

March 27, 2020
2:14 PM
Received by
EPA Region VIII
Hearing Clerk

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

IN THE MATTER OF:)
)
Colorado Marine and Boatworks, Inc.)
#1 North Marina Road)
P.O. Box 7436)
Pueblo West, Colorado 81007)
)
Respondent.)
)
)
)

Docket No. CWA-08-2020-0003

CONSENT AGREEMENT

I. INTRODUCTION

1. This is an administrative penalty assessment proceeding pursuant to sections 22.13 and 22.18 of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules of Practice), as codified at 40 C.F.R. part 22.
2. Colorado Marine and Boatworks, Inc. (Respondent) owns and/or operates the North Shore Marina (Facility) located at North Marina Road, Pueblo Reservoir, Pueblo West, Colorado 81007.
3. EPA and Respondent, having agreed that settlement of this action is in the public interest, consent to the entry of this consent agreement (Agreement) without adjudication of any issues of law or fact herein, and Respondent agrees to comply with the terms of this Agreement.

II. JURISDICTION

4. The EPA has jurisdiction over this matter pursuant to section 311(b)(6)(B)(i) of the Clean Water Act (Act), 33 U.S.C. § 1321(b)(6)(B)(i). The undersigned EPA official has been duly authorized to institute this action.
5. The Regional Judicial Officer is authorized to approve this Agreement with a final order. 40 C.F.R. §§ 22.4(b) and 22.18(b).
6. The final order approving this Agreement simultaneously commences and concludes this proceeding. 40 C.F.R. § 22.13(b).

III. GOVERNING LAW

7. Section 311(j)(1)(C) of the Act, 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..."

8. In response to the directive referenced in Paragraph 7, above, the EPA promulgated 40 C.F.R. part 112.
9. 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.

IV. ALLEGED FACTS

10. Respondent owns and operates the Facility, a marina on Pueblo Reservoir (AKA Lake Pueblo), located at North Marina Road, Pueblo Reservoir, Pueblo West, Colorado 81007. Respondent, Colorado Marine and Boatworks, Inc., is a Colorado corporation. Respondent's principal office is located at #1 North Marina Road, P.O. Box 7436, Pueblo West, Colorado 81007.
11. 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).
12. Respondent owns and operates 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."
13. The Facility includes ten above ground storage containers as defined in 40 C.F.R. § 112.2. The Facility has a total aboveground storage capacity of 3,165 gallons of gasoline and diesel fuel (oil), waste oil, and kitchen grease and is subject to the SPCC regulations.
14. Respondent is engaged in storing, transferring, and/or distributing oil at the Facility.
15. The Facility is an "onshore facility" as defined in section 311(a)(10) of the Act, 33 U.S.C. § 1321(a)(10), and a "non-transportation-related" facility as defined in 40 C.F.R. § 112.2.
16. The oil referenced in Paragraph 13, above, meets the definition of "oil" in section 311(a)(1) of the Act, 33 U.S.C § 1321(a)(1) and 40 C.F.R. § 112.2.
17. Respondent is an "owner or operator," as defined in section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6).

V. ALLEGED VIOLATIONS OF LAW

18. In the event of a discharge, the location of the Facility is reasonably expected to discharge oil and/or pollutants into the Pueblo Reservoir 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.
19. The Pueblo Reservoir is a "navigable water" as defined in section 502(7) of the Act, 33 U.S.C. § 1362(7) and 40 C.F.R. §§ 110.1 and 112.2.
20. At all times from September 30, 2015 to the present, the Facility had been subject to the SPCC requirements at 40 C.F.R. part 112.

