UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8
1595 WYNKOOP STREET
DENVER, CO 80202-1129
Phone 800-227-8917
http://www.epa.gov/region08

May 22, 2020
8:00 AM
Received by
EPA Region VIII
Hearing Clerk

DOCKET NO.: CWA-08-2020-0012

IN THE MATTER OF:	)	
	)	
RUD CORPORATION	)	**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 21st DAY OF May, 2020.

KATHERIN HALL
Digitally signed by KATHERIN HALL
Date: 2020.05.21 21:36:24 -06'00'

Katherin E. Hall
Regional Judicial Officer

UNITED STATES
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IN THE MATTER OF:	)	
	)	
	)	**CONSENT AGREEMENT**
Rud Corporation,	)	
	)	
	)	Docket No. CWA-08-2020-0012
	)	
Respondent	)	

I. INTRODUCTION

1. This is an administrative penalty assessment proceeding pursuant to sections 22.13(b) and 22.18(b)(2) and (3) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits* (Consolidated Rules of Practice), as codified at 40 C.F.R. part 22.

2. The parties to this proceeding are the undersigned U.S. Environmental Protection Agency official (Complainant) and Rud Corporation (Respondent).

3. Respondent owns and/or operates a facility known as the Curtis Rud Oil - Glen Ullin Bulk Plant, at 6490 Highway 49, in Glen Ullin, North Dakota (the Site).

4. The parties, having agreed settlement of this action is in the public interest, consent to the entry of this consent agreement (Agreement) without adjudication of any issues of law or fact herein, and Respondent agrees to comply with the terms of this Agreement.

II. JURISDICTION

5. This Agreement is issued under the authority of section 311(b)(6) of the Clean Water Act (Act), 33 U.S.C. § 1321(b)(6). This is a Class I proceeding, as described in section 311(b)(6)(B)(i) of the Act, 33 U.S.C. § 1321(b)(6)(B)(i).

6. This proceeding is subject to the Consolidated Rules of Practice, under which this proceeding may be resolved by a final order from a Regional Judicial Officer ratifying this Agreement. The final order will simultaneously commence and conclude this proceeding. 40 C.F.R. § 22.13(b).

III. GOVERNING LAW

7. Congress has 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 . . . ." 33 U.S.C. § 1321(j)(1)(C). The President delegated the authority to issue these regulations to the EPA Administrator in section 2(b)(1) of Executive Order No. 12777 (56 Fed. Reg. 54757, October 21, 1991).

8. In response to the directive referenced in paragraph 7, above, EPA promulgated 40 C.F.R. part 112, entitled "Oil Pollution Prevention."

9. 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 practices specified in that regulation. The regulations in 40 C.F.R. part 112, subparts A through C will be referenced as the "SPCC Regulations."

10. The SPCC Regulations apply to "any owner or operator of a non-transportation-related onshore or offshore facility engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using, or consuming oil and oil products, which due to its location, could reasonably be expected to discharge oil in quantities that may be harmful, as described in [40 C.F.R. part 110], into or upon the navigable waters of the United States or adjoining shorelines." There are certain exceptions in 40 C.F.R. § 112.1(d), such as for facilities with both completely buried oil storage capacities of 42,000 U.S. gallons or less and aggregate aboveground oil storage capacities of 1,320 U.S. gallons.

11. For purposes of section 311(b)(4) of the Act, discharges of oil that may be harmful to the public health or welfare or the environment of the United States includes 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. 40 C.F.R. § 110.3.

12. EPA promulgated 40 C.F.R. § 110.3 in response to the directive of section 311(b)(4) of the Act for the President to determine by regulation, for purposes of section 311 of the Act, those quantities of oil and any hazardous substances the discharge of which may be harmful to the public health or welfare of the United States, including but not limited to fish, shellfish, wildlife and public and private property, shorelines, and beaches. The President delegated the authority to make this determination to EPA in section 8(a) of Executive Order No. 12777 (56 Fed. Reg. 54757, October 21, 1991).

IV. ALLEGATIONS OF FACT AND LAW

The following allegations apply at all times relevant to this Agreement:

13. Respondent is a North Dakota corporation. Its registered agent for service of process in North Dakota is Brent Rud, 3701 Daytona Dr., Bismarck, North Dakota 58503-1707.

14. Respondent has done business under the trade name Curtis Rud Oil.

15. Respondent is a "person" for purposes 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. § 122.2.

16. At the Site (see paragraph 3, above), Respondent stores oil.

17. The Site has an aboveground oil storage capacity of more than 80,000 gallons, including but not limited to three 12,000-gallon capacity tanks and three 15,000-gallon capacity tanks.

18. In the event of an uncontained spill, oil from any of the tanks referenced in paragraph 17, above, would flow for approximately 600 feet to an unnamed tributary of Tavis Creek and along the unnamed tributary for approximately 645 feet before entering Tavis Creek.

