



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

1595 Wynkoop Street
DENVER, CO 80202-1129
Phone 800-227-8917
<http://www.epa.gov/region08>

2007 DEC 13 PM 1:42

EPA REGION VIII
HEARING CLERK

DOCKET NO.: CWA-08-2007-0011

FLANNERY OIL COMPANY, INC.
BLACK HILLS MARKETERS, INC.
SHANNON CAPITAL, INC.
M. G. OIL COMPANY, INC.
1012 E. Centre Street
Rapid City, SD 57709

AND

KELLY FLANNERY, INDIVIDUALLY
KEVIN FLANNERY, INDIVIDUALLY
4931 Ireland Place
Rapid City, SD 57702-8333

Respondents

FINAL ORDER

Pursuant to 40 C.F.R. §22.18, 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 Respondents are hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondents of this Consent Agreement and Final Order.

SO ORDERED THIS 13th DAY OF December 2007.

Elyana R. Sutin
Regional Judicial Officer

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

2007 DEC 18 PM 1:43

IN THE MATTER OF)
)
Flannery Oil Company, Inc.)
1012 E. Centre St.)
Rapid City, SD 57709)

and)
Black Hills Marketers, Inc.)
1012 E. Centre St.)
P.O. Box 1580)
Rapid City, SD 57709)
and)
Shannon Capital, Inc.)
1012 E. Centre St.)
P.O. Box 1580)
Rapid City, SD 57709)
and)
M. G. Oil Company, Inc.)
1012 E. Centre St.)
P.O. Box 1580)
Rapid City, SD 57709)
and)
Kelly Flannery, Individually)
Kevin Flannery, Individually)
4931 Ireland Place)
Rapid City, SD 57702-8333)

Respondents.)

CONSENT AGREEMENT

Docket No. CWA-08-2007-0011

Complainant, the United States Environmental Protection Agency, Region 8 (EPA) and Respondents, Flannery Oil Company, Inc., Black Hills Marketers, Inc., Shannon Capital, Inc., M.G. Oil Company, Inc., Kelly Flannery, Individually, and Kevin Flannery, Individually, by their undersigned representatives, hereby consent and agree as follows:

1. On June 29, 2007, Complainant issued an Administrative Complaint and Notice of Opportunity for Hearing alleging violations of section 311(b)(6)(B)(ii) of the Clean Water Act

("CWA" or "the Act"), 33 U.S.C. § 1321(b)(6)(B)(ii), as amended by the Oil Pollution Act of 1990. The Complaint proposed a civil penalty for the violations alleged therein.

2. Respondents admit the jurisdictional allegations of the Complaint and neither admit nor deny the specific factual allegations of the Complaint.

3. ~~Respondents waive their rights to a hearing before any tribunal to contest any issue of law or fact set forth in the Complaint or in this Consent Agreement.~~

4. Complainant asserts that settlement of this matter is in the public interest, and Complainant and Respondents agree that entry of this Consent Agreement without further litigation is the most appropriate means of resolving this matter.

5. This Consent Agreement, upon incorporation into a final order, applies to and is binding upon EPA and upon Respondents and Respondents' successors and assigns. Any change in ownership or corporate status of Respondents, including, but not limited to, any transfer of assets or real or personal property, shall not alter Respondents' responsibilities under this agreement. This Consent Agreement contains all the terms of the settlement agreed to by the parties.

6. Respondent, Black Hills Marketers, Inc., consents and agrees, for the purposes of settlement, to pay a civil penalty in the amount of thirty thousand dollars (\$30,000.00) in the manner described in this paragraph:

- a. Payment is due within 30 calendar days from the date written on the Final Order, issued by the Regional Judicial Officer, that adopts this Consent Agreement. If the due date falls on a weekend or legal federal holiday, the due date is the next business day. Payments must be received by 12:00 p.m. Central Standard Time to be considered as received that day.

b. Payment shall be made by one of the following methods:

i. **Payment by cashier's or certified check:**

A cashier's or certified check, including the name and docket number of this case, for this amount, payable to "Treasurer, United States of America," to:

Regular Mail:

Overnight Mail:

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

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

ii. **Wire Transfer:**

Wire transfers should be directed to the Federal Reserve Bank of New York with the following information:

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"

iii. **On Line Payment:**

This option is available through the Department of Treasury.
www.pay.gov
Enter sfo 1.1 in the search field
Open form and complete the required fields.

c. A copy of the check or record of payment if sent by other means shall be sent simultaneously to:

Donna K. Inman
Technical Enforcement Program (8UFO)
U.S. EPA Region 8

and

Tina Artemis
Regional Hearing Clerk (8RC)
U.S. EPA Region 8

1595 Wynkoop St.
Denver, CO 80202-1129

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d. Respondent, Black Hills Marketers, Inc., agrees that the payment provided for herein shall never be claimed as a federal or other tax deduction or credit.

7. Conditioned upon full satisfaction of all the terms of this Consent Agreement,

Complainant herein agrees to dismiss the Complaint as to Respondents, M.G. Oil Company, Inc., Flannery Oil Company, Inc., Shannon Capital, Inc., and Kevin Flannery, Individually.

8. Nothing in this Consent Agreement shall relieve any and/or all of the Respondents of the duty to comply with the CWA, as amended by the Oil Pollution Act of 1990, and its implementing regulations.

9. Failure by Respondent, Black Hills Marketers, Inc., to comply with the terms of this Consent Agreement shall constitute a breach of this Consent Agreement and shall render this Consent Agreement null and void as to all parties.

