



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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

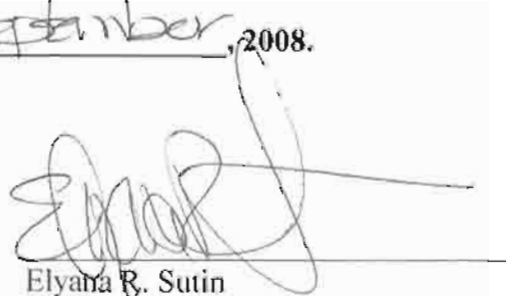
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EPA REGION 8
HEARING CLERK

DOCKET NO.: CWA-08-2008-0023

IN THE MATTER OF:)	
)	
MACHII-ROSS PETROLEUM COMPANY)	FINAL ORDER
(BERGER TANK BATTERY))	
)	
RESPONDENT)	

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 Respondent is hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondent of this Consent Agreement and Final Order.

SO ORDERED THIS 30th DAY OF September, 2008.


Elyana R. Sutin
Regional Judicial Officer

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

Docket No.: CWA-08-2008-0023

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IN THE MATTER OF)
)
Machii-Ross Petroleum Company)
2901 28th Street, Ste. 205)
Santa Monica, California 90405-2972)
)
)
(Berger Tank Battery)
SE ¼, NE ¼, Section 23,)
Township 2 N, Range 68 W of the)
6th Principal Meridian, Weld County,)
Firestone, Colorado))
)

Respondent.)

**COMBINED COMPLAINT AND
CONSENT AGREEMENT**

PRELIMINARY MATTERS

1. This combined complaint and consent agreement (CCCA) is entered into by Machii-Ross Petroleum Company (Respondent) and the United States Environmental Protection Agency (EPA) to address alleged violations of sections 311(b)(3) and (j)(1)(C) of the Clean Water Act, as amended by the Oil Pollution Act of 1990 (the Act), 33 U.S.C. §§ 1321(b)(3) and (j)(1)(C), and the implementing regulations at 40 C.F.R. part 112.
2. The undersigned EPA Region 8 official has been properly delegated the authority to enter into this CCCA under the authority vested in the Administrator of EPA by section 311(b)(6)(B)(ii) of the Act, 33 U.S.C. § 1321(b)(6)(B)(ii).
3. EPA is authorized to bring an action under section 311(b)(6)(B)(ii) of the Act, 33 U.S.C. § 1321(b)(6)(B)(ii), for civil administrative penalties against a Respondent who EPA alleges has violated, or is in violation of, a requirement or prohibition of the Act or its implementing regulations.

4. This proceeding is governed by the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules) set forth at 40 C.F.R. part 22.

5. This CCCA is entered into by EPA and Respondent for the purpose of simultaneously commencing and concluding this matter, as authorized by 40 C.F.R. § 22.13(b), and executed pursuant to 40 C.F.R. § 22.18(b)(2) and (3) of the Consolidated Rules.

6. Respondent admits the jurisdictional allegations in this CCCA and neither admits nor denies the specific factual allegations contained herein. Respondent does not admit and specifically retains the right to controvert any of the factual or legal statements or determinations made herein relative to the jurisdictional allegations in any judicial or administrative proceeding except in an action to enforce this CCCA and the Final Order.

7. Respondent waives its right to a hearing before any tribunal, to contest any issue of law or fact set forth in this CCCA.

8. This CCCA, upon incorporation into a final order, applies to and is binding upon EPA and upon Respondent, and Respondent's officers, directors, employees, agents, successors and assigns. 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 CCCA.

9. This CCCA contains all terms of the settlement agreed to by the parties.

ALLEGED VIOLATIONS

10. Respondent Machii-Ross Petroleum Company is a California partnership as of December 28, 1970.

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/or operates the Berger Tank Battery facility (Facility) located in the SE ¼, NE ¼, Section 23, Township 2 N, Range 68 W of the 6th Principal Meridian, Weld County, Firestone, Colorado.
13. The Facility includes, but is not limited to, two 300 barrel (25,200 gallons) above-ground storage tanks containing crude oil; one partially buried 100 barrel (4,200 gallons) tank containing produced water; one partially buried 30 barrel (1,250 gallons) tank containing produced water (not in use); one 5 barrel (210 gallons) treater containing crude oil and products; one 45 barrel (1,900 gallon) heater treater containing crude oil; and one 9 barrel (370 gallons) separator containing crude oil. The total oil storage capacity at the Facility is approximately 33,130 gallons.
14. Crude oil and produced water are oil within the meaning of “oil” as defined at section 311(a)(1) of the Act, 33 U.S.C. § 1321(a)(1).
15. Respondent is an “owner and/or operator” of an “onshore facility” within the meaning of sections 311(a)(6) and (10) of the Act, 33 U.S.C. §§ 1321(a)(6) and (10).
16. The Facility is a “non-transportation related” onshore facility within the meaning of 40 C.F.R. § 112.2.
17. At the Facility, Respondent stores, transfers, distributes, uses or consumes crude oil and produced water, which are “oils” as defined at section 311(a)(1) of the Act, 33 U.S.C. § 1321(a)(1).
18. The Facility is subject to the oil pollution prevention requirements of 40 C.F.R. part 112, pursuant to section 311(j) of the Act, 33 U.S.C. § 1321(j), and its implementing regulations.