19. After entering Tavis Creek, the oil referenced in paragraph 18, above, would flow approximately six-tenths of a mile along Tavis Creek to Big Muddy Creek, and for approximately 27 miles to the Heart River.

20. Tavis Creek is a relatively permanent tributary of Big Muddy Creek.

21. Big Muddy Creek is a relatively permanent tributary of the Heart River.

22. The Heart River is a traditionally navigable water.

23. The Heart River is a tributary of the Missouri River.

24. The Missouri River is an interstate, traditionally navigable water.

25. Tavis Creek is a "navigable water" as defined in section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 112.2. It is also a "water of the United States" as defined in 40 C.F.R. § 122.2.

26. Big Muddy Creek is a "navigable water" as defined in section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 112.2. It is also a "water of the United States" as defined in 40 C.F.R. § 122.2.

27. The Heart 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. § 112.2. It is also a "water of the United States" as defined in 40 C.F.R. § 122.2.

28. The Missouri 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. § 112.2. It is also a "water of the United States" as defined in 40 C.F.R. § 122.2.

29. Due to its location, the Site could reasonably be expected to discharge oil and/or other pollutants to Tavis Creek and/or its adjoining shorelines in quantities that would (a) violate applicable water quality standards or (b) cause a film or 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 water or adjoining shorelines.

30. Due to its location, the Site could reasonably be expected to discharge oil and/or other pollutants to Big Muddy Creek and/or its adjoining shorelines in quantities that would (a) violate applicable water quality standards or (b) cause a film or 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 water or adjoining shorelines.

31. The Site is an "onshore facility" as that term is defined in section 311(a)(10) of the Act, 33 U.S.C. § 1321(a)(10).

32. The Site is a "non-transportation related" facility" as that term is defined in 40 C.F.R. § 112.2.

33. Respondent is an "owner or operator" of the Site as that term is defined in section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6).

34. The Site is subject to the SPCC Regulations.

35. On October 7, 2016, EPA representatives conducted an SPCC inspection of the Site (the SPCC Inspection).

V. ALLEGED VIOLATIONS OF LAW

The alleged violations are set forth in the following counts:

Count 1: Failure to Maintain an SPCC Plan on Site

36. Respondent is required to prepare an SPCC plan for the Site in accordance with the requirements of 40 C.F.R. part 112.

37. Respondent is required to maintain a complete copy of its SPCC Plan at the Site. 40 C.F.R. § 112.3(e)(1).

38. As of the time of EPA's inspection referenced in paragraph 35, above, Respondent had no SPCC plan at the Site.

39. Each day Respondent failed to maintain a copy of the SPCC Plan for the Site at the Site constitutes a violation of 40 C.F.R. § 112.3(e)(1).

Count 2: Failure to Prepare an Adequate SPCC Plan

40. In December of 2016, Respondent submitted an SPCC plan to EPA. The plan indicated it had last been revised on November 18, 2016.

41. SPCC plans are required to comply with all applicable requirements in 40 C.F.R. part 112. Whenever an SPCC plan does not comply with certain applicable requirements of 40 C.F.R.

part 112, the plan must state the reasons for nonconformance and describe in detail alternative methods and the means of achieving equivalent environmental protection. 40 C.F.R. § 112.7(a)(2).

42. Respondent's SPCC plan indicates that it deviates from the requirements of 40 C.F.R. § 112.8(c)(8) regarding high level alarms. (See section 3.C of the plan, on page 5 of 40.) The equivalency explanation states, "Product is manually added to the tanks and product level confirmed by the delivery vehicle driver prior to each delivery. This manual confirmation of ullage [i.e., the amount by which a container falls short of being full] is deemed equivalent environmental protection as outlined in 40 CFR 112.7(g) as overfill protection during unloading operations."

43. The explanation quoted in paragraph 42, above, is inadequate. For example, the cited regulation, 40 C.F.R. § 112.7(g) is entitled "Security (excluding oil production facilities)." It concerns preventing unauthorized access and has nothing to do with any indications of remaining tank capacity or ullage.

44. SPCC plans are required to address the methods of disposal of recovered materials in accordance with applicable legal requirements. 40 C.F.R. § 112.7(a)(3)(v).

45. Respondent's SPCC plan addresses methods of disposal of recovered materials merely by stating, "Large volumes of oil will be recovered via vacuum truck and disposed of at an unpermitted facility." (See section 3.E.5 of the plan, at page 9 of 40.)

46. Respondent's failures to include an adequate equivalency explanation and to address methods of disposal of recovered materials in its SPCC plan constitute violations of 40 C.F.R. §§ 112.7(a)(2) and 112.7(a)(3)(v).

