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BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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HEARINGS CLERK
EPA -- REGION 10

In the Matter of:)

Nelson Petroleum Company)

Respondent)

) DOCKET NO. CWA 10-2012-0140

) CONSENT AGREEMENT AND
) FINAL ORDER

1. AUTHORITIES

1.1. This Consent Agreement and Final Order (CAFO) is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by Section 311(b)(6)(B)(i) of the Clean Water Act (Act), 33 U.S.C. § 1321(b)(6)(B)(i), as amended by the Oil Pollution Act of 1990. The Administrator has delegated the authority to issue the Final Order contained in Part 5 of this CAFO to the Regional Administrator of EPA Region 10, who in turn has delegated this authority to the Regional Judicial Officer.

1.2. 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 Nelson Petroleum Company (Respondent) agrees to issuance of the Final Order contained in Part 5 of this CAFO.

1.3. 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 authorize EPA to assess a civil penalty not to exceed \$37,500 against any owner, operator, or person in charge of an onshore facility who fails or refuses to comply with any regulation issued under Section 311(j) of Act, 33 U.S.C. § 1321(j).

1.4. The Oil Pollution Prevention regulations that implement Section 311(j) of the Act, 40 C.F.R. Part 112, establish requirements for preventing the discharge of oil. These requirements apply to owners or operators of non-transportation-related facilities engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing or consuming oil or oil products that, due to facility location, could reasonably be expected to discharge oil in harmful quantities to navigable waters of the United States or adjoining shorelines.

1.5. “Harmful quantities” are defined in 40 C.F.R. § 110.3 to include oil discharges that cause either (1) a violation of applicable water quality standards, or (2) a film, sheen upon, or discoloration of the surface of the water or adjoining shorelines or (3) a sludge or emulsion to be deposited beneath the surface of the water or adjoining shorelines.

1.6. “Navigable waters” are defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7) and 40 C.F.R. § 112.2.

1.7. Under 40 C.F.R. § 112.3, the owner or operator of an onshore facility that became operational on or before August 16, 2002, that due to its location, could reasonably be expected to discharge oil in harmful quantities into or upon the navigable waters of the United States and adjoining shorelines shall have prepared and implemented a Spill Prevention, Control and Countermeasure (SPCC) Plan in accordance with 40 C.F.R. § 112.7.

1.8. Under 40 C.F.R. § 112.7, the SPCC Plan shall be prepared “in accordance with good engineering practices” and have the full approval of management with authority to commit the necessary resources to implement the plan.

2. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.45(b), issuance of this CAFO commences this proceeding, which will conclude when the Final Order in Part 5 of this CAFO becomes effective.

2.2. A concise statement of the factual bases for alleged violations of the Act and specific references to the statutory and regulatory provisions Respondent is alleged to have violated appear in Part 3 of this CAFO.

3. ALLEGATIONS

3.1. Respondent is a corporation organized under the laws of the State of Washington and is a “person” within the meaning of Section 311(a)(7) of the Act, 33 U.S.C. § 1321(a)(7), and 40 C.F.R. § 112.2.

3.2. At the time of EPA inspections conducted on August 27, 2009, and September 1, 2009, Respondent was the “owner or operator” within the meaning of Section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6), of oil storage and distribution facilities located at 208 West Avenue, Arlington, Washington (“Arlington Facility”), and 208 East Stanley Street, Granite Falls, Washington (“Granite Falls Facility”) (collectively the “Facilities”).

3.3. The Facilities are “onshore facilities” 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.

3.4. The Facilities are “non-transportation-related” within the meaning of 40 C.F.R. § 112.2.

3.5. The Facilities are non-transportation facilities that, due to location, could reasonably have been expected, at the time of inspection, to discharge oil from an above-ground

container to a navigable water of the United States or its adjoining shorelines in a harmful quantity and are therefore subject to the SPCC regulations at 40 C.F.R. Part 112.

3.6. Each Facility had, at the time of inspection, an aggregate above-ground storage capacity greater than 1,320 gallons of oil in containers each with a shell capacity of at least 55 gallons.

