

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

2016 FEB 29 PM 3:14

FILED  
 EPA REGION VIII  
 HEARING CLERK

DOCKET NO.: CWA-08-2016-0004

IN THE MATTER OF:

SILCO OIL CO.

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FINAL ORDER

RESPONDENT

Pursuant to 40 C.F.R. §22.13(b) and 22.18(b)(2)(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 receipt by Respondent of this Consent Agreement and Final Order.

SO ORDERED THIS 29<sup>th</sup> DAY OF February, 2016.

Thomas Rucki  
 Regional Judicial Officer

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8**

2016 FEB 29 PM 3:14

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**IN THE MATTER OF:** )

Silco Oil Co. )  
181 E 56<sup>th</sup> Avenue, Suite 600 )  
Denver, CO 80216 )

Respondent. )

Docket No. ~~CWA-08-2016-0004~~ FILED  
EPA REGION VIII  
HEARING CLERK

**COMBINED COMPLAINT AND  
CONSENT AGREEMENT**

**Proceeding to Assess Civil Penalty  
Under Section 311(j)  
of the Clean Water Act**

The U.S. Environmental Protection Agency, Region 8 (EPA), and Silco Oil Co. (Respondent), by their undersigned representatives, hereby consent and agree as follows:

**AUTHORITY**

1. This proceeding is subject to the EPA's "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits," 40 C.F.R. part 22. This Combined Complaint and Consent Agreement (CCCA) 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. The EPA has jurisdiction over this matter pursuant to section 311(b)(6)(B)(ii) of the Clean Water Act (CWA), 33 U.S.C. § 1321(b)(6)(B)(ii).

**PARTIES BOUND**

3. This CCCA, 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 CCCA certifies that they are authorized to execute and legally bind the party they represent to this CCCA.

## **STATEMENT OF THE PARTIES**

4. For the purposes of this settlement only, Respondent admits the jurisdictional allegations contained herein and neither admits nor denies the EPA's specific factual allegations and legal conclusions.

5. With respect to this settlement only, the Respondent waives 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 CCCA, including any right of judicial review under the Administrative Procedure Act, 5 U.S.C. §§ 701 – 706.

6. The EPA asserts that settlement of this matter is in the public interest, and the EPA and Respondent agree that entry of this CCCA and its incorporation into a Final Order without further litigation and without adjudication of any issue of fact or law will avoid prolonged and complicated litigation between the parties.

7. The parties reserve any and all rights and defenses they may have against any person or entity not a party to this CCCA.

8. This CCCA, upon incorporation into a Final Order and full satisfaction by the parties, shall be a complete and full resolution of Respondent's liability for federal civil penalties for the violations alleged below.

## **GENERAL ALLEGATIONS**

### **Spill Prevention Control and Countermeasure Requirements**

9. Section 311(j)(1)(C) of the CWA, 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 . . . ."

10. In response to the directive referenced in paragraph 9, above, the EPA promulgated 40 C.F.R. part 112.

11. 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.

### **EPA'S SPECIFIC ALLEGATIONS**

12. Respondent is a corporation organized under the laws of the State of Colorado. Respondent's principal office is located in Denver, Colorado.

13. Respondent is a "person" within the meaning of sections 311(a)(7) and 502(5) of the CWA, 33 U.S.C. §§ 1321(a)(7) and 1362(5).

14. Respondent owned and/or operated until December 28, 2014, 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 was known as the Tomahawk Truck Stop located at 12060 Sable Boulevard, Brighton, Colorado (the Facility).

15. The Facility included six bulk storage containers as defined in 40 C.F.R § 112.2. The facility had a total aboveground storage capacity of approximately 79,280 gallons of gasoline and diesel fuel (oil) and is subject to the SPCC regulations.

16. Respondent states that it acquired ownership and began operating the Facility in 1989.

17. Respondent was therefore an "owner or operator" of the Facility as defined in section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6) until December 28, 2014.

18. Respondent was engaged in storing, transferring, and/or distributing oil at the Facility.

19. The Facility was an "onshore facility" as defined in section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10), and a "non-transportation related" facility as defined in 40 C.F.R. § 112.2.

20. The oil referenced in paragraph 15, above, meets the definition of “oil” in section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1) and 40 C.F.R. § 112.2.

21. When discharged into water, the oil referenced in paragraphs 15 and 18, above, also meets the definition of “pollutant” in section 502(6) of the CWA, 33 U.S.C. § 1362(6).