Count 3: Failure to Provide Adequate Secondary Containment

47. Respondent is required to provide adequate containment and/or diversionary structures or equipment at the Site to prevent a discharge of oil (with an exception not relevant here). Among other things, the entire containment system, including walls and floor, must be capable of containing oil and must be constructed so that any discharge from a primary containment system, such as a tank, will not escape the containment system before containment occurs. 40 C.F.R. §§ 112.7(c) and 112.8(a).

48. Respondent's containment system is required by 40 C.F.R. §§ 112.7(c) and 112.8(a) to include at least one of the following prevention systems or its equivalent:

(i) Dikes, berms, or retaining walls sufficiently impervious to contain oil
(ii) Curbing or drip pans;
(iii) Sumps and collection systems;
(iv) Culverting, gutters, or other drainage systems;

(v) Weirs, booms, or other barriers;
(vi) Spill diversion ponds;
(vii) Retention ponds; or
(viii) Sorbent materials.

49. Respondent is required to construct all bulk storage tank installations to provide a secondary means of containment for the entire capacity of the largest single container and sufficient freeboard to contain precipitation. 40 C.F.R. § 112.(c)(2).

50. The SPCC Inspection revealed that rust and pitting on the base of at least one of Respondent's tanks, cracks in the containment walls for multiple tanks, and evidence of past leakage on at least one valve.

51. The rust, pitting, cracks, and evidence of past leakage demonstrated that secondary containment systems at the Site will not effectively contain oil spills in the event of a tank rupture or other leak.

52. Although an engineer retained by Respondent indicated to EPA that cracks in the Site's secondary containment walls would be repaired by December 31, 2016, and although EPA has made efforts to reach Respondent and confirm repairs have been made, EPA has yet to receive any verification that any repairs have occurred.

53. Each day Respondent has stored oil at the Site (in excess of the threshold cited in paragraph 10, above) without providing adequate secondary containment is a violation of 40 C.F.R. §§ 112.7(c), 112.8(a), 112.8(c)(2), and 112.12(c)(2).

Count 4: Failure to Position Mobile Containers to Prevent a Discharge

54. Respondent is required to position any mobile or portable oil storage containers to prevent a discharge. Except for certain mobile refuelers and trucks, it is required to furnish a secondary means of containment, such as a dike or catchment basin, sufficient to contain the capacity of the largest single compartment or container with sufficient freeboard to prevent precipitation. 40 C.F.R. § 112.8(c)(11).

55. The SPCC plan Respondent provided EPA (see paragraph 40, above) indicated the containment capacity for the Site's bulk storage containers was undersized and would be modified no later than July 1, 2017 to provide adequate containment for the largest container and freeboard for a 25-year rain event.

56. Although EPA has made efforts to reach Respondent and confirm the adequate containment has been provided for the Site's bulk storage containers, EPA has yet to receive any confirmation this has occurred.

57. Each day Respondent has stored mobile or portable oil storage containers at the Site without implementing secondary containment measures sufficient to contain the capacity of the largest single compartment or container with sufficient freeboard to prevent precipitation constitutes a violation of 40 C.F.R. § 112.8(c)(11).

Count 5: Failure to Provide Adequate Warning Signs

58. Respondent is required to warn all vehicles entering the Site to be sure no vehicle will endanger aboveground piping or other oil transfer operations. 40 C.F.R. § 112.8(d)(5).

59. The SPCC Inspection revealed Respondent did not post warning signs to ensure no vehicle would endanger aboveground piping or other oil transfer operations.

60. Each day Respondent has stored oil at the Site (in excess of the threshold cited in paragraph 10, above) without providing adequate signage to warn against vehicles endangering aboveground piping or other oil transfer operations constitutes a violation of 40 C.F.R. § 112.8(d)(5).

VI. TERMS OF CONSENT AGREEMENT

61. For the purpose of this proceeding, Respondent:

a. admits the facts set forth in paragraph 3 of this Agreement;

b. admits the jurisdictional allegations in section II of this Agreement;

c. neither admits nor denies the factual allegations in sections IV and V of this Agreement;

d. consents to the assessment of a civil penalty as stated below;

e. acknowledges this Agreement constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement action; and

f. waives any right to contest the allegations in this Agreement and to appeal any final order approving this Agreement.

62. Section 311(b)(6) of the Act, 33 U.S.C. § 1321(b)(6) establishes the civil administrative penalty amounts EPA may assess in this type of proceeding. The maximum amounts have been adjusted for inflation under 40 C.F.R. part 19.

63. Having considered the seriousness of the violations cited in the Alleged Violations of Law, above, the economic benefit to Respondent, if any, resulting from the violations, the degree of culpability involved, any other penalty for the same violations, any history of prior violations, the economic impact of the penalty on the Respondent, and any other matters as

justice may require, in accordance with section 311(b)(8) of the Act, 33 U.S.C. § 1321(b)(8), the Complainant has determined the civil administrative penalty amount agreed upon below is appropriate to settle this matter.

