

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

SPACE AGE FUEL, INC.,

Clackamas, Oregon,

Respondent.

DOCKET NO. CWA-10-2022-0034

CONSENT AGREEMENT

Proceedings Under Section 311(b)(6) of the
Clean Water Act, 33 U.S.C. § 1321(b)(6)

I. STATUTORY AUTHORITY

1.1. This Consent Agreement is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by Section 311(b)(6) of the Clean Water Act (CWA), 33 U.S.C. § 1321(b)(6).

1.2. Pursuant to CWA Section 311(b)(6)(A), EPA is authorized to assess a civil penalty against any owner, operator, or person in charge of an onshore facility from which oil or a hazardous substance is discharged in violation of CWA Section 311(b)(3), 33 U.S.C. § 1321(b)(3).

1.3. CWA Section 311(b)(6)(B), 33 U.S.C. § 1321(b)(6)(B), authorizes the administrative assessment of Class II civil penalties in an amount not to exceed \$10,000 per day for each day during which the violation continues, up to a maximum penalty of \$125,000. Pursuant to the 2015 amendments to the Federal Civil Penalty Inflation Adjustment Act, 28 U.S.C. § 2461, and 40 C.F.R. Part 19, the administrative assessment of Class II civil penalties may not exceed \$19,505 per day for each day during which the violation continues, up to a maximum penalty of \$243,808. *See also* 85 Fed. Reg. 83818 (December 23, 2020) (2021 Civil Monetary Penalty Inflation Adjustment Rule).

1.4. Pursuant to CWA Section 311(b)(6)(A) and (b)(6)(B), 33 U.S.C. § 1321(b)(6)(A) and (B), and 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 Space Age Fuel, Inc., (“Respondent”) agrees to issuance of, the Final Order attached to this Consent Agreement.

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this Consent Agreement commences this proceeding, which will conclude when the Final Order becomes effective.

2.2. The Administrator has delegated the authority to sign consent agreements between EPA and the party against whom a penalty is proposed to be assessed pursuant to CWA Section 311(b)(6), 33 U.S.C. § 1321(b)(6), to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Director of the Enforcement and Compliance Assurance Division, EPA Region 10 (“Complainant”).

2.3. Part III of this Consent Agreement contains a concise statement of the factual and legal basis for the alleged violations of the CWA together with the specific provisions of the CWA and the implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

Statutory and Regulatory Framework

3.1. The objective of the CWA is “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” 33 U.S.C. § 1251(a).

3.2. CWA Section 301 Discharge. The CWA prohibits the discharge of any pollutant, including oil, by any person, except, *inter alia*, in compliance with a National Pollutant

Discharge Elimination System (“NPDES”) permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. 33 U.S.C. § 1311(a).

3.3. “Discharge of a pollutant” means any addition of any pollutant to navigable waters from any point source. 33 U.S.C. § 1362(12).

3.4. “Pollutant” is defined to include “dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water.” 33 U.S.C. § 1362(6).

3.5. A “person” is an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body. 33 U.S.C. § 1362(5).

3.6. CWA Section 502(7) defines “navigable waters” as “waters of the United States, including the territorial seas.” 33 U.S.C. § 1362(7). In turn, at the time of the violations, “waters of the United States” was defined to include, inter alia, all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide; tributaries to such waters; and wetlands adjacent to the foregoing waters. 40 C.F.R. § 122.2 (1993).

3.7. A “point source” is any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. 33 U.S.C. § 1362(14).

3.8. CWA Section 311 Discharge. The CWA further prohibits the discharge of oil into or upon the navigable waters of the United States and adjoining shorelines in such quantities

as the President determines may be harmful to the public health or welfare or the environment of the United States. 33 U.S.C. § 1321(b)(3).

3.9. The CWA defines "discharge" to include "any spilling, leaking, pumping, pouring, emitting, emptying or dumping" 33 U.S.C. § 1321(a)(2).

3.10. "Oil" means "oil of any kind or in any form." 33 U.S.C. § 1321(a).

3.11. CWA Section 502(7) defines "navigable waters" as "waters of the United States, including the territorial seas." 33 U.S.C. § 1362(7). In turn, at the time of the violations, "waters of the United States" was defined to include, inter alia, all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide; tributaries to such waters; and wetlands adjacent to the foregoing waters. 40 C.F.R. § 110.1 (1993).

3.12. Pursuant to 33 U.S.C. § 1321(b)(4), EPA has determined by regulation that the quantities of oil that may be harmful to the public health or welfare or the environment of the United States include discharges of oil that (1) violate applicable water quality standards; (2) cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines; or (3) cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines. 40 C.F.R. § 110.3.

