling Facilities Corporation
10 Bruno.DosSantos@hawaiianair.com

11 Matthew Klein, Senior Legal Counsel
12 Signature Flight Support Corporation
13 Matthew.Klein@signatureaviation.com

14 ELECTRONIC MAIL

15 For Complainant:

16 Desean Garnett, Attorney-Advisor
17 United States Environmental Protection Agency
18 Garnett.Desean@epa.gov

19 **Armsey, Steven** Digitally signed by
20 **Armsey, Steven**
21 **Steven** Date: 2021.07.28
22 19:00:12 -07'00'

23

24 Steven Armsey
25 Regional Hearing Clerk
U.S. EPA, Region 9