

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

**In the Matter of:**

**Benz Oil, Inc.  
2724 West Hampton Avenue  
Milwaukee, Wisconsin,**

**Respondent.**

) **Docket No. CWA-05-2016-0007**  
)  
) **Proceeding to Assess a Class II Civil**  
) **Penalty under Section 311(b)(6)(B)(ii) of**  
) **the Clean Water Act, 33 U.S.C.**  
) **§ 1321(b)(6)(B)(ii)**  
)  
)



**Consent Agreement and Final Order**

**Preliminary Statement**

1. This is an administrative action commenced and concluded under Section 311(b)(6)(B)(ii) of the Clean Water Act (Act), 33 U.S.C. § 1321(b)(6)(B)(ii), as amended by the Oil Pollution Act of 1990, and 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/Termination or Suspension of Permits (Consolidated Rules) as codified at 40 C.F.R. § 22.13(b) and 22.18(b)(2) and (3).

2. The Complainant is, by lawful delegation, the Director of the Superfund Division, United States Environmental Protection Agency, Region 5 (EPA).

3. The Respondent is Benz Oil, Inc. ("Respondent" or "Benz"), a corporation doing business in the State of Wisconsin.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). *See* 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of the CAFO.

**Jurisdiction and Waiver of Right to Hearing**

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. 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 CAFO, including its right to request a hearing under Section 311(b)(6)(B)(ii) of the Act, 33 U.S.C. § 1321(b)(6)(B)(ii), and 40 C.F.R. § 22.15(c), its right to seek federal judicial review of the CAFO pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706, any right to contest the allegations in this CAFO, and its right to appeal this CAFO. Respondent also consents to the issuance of this CAFO without further adjudication.

**Statutory and Regulatory Background**

9. Section 311(j)(1)(C) of the Act, 33 U.S.C. § 1321(j)(1)(C), provides that the President of the United States 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 . . . .”

10. Section 311(j)(5)(A)(i) and (C)(iv) of the Act, 33 U.S.C. § 1321(j)(5)(A)(i) and (C)(iv), states that the President shall issue regulations requiring the owner or operator of “an onshore facility that, because of its location, could reasonably be expected to cause substantial harm to the environment by discharging into or upon the navigable waters of the United States

[or] adjoining shorelines” to “submit to the President a plan for responding, to the maximum extent practicable, to a worst case discharge, and to a substantial threat of such discharge, of oil.”

11. Initially by Executive Order 11,548 (July 20, 1970), 35 Fed. Reg. 11,677 (July 22, 1970), and most recently by Section 2(b)(1) of Executive Order 12,777 (Oct. 18, 1991), 56 Fed. Reg. 54,757 (Oct. 22, 1991), the President delegated to the EPA his authority under Section 311(j)(1)(C) of the Act, 33 U.S.C. § 1321(j)(1)(C), to issue the regulations referenced in the preceding paragraph for non-transportation-related onshore facilities.

12. EPA subsequently promulgated regulations, codified at 40 C.F.R. Part 112, Subparts A, B, C, and D, also known as the Spill Prevention, Control, and Countermeasure (SPCC) and Facility Response Plan (FRP) regulations, pursuant to its authorities under the Act, 33 U.S.C. § 1251 *et seq.*

13. 40 C.F.R. § 112.3 states, in part, that the owner or operator of an SPCC-regulated facility must prepare and implement a written SPCC plan (“SPCC Plan” or “Plan”).

14. 40 C.F.R. § 112.8(a) requires the owner or operator of a facility subject to 40 C.F.R. Part 112 to meet the general requirements for the SPCC plan listed under 40 C.F.R. § 112.7.

15. 40 C.F.R. § 112.7(a)(1) requires the owner or operator of a facility subject to 40 C.F.R. Part 112 to include in their Plan a discussion of their facility’s conformance with the requirements listed in 40 C.F.R. Part 112.

16. 40 C.F.R. § 112.20(a)(1) requires the owner or operator of a facility subject to 40 C.F.R. Part 112, Subpart D, that was in operation on or before February 18, 1993, to prepare and submit a facility response plan no later than February 18, 1995 that satisfies the requirements of

Section 311(j)(5) of the Act, 33 U.S.C. § 1321(j)(5).