3.13. An "onshore facility" is any facility (including, but not limited to, motor vehicles and rolling stock) of any kind in, on, or under any land within the United States other than submerged land. 33 U.S.C. § 1321(a).

General Allegations

3.14. Respondent is domestic business corporation licensed to conduct business in the State of Oregon, and a “person” under CWA Sections 311(a)(7) and 502(5), 33 U.S.C. §§ 1321(a)(7), 1362(5).

3.15. On February 16, 2020, a tanker truck (“Truck”) carrying approximately 10,700 gallons of gasoline and diesel fuel rolled over on Oregon Highway 22 near Milepost 63, immediately adjacent to the North Santiam River.

3.16. At all times relevant to this Consent Agreement, Respondent was the “owner or operator” of the Truck within the meaning of Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6).

3.17. The Truck released approximately 7,871 gallons of gasoline and diesel onto Oregon Highway 22 and the surrounding area. Most of the oil collected in an adjacent ditch on the westbound side of Highway 22, and a portion of the released oil flowed down the highway embankment and directly into the North Santiam River. The gasoline and diesel in the adjacent ditch infiltrated the soil and flowed under Highway 22 to the east bank of the North Santiam River, where it discharged into the River. Over time, gasoline and diesel fuel continued to seep from the riverbank into the North Santiam River.

3.18. The spill response team observed and documented a sheen on the surface of the North Santiam River. Water quality samples collected in the North Santiam River showed elevated levels of petroleum constituents in the River from February 17, 2020, when surface water monitoring began, through March 11, 2020.

3.19. On February 16, 2020, Respondent initiated spill response and cleanup activities, including placement of boom, soil excavation, pumping using vacuum trucks, and water quality monitoring.

3.20. The North Santiam River is a perennial tributary of the Willamette River, which

flows to the Columbia River. Thus, the North Santiam River is a “navigable water” as defined under Section 502(7) of the CWA, 33 U.S.C. § 1362(7) and is a “water of the United States” within the meaning of 40 C.F.R. §§ 122.2 and 110.1 (1993).

3.21. Respondent failed to notify the National Response Center of the discharge, as required by Section 311(b)(5) of the CWA, 33 U.S.C. § 1321(b)(5), and 40 C.F.R. § 110.6.

3.22. In an effort to prevent similar incidents from recurring and to resolve alleged violations of Oregon State law, Respondent and the Oregon Department of Environmental Quality (ODEQ) have entered into a Mutual Agreement and Final Order, which requires Respondent to pay a civil penalty of \$72,000 and develop and implement an inclement weather safety program.

Violations

Violation 1 – Unauthorized Discharge in Violation of Section 301(a) of the CWA, 33 U.S.C.

§ 1311(a)

3.23. Paragraphs 3.1 through 3.22 are realleged and incorporated herein by reference.

3.24. The gasoline and diesel fuel that was released from Respondent’s Truck are “pollutants” within the meaning of Section 502(6) of the CWA, 33 U.S.C § 1362(6).

3.25. Respondent’s Truck is a “point source” within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

3.26. The North Santiam River is a water of the United States within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

3.27. At least on February 16, 2020, Respondent added oil from the Truck into the North Santiam River.

3.28. Respondent’s actions constitute a “discharge of pollutants” within the meaning of Sections 301(a) and 502(12) of the CWA, 33 U.S.C. §§ 1311(a) and 1362(12).

3.29. The discharge was not authorized by a permit issued by EPA or the State of

Oregon pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

3.30. Therefore, Respondent violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a), by adding pollutants to navigable waters from a point source without a permit.

3.31. Violations of CWA Section 301(a) are enforceable under Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

Violation 2 - Unauthorized Discharge of Oil in Violation of Section 311(b)(3) of the CWA,

33 U.S.C. § 1321(b)(3)

3.32. The allegations in Paragraphs 3.1 through 3.22 are realleged and incorporated herein by reference.

3.33. At all times relevant to this Consent Agreement, Respondent's Truck was an "onshore" facility within the meaning of Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10).

3.34. At all times relevant to this Consent Agreement, Respondent was the "owner or operator" of the Truck within the meaning of Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6).

3.35. At least on February 16, 2020, Respondent discharged oil from the Truck into the North Santiam River.

3.36. Respondent's actions constituted a discharge of oil into or upon navigable waters and adjoining shorelines within the meaning of Sections 311(a)(2) and (b)(3) of the CWA, 33 U.S.C. §§ 1321(a)(2) and (b)(3).

3.37. The North Santiam River is a water of the United States within the meaning of Sections 311(b)(3) and 502(7) of the CWA, 33 U.S.C. §§ 1321(b)(3) and 1362(7).

3.38. Gasoline and diesel fuel are "oil" within the meaning of Section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1).