22. Due to its location, the Facility “could reasonably be expected to discharge oil and/or other pollutants,” as provided in 40 C.F.R. § 112.1(b), into the O’Brian and Burlington Ditches, then into Barr Lake 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.

23. The O’Brian Ditch and Burlington Ditch are tributaries to Barr Lake.

24. Barr Lake is traditionally navigable water.

25. Barr Lake is a “navigable water” as defined in section 502(7) of the CWA, 33 U.S.C. § 1362(7) and 40 C.F.R. §§ 110.1 and 112.2.

26. At all relevant times, the Facility has been subject to the SPCC requirements of 40 C.F.R. part 112.

27. On September 24, 2013, the EPA inspected the Facility for compliance with SPCC requirements.

28. During this inspection, the EPA found numerous violations of SPCC requirements under 40 C.F.R. part 112. The EPA alleges the following technical violations of the part 112 regulations:

- a. Grossly inadequate secondary containment that would “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);

- b. Inadequate description of the type of oil in each container and its storage capacity, in violation of 40 C.F.R. § 112.7(a)(3)(i);
- c. Inappropriate containment and/or diversionary structures or equipment to prevent a discharge during transfer, in violation of 40 C.F.R. § 112.7(c);
- d. No records on site of inspections and tests, in violation of 40 C.F.R. § 112.7(e);
- e. No records of personnel briefings conducted, in violation of 40 C.F.R. § 112.7(f)(1)-(2);
- f. No procedures for integrity testing of aboveground containers, in violation of 40 C.F.R. § 112.8(c)(6);
- g. Containers not engineered to prevent a discharge, aboveground storage tanks are lacking in an overfill protection method, in violation of 40 C.F.R. § 112.8(c)(8);
- h. Visible discharges of oil on the tanks and accumulations of oil were not removed, in violation of 40 C.F.R. § 112.8(c)(10);
- i. Mobile or portable containers at the Facility were not located or positioned to prevent a discharge and lacked secondary containment for these containers, in violation of 40 C.F.R. § 112.8(c)(11); and
- j. Pipe supports were not designed to “minimize abrasion and corrosion and allow for the expansion and contraction,” in violation of 40 C.F.R. § 112.8(d)(3).

29. On March 3, 2014, the EPA completed a review of the 2011 SPCC Plan provided by the Respondent and determined that the SPCC plan was in violation of requirements under 40 C.F.R. part 112. Specifically, the SPCC Plan lacked the following:

- a. The PE certification did not contain the testing and inspection citation, in violation of 40 C.F.R. § 112.3(d);

- b. Complete documentation of the review and evaluation with a review statement and signature for reviewer, in violation of § 40 C.F.R. § 112.5(b);
- c. Pages 11-14 of the SPCC Plan list technical tasks that need to be completed to come into compliance with the SPCC Plan. There is no schedule of when these tasks are to be completed, in violation of 40 C.F.R. § 112.7;
- d. A description of mobile or portable containers found at the Facility and the type of oil and storage capacity of each container or an estimate of the potential number of containers, in violation of 40 C.F.R. § 112.7(a)(3)(i); and
- e. There is no description of how to restrain drainage from diked storage areas by valves to prevent a discharge into the drainage system or facility effluent treatment system, in violation of 40 C.F.R. § 112.8(b)(1).

30. Between March 3, 2014, and June 19, 2014, the Respondent addressed some of the technical and SPCC Plan violations. The Respondent states that corrections were made to the best of its ability.

31. The Respondent had an updated SPCC Plan completed on June 13, 2014. This 2014 SPCC Plan still listed technical deficiencies at the Facility at pages 11-13.

32. Respondent sold the Facility on December 28, 2014.

33. At the time of sale, the Respondent was not in compliance with the SPCC Plan regulations at 40 C.F.R. part 112 for the following violations:

- a. Inadequate secondary containment to provide 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); and

b. Failure to engineer or update each container installation in accordance with good engineering practice to avoid discharge. The SPCC Plan instructed that overfill alarms be installed, in accordance with 40 C.F.R. § 112.8(c)(8).

### **EPA'S FINDINGS OF VIOLATION**

34. The deficiencies identified in Respondent's SPCC Plan and implementation described in **paragraphs 28(a)-(j), 29(a)-(e), and 33(a)-(b)**, above, each constitutes a separate violation of section 311(j) of the CWA, 33 U.S.C. § 1321(j), and 40 C.F.R. part 112, for which Respondent is liable for civil administrative penalties pursuant to section 311(b)(6)(A)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(A)(ii).