17. 40 C.F.R. § 112.5(b) requires that the SPCC Plan be amended within six months when there is a change in the facility that materially affects its potential for discharge, and that the SPCC Plan be reviewed and evaluated at least once every five years.

18. 40 C.F.R. § 112.7(a)(3) requires that the SPCC Plan describe the physical layout of the facility and include a diagram that identifies: the location, capacity, and contents of all regulated fixed oil storage containers, the storage areas where mobile/portable storage containers are located, and an estimate of the potential number of mobile or portable containers.

19. 40 C.F.R. § 112.7(a)(3)(iv) requires that the SPCC Plan address countermeasures for discharge discovery, response, and cleanup available from both the facility and its contractors.

20. 40 C.F.R. § 112.7(a)(3)(vi) requires the SPCC Plan to include a list of contacts and phone numbers for the facility response coordinator, National Response Center, cleanup contractors with whom the facility has an agreement for response, and all appropriate federal, state, and local agencies who must be contacted in case of a discharge as described in 40 C.F.R. § 112.1(b).

21. 40 C.F.R. § 112.7(a)(4) requires that the SPCC Plan contain information and procedures that enable a person reporting an oil discharge as described in 40 C.F.R. § 112.1(b) to report various information related to a discharge event.

22. 40 C.F.R. § 112.7(a)(5) requires that the SPCC Plan be organized so that portions describing procedures to be used when a discharge occurs will be readily usable in an emergency.

23. 40 C.F.R. § 112.7(b) provides that where experience indicates a reasonable potential for equipment failure, the SPCC Plan must include a prediction of the direction, rate of flow, and total quantity of oil which could be discharged from the facility as a result of each type of major equipment failure.

24. 40 C.F.R. § 112.7(c) requires that a facility have appropriate containment and/or diversionary structures or equipment to prevent a discharge as described in 40 C.F.R. § 112.1(b).

25. 40 C.F.R. § 112.7(e) requires that tank truck and railcar inspections and tests be conducted in accordance with written procedures, that records of such inspections or tests be signed by a supervisor or inspector, and that these records be kept with the SPCC Plan for at least three years.

26. 40 C.F.R. § 112.7(f)(3) requires owners or operators to schedule and conduct discharge prevention briefings for their oil-handling personnel at least once a year. Such briefings must highlight and describe known discharges as described in 40 C.F.R. § 112.1(b), or failures, malfunctioning components, and any recently developed precautionary measures.

27. 40 C.F.R. § 112.7(g) requires that owners or operators secure and control access to the oil handling, processing, and storage areas; secure master flow and drain valves; prevent unauthorized access to starter controls on oil pumps; secure out-of-service and loading/unloading connections of oil pipelines; and address the appropriateness of security lighting both to prevent acts of vandalism and to assist in the discovery of oil discharges.

28. 40 C.F.R. § 112.7(h)(3) requires that facilities with tank car and tank truck loading/unloading racks closely inspect the lower-most drains and all outlets on tank cars/trucks prior to filling and departure to prevent liquid discharge while in transit.

29. 40 C.F.R. § 112.8(b)(3) and (4) requires that drainage from undiked areas be designed to retain oil or return it to the facility in the event of a discharge.

30. 40 C.F.R. § 112.8(c)(6) requires, among other things, that the owner or operator of an onshore facility test or inspect each aboveground container for integrity on a regular schedule and whenever material repairs are made. The SPCC Plan must include: the appropriate qualifications for personnel performing tests and inspections; the frequency and type of testing and inspections, which take into account container size, configuration, and design; and frequent inspections of the outside of the container for signs of deterioration, discharges, or accumulation of oil inside diked areas.

31. 40 C.F.R. § 112.8(c)(8) requires, among other things, that the owner or operator of an onshore facility regularly test liquid level sensing devices to ensure proper operation.

32. 40 C.F.R. § 112.8(c)(11) requires that mobile or portable containers be positioned to prevent a discharge as described in 40 C.F.R. § 112.1(b), and that they have secondary containment.

33. 40 C.F.R. § 112.8(d)(1)-(4) sets forth inspection, marking, and design requirements of owners or operators of facilities with piping that must be addressed in the SPCC Plan.

34. 40 C.F.R. § 112.8(d)(5) requires owners or operators of facilities to warn vehicles of aboveground piping.