3.7. The Arlington Facility is located approximately one mile from the Stillaguamish River, a “navigable water” within the meaning of 40 C.F.R. § 112.2. The Granite Falls Facility is located approximately .5 miles from the Pilchuck River, a “navigable water” within the meaning of 40 C.F.R. § 112.2.

3.8. Respondent, at the time of inspection, was engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using or consuming oil or oil products at the Facilities, as described in 40 C.F.R. § 112.1(b).

3.9. The Facilities began operating before August 16, 2002.

3.10. Under 40 C.F.R. § 112.3, the owner or operator of an SPCC-regulated facility that was in operation on or before August 16, 2002, shall have prepared and implemented a written SPCC Plan that complies with 40 C.F.R. §§ 112.3 and 112.7.

3.11. On August 27, 2009 and September 1, 2009, authorized EPA representatives inspected the Facilities to determine compliance with Section 311(j) of the Act, and in particular with the requirements of 40 C.F.R. Part 112 related to SPCC Plans.

3.12. EPA alleges that Respondent:

3.12.1.1. Failed to have adequate SPCC Plans at each Facility that meets the requirements of 40 C.F.R. §§ 112.3 and 112.7;

- 3.12.1.2. Failed to provide general secondary containment around storage tanks at the Facilities, as required by 40 C.F.R. § 112.7(c);
- 3.12.1.3. Failed to provide records of inspections, training, tank and piping tests and storm water releases for the Facilities, as required by 40 C.F.R. § 112.7(e).
- 3.12.1.4. Failed to conduct and document the training of oil-handling personnel at the Granite Falls Facility, as required by 40 C.F.R. § 112.7(f);
- 3.12.1.5. Failed to implement and document security measures at the Facilities, as required by 40 C.F.R. § 112.7(g);
- 3.12.1.6. Failed to restrain drainage from diked storage areas by valves to prevent discharge into the drainage system or facility effluent treatment system at the Granite Falls Facility, as required by 40 C.F.R. §§ 112.8(b) and 112.12(b);
- 3.12.1.7. Failed to implement adequate secondary containment, failed to implement adequate rainwater drainage procedures, failed to perform integrity tests failed to use alarms on bulk storage containers at the Facilities, as required by 40 C.F.R. §§ 112.8(c) and 112.12(c);
- 3.12.1.8. Failed to follow the requirements for buried piping, including cathodic inspection and protection, at the Facilities, as required by 40 C.F.R. §§ 112.8(d) and 112.12(d);
- 3.12.2. Respondent's failure to prepare and implement adequate SPCC Plans for the Facilities in accordance with the requirements of 40 C.F.R. §§ 112.7 and 112.8 violated 40 C.F.R. §112.3.

3.13. Respondent's continuing failure to comply with the requirements of 40 C.F.R. Part 112 has subjected it to civil penalties pursuant to Section 311(b)(6)(B)(i) of the Act, 33 U.S.C. § 1321(b)(6)(b)(i), not to exceed \$37,500.

4. CONSENT AGREEMENT

4.1. Respondent admits the jurisdictional allegations contained in Part 3 of this CAFO.

4.2. Respondent neither admits nor denies the specific factual allegations contained in Part 3 of this CAFO.

4.3. Respondent expressly waives any rights to contest the allegations and to appeal the Final Order contained herein.

4.4. The provisions of this CAFO shall bind Respondent and its servants, employees, successors and assigns.

4.5. Except as provided in Paragraph 4.10.2 below, each party shall bear its own costs in bringing or defending this action.

4.6. Pursuant to Section 311(b) of the Act, 33 U.S.C. § 1321(b), EPA has determined, and Respondent agrees, that an appropriate penalty to settle this action is TWENTY-FIVE THOUSAND DOLLARS (\$25,000). This penalty amount has been agreed upon in consideration of the statutory penalty factors identified in Section 311(b)(8) of the Act, 33 U.S.C. § 1321(b)(8).

4.7. Respondent agrees to pay the civil penalty cited in the foregoing paragraph within thirty (30) days of the effective date of the Final Order.

