

RECEIVED

14 APR -3 PM 8:14

HEALING CLERK
EPA--REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	
)	DOCKET NO. CWA-10-2014-0035
)	
CPD ALASKA, LLC)	
Anchorage, Alaska,)	CONSENT AGREEMENT AND
)	FINAL ORDER
)	
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 309(g)(2)(B) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319(g)(2)(B).

1.2. 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.

1.3. Pursuant to Sections 309(g)(1) and (2)(B) of the CWA, 33 U.S.C. §§ 309(g)(1) and (2)(B), 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 CPD Alaska, LLC (“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 22.45(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 Director of the Office of Compliance and Enforcement, EPA Region 10, has been delegated the authority to sign consent agreements between EPA and the party against whom a Class II penalty, pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), is proposed to be assessed.

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 implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

3.1. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the “discharge of any pollutant by any person” into navigable waters of the United States except, *inter alia*, as authorized by a National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

3.2. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), defines the term “discharge of a pollutant” to include “any addition of any pollutant to navigable waters from any point source.”

3.3. Section 502(6) of the CWA, 33 U.S.C. § 1362(6), defines “pollutant” to include, *inter alia*, solid waste, sewage, garbage, sewage sludge, biological materials, rock, sand, cellar dirt, and industrial waste.

3.4. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines “navigable waters” as “waters of the United States.” EPA’s regulations define “waters of the United States” to include waters that are currently used, were used in the past, or may be susceptible to use, in interstate or foreign commerce; all interstate waters; and tributaries to those waters. 40 C.F.R. § 122.2.

3.5. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), defines the term “point source” to include any “pipe, ditch, channel, tunnel, or conduit...from which pollutants are or may be discharged.”

3.6. Section 502(5) of the CWA, 33 U.S.C. § 1362(5), defines the term “person” to include, *inter alia*, an individual, corporation, partnership, or association.

3.7. Respondent is a limited liability company organized under the laws of the state of Delaware and registered in the state of Alaska and is therefore a “person” within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

3.8. In April 2011, Respondent informed EPA that it was purchasing the bulk petroleum fuel terminal facility, located at 459 West Bluff Road, Anchorage, Alaska (“Facility”), from Chevron USA, Inc.

3.9. At all times relevant to this action, Respondent was the owner and operator of the Facility. The Facility provides jet fuel to an entity at the U.S. Elmendorf Air Force Base. As of 2008, the Facility had six tanks in active operation with a total capacity of 415,000 barrels (17.4 million gallons) with a 90,000 barrel tank (3.7 million gallons) for spill containment. Waste

water (i.e., stormwater) is directed into a 20,000 gallon oil/water separator for treatment. Treated water is then discharged from the oil/water separator through Outfall 001 at an estimated 500 gallons per minute to Cook Inlet through a stormwater sewer system.

3.10. The Facility is a point source within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14), and 40 C.F.R. § 122.2. In the alternative, the Facility contains point sources.

3.11. On September 24, 2008, EPA issued NPDES Permit AK-000037-0 (“Permit”) to Chevron USA, Inc. authorizing the discharge of treated stormwater runoff from the Facility, in accordance with the conditions and requirements set forth therein. The Permit became effective on April 1, 2009 and will expire on March 31, 2014.

3.12. By letter dated June 23, 2011, Respondent notified EPA that it would assume Permit implementation responsibilities from Chevron USA, Inc. upon closure of the Facility sale, which was expected on or about July 12, 2011. On July 25, 2011, EPA modified the Permit to identify Respondent as the permittee.

3.13. At all times relevant to this action, Respondent was authorized to discharge pollutants from the Facility, pursuant to the Permit. The Permit authorizes discharge of treated stormwater runoff from the Facility into Cook Inlet.

3.14. Cook Inlet is currently used, was used in the past, or may be susceptible to use, in interstate and foreign commerce, and thus Cook Inlet is a “water of the United States” as defined in 40 C.F.R. § 122.2, and a “navigable water” as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

3.15. Respondent asserted during an EPA inspection of the Facility in September 2012 that the groundwater at the Facility was contaminated.

