

RECEIVED

19 FEB 14 PM 12:08

PERMIT DIVISION

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

PETRO 49, INC., KETCHIKAN BULK
PLANT

Ketchikan, Alaska

Respondent.

DOCKET NO. CWA-10-2019-0026

CONSENT AGREEMENT

Proceedings Under Section 309(g) of the Clean
Water Act, 33 U.S.C. § 1319(g)

I. STATUTORY AUTHORITY

1.1. This Consent Agreement is entered under the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by Section 309(g) of the Clean Water Act (CWA), 33 U.S.C. § 1319(g).

1.2. Pursuant to CWA Section 309(g)(1)(A), 33 U.S.C. § 1319(g)(1)(A), the EPA is authorized to assess a civil penalty against any person that has violated CWA Section 301, 33 U.S.C. § 1311, and/or any permit condition or limitation in a permit issued under CWA Section 402, 33 U.S.C. § 1342.

1.3. CWA Section 309(g)(2)(B), 33 U.S.C. § 1319(g)(2)(B), authorizes the administrative assessment of Class II civil penalties in an amount not to exceed \$10,000 per day for each day during which the violation continues, up to a maximum penalty of \$125,000. Pursuant to 40 C.F.R. Part 19, the administrative assessment of Class II civil penalties may not exceed \$21,393 per day for each day during which the violation continues, up to a maximum penalty of \$267,415. See also 83 Fed. Reg. 1190 (January 10, 2018) (2018 Civil Monetary Penalty Inflation Adjustment Rule).

1.4. Pursuant to CWA Section 309(g)(1)(A) and (g)(2)(B), 33 U.S.C. § 1319(g)(1)(A)

and (g)(2)(B), and in accordance with Section 22.18 of the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA issues, and Petro 49, Inc. (“Respondent”) agrees to issuance of, the Final Order attached to this Consent Agreement.

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), execution of this Consent Agreement commences this proceeding, which will conclude when the Final Order becomes effective.

2.2. The Administrator has delegated the authority to sign consent agreements between EPA and the party against whom a penalty is proposed to be assessed pursuant to CWA Section 309(g), 33 U.S.C. § 1319(g), to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Director of the Office of Compliance and Enforcement, EPA Region 10 (“Complainant”).

2.3. Part III of this Consent Agreement 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

Statutory and Regulatory Framework

3.1. As provided in CWA Section 101(a), 33 U.S.C. § 1251(a), the objective of the CWA is “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.”

3.2. CWA Section 301(a), 33 U.S.C. § 1311(a), prohibits the discharge of pollutants by any person from any point source into waters of the United States except, *inter alia*, as

authorized by a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to CWA Section 402, 33 U.S.C. § 1342.

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

3.4. CWA Section 502(6), 33 U.S.C. § 1362(6), defines a “pollutant” to include, *inter alia*, dredged spoil, rock, sand, chemical wastes, and industrial wastes.

3.5. CWA Section 502(14), 33 U.S.C. § 1362(14), defines “point source” to mean any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel or conduit from which pollutants are or may be discharged.

3.6. CWA Section 502(7) defines “navigable waters” as “waters of the United States, including the territorial seas.” 33 U.S.C. § 1362(7). In turn, “waters of the United States” has been defined to include, *inter alia*, all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce; tributaries to such waters; and wetlands adjacent to the foregoing waters. 40 C.F.R. §§ 122.2 & 110.1 (2014).

3.7. CWA Section 402(p), 33 U.S.C. § 1342(p), requires an NPDES permit for any discharge of stormwater “associated with industrial activity.”

3.8. “Stormwater discharge associated with industrial activity” is defined to include the discharge from any conveyance that is used for collecting and conveying stormwater that is directly related to manufacturing, processing, or raw materials storage areas at an industrial plant, including the discharge from facilities classified under Standard Industrial Classification code 5171 (Petroleum Bulk Stations and Terminals). 40 C.F.R. § 122.26(b)(14).

3.9. The state of Alaska, through the Alaska Department of Environmental Conservation (ADEC), is authorized pursuant to CWA Section 402(b), 33 U.S.C. § 1342(b), to

administer the NPDES permitting program for stormwater discharges associated with industrial activity. 73 Fed. Reg. 66,243 (Nov. 7, 2008).

3.10. ADEC issued the Multi-Sector General Permit for Storm Water Discharges Associated with Industrial Activity, General Permit Number AKR060000, which became effective on April 1, 2015 (hereinafter “MSGP”). The MSGP authorizes, subject to the terms and conditions of the permit, the discharge of stormwater associated with certain industrial activities, including activities conducted under Standard Industrial Classification code 5171.

General Allegations

3.11. Respondent is a corporation licensed to do business in the state of Alaska and is a “person” within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).