10. Nothing in this Consent Agreement 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 action instituted as a result of Respondent's, Black Hills Marketers, Inc.'s, failure to perform pursuant to the terms of this Consent Agreement.

11. The undersigned representative of Respondents certify that he/she is fully authorized to enter into the terms and conditions of this Consent Agreement and to bind Respondents to the terms and conditions of this Consent Agreement.

12. The parties agree to submit this Consent Agreement to the Regional Judicial Officer, with a request that it be incorporated into a final order.

13. Each party shall bear its own costs and attorneys fees in connection with this matter.

14. This Consent Agreement, upon incorporation into a final order by the Regional Judicial

Officer and full satisfaction by the parties, shall be a complete and full civil settlement of the specific violations alleged in the Complaint.

**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8,
Complainant.**

Date: 12/7/07

for Michael T. Bioner
Andrew M. Gaydosh,
Assistant Regional Administrator
Office of Enforcement, Compliance and
Environmental Justice

Date: 12/12/07

Brenda Morris
Brenda Morris, Enforcement Attorney
U.S. EPA, Region 8
999 18th Street, Suite 300 (8ENF-L)
Denver, CO 80202-2466

Flannery Oil Company, Inc., Respondent,

Date: _____

By: _____
(Signature)

(Print Name of Signatory)

Black Hills Marketers, Inc., Respondent,

Date: _____

By: _____
(Signature)

(Print Name of Signatory)

Shannon Capital, Inc., Respondent,

Officer and full satisfaction by the parties, shall be a complete and full civil settlement of the specific violations alleged in the Complaint.

**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8,
Complainant.**

Date: _____

Eddie Sierra,
Acting Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

Date: _____

Brenda Morris, Enforcement Attorney
U.S. EPA, Region 8
999 18th Street, Suite 300 (8ENF-L)
Denver, CO 80202-2466

Flannery Oil Company, Inc., Respondent,

Date: 11-19-07

By:

Flannery Oil Co. Inc.
(Signature) *By: Kelly Flannery, President*
Kelly Flannery
(Print Name of Signatory)

Black Hills Marketers, Inc., Respondent,

Date: 11-19-07

By:

Black Hills Oil Marketers Inc
(Signature) *By: Kelly Flannery, President*
Kelly Flannery
(Print Name of Signatory)

Shannon Capital, Inc., Respondent,

Date: _____

By: _____
(Signature)

(Print Name of Signatory)

M.G. Oil Company, Inc., Respondent,

Date: 11/12/07

By: 
(Signature)

DAVE KULISH
(Print Name of Signatory)

Kelly Flannery, Respondent,

Date: _____

By: _____
(Signature)

(Print Name of Signatory)

Kevin Flannery, Respondent.

Date: _____

By: _____
(Signature)

(Print Name of Signatory)

Date: 11-19-07

*Shannon Capital Inc.
By Kelly Flannery Pres.*

By: _____
(Signature)

Kelly Flannery
(Print Name of Signatory)

M.G. Oil Company, Inc., Respondent,

Date: _____

By: _____
(Signature)

(Print Name of Signatory)

Kelly Flannery, Respondent,

Date: 11-19-07

By: *Kelly Flannery*
(Signature)

Kelly Flannery
(Print Name of Signatory)

Kevin Flannery, Respondent.

Date: _____

By: _____
(Signature)

(Print Name of Signatory)

Date: 11-19-07

Shanna Capital Inc.
By Kelly Flannery Pres.

By: _____
(Signature)

Kelly Flannery
(Print Name of Signatory)

M.G. Oil Company, Inc., Respondent,

Date: _____

By: _____
(Signature)

(Print Name of Signatory)

Kelly Flannery, Respondent,

Date: 11-19-07

By: *Kelly Flannery*
(Signature)

Kelly Flannery
(Print Name of Signatory)

Kevin Flannery, Respondent.

Date: 11-20-07

By: *Kevin Flannery*
(Signature)

Kevin H. Flannery
(Print Name of Signatory)

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT/FINAL ORDER** in the matter of **FLANNERY OIL CO., INC., BLACK HILLS MARKETERS, INC., SHANNON CAPITAL, INC., M. G. OIL CO., INC., KELLY FLANNERY, INDIVIDUALLY, AND KEVIN FLANNERY, INDIVIDUALLY; DOCKET NO.: CWA-08-2007-0011** was filed with the Regional Hearing Clerk on December 13, 2007.

Further, the undersigned certifies that a true and correct copy of the document was delivered to Brenda Morris, Senior Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned document was placed in the United States mail certified/return receipt requested on December 13, 2007, to:

Attorney for M. G. Oil Company, Inc.

Edward C. Carpenter
Costello, Porter, Hill, Heisterkamp, Bushnell
And Carpenter, LLP
P. O. Box 290
Rapid City, SD 57709

Attorney for Flannery Oil Co.; Black Hills Marketers, Inc.; Shannon Capital, Inc.; Kelly Flannery and Kevin Flannery, Individually:

Frank Bettmann
1506 Mountain View Road. #101
Rapid City, SD 57702

E-mailed to:

Michelle Angel
U. S. Environmental Protection Agency
Cincinnati Finance Center
26 West Martin Luther King Drive (MS-0002)
Cincinnati, Ohio 45268

December 13, 2007


Tina Artemis
Paralegal/Regional Hearing Clerk