35. Under Appendix C to Part 112, Section 3.0 – Certification For Facilities That Do Not Pose Substantial Harm, for facilities that do not meet the substantial harm criteria listed in Attachment C-I, the owner or operator shall complete and maintain at the facility the certification

form contained in Attachment C-II.

36. Section 311(b)(6)(B)(ii) of the Act, 33 U.S.C. § 1321(b)(6)(B)(ii) and 40 C.F.R. § 19.4 authorize EPA to assess a civil penalty for violations of the SPCC and FRP regulations promulgated pursuant to Section 311(j)(1)(C) of the Act, 33 U.S.C. § 1321(j)(1)(C), of up to \$16,000 per day for violations that occurred after January 12, 2009 through December 6, 2013 (up to a maximum of \$177,500), and up to \$16,000 per day for violations that occurred after December 6, 2013 (up to a maximum of \$187,500).

#### **Factual Allegations and Alleged Violations**

37. Respondent is a corporation with a place of business located at 2724 West Hampton Avenue in Milwaukee, Wisconsin. Respondent 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.

38. Respondent is the owner and operator, within the meaning of Section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6), and 40 C.F.R. § 112.2, of an onshore bulk oil storage facility located on the Respondent's place of business (Facility).

39. Oil from the Facility, in the event of a discharge, could reasonably be expected to flow and/or discharge to Lincoln Creek, located 600 feet west of the Facility, either along the topography or through a storm sewer located within the grounds of the Facility. Lincoln Creek is a tributary to the Milwaukee River, which discharges to Lake Michigan.

40. The Facility has above-ground storage capacity greater than 1,320 gallons of oil in containers each with a shell capacity of at least 55 gallons.

41. The Facility has above-ground storage capacity greater than one million gallons

and is located at a distance such that a discharge from the Facility could cause injury to fish, wildlife, and sensitive environments, as defined in 40 C.F.R. § 112.2.

42. Lincoln Creek is a navigable water of the United States within the meaning of 40 C.F.R. § 112.2 and Section 502(7) of the Act, 33 U.S.C. § 1362(7).

43. Respondent is engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using, or consuming oil or oil products located at the Facility.

44. The Facility is a non-transportation-related facility within the meaning of 40 C.F.R. § 112.2 Appendix A, as incorporated by reference within 40 C.F.R. § 112.2.

45. 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.

46. The Facility is a non-transportation-related onshore facility which, due to its location, could reasonably be expected to discharge oil to a navigable water of the United States or its adjoining shorelines in a harmful quantity, and is therefore subject to the SPCC regulations at 40 C.F.R. Part 112, Subparts A and B.

47. The Facility is a non-transportation-related onshore facility which has above-ground storage capacity greater than one million gallons, and because of its location, could reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters of the United States or adjoining shorelines, within the meaning of Section 311(j)(5) of the Act, 33 U.S.C. § 1321(j)(5), and 40 C.F.R. § 112.20(f)(1). The Facility is therefore subject to the FRP regulations at 40 C.F.R. Part 112, Subpart D.

48. Operations commenced at the Facility in 1956.

49. On May 19, 2014, EPA inspected the Facility, and conducted an evaluation of the



Facility's SPCC Plan. At the time of the inspection, the Facility did not possess a FRP. On December 16, 2014, EPA issued a Notice of Violation to Respondent alleging violations of certain SPCC and FRP regulations (the NOV).

50. At the time of the May 2014 inspection, Benz had retained Endpoint Solutions Corporation to prepare the Facility's SPCC Plan.

51. The Facility's SPCC Plan notes that a review and plan revision was done in May 2013. However, at the time of the May 19, 2014 inspection, the Facility's SPCC Plan had not been revised to reflect physical changes to the Facility that materially affect its potential for discharge, such as addition, subtraction, and manifolding of fixed storage tanks, the Facility's use of underground piping, the Facility's oil-filled operational equipment, and the storage of large quantities of drums and totes in buildings and trailers. In addition, the SPCC Plan does not have an accurate description of the Facility's operations. This failure to amend the Facility's SPCC Plan is a violation of 40 C.F.R. § 112.5(b).

52. The Facility's SPCC Plan does not contain a diagram that identifies the location of all of its fixed oil storage containers, nor the mobile or portable container storage areas, at the Facility. The Facility's SPCC Plan also fails to describe the type of oil and storage capacity of its fixed oil storage and mobile or portable containers. These are violations of 40 C.F.R. § 112.7(a)(3).