21. On September 30, 2015, the EPA inspected the Facility for compliance with the SPCC requirements.
22. During this inspection and review of the SPCC plan provided during this inspection, dated November 2008 (2008 Plan), the EPA found alleged violations of the SPCC requirements under 40 C.F.R. part 112. The technical violations of the part 112 regulations are as follows:
- a. The SPCC plan was self-certified although the Facility was ineligible for self-certification, in violation of 40 C.F.R. § 112.3(g);
 - b. Failure to amend the SPCC plan after change in design, construction, operation, or maintenance of Facility, in violation of 40 C.F.R. § 112.5(a);
 - c. No evidence of five-year review of the SPCC plan by owner/operator, in violation of 40 C.F.R. § 112.5(b);
 - d. No signed management approval of the SPCC plan, in violation of 40 C.F.R. § 112.7;
 - e. No or incomplete Facility diagram, in violation of 40 C.F.R. § 112.7(a)(3);
 - f. No or incomplete listing of type of oil and storage capacity of containers, in violation of 40 C.F.R. § 112.7(a)(3)(i);
 - g. No or inadequate description of discharge prevention measures, in violation of 40 C.F.R. § 112.7(a)(3)(ii);
 - h. No or inadequate description of countermeasures for discharge discovery, response, and cleanup, in violation of 40 C.F.R. § 112.7(a)(3)(iv);
 - i. No or incomplete contact list and phone numbers for response and reporting discharges, in violation of 40 C.F.R. § 112.7(a)(3)(vi);
 - j. No or inadequate procedures for reporting discharges, in violation of 40 C.F.R. § 112.7(a)(4);
 - k. No or inadequate procedures for use in an emergency, in violation of 40 C.F.R. § 112.7(a)(5);
 - l. The SPCC plan had inadequate or no prediction of equipment failure which could result in discharges, in violation of 40 C.F.R. § 112.7(b) or 112.6(a)(3)(i);
 - m. No or inadequate containment and/or diversionary structures to prevent a discharge, in violation of 40 C.F.R. § 112.7(c);
 - n. Inspections and tests not in accordance with written procedures in the SPCC plan, in violation of 40 C.F.R. § 112.7(e);
 - o. Record of inspections not signed by facility supervisor, in violation of 40 C.F.R. § 112.7(e);

- p. Record of inspections not maintained for three years, in violation of 40 C.F.R. § 112.7(e);
- q. No training of oil-handling personnel on discharge prevention, in violation of 40 C.F.R. § 112.7(f)(1);
- r. No designated person responsible for spill prevention, in violation of 40 C.F.R. § 112.7(f)(2);
- s. Spill prevention briefings not conducted at least annually, in violation of 40 C.F.R. § 112.7(f)(3);
- t. No or inadequate security at Facility, in violation of 40 C.F.R. § 112.7(g);
- u. Oil-filled operational equipment (OFOE) has no or inadequate secondary containment in accordance with 112.7(c) and does not meet eligibility criteria in 112.7(k)(1), in violation of 40 C.F.R. § 112.7(k);
- v. Drainage from diked areas not restrained by valves or manual pumps/ejectors, in violation of 40 C.F.R. § 112.8(b)(1);
- w. Material/construction of containers not compatible with oil stored and/or storage conditions, in violation of 40 C.F.R. § 112.8(c)(1);
- x. No secondary containment or inadequately sized to contain largest single container with freeboard for precipitation, in violation of 40 C.F.R. § 112.8(c)(2) or 112.6(a)(3)(ii);
- y. Materials or construction of secondary containment not sufficiently impervious, in violation of 40 C.F.R. § 112.8(c)(2);
- z. Bypass valves not sealed closed when drainage is to a storm drain or open watercourse, in violation of 40 C.F.R. § 112.8(c)(3)(i);
- aa. Retained rainwater not inspected to ensure presence will not cause a discharge, in violation of 40 C.F.R. § 112.8(c)(3)(ii);
- bb. Bypass valves not opened and later resealed under supervision, in violation of 40 C.F.R. § 112.8(c)(3)(iii);
- cc. Adequate records of drainage events not maintained, in violation of 40 C.F.R. § 112.8(c)(3)(iv);
- dd. Aboveground containers not integrity tested on a regular schedule or when repaired, in violation of 40 C.F.R. § 112.8(c)(6);
- ee. Testing/inspection not in accordance with industry standards to identify the appropriate qualification for inspection/testing personnel or frequency or type of testing/inspection, in violation of 40 C.F.R. § 112.8(c)(6);