3.12. At all times relevant to this action, Respondent owned and operated the Ketchikan Bulk Plant (Facility) located at 1100 Stedman Street in Ketchikan, Alaska.

3.13. The primary operations conducted by Respondent at the Facility include receiving, storing, and distributing petroleum products, which are activities categorized under Standard Industrial Classification code 5171 (Petroleum Bulk Stations and Terminals).

3.14. The Facility, which was under Respondent’s control at all times relevant to this action, discharges stormwater into Tongass Narrows via four outfalls at the Lower Tank Farm (*i.e.*, Outfalls Lower 1 – Lower 4) and one outfall at the Upper Tank Farm (*i.e.*, Outfall Upper 1). The Facility’s stormwater discharges contain “pollutants” within the meaning of Section 502(6) and (12) of the CWA, 33 U.S.C. § 1362(6) and (12).

3.15. Outfalls Lower 1 – Lower 4 and Outfall Upper 1 are “point sources” as defined at CWA Section 502(14), 33 U.S.C. § 1362(14).

3.16. The Tongass Narrows is a channel of the Pacific Ocean. Thus, the Tongass Narrows is a “navigable water” as defined under Section 502(7) of the Act, 33 U.S.C. § 1362(7).

3.17. At all times relevant to this Order, Respondent was authorized to discharge stormwater associated with industrial activity from the Facility by MSGP permit number AKR06AC52. Respondent submitted a notice of intent to obtain MSGP coverage on July 31, 2015, and ADEC confirmed receipt of Respondent’s notice of intent on August 4, 2015.

3.18. At times relevant to this Order, Respondent was implementing a Stormwater Pollution Prevention Plan (“SWPPP”) dated July 30, 2015 at the Facility.

3.19. On August 28, 2017, EPA conducted a compliance evaluation inspection at the Facility to determine Respondent’s compliance with the MSGP and Sections 301 and 402 the CWA, 33 U.S.C. §§ 1311 and 1342.

3.20. As part of the inspection, EPA requested records concerning Respondent’s compliance with the MSGP including the SWPPP for the Facility. Respondent provided EPA with the SWPPP, dated July 30, 2015.

3.21. As part of the inspection, EPA reviewed Respondent’s quarterly visual assessment reports and annual reports.

3.22. In subsequent communications, Respondent provided routine facility inspection reports for EPA review.

Alleged Violations

3.23. As described below, EPA alleges that, after obtaining MSGP coverage, Respondent violated certain terms and conditions of the MSGP permit and therefore violated CWA Section 301, 33 U.S.C. § 1311.

Count 1: Failure to Identify Inlets, Outfalls, and Conveyances in SWPPP

3.24. Part 5.2.3.3 of the MSGP requires that the SWPPP include a site map of the permittee's facility. The map shall include, *inter alia*, "locations of all storm water conveyances including ditches, pipes, and swales;" and "locations of storm water inlets and outfalls, with a unique identification code for each outfall (e.g., Outfall No. 1, No. 2, etc), indicating if permittees are treating one or more outfalls as 'substantially identical' under Parts 6.2.3, 5.2.6.2, and 7.1.1, and an approximate outline of the areas draining to each outfall."

3.25. EPA alleges that Respondent violated Part 5.2.3.3 of the MSGP, by failing to include Outfalls Lower 2 – Lower 4 and associated inlets and conveyances in its SWPPP site map between August 2015 and July 2018. Violations of the MSGP are enforceable under Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

Count 2: Failure to Conduct Quarterly Visual Assessments

3.26. Part 6.2.1 of the MSGP requires Respondent to conduct a visual assessment of the stormwater from each outfall each calendar quarter. If no discharge occurs during the quarterly visual assessment period, Respondent must still report no discharge for this monitoring period and follow the requirements of Part 7.1.6 of the MSGP.

3.27. EPA alleges that Respondent violated Part 6.2.1 of the MSGP, by failing to conduct visual assessments of Outfalls Lower 2 – Lower 4 from August 2015 through July 2018. Violations of the MSGP are enforceable under Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

Count 3: Failure to Maintain Routine Facility Inspection Reports

3.28. Part 6.1.2 of the MSGP requires Respondent to document the findings of each routine facility inspection performed.

3.29. Part 5.8.8 of the MSGP requires Respondent to maintain copies of all routine facility inspection reports on site with the SWPPP.

3.30. EPA alleges that Respondent violated Part 5.8.8 of the MSGP, by failing to maintain routine facility inspection reports on site with the SWPPP from August 2015 through July 2018. Violations of the MSGP are enforceable under Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

IV. TERMS OF SETTLEMENT

4.1. Respondent admits the jurisdictional allegations contained in this Consent Agreement.

4.2. Respondent neither admits nor denies the specific factual allegations contained in this Consent Agreement.

4.3. As required by CWA Section 309(g)(3), 33 U.S.C. § 1319(g)(3), the EPA has taken into account “the nature, circumstances, extent, and gravity of the violation, or violations, and, with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violations, and such other matters as justice may require.” After considering all of these factors as they apply to this case, EPA has determined that an appropriate penalty to settle this action is \$27,000.

