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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
901 NORTH 5th STREET
KANSAS CITY, KANSAS 66101

ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)	
)	Docket No: CWA-07-2010-0011
NUSSER OIL COMPANY)	
HANSTON, KANSAS)	COMPLAINT AND NOTICE OF
)	OPPORTUNITY FOR HEARING
Respondent)	
)	Proceeding to Assess Class II Civil
)	Penalty under Clean Water Act
)	Section 311 for Spill Prevention
)	Control and Countermeasure
)	Violations

RESPONSE TO COMPLAINT

1. Admitted.
2. Admitted that the Complaint serves notice of the EPA's belief as to the violations of the regulations and admitted as to the Complaint serving notice to the Respondent. The paragraph is in all other respects denied.
3. Admitted.
4. Admitted.
5. Respondent lacks sufficient knowledge to admit or deny the allegations contained in paragraph 5 and therefore denies same.
6. Respondent lacks sufficient knowledge to admit or deny the allegations contained in paragraph 6 and therefore denies same.
7. Respondent lacks sufficient knowledge to admit or deny the allegations contained in paragraph 7 and therefore denies same.
8. Respondent lacks sufficient knowledge to admit or deny the allegations contained in paragraph 8 and therefore denies same.

9. Respondent lacks sufficient knowledge to admit or deny the allegations contained in paragraph 9 and therefore denies same.
10. Admitted.
11. Respondent lacks sufficient knowledge to admit or deny the allegations contained in paragraph 11 and therefore denies same.
12. Respondent lacks sufficient knowledge to admit or deny the allegations contained in paragraph 12 and therefore denies same.
13. Respondent lacks sufficient knowledge to admit or deny the allegations contained in paragraph 13 and therefore denies same.
14. Respondent lacks sufficient knowledge to admit or deny the allegations contained in paragraph 14 and therefore denies same.
15. Respondent lacks sufficient knowledge to admit or deny the allegations contained in paragraph 15 and therefore denies same.
16. Respondent lacks sufficient knowledge to admit or deny the allegations contained in paragraph 16 and therefore denies same.
17. Respondent lacks sufficient knowledge to admit or deny the allegations contained in paragraph 17 and therefore denies same.
18. Admitted.
19. Respondent lacks sufficient knowledge to admit or deny the allegations contained in paragraph 19 and therefore denies same.
20. Denied. The Facility has never had a discharge incident in its history.
21. Respondent lacks sufficient knowledge to admit or deny the allegations contained in paragraph 21 and therefore denies same.

Violations

Count I

22. Respondents hereby incorporate their responses to paragraphs 1 through 21 above.

23. Paragraph 23 recites certain portions of a regulation and makes no factual allegations as to Respondent. To the extent Paragraph 23 contains allegations as to Respondent, those allegations are denied.

24. Denied. Based on information and belief, the EPA never conducted an on-site inspection of Respondent's facility.

25. Denied. Based on information and belief, the EPA never conducted an on-site inspection of Respondent's facility.

26. Denied.

27. Denied.

28. Paragraph 28 recites certain portions of a regulation and makes no factual allegations as to Respondent. To the extent Paragraph 28 contains allegations as to Respondent, those allegations are denied.

Relief

29. Paragraph 29 contains assertions of law and contains no factual allegations as to Respondent. To the extent paragraph 29 contains allegations as to Respondent, those allegations are denied.

30. Denied. Based on information and belief, the EPA never conducted an on-site inspection of Respondent's facility. As a result, the EPA cannot have calculated its proposed penalties based upon "the best information available to" it.

31. Paragraph 31 contains assertions of law and contains no factual allegations as to Respondent. To the extent paragraph 31 contains allegations as to Respondent, those allegations are denied.

Defenses

32. The proposed penalties are arbitrary and capricious.

33. The EPA failed to give prior notice to the Respondent that Respondent's facility would be investigated.

34. The EPA failed to give notice to Respondent that penalties would result if an SPCC plan was not created.

35. The EPA failed to give Respondent notice of any on-site investigation of Respondent's facility.

36. The EPA never conducted an on-site inspection of Respondent's facility.

37. The EPA failed to give Respondent notice of any deficiency and an opportunity to mitigate any proposed penalties.
38. The EPA has been guilty of laches and unreasonable delay in bringing this action.
39. The EPA lacks jurisdiction because there are no navigable waters in question.

Request for Hearing

39. Wherefore, for the foregoing reasons, Respondent respectfully requests that Complainant's Complaint be dismissed, this matter be set for hearing and for other and such relief as is deemed necessary and proper.

Respectfully submitted,



Shawn L. Stogsdill, MO # 51591
Kent Coxe, MO #37059
Anne Pond, MO #56099
VAN OSDOL & MAGRUDER, P.C.
911 Main Street, Suite 2400
Kansas City, MO 64105
(816) 421-0644
(816) 421-0758 FAX

ATTORNEYS FOR Respondent

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served via hand delivery on December 28th, 2009 to:

Kristen Nazar
Office of Regional Counsel
US EPA, Region 7
901 North 5th St.
Kansas City, KS 66101