53. The Facility's SPCC Plan does not address countermeasures for discharge discovery, response, and cleanup, in violation of 40 C.F.R. § 112.7(a)(3)(iv) and 112.7(a)(1).

54. The Facility's SPCC Plan does not include all of the required contacts and phone numbers, and certain contacts contain incorrect telephone numbers, in violation of 40 C.F.R. § 112.7(a)(3)(vi) and 112.7(a)(1).

55. The Facility's SPCC Plan does not contain the required information and procedures that would enable a person to report an oil discharge as described in 40 C.F.R. § 112.1(b), in violation of 40 C.F.R. § 112.7(a)(4) and 112.7(a)(1).

56. The Facility's SPCC Plan does not contain the required information and procedures for reporting discharge events, nor is it organized to be readily usable in an emergency, in violation of 40 C.F.R. § 112.7(a)(5) and 112.7(a)(1).

57. The Facility's Plan does not include an adequate prediction of the direction, rate of flow, and total quantity of oil which could be discharged from the facility as a result of each type of major equipment failure, in violation of 40 C.F.R. § 112.7(b) and 112.7(a)(1).

58. During the May 2014 inspection, it was observed that Benz maintained a large number of drums and totes, conducted transfer operations near sewer access points, and had manifolded a number of its bulk storage tanks in a configuration not described in the Facility's SPCC Plan. Benz's SPCC Plan does not describe how secondary containment is provided for its mobile/portable containers or how it conducts transfer operations, nor did Benz accurately document the Facility's conformance with this requirement for its bulk storage containers, in violation of 40 C.F.R. § 112.7(c) and 112.7(a)(1).

59. At the time of the May 2014 inspection, Benz did not maintain a written record of tank truck and railcar inspections, did not have a supervisor or inspector sign each record, and

did not maintain SPCC related records for more than a month, in violation of 40 C.F.R. § 112.7(e).

60. Benz's discharge prevention briefings for their oil-handling personnel did not address failures or malfunctioning components experienced by the Facility, such as spills of oil from tank cars, in violation of 40 C.F.R. § 112.7(f)(3).

61. Benz's SPCC Plan does not address how access to the oil handling, processing, and storage areas is secured and controlled; how the master flow and drain valves are secured; how unauthorized access to starter controls on oil pumps is prevented; how out-of-service and loading/unloading connections of oil pipelines are secured; and how appropriate the security lighting is to prevent acts of vandalism and assist in the discovery of oil discharges, in violation of 40 C.F.R. § 112.7(g) and 112.7(a)(1).

62. Benz's SPCC Plan does not describe the Facility's process for conducting inspections of the lower-most drains and all outlets on tank cars/trucks prior to filling and departure, nor were records of these inspections available during the May 2014 inspection, in violation of 40 C.F.R. § 112.7(h)(3) and 112.7(a)(1).

63. The Facility stores oil in mobile/portable containers, has overhead piping, and conducts transfer operations in undiked areas that discharge to storm sewers. However, Benz's SPCC Plan does not adequately describe how drainage from undiked areas is designed to be retained or returned to the Facility to prevent a discharge. This is a violation of 40 C.F.R. § 112.8(b)(3) and (4) and 112.8(a).

64. As observed during the May 2014 inspection, Benz had manifolded the Facility's tanks in a configuration that was not accurately described in its SPCC Plan. The Facility's SPCC

Plan does not describe how sufficient secondary containment was provided for the additional storage capacity present due to the manifolding, in violation of 40 C.F.R. § 112.8(c)(2) and 112.8(a).

65. At the time of the May 2014 inspection, Benz was not following an integrity testing program for the Facility's tanks, nor does Benz's SPCC Plan address all of the required information related to integrity testing in accordance with industry standards, in violation of 40 C.F.R. § 112.8(c)(6) and 112.8(a).

66. The Facility's SPCC Plan does not address how liquid level sensing equipment is tested, in violation of 40 C.F.R. § 112.8(c)(8) and 112.8(a).

67. Benz positions mobile or portable containers in areas that drain to sewers; however, the Facility's SPCC Plan does not address how this position prevents a discharge or whether there is sufficient secondary containment, in violation of 40 C.F.R. § 112.8(c)(11) and 112.8(a).