3.39. The discharge resulted in the presence of oil in waters of the United States and

adjoining shorelines in sufficient quantities to cause a sheen, sludge, emulsion or violation of water quality standards. The discharge of oil was in a quantity that may be harmful, within the meaning of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3) and 40 C.F.R. § 110.3.

3.40. Therefore, Respondent violated Section 311(b)(3) of the CWA by discharging oil into navigable waters and adjoining shorelines in harmful quantities.

3.41. Violations of CWA Section 311(b)(3) are enforceable under Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6).

IV. TERMS OF SETTLEMENT

4.1. Respondent admits the jurisdictional allegations of this Consent Agreement.

4.2. Respondent neither admits nor denies the specific factual allegations contained in this Consent Agreement.

4.3. As required by CWA Section 311(b)(8), 33 U.S.C. § 1321(b)(8), EPA has taken into account the seriousness of the alleged violations; Respondent's economic benefit of noncompliance; 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. After considering all of these factors, including Respondent's agreement to pay a \$72,000 penalty to the ODEQ for violations of state law arising from the same incident, EPA has determined that an appropriate penalty to settle this action is \$135,000.

4.4. Respondent consents to the assessment of the civil penalty set forth in Paragraph 4.3 and agrees to pay the total civil penalty within 30 days of the effective date of the Final Order.

4.5. Payment under this Consent Agreement and the Final Order may be paid by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are

available at: <http://www2.epa.gov/financial/makepayment>. Payments made by a cashier's check or certified check must be payable to the order of "Treasurer, United States of America" and delivered to the following address:

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

Respondent must note on the check the title and docket number of this action and "Oil Spill Liability Trust Fund - 311."

4.6. Respondent must serve photocopies of the check, or proof of other payment method described in Paragraph 4.5, on the Regional Hearing Clerk and EPA Region 10

Compliance Officer at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, Mail Stop 11-C07
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101
R10_RHC@epa.gov

Rick Cool
U.S. Environmental Protection Agency
Region 10, Mail Stop 20-C04
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101
Cool.Richard@epa.gov

4.7. If Respondent fails to pay the penalty assessed by this Consent Agreement and the Final Order in full by its due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. Such failure may also subject Respondent to a civil action to collect the assessed penalty under the CWA, together with interest, fees, costs, and additional penalties described below. In any collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

4.7.1. Interest. Pursuant to CWA Section 311(b)(6)(H), 33 U.S.C.

§ 1321(b)(6)(H), any unpaid portion of the assessed penalty shall bear interest at a rate

established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the

effective date of the Final Order provided, however, that no interest shall be payable on any portion of the assessed penalty that is paid within 30 days of the effective date of the Final Order.

4.7.2. Attorneys Fees, Collection Costs, Nonpayment Penalty. Pursuant to CWA Section 311(b)(6)(H) of the CWA, 33 U.S.C. § 1321(b)(6)(H), if Respondent fails to pay on a timely basis the penalty set forth in Paragraph 4.3, 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 20% of the aggregate amount of Respondent's penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.

4.8. The penalty described in Paragraph 4.3, including any additional expenses incurred under Paragraph 4.7 above, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.9. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this Consent Agreement and to bind Respondent to this document.

4.10. The undersigned representative of Respondent also certifies that, as of the date of Respondent's signature of this Consent Agreement, Respondent has corrected the violation(s) alleged in Part III above.

4.11. Except as described in Subparagraph 4.7.2, above, each party shall bear its own fees and costs in bringing or defending this action.

4.12. For the purposes of this proceeding, Respondent expressly waives any affirmative defenses and the right to contest the allegations contained in the Consent Agreement and to appeal the Final Order.


4.13. The provisions of this Consent Agreement and the Final Order shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.14. The above provisions are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

2/7/2022

FOR RESPONDENT:

DocuSigned by:

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JAMES PLISKA, President
Space Age Fuel, Inc.

DATED:

FOR COMPLAINANT:

EDWARD J. KOWALSKI
Director
Enforcement and Compliance Assurance Division
EPA Region 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

SPACE AGE FUEL, INC.,

Clackamas, Oregon,

Respondent.

DOCKET NO. CWA-10-2022-0034

FINAL ORDER

Proceedings Under Section 311(b)(6) of the
Clean Water Act, 33 U.S.C. § 1321(b)(6)

1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of the U.S. Environmental Protection Agency (EPA) Region 10, who has in turn delegated this authority to the Regional Judicial Officer in EPA Region 10.

2. 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.

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

4. This Final Order shall become effective upon filing.

SO ORDERED this _____ day of _____, 2022.

RICHARD MEDNICK
Regional Judicial Officer
EPA Region 10