- ff. Containers and container supports not inspected, in violation of 40 C.F.R. § 112.8(c)(6);
- gg. Outside of container not frequently inspected for signs of deterioration, or oil discharges, in violation of 40 C.F.R. § 112.8(c)(6);
- hh. No records of inspections/tests or comparison records not kept, in violation of 40 C.F.R. § 112.8(c)(6);
- ii. No liquid level sensing devices or other overfill prevention systems provided or not regularly tested, in violation of 40 C.F.R. § 112.8(c)(8) or 112.6(a)(3)(iii);
- jj. Leaks in diked area not promptly corrected or oil in diked areas not removed, in violation of 40 C.F.R. § 112.8(c)(10);
- kk. Mobile or portable containers not positioned to prevent discharge as described in 112.1(b) or no/inadequate secondary containment for mobile or portable containers, in violation of 40 C.F.R. § 112.8(c)(11) or 112.6(a)(3)(ii); and
- ll. Aboveground valves, piping, and appurtenances not inspected, in violation of 40 C.F.R. § 112.8(d)(4).

23. On May 16, 2016, Respondent provided the EPA with a SPCC Plan dated October 23, 2015 (2015 Plan). During review of the 2015 Plan, the EPA found alleged violations of the SPCC requirements under 40 C.F.R. part 112. The technical violations of the part 112 regulations for the 2015 Plan are as follows:

- a. Failure of a licensed professional engineer (PE) to certify the SPCC plan in violation of 40 C.F.R. § 112.3(d);
- b. No signed management approval of the SPCC plan, in violation of 40 C.F.R. § 112.7;
- c. Failure to have an accurate facility diagram in the SPCC plan, in violation of 40 C.F.R. § 112.7(a)(3);
- d. Failure to provide complete listing of the type of oil and storage capacity of each container at the Facility in the SPCC plan, in violation of 40 C.F.R. § 112.7(a)(3)(i);
- e. Failure to provide adequate contact information for discharge or drainage controls, in violation of 40 C.F.R. § 112.7(a)(iii);
- f. No or inadequate description of countermeasures in the SPCC Plan, in violation of 40 C.F.R. § 112.7(a)(3)(iv);
- g. Failure to provide methods of disposal of recovered materials in accordance with applicable legal requirements in the SPCC plan, in violation of 40 C.F.R. § 112.7(a)(3)(v);

- h. The SPCC plan had an incomplete list of phone numbers for response and reporting discharges, in violation of 40 C.F.R. § 112.7(a)(3)(vi);
 - i. The SPCC plan had inadequate containment to prevent a discharge for mobile/portable containers, oil-filled operational equipment, piping, and transfer areas, in violation of 40 C.F.R. § 112.7(c);
 - j. Failure to state frequency or record keeping for inspections in the SPCC plan, in violation of 40 C.F.R. § 112.7(e);
 - k. Failure to restrain drainage from diked storage areas by valves to prevent a discharge into the drainage system, except when facility systems are designed to control such discharge, in violation of 40 C.F.R. § 112.8(b)(1);
 - l. Failure to use valves of manual, open-and-closed design for the drainage of diked areas, in violation of 40 C.F.R. § 112.8(b)(2);
 - m. Failure to meet requirement that containers will not be used for the storage of oil unless its material and construction are compatible with the material stored and the conditions of storage such as pressure and temperature, in violation of 40 C.F.R. § 112.8(c)(1);
 - n. Failure to adequately prevent drainage of uncontaminated rainwater from the diked area into a storm drain or discharge of an effluent into an open watercourse, lake, or pond, in violation of 40 C.F.R. § 112.8(c)(3);
 - o. Failure to adequately test aboveground containers for integrity on a regular schedule, and whenever material repairs are made, in violation of 40 C.F.R. § 112.8(c)(6);
 - p. The SPCC plan does not indicate that aboveground valves, piping, and appurtenances are inspected, in violation of 40 C.F.R. § 112.8(d); and
 - q. Failure to provide Appendix C: Substantial Harm Certification form, in violation of 40 C.F.R. § 112.8.
24. On November 28, 2017, EPA inspected the Facility to determine compliance with the SPCC requirements.
25. During this inspection, the EPA found alleged violations of the SPCC requirements under 40 C.F.R. part 112. The technical violations of the part 112 regulations are as follows:
- a. Inspections and tests not in accordance with written procedures in the SPCC Plan, in violation of 40 C.F.R. § 112.7(e);
 - b. Record of inspections not signed by Facility supervisor, in violation of 40 C.F.R. § 112.7(e);
 - c. Record of inspections not maintained for three years, in violation of 40 C.F.R. § 112.7(e);