68. The Facility's SPCC Plan does not address conformance with the requirements relating to piping, in violation of 40 C.F.R. § 112.8(d)(1)-(4) and 112.8(a).

69. At the time of the May 2014 inspection, the Facility did not have posted signs warning of aboveground piping, nor does its SPCC Plan address the Facility's conformance with the requirements relating to warning vehicles of aboveground piping, in violation of 40 C.F.R. § 112.8(d)(5) and 112.8(a).

70. During the May 2014 inspection, Benz representatives stated that the Facility had been in operation since 1956, but that no FRP was present at the Facility or in possession of the Facility operators at that time. This is a violation of 40 C.F.R. § 112.20(a)(1).

71. At the time of the May 2014 inspection, Benz maintained a C-II form that did not properly indicate that the Facility is located at a distance such that a discharge could cause injury to fish and wildlife and sensitive environments, in violation of Section 3.0 of Appendix C to 40 C.F.R. Part 112.

### Civil Penalty

72. Based on an analysis of the factors set forth in Section 311(b)(8) of the Act, 33 U.S.C. § 1321(b)(8), and in the Civil Penalty Policy for Section 311(b)(3) and Section 311(j) of the Clean Water Act, taking into account the facts of this case and information submitted by Respondent, including steps that Respondent has agreed to undertake in a corresponding supplemental environmental project costing at least \$121,045, Complainant has determined that an appropriate civil penalty to settle this action is \$82,898.75. Respondent agrees to pay this amount as a civil penalty.

73. Within 30 days after the effective date of this CAFO, Respondent shall pay the \$82,898.75 by cashier's or certified check, or by electronic funds transfer (EFT). If paying by check, Respondent shall submit a cashier's or certified check, payable to "Environmental Protection Agency," and bearing the notation "OSLTF – 311" and the docket number of this case. If the Respondent sends payment by check, the payment shall be addressed to:

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

If paying by EFT Respondent shall transfer \$82,898.75 to:

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

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

74. This civil penalty is not deductible for federal tax purposes.

75. The Respondent shall submit copies of the check (or, in the case of an EFT

transfer, copies of the EFT confirmation) to the following persons:

Regional Hearing Clerk (E-19J)  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604

Joseph Ulfig, P.E. (SC-5J)  
Chemical Emergency Preparedness  
and Prevention Section  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604

Robert M. Peachey  
Associate Regional Counsel (C-14J)  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604

76. Failure by Respondent to timely pay this civil penalty may subject Respondent to a civil action to collect any unpaid portion of the assessed penalty, plus interest, attorney's fees, costs, and an additional quarterly nonpayment penalty 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 agreed to herein shall not be subject to review.

### **Supplemental Environmental Project**

77. Respondent must complete a supplemental environmental project (SEP) designed to protect human health and the environment by reducing the Facility's potential for an oil spill.

78. Respondent must install the following equipment at the Facility:

- a. Oil stop valves in the Facility's three existing storm sewer manholes lacking an oil stop valve (including removal of the existing manholes, installation of new 48-inch diameter manholes and grates in the same locations, running underground electrical conduits and vents to each manhole, connecting all applicable sewer laterals, and installation of a 42-inch diameter grate on the existing oil stop valve manhole by the Central Truck Bulk Transfer Containment Area);
- b. A manual stop valve on piping between the existing oil stop valve manhole and the Facility's property line; and
- c. A 6-inch deep trench pitched to a collection sump in the load dock area of the Facility's West Warehouse.

79. Respondent must have engineering design and construction specifications completed for these projects within 60 days of the effective date of this CAFO.

80. Respondent must place a down payment for the purchase of raw materials and installation of this equipment with its vendor(s) no later than 90 days after the effective date of this CAFO.

81. Respondent must install and begin operation of this equipment no later than 180 days beyond the effective date of this CAFO.

82. Respondent must spend at least \$121,045 to complete the SEP and operate all components installed pursuant to the SEP for at least 5 years.

83. If Respondent ceases operation of any components installed pursuant to the SEP within 5 years of commencing operations, Respondent must notify EPA of that fact in writing by sending a report to Mr. Ulfig and Mr. Peachey at the addresses specified in Paragraph 75, above.