3.16. The Facility is listed as a Contaminated Site under the Alaska Department of Environmental Conservation Contaminated Sites Program. Sampling under this program found the groundwater to be contaminated with gasoline range organics and diesel range organics.

Count 1: Unpermitted Discharge of Groundwater from Facility

3.17. Part I.A. of the Permit authorizes the permittee to discharge treated stormwater runoff from the Facility into Cook Inlet, pursuant to the conditions and requirements set forth therein.

3.18. Water from a French drain and catch basin system up-hill of the Facility flowed via a pipe into the Facility's secondary containment system where it mixed with contaminated groundwater through the faulty lining of the secondary containment system, and was then discharged through the Permit's Outfall 001 into Cook Inlet, in August 2011, September 2011, October 2011, December 2011, and from April 2012 through November 2012.

3.19. Respondent's collection of contaminated groundwater into the Facility's secondary containment system, and subsequent discharge into Cook Inlet, in August 2011, September 2011, October 2011, December 2011, and from April 2012 through November 2012, were not authorized under the Permit, and therefore, were in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

Count 2: Unpermitted Discharge of Groundwater during Facility Modifications

3.20. Part I.A. of the Permit authorizes the permittee to discharge treated stormwater runoff from the Facility into Cook Inlet, pursuant to the conditions and requirements set forth therein.

3.21. From approximately June 2012 through October 2012, a contractor engaged by Respondent conducted Facility modifications to install and repair liner and drainage components in the secondary containment system.

3.22. Earthwork and related construction of these Facility modifications conducted by Respondent's contractor disturbed groundwater, causing the discharge of contaminated groundwater into Cook Inlet from June 2012 through October 2012.

3.23. Respondent's discharges of contaminated groundwater from June 2012 through October 2012, were not authorized under the Permit, and therefore, were in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

Count 3: Failure to Consider Best Management Practices Plan Prior to Facility Modifications

3.24. Part II.B.1.n) of the Permit requires the permittee to conduct a prior evaluation of any planned modifications to the facility to ensure that the requirements of the Best Management Practices ("BMP") plan are considered as part of the modifications.

3.25. Starting in approximately June 2012, a contractor engaged by Respondent conducted Facility modifications to install and repair liner and drainage components in the secondary containment system.

3.26. Earthwork and related construction of these Facility modifications conducted by

Respondent's contractor disturbed groundwater, causing the discharge of contaminated groundwater into Cook Inlet from June 2012 through October 2012.

3.27. Prior to starting these modifications to the Facility, Respondent failed to evaluate the planned modifications to ensure the requirements of the BMP plan were considered, in violation of the Permit.

Count 4: Failure to Operate Systems of Treatment and Control for Contaminated Groundwater Discharges.

3.28. Part IV.E. of the Permit requires the permittee to maintain all facilities and properly operate and maintain all systems of treatment and control installed or used to achieve compliance with conditions of the Permit.

3.29. Earthwork and related construction of Facility modifications conducted by Respondent's contractor disturbed groundwater, causing the discharge of contaminated groundwater into Cook Inlet from June 2012 through October 2012.

3.30. From approximately August 3, 2012 through September 11, 2012, Respondent diverted discharges from its oil/water separator to Tank T-30 while it investigated the contamination effects of the disturbed groundwater on discharges through Outfall 001.

3.31. Respondent failed to maintain and properly operate all systems of treatment and control by discharging contaminated groundwater from June 2012 through October 2012, in violation of the Permit.

Count 5: Effluent Limit Violations for Total Suspended Solids, Total Aromatic Hydrocarbons, and Total Aqueous Hydrocarbons

3.32. Part I.B., Table 1, of the Permit identifies effluent limits that the permittee is required to comply with for discharges from Outfall 001. The maximum daily limit for Total Suspended Solids (“TSS”) is 33 milligrams per liter (“mg/L”), and the average monthly limit for TSS is 21 mg/L. The maximum daily limit for Total Aromatic Hydrocarbons (“TAH”) is 10 micrograms per liter (“µg/L”). The maximum daily limit for Total Aqueous Hydrocarbons (“TAqH”) is 15 µg/L.