- d. Drainage from diked areas not restrained by valves or manual pumps/ejectors, in violation of 40 C.F.R. § 112.8(b)(1);
 - e. Failure to use valves of manual, open-and-closed design to drain diked areas, in violation of 40 C.F.R. § 112.8(b)(2);
 - f. No secondary containment or secondary containment inadequately sized to contain largest single container with freeboard for precipitation, in violation of 40 C.F.R. § 112.8(c)(2) or 112.6(a)(3)(ii);
 - g. Adequate records of drainage events are not maintained, in violation of 40 C.F.R. § 112.8(c)(3)(iv);
 - h. No records of inspections/tests or comparison records not kept, in violation of 40 C.F.R. § 112.8(c)(6); and
 - i. No certification of the applicability of the substantial harm criteria, in violation of 40 C.F.R. § 112.20(e).
26. On August 21, 2018, Respondent submitted an adequate SPCC Plan and demonstrated that it had come into compliance with EPA SPCC requirements under 40 C.F.R. part 112.
27. Each of the deficiencies described in subparagraphs 22(a)-(ll), 23(a)-(q), and 25(a)-(i), above, constitutes a separate violation of section 311(j) of the Act, 33 U.S.C. § 1321(j), and 40 C.F.R. part 112, for which Respondent is liable for civil administrative penalties pursuant to 311(b)(6)(A)(ii) of the Act, 33 U.S.C. § 1321(b)(6)(A)(ii).

VI. TERMS OF CONSENT AGREEMENT

28. For the purpose of this proceeding, Respondent:
- a. admits the jurisdictional allegations in section II of this Agreement;
 - b. neither admits nor denies the factual allegations stated in section IV of this Agreement;
 - c. consents to the assessment of a civil penalty as stated below;
 - d. acknowledges that this Agreement constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions;
 - e. waives any and all available rights to judicial or administrative review or other remedies that Respondent may have, with respect to any issue of fact or law or any terms and conditions set forth in this Consent Agreement, including any right of judicial review under the Administrative Procedure Act, 5 U.S.C. §§ 701-706; and
 - f. waives any rights it may possess at law or in equity to challenge the authority of EPA to bring a civil action in a United States District Court to compel compliance with the Agreement or Order,

or both, and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action.

29. Section 311(b)(6)(B)(i) of the Act, 33 U.S.C. § 1321(b)(6)(B)(i), and 40 C.F.R. part 19.4 authorizes EPA to assess a civil penalty in this matter.
30. In determining the amount of the penalty to be assessed, EPA considered the seriousness of the violations, the economic benefit to the violator, if any, resulting from the violation, the degree of culpability involved, any other penalty for the same incident, any history of prior violations, the nature, extent, and degree of success of any efforts of the violator to minimize or mitigate the effects of the discharge, the economic impact of the penalty on the violator, and any other matters as justice may require, in accordance with section 311(b)(8) of the Act, 33 U.S.C. § 1321(b)(8).
31. EPA has determined that a civil penalty of \$24,900 is appropriate to settle this matter.
32. **Penalty Payment.** Respondent agrees to pay a civil penalty in the amount of \$24,900 in the manner described below:
- a. payment shall be in six installments. The first is due no later than 30 calendar days from the date of the Final Order issued by the Regional Judicial Officer. The remaining installments are due 30, 60, 90, 120, and 150 days, respectively, after the due date for the first installment. Each of the six installments shall be in the amount of 4,162.10. The amount of \$72.60 constitutes interest on an agreed-upon settlement of \$24,900;
 - b. 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. Payment must be received by 11:00 a.m. Eastern Time to be considered as received that day;
 - c. payment of the civil penalty shall be made using any method provided on the following website: <https://www.epa.gov/financial/makepayment>;
 - d. indicate each and every payment is payable to "Oil Spill Liability Trust Fund-311" and identify each and every payment with the docket number that appears on the final order; and
 - e. within 24 hours of payment, email proof of payment to Darla Hohman and Shaula Eakins at hohman.darla@epa.gov and eakins.shaula@epa.gov ("proof of payment" means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with the docket number that appears on the final order).
33. If Respondent fails to timely pay any portion of the penalty assessed under this Agreement, EPA may:
- a. request the Attorney General to bring a civil action in an appropriate district court to recover: the amount assessed; interest at rates established pursuant to 26 U.S.C. § 6621(a)(2); the United States' enforcement expenses;