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

4.5. Payment under this Consent Agreement and the Final Order may be paid by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at: <http://www2.epa.gov/financial/makepayment>. Payments made by a cashier’s check

or certified check must be payable to the order of "Treasurer, United States of America" and delivered 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. Concurrent with payment, Respondent must serve photocopies of the check, or proof of other payment method described in Paragraph 4.5, on the Regional Hearing Clerk and EPA Region 10 Compliance Officer at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-113
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101
young.teresa@epa.gov

Chae Park
U.S. Environmental Protection Agency
Region 10, Mail Stop OCE-201
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101
park.chae@epa.gov

4.7. If Respondent fails to pay the penalty assessed by this Consent Agreement in full by its due date, 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.

a. Interest. Pursuant to CWA Section 309(g)(9), 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 Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the Final Order, 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.

b. Attorneys Fees, Collection Costs, Nonpayment Penalty. Pursuant to CWA Section 309(g)(9), 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 Consent Agreement and to bind Respondent to this document.

4.10. The undersigned representative of Respondent also certifies that, as of the date of Respondent's signature of this Consent Agreement, Respondent has corrected the violation(s) alleged in Part III above.

4.11. Except as described in Subparagraph 4.7 and its subparagraphs, each party shall bear its own costs in bringing or defending this action.

4.12. 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 this Consent Agreement, including its right to request a hearing under 40 C.F.R. § 22.15(c) and

Section 309(g)(2)(B) and (4)(C) of the Act, 33 U.S.C. § 1319(g)(2)(B), and (4)(C), its right to appellate review under Section 309(g)(8)(B) of the Act, 33 U.S.C. § 1319(g)(8)(B), its right to seek federal judicial review of the Consent Agreement and Final Order pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-06, and its right to appeal this Consent Agreement. Respondent also consents to the issuance of this Consent Agreement without further adjudication.

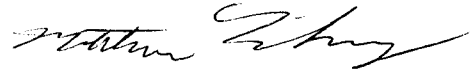
4.13. The provisions of this Consent Agreement and the Final Order shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.14. The above provisions are STIPULATED AND AGREED upon by Respondent and Complainant.

DATED:

12/7/2018

FOR RESPONDENT:



Matthew Lindsey, Executive Vice President
Petro 49, Inc.

DATED:

12-17-2018

FOR COMPLAINANT:



EDWARD J. KOWALSKI, Director
Office of Compliance and Enforcement
EPA Region 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

PETRO 49, INC., KETCHIKAN BULK
PLANT

Ketchikan, Alaska

Respondent.

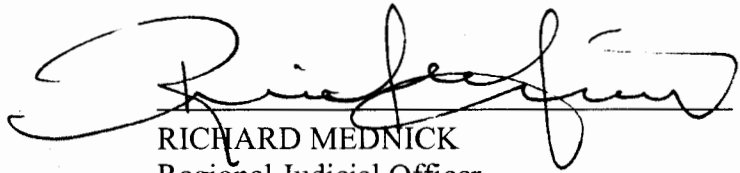
DOCKET NO. CWA-10-2019-0026

FINAL ORDER

Proceedings Under Section 309(g) of the Clean
Water Act, 33 U.S.C. § 1319(g)

1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of the U.S. Environmental Protection Agency (EPA) Region 10, who has in turn delegated this authority to the Regional Judicial Officer in EPA Region 10.
2. The terms of the foregoing Consent Agreement are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.
3. The Consent Agreement and this Final Order constitute a settlement by EPA of all claims for civil penalties pursuant to the Clean Water Act (CWA) for the violations alleged in Part III of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(a), nothing in this Final Order 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 Final Order 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.
4. This Final Order shall become effective upon filing.

SO ORDERED this 13th day of February, 2019.



RICHARD MEDNICK
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: PETRO 49, INC., DOCKET NO.: CWA-10-2019-0026**, was filed with the Regional Hearing Clerk on the date below.

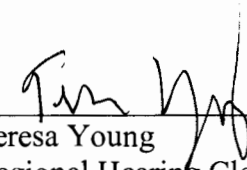
The undersigned certifies that a true and correct copy of the document was delivered to:

J. Matthew Moore
Office of Regional Counsel
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-113
1200 Sixth Avenue, Suite 155
Seattle, WA 98101

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

Matthew Lindsey
Executive Vice President
Petro 49, Inc.
1813 East 1st Avenue
Anchorage, AK 99501

DATED this 14 day of February, 2019.



Teresa Young
Regional Hearing Clerk
EPA Region 10