64. Respondent agrees to:

a. pay a civil penalty in the amount of **$25,000**, within 30 calendar days of date the final order approving this Agreement is filed with the Regional Hearing Clerk;

b. pay the civil penalty using any method provided on the website https://www.epa.gov/financial/makepayment;

c. indicate each and every payment is payable to "Oil Spill Liability Trust Fund-311" and identify each and every payment with the docket number that appears on the final order;

d. within 24 hours of payment, email proof of payment to Dennis Jaramillo, Environmental Engineer, EPA Region 8, at Jaramillo.dennis@epa.gov (whom the complainant designates for service of proof of payment) and the Regional Hearing Clerk for EPA Region 8 at Haniewicz.melissa@epa.gov. "Proof of payment" means, as applicable, a copy of the check, confirmation of credit card or debit card payment confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate payment has been made according to EPA requirements, in the amount due, and identified with the docket number that appears on the final order.

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

a. request the Attorney General to bring a civil action under section 311(b)(6)(H) of the Act, 33 U.S.C. § 1321(b)(6)(H), in an appropriate district court to recover the amount assessed, plus interest at currently prevailing rates from the date of the final order, attorney's fees and costs for collection proceedings, and a 20% quarterly nonpayment penalty for each quarter during which failure to pay persists;

b. refer the debt to a credit reporting agency or a collection agency under 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, under 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 EPA or engaging in programs EPA sponsors or funds under 40 C.F.R. § 13.17.

66. Consistent with section 162(f)(1) of the Internal Revenue Code, 26 U.S.C. § 162(f)(1), Respondent will not deduct penalties paid under this Agreement for federal tax purposes.

67. This Agreement applies to Respondent and its officers, directors, employees, agents, trustees, authorized representatives, successors, and assigns. Respondent must give written notice and a copy of this Agreement to any successors-in-interest prior to any transfer of any interest in the Site occurring prior to payment in full of the penalty referenced above. Any change in ownership or corporate control of Respondent, including but not limited to any transfer of assets or real or personal property, shall not alter Respondent's responsibilities under this Agreement.

68. The undersigned representative of Respondent certifies he or she has authority to bind Respondent to this Agreement.

69. Except as qualified by paragraph 65, above, each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.

VII. EFFECT OF CONSENT AGREEMENT

70. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this Agreement resolves only Respondent's liability for federal civil penalties for the violations specifically alleged above.

71. The terms of this Agreement may not be modified or amended except upon the written agreement of both parties, and approval of the Regional Judicial Officer or Regional Administrator.

72. Nothing in this Agreement shall relieve Respondent of the duty to comply with all applicable provisions of the Act, any regulation, order, or permit issued pursuant to the Act, and any other federal, state, or local laws, nor shall it restrict 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.

73. Nothing herein shall be construed to limit the power of EPA to pursue injunctive or other equitable relief, or criminal sanctions for any violations of law or 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.

74. If and to the extent EPA finds, after signing this Agreement, that any information provided by Respondent was materially false or inaccurate at the time such information was provided to EPA, EPA reserves any and all of its legal and equitable rights.

VIII. PUBLIC NOTICE

75. Because this is a Class I administrative penalty proceeding, the public notice provisions of section 311(b)(6)(C) of the Act, 33 U.S.C. § 1321(b)(6)(C), and 40 C.F.R. § 22.45, do not apply.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 8

Date: _____

By: JANICE PEARSON Digitally signed by JANICE PEARSON Date: 2020.05.15 13:23:46 -06'00'

Janice Pearson, Chief
RCRA and OPA Enforcement Branch
Complainant

RUD CORPORATION
Respondent

Date: 3-15-20

By: _____

Brent Rud, President

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT** and **FINAL ORDER** in the matter of **RUD CORPORATION; DOCKET NO.: CWA-08-2020-0012** were filed with the Regional Hearing Clerk on May 22, 2020.

Further, the undersigned certifies that a true and correct copy of the documents were emailed to, Peggy Livingston, Enforcement Attorney, and sent via certified receipt email on May 22, 2020, to:

Respondent

Brent Rud, President
Rud Corporation
Brent.rud@gmail.com

EPA Financial Center

Jessica Chalifoux
U. S. Environmental Protection Agency
Cincinnati Finance Center
Chalifoux.Jessica@epa.gov

May 22, 2020

MELISSA HANIEWICZ
Digitally signed by MELISSA HANIEWICZ
Date: 2020.05.22 08:28:43 -06'00'

Melissa Haniewicz
Regional Hearing Clerk