4.8. Payment under this CAFO shall be made by cashier's check or certified check, payable to "Environmental Protection Agency," and bearing the notation "OSLTF-311."

Payment sent by the U.S. Postal Service shall be addressed to:

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

Payment sent by express mail via a non-U.S. Postal Service carrier shall be addressed to:

U.S. Bank
Government Lockbox 979077
U.S. E.P.A. Fines and Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101

Respondent shall note on the check the title and docket number as they appear in the caption of this CAFO.

4.9. Respondent shall serve photocopies of the check described above on the Regional Hearing Clerk and EPA at the following two addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
1200 Sixth Avenue, Suite 900
Mail Stop ORC-158
Seattle, Washington 98101

Mr. Jeff KenKnight
Unit Manager, NPDES Compliance Unit
1200 Sixth Avenue, Suite 900
Mail Stop OCE-133
Seattle, Washington 98101

4.10. If Respondent fails to pay the penalty assessed by paragraph 4.6 of this CAFO in full by its due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. Such failure may subject Respondent to a civil action to collect the assessed penalty under the Act. In any collection action, the validity, amount, and

appropriateness of the penalty assessed by paragraph 4.6 shall not be subject to review.

4.10.1. Interest. Pursuant to Section 311(b)(6)(H) of the Act, 33 U.S.C. § 1321(b)(6)(H), any unpaid portion of the assessed penalty shall bear interest from the effective date of the Final Order contained herein, at the rate established by the Secretary of the Treasury under 31 U.S.C. § 3717(a)(1).

4.10.2. Attorneys Fees, Collection Costs, Nonpayment Penalty. Pursuant to Section 311(b)(6)(H) of the Act, 33 U.S.C. § 1321(b)(6)(H), 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 twenty percent (20%) of the aggregate amount of Respondent's penalties and nonpayment penalties that are unpaid as of the beginning of such quarter.

4.11. The penalty described in Paragraph 4.6, including any costs incurred under Paragraph 4.10 above, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.12. Respondent represents that it is authorized to sign this CAFO and that the party signing on its behalf is authorized to bind Respondent to the terms of this CAFO. This CAFO may be executed in multiple counterparts, each of which shall be deemed to have the same force and effect as an original. A facsimile signature shall be treated as an original.

4.13. Compliance with all terms and conditions of this CAFO shall result in full settlement and satisfaction of all penalty claims for violations alleged in Section 3 above.

STIPULATED AND AGREED:

FOR RESPONDENT



Dated: 7/31/12

Mark Nelson
President
Nelson Petroleum Company

FOR COMPLAINANT



Dated: 8/9/2012

Edward J. Kowalski, Director
Office of Compliance and Enforcement
U. S. Environmental Protection Agency Region 10

5. FINAL ORDER

5.1. 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 in the Consent Agreement.

5.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to the Clean Water Act for the particular violations alleged in Part 3 above. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate injunctive relief or other equitable relief or criminal sanctions for any violations of law. This CAFO does not waive, extinguish or otherwise affect Respondent's obligations to comply with all applicable provisions of the Act and any regulations promulgated or permits issued there under.

5.3. This Final Order shall become effective upon filing.

SO ORDERED this 15th day of August, 2012.



Thomas M. Jahnke
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 the Matter of Nelson Petroleum Company, Docket No.: CWA-10-2012-**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

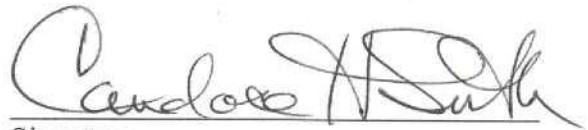
The undersigned certifies that a true and correct copy of the document was delivered to:

Ms. Stephanie L. Mairs, Esquire
U.S. Environmental Protection Agency
1200 Sixth Avenue, ORC-158
Suite 900
Seattle, Washington 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 to:

Mr. Barry Ziker, Esquire
Joyce Ziker Parkinson
1601 Fifth Avenue, Suite 2040
Seattle, WA 98101

DATED this 15th day of August, 2012



Signature

Candace H. Smith
Print Name

Regional Hearing Clerk
EPA Region 10