- b. refer the debt to a credit reporting agency or a collection agency, 40 C.F.R. §§ 13.13, 13.14, and 13.33;
 - c. collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, 40 C.F.R. part 13, subparts C and H; and
 - d. suspend or revoke Respondents' licenses or other privileges or suspend or disqualify Respondents from doing business with EPA or engaging in programs EPA sponsors or funds, 40 C.F.R. § 13.17.
34. Consistent with section 162(f)(1) of the Internal Revenue Code, 26 U.S.C. § 162(f)(1), the Respondent will not deduct penalties paid under this Agreement for federal tax purposes.
35. This Agreement applies to Respondent and its officers, directors, employees, agents, trustees, authorized representatives, successors, and assigns. Respondent must give written notice and a copy of this Agreement to any successors-in-interest prior to transfer of any interest in North Shore Marina. Any change in ownership or corporate status of Respondent, including but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this Agreement.
36. The undersigned representative of Respondent certifies that he or she is fully authorized to execute and enter into the terms and conditions of this Agreement and has the legal capacity to bind the party he or she represents to this Agreement.
37. Each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.

VII. EFFECT OF CONSENT AGREEMENT

38. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this Agreement resolves only Respondent's liability for federal civil penalties for the violations and facts specifically alleged above.
39. The terms, conditions, and compliance requirements of this Agreement may not be modified or amended except upon the written agreement of both parties, and approval of the Environmental Appeals Board/ Regional Judicial Officer, or other Delegatee.
40. Nothing in this Agreement shall relieve Respondent of the duty to comply with all applicable provisions of the Act and other federal, state, or local laws, nor shall it restrict EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.
41. Nothing herein shall be construed to limit the power of EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.

42. If and to the extent that EPA finds, after signing this Agreement, that any information provided by Respondent was materially false or inaccurate at the time such information was provided to EPA, EPA reserves any and all of its legal and equitable rights.

VIII. EFFECTIVE DATE

43. This Agreement shall become effective on the date the Final Order is filed by the hearing clerk.

Consent Agreement In the Matter of Colorado Marine and Boatworks, Inc.

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
Complainant**

Date: _____

By: Janice Pearson Digitally signed by Janice Pearson
Date: 2020.03.26 12:11:18 -06'00'

Janice Pearson, Chief
RCRA/OPA Enforcement Branch
Enforcement & Compliance Assurance Division

**COLORADO MARINE AND BOATWORKS, INC.
Respondent**

Date: 3/17/20

By: Connie Jack

Connie Jack, President
#1 North Marina Road, P.O. Box 7436, Pueblo West, Colorado
81007

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT and FINAL ORDER** in the matter of **COLORADO MARINE AND BOATWORKS, INC.;** **DOCKET NO.: CWA-08-2020-0003** was filed with the Regional Hearing Clerk on March 27, 2020.

Further, the undersigned certifies that a true and correct copy of the documents were emailed to, Shaula Eakins, Enforcement Attorney, and sent via certified receipt email on March 27, 2020, to:

Respondent

Colorado Marine and Boatworks, Inc.
#1 North Marina Road
PO Box 7436
Pueblo West, Colorado 81007
noshore@qwestoffice.net

Legal Counsel

Douglas Kwitek
601 N. Main Street, Suite 200
Pueblo, Colorado 81003
dkwitek@yahoo.com

And emailed to:

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

March 27, 2020

MELISSA
HANIEWICZ

Digitally signed by
MELISSA HANIEWICZ
Date: 2020.03.27
14:13:14 -06'00'

Melissa Haniewicz
Regional Hearing Clerk