### **CIVIL PENALTY**

35. Pursuant to section 311(b)(6)(A) of the CWA, 33 U.S.C. § 1321(b)(6)(A), and after consideration of the facts of this case as they relate to the factors set forth in section 311(b)(8) of the CWA, 33 U.S.C. § 1321(b)(8), the EPA has determined that a civil penalty of thirty thousand dollars (\$30,000.00) is appropriate to settle this matter.

36. Respondent consents and agrees to pay a civil penalty in the amount of thirty thousand (\$30,000) dollars in the manner described below:

a. Payment shall be in a single payment of \$30,000, due no later than thirty (30) calendar days from the date of the Final Order. If the due date for the payment falls on a weekend or federal holiday, then the due date is the next business day. The date the payment is made is considered to be the date processed by U.S. Bank, as described below. Payment must be received by 11:00 a.m. Eastern Standard Time to be considered as received that day.



b. The payment shall be made by remitting a check or making a wire transfer or on-line payment. If paying by check, the Respondent shall submit a cashier's or certified check, payable to "Environmental Protection Agency," and bearing the notations "OSLTF – 311" and the title and docket number of this case. If the Respondent sends payment by the U.S. Postal Service, the payment shall be addressed to:

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

If the Respondent sends payment by overnight mail, the payment shall be sent to:

U.S. Environmental Protection Agency  
Government Lockbox 979077  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, Missouri 63101

Wire transfers shall be directed to:

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."

Copies of the check or record of payment shall be sent to:

Donna K. Inman  
U.S. Environmental Protection Agency (8ENF-UFO)  
1595 Wynkoop Street  
Denver, Colorado 80202-1129

and

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

A transmittal letter identifying the case title and docket number of this matter must accompany the remittance and copies of the check.

37. If the payment is not received by the specified due date, interest accrues 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.

38. A handling charge of fifteen dollars (\$15) shall be assessed the 31<sup>st</sup> day from the date of the Final Order, and for each subsequent 30-day period that the debt, or any portion thereof, remains unpaid. In addition, a 6% per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 30 days of the due date. Payments are first applied to outstanding handling charges, second to penalty assessments, third to accrued interest, and then to the outstanding principal amount.

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

#### **GENERAL PROVISIONS**

40. Nothing in this CCCA shall relieve Respondent of the duty to comply with the CWA and any regulation, order, or permit issued pursuant to the CWA.

41. Any failure by Respondent to comply with this CCCA shall constitute a breach of this CCCA and may result in referral of the matter to the United States Department of Justice for enforcement of this CCCA and such other relief as may be appropriate.

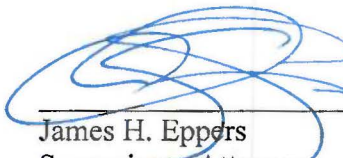
42. Nothing in this CCCA shall be construed as a waiver by the EPA or any other federal entity of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of any failure by Respondent to comply with this CCCA.

43. The parties agree to submit this CCCA to the Regional Judicial Officer, with a request that it be incorporated into a Final Order.


44. Each party shall bear its own costs and attorney's fees in connection with this matter.

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY, REGION 8,  
Complainant

Date: 2/23/16


By:  FOR  
James H. Eppers  
Supervisory Attorney  
Legal Enforcement Program  
Office of Enforcement, Compliance,  
and Environmental Justice

Date: 02/23/16

By:   
Gwenette C. Campbell, Supervisor  
Water Technical Enforcement Program  
Office of Enforcement, Compliance,  
and Environmental Justice (8ENF-L)

Silco Oil Co.,  
Respondent

Date: February 22, 2016

By:   
Susan D. Vanderberg  
President

## CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **COMBINED COMPLAINT AND CONSENT AGREEMENT and FINAL ORDER** in the matter of **SILCO OIL CO.;** **DOCKET NO.: CWA-08-2016-0004** was filed with the Regional Hearing Clerk on February 29, 2016.

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 and emailed on February 29, 2016, to:

Respondent is represented by:

Wendy Harring  
Spencer Fane LLP  
1700 Lincoln Street, Suite 2000  
Denver, CO 80203  
wharring@spencerfane.com

And emailed to:

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

February 29, 2016



Tina Artemis  
Paralegal/Regional Hearing Clerk