84. Respondent certifies that it is not required to perform or develop the activities described in this SEP by any law, regulation, grant, order, or agreement, or as injunctive relief as of the date it signs this CAFO. Respondent further certifies that it has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.

85. Respondent further certifies that it is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP. Respondent also certifies that, to the best of its knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to EPA within two years of the date that it is signing this CAFO (unless the project was barred from funding as statutorily ineligible). For purposes of this certification, the term “open federal financial assistance transaction” refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee, or other mechanism for providing federal financial assistance whose performance period has not expired.

86. EPA may inspect the facility at any time to monitor Respondent’s compliance with this CAFO’s SEP requirements.

87. Respondent must submit a SEP completion report to EPA within 60 days after beginning operation of the equipment, as described in paragraph 81. This report must contain the following information:

- a. Detailed description of the SEP as completed;
- b. Itemized cost of goods and services used to complete the SEP, documented by copies of invoices, purchase orders, or canceled checks that specifically identify and itemize the individual costs of the goods and services;



- c. Certification that Respondent has completed the SEP in compliance with this CAFO; and
- d. Description of the environmental and public health benefits resulting from the SEP (quantify the benefits and pollution reductions, if feasible).

88. Respondent must submit all notices and reports required by this CAFO by first class mail to Mr. Joseph Ulfing, at the address provided in paragraph 75 above.

89. In each report that Respondent submits as provided by this CAFO, it must certify that the report is true and complete by including the following statement signed by one of its officers:

I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, it is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

90. Following receipt of the SEP completion report described in paragraph 87 above, EPA must notify Respondent in writing that:

- a. It has satisfactorily completed the SEP and the SEP report;
- b. There are deficiencies in the SEP as completed or in the SEP report, and EPA will give Respondent 30 days to correct the deficiencies. The parties may agree in writing to extend this 30 day period; or
- c. It has not satisfactorily completed the SEP, and EPA will seek stipulated penalties under paragraph 92 below.

91. If EPA exercises option 90.c above, Respondent may object in writing to the deficiency notice within 10 days of receiving the notice. The parties will have 30 days from EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach an agreement, EPA will give Respondent a written decision on its objection. Respondent will comply with any requirement that EPA imposes in its decision. If Respondent does not complete

the SEP as required by EPA's decision, Respondent will pay stipulated penalties to the United States under paragraph 92 below.

92. If Respondent violates any requirement of this CAFO relating to the SEP,

Respondent must pay stipulated penalties to the United States as follows:

- a. If Respondent does not complete the SEP satisfactorily according to the requirements of this CAFO, or halts or abandons work on the SEP, Respondent must pay an additional civil penalty of \$78,670. The penalty will accrue as of the date for completing the SEP or the date performance ceases, whichever is earlier.
- b. If Respondent does not complete the SEP satisfactorily according to the requirements of this CAFO, but EPA determines that Respondent made good faith and timely efforts to complete the SEP and certifies, with supporting documents, that it has spent at least 90 percent of the amount set forth in paragraph 82 above, Respondent will not be liable for any stipulated penalty under subparagraph a. above.
- c. If Respondent completes the SEP satisfactorily according to the requirements of this CAFO, but spends less than 90 percent of the amount set forth in paragraph 82 above, Respondent must pay an additional civil penalty in the amount of the difference between the amount set forth in paragraph 82 above and the amount that Respondent spent to complete the SEP.
- d. If Respondent fails to comply with the schedule in paragraphs 79 to 81 above for implementing the SEP, or fails to submit timely the SEP completion report required by paragraph 87, Respondent must pay stipulated penalties for each failure to meet an applicable milestone, as follows:

<u>Penalty per violation per day</u>	<u>Period of violation</u>
\$ 250	1st through 20th day
\$ 500	21st through 30th day
\$ 750	31st day and beyond

These penalties will accrue from the date Respondent was required to meet each milestone until it achieves compliance with the milestone.

93. EPA's determination of whether Respondent satisfactorily completed the SEP and whether Respondent made good faith and timely efforts to complete the SEP will bind Respondent.

94. Respondent must pay any stipulated penalties within 15 days of receiving EPA's written demand for the penalties. Respondent will use the method of payment specified in paragraph 73, above, and will pay interest, handling charges, and nonpayment penalties on any overdue amounts

95. Any public statement that Respondent makes referring to the SEP must include the following language, "Benz Oil, Inc. undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against Benz Oil, Inc. for violations of Section 311 of the Clean Water Act, 33 U.S.C. § 1321, and 40 C.F.R. Part 112."