3.33. The TSS daily maximum and monthly average effluent values for August 2011, reported in Respondent’s Discharge Monitoring Report (“DMR”), were 40 mg/L. The TSS daily and monthly effluent values for July 2012, reported in Respondent’s DMR, were 87.5 mg/L. The TSS daily and monthly effluent values for August 2012, reported in Respondent’s DMR, were 52.5 mg/L.

3.34. The TSS daily maximum effluent values reported for August 2011, July 2012, and August 2012 exceeded 33 mg/L, in violation of the Permit. The TSS average monthly effluent values reported for August 2011, July 2012, and August 2012 exceeded 21 mg/L, in violation of the Permit.

3.35. The TAH daily maximum effluent value for July 2012, reported in Respondent’s DMR, was 213.24 µg/L. The TAH daily maximum effluent value for August 2012, reported in Respondent’s DMR, was 175.49 µg/L. The TAH daily maximum effluent value for October 2012, reported in Respondent’s DMR, was 75.6 µg/L.

3.36. The TAH daily maximum effluent values reported for July 2012, August 2012, and October 2012 exceeded 10 µg/L, in violation of the Permit.

3.37. The TAqH daily maximum effluent value for July 2012, reported in Respondent's DMR, was 213.24 µg/L. The TAqH daily maximum effluent value for August 2012, reported in Respondent's DMR, was 176.45 µg/L. The TAqH daily maximum effluent value for October 2012, reported in Respondent's DMR, was 77.08 µg/L.

3.38. The TAqH daily maximum effluent values reported for July 2012, August 2012, and October 2012 exceeded 15 µg/L, in violation of the Permit.

Count 6: Failure to Conduct Required Pollutant Parameter Sampling

3.39. Part I.B.1., Table 1, of the Permit requires the permittee to conduct monthly sampling for, *inter alia*, oil & grease, TSS, 5-day biological oxygen demand ("BOD₅"), chemical oxygen demand ("COD"), chloride, TAH, and TAqH.

3.40. Respondent failed to conduct sampling for chloride in August 2011, September 2011, October 2011, and December 2011.

3.41. Respondent failed to conduct sampling for oil & grease, TSS, BOD₅, COD, TAH, and TAqH in September 2011, and December 2011.

3.42. Respondent failed to conduct required pollutant parameter sampling in August 2011, September 2011, October 2011, and December 2011, in violation of the Permit.

Count 7: Failure to Apply Appropriate Procedures for pH Level Monitoring

3.43. Part IV.E. of the Permit requires the permittee to properly operate and maintain all systems of treatment and control, including adequate laboratory controls and appropriate quality assurance procedures.

3.44. Part III.F. of the Permit requires the permittee to maintain records of all monitoring information, including calibration records.

3.45. Part II.A. of the Permit requires the permittee to develop a Quality Assurance Plan (“QAP”) for all monitoring required by the Permit that uses EPA-approved procedures described in *Requirements for Quality Assurance Plans* (EPA/QA/R-5) and *Guidance for Quality Assurance Project Plans* (EPA/QA/G-5). The *Guidance for Quality Assurance Project Plans* (EPA/QA/G-5) states that all QAPs should include: a list of tools, instruments, etc., including pH meters, that require calibration; a description of the calibration method; identification of certified equipment and/or standards to be used; and details of how calibration records will be maintained.

3.46. Respondent’s pH meter included a manufacturer’s instruction manual explaining appropriate calibration procedures and frequencies for the meter. The instruction manual states that the meter must be calibrated at least once per month.

3.47. Respondent failed to calibrate the pH meter pursuant to the manufacturer’s manual in July 2012 and August 2012.

3.48. Respondent used expired pH buffer solutions for any pH meter calibrations conducted in August 2011, September 2011, October 2011, December 2011, April 2012, May 2012, and June 2012.

3.49. Respondent failed to calibrate the pH meter in July 2012, and August 2012, and failed to use unexpired pH buffer solutions for pH meter calibrations conducted in August 2011, September 2011, October 2011, December 2011, April 2012, May 2012 and June 2012, in violation of Part IV.E. of the Permit.