96. If an event occurs which causes or may cause a delay in completing the SEP as required by this CAFO:

- a. Respondent must notify EPA in writing within 10 days after learning of an event which caused or may cause a delay in completing the SEP. The notice must describe the anticipated length of the delay, its cause(s), Respondent's past and proposed actions to prevent or minimize the delay, and a schedule to carry out those actions. Respondent must take all reasonable actions to avoid or minimize any delay. If Respondent fails to notify EPA according to this paragraph, Respondent will not receive an extension of time to complete the SEP.
- b. If the parties agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, the parties will stipulate to an extension of time no longer than the period of delay.
- c. If EPA does not agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, EPA will notify Respondent in writing of its decision, and any delays in completing the SEP will not be excused.
- d. Respondent has the burden of proving that circumstances beyond its control

caused or may cause a delay in completing the SEP. Increased cost for completing the SEP will not be a basis for an extension of time under subparagraph b, above. Delay in achieving an interim step will not necessarily justify or excuse delay in achieving subsequent steps.

97. For federal income tax purposes, Respondent will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

### **General Provisions**

98. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in this CAFO and the NOV.

99. This CAFO does not affect the rights of the Administrator or the United States to pursue applicable injunctive or other equitable relief or criminal sanctions for any other violations of law not alleged in this CAFO or in the NOV.

100. This CAFO does not affect Respondent's responsibility to comply with the Act, the SPCC and FRP Rules of 40 C.F.R. Part 112, and any other applicable federal, state and local laws.

101. Compliance with this CAFO shall not be a defense to any action subsequently commenced pursuant to federal laws and regulations administered by the EPA.

102. Respondent certifies that it has addressed the violations alleged in the NOV, and is now in compliance with Section 311 of the Act, 33 U.S.C. § 1321 and its implementing regulations.

103. This CAFO is a "final order" for purposes of 40 C.F.R. § 22.31 and the August 1998 CWA Penalty Policy.

104. The CAFO shall be binding upon Respondent and Respondent's officers, directors, agents, servants, employees, and successors or assigns.

105. The CAFO does not constitute a waiver, suspension, or modification of the requirements of Section 311 of the Act, 33 U.S.C. § 1321, or any regulations promulgated thereunder.

106. If Respondent fails to comply with this CAFO, Respondent waives any rights it may possess in law or equity to challenge the authority of the EPA to bring a civil action in the appropriate United States District Court to compel compliance with this CAFO and/or seek an additional penalty for non-compliance with the CAFO.

107. Each party shall bear its own costs and attorney's fees in connection with the action resolved by this CAFO.

108. EPA has provided a thirty day opportunity for public notice and comment on this proposed CAFO pursuant to Section 311(b)(6)(C)(i) of the Act, 33 U.S.C. § 1321(b)(6)(C)(i), and 40 C.F.R. § 22.45(b).

109. Complainant reserves the right, pursuant to 40 C.F.R. § 22.45(c)(4)(iii), to withdraw this CAFO within 15 days of receipt of a Commenter's petition requesting, pursuant to 40 C.F.R. § 22.45(c)(4)(ii), that the Regional Administrator set aside the CAFO on the basis of material evidence not considered.

110. The undersigned representative of each Party to this CAFO certifies that he or she is duly authorized by the Party he or she represents to enter into the terms and bind that Party to them.

111. This CAFO shall become effective on the date it is filed with the Regional Hearing Clerk, Region 5.

**In the Matter of: Benz Oil, Inc.**

**Benz Oil, Inc., Respondent**

Date: 12/29/2015



Dixon Benz II  
President  
Benz Oil, Inc.

**U.S. Environmental Protection Agency, Complainant**

Date: 1/7/2016



*for* Richard C. Karl  
Director  
Superfund Division  
U.S. Environmental Protection Agency  
Region 5

**In the Matter of: Benz Oil, Inc.**  
**Docket No. CWA-05-2016-0007**

**FINAL ORDER**

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

Date: \_\_\_\_\_

\_\_\_\_\_  
Susan Hedman  
Regional Administrator  
U.S. Environmental Protection Agency  
Region 5