3.50. Respondent did not maintain pH meter calibration logs from August 2011 through September 2012, in violation of Part III.F. of the Permit.

3.51. Respondent's QAP did not include pH meter calibration procedures from August 2011 through September 2012, in violation of Part II.A. of the Permit.

3.52. Under Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), EPA may assess an administrative penalty when EPA finds that "any person has violated section 311...or has violated any permit condition or limitation" in a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. Consequently, pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), and 40 C.F.R. Part 19, Respondent may be liable for an administrative assessment of penalties for violations at the Facility in an amount not to exceed \$16,000 per day, up to a maximum of \$177,500, for each violation that occurred on or after January 12, 2009.

IV. CONSENT AGREEMENT

4.1. Respondent admits the jurisdictional allegations contained in Part III of this CAFO.

4.2. Respondent neither admits nor denies the specific factual allegations contained in Part III of this CAFO.

4.3. As required by Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3), EPA has taken into account the nature, circumstances, extent and gravity of the alleged violations, as well as Respondent's economic benefit of noncompliance, ability to pay, and other relevant factors. After considering all of these factors, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$147,000.

4.4. Respondent agrees to pay the total civil penalty set forth in Paragraph 4.3 within 30 calendar days of the effective date of the Final Order.

4.5. Payment under this CAFO must be made by cashier's check or certified check payable to the order of "Treasurer, United States of America" and delivered via United States mail to the following address:

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 deliver via United States mail a photocopy of the check described in Paragraph 4.5 to 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

Rick Cool
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 the due date set forth in Paragraph 4.4, 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.

4.7.1. Interest. Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), any unpaid portion of the assessed penalty shall bear interest at a rate established by the Secretary of the 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 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), 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, 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. Except as described in Subparagraph 4.7.2., each party shall bear its own fees and costs in bringing or defending this action.

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

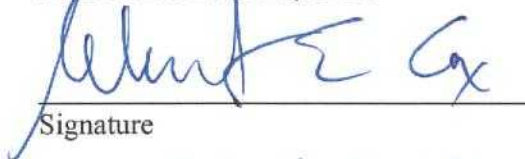
4.12. The provisions of this CAFO shall bind Respondent and its agents, servants, employees, successors, and assigns.

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

DATED:

24 February 2014

FOR CPD ALASKA, LLC:


Signature

Name: Robert E. Cox

Title: Vice President

DATED:

4/1/2014

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY:


EDWARD J. KOWALSKI
Director
Office of Compliance and Enforcement

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 the 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 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. In accordance with Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), and 40 C.F.R. § 22.38(b), the Alaska Department of Environmental Conservation has been given the opportunity to consult with EPA regarding the assessment of the administrative civil penalty against Respondent.

5.4. Pursuant to Section 309(g)(4)(A) of the CWA, 33 U.S.C. § 1319(g)(4)(A), 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.

5.5. This Final Order shall become effective upon filing.

SO ORDERED this 2nd day of April, 2014.


M. SOCORRO RODRIGUEZ
Regional Judicial Officer
U.S. Environmental Protection Agency, Region 10

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in: **In the Matter of: CPD Alaska, LLC, Docket No. CWA-10-2014-0035**, was filed, and served as follows, on the signature date below.

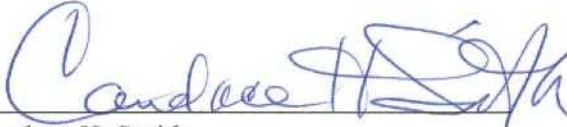
The undersigned certifies that a true and correct electronic copy of the document was delivered to:

Kris Leefers
U.S. Environmental Protection Agency
Region 10, M/S: ORC-158
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

Further, the undersigned certifies that a true and correct copy of this document was placed in the United States mail, certified/return receipt, to:

Greg Miller
Crowley Petroleum Distribution, Inc.
459 West Bluff Road
Anchorage, AK 99501

3rd of April 2014
Dated


Candace H. Smith
Regional Hearing Clerk
EPA Region 10