19. The Facility is a facility, which due to its location, could reasonably be expected to discharge oil to a navigable water of the United States (as defined by section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 110.1) or its adjoining shoreline and may either (1) violate applicable water quality standards or (2) cause a film or sheen or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

20. Section 311(j)(1)(C) of the Act, 33 U.S.C. § 1321(j)(1)(C), provides that the President shall 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"

21. 40 C.F.R. § 112.3 requires that owners or operators of onshore facilities prepare and implement a Spill Prevention, Control, and Countermeasure (SPCC) plan in writing and in accordance with applicable sections of 40 C.F.R. part 112, including, but not limited to, sections 112.7 and 112.9.

22. Section 311(b)(6)(A) of the Act, 33 U.S.C. § 1321(b)(6)(A), states in pertinent part that any owner, operator, or person in charge of any vessel, onshore facility or offshore facility (ii) who fails or refuses to comply with any regulation issued under subsection (j) of this section to which that owner, operator, or person in charge is subject, may be assessed a class I or class II civil penalty by ... the Administrator.

23. A discharge from the Facility could migrate to an unnamed perennial stream. The unnamed stream flows to the St. Vrain River.

24. The unnamed stream and the St. Vrain River are “navigable waters” and “waters of the United States” within the meaning of section 502(7) of the Act, 33 U.S.C. § 1362(7) and 40 C.F.R. § 110.1.

25. On or about January 7, 2007, approximately 70 barrels (2,940 gallons) of crude oil discharged from the Facility into the unnamed stream and the St. Vrain River.

26. On May 7, 2007, EPA issued Respondent a request for information pursuant to section 308 of the Act, 33 U.S.C. § 1318, to investigate the crude oil release and the status of the Facility’s compliance with the oil pollution prevention regulations set forth at 40 C.F.R. part 112.

27. On or about June 18, 2007, the Respondent submitted a response to EPA’s information request accompanied by an SPCC Plan for the Facility dated June 18, 2007.

28. Respondent’s response to EPA’s information request indicated the January 7, 2007 spill reached “navigable waters” or “waters of the United States” within the meaning of section 502(7) of the Act, 33 U.S.C. § 1362(7) and 40 C.F.R. § 110.1.

COUNT I

29. Section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3), provides that “the discharge of oil or hazardous substances (i) into or upon the navigable waters of the United States...is prohibited.”

30. EPA alleges that Respondent’s release of approximately 70 barrels of oil on January 7, 2007 into navigable waters of the United States constitutes one violation of section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3).

COUNT II

31. EPA reviewed the June 18, 2007 SPCC plan and determined it to be inadequate as follows:

- a. Inadequate discharge prediction in accordance with 40 C.F.R. § 121.7(b);
- b. Inadequate secondary containment for loading/unloading in accordance with 40 C.F.R. § 112.7(c);
- c. For oil production facility bulk storage containers:
 - (1) Inadequate secondary containment in accordance with 40 C.F.R. § 112.9(c)(2);
 - (2) No undiked drainage confined in catchment basin or holding pond in accordance with 40 C.F.R. § 112.9(c)(2);
 - (3) No inspection for bulk container foundations and supports in accordance with 40 C.F.R. § 112.9(c)(3);
- d. No discussion or documentation of inspection of saltwater disposal facilities in accordance with 40 C.F.R. § 112.9(d)(2);
- e. Inadequate discussion of flowline maintenance to prevent discharges in accordance with 40 C.F.R. § 112.9(d)(3);
- f. No discussion of positioning equipment to prevent discharges in accordance with 40 C.F.R. § 112.10(b);
- g. No discussion of catchment basins or diversion structures in accordance with 40 C.F.R. § 112.10(c); and
- h. No discussion of installing a blowout prevention assembly and well control system installed in accordance with 40 C.F.R. § 112.10(d).

32. EPA alleges that the Respondent failed to prepare and implement an SPCC plan for the Facility in accordance with the regulations at 40 C.F.R. § 112.7 and 112.9 as required by

40 C.F.R. § 112.3 from January 7, 2007 through and including January 10, 2008, a duration of approximately twelve (12) months, thereby violating 40 C.F.R. § 112.3 and section 311(j)(1)(C) of the Act, 33 U.S.C. § 1321(j)(1)(C).

33. EPA notes the following inadequacies in Respondent's June 18, 2007 SPCC plan that, if not implemented on or before July 1, 2009, will violate 40 C.F.R. § 112.3 and sections 311(b)(6)(A), 33 U.S.C. §§ 1321(b)(6)(A) and 311(j)(1)(C), 33 U.S.C. § 1321(j)(1)(C):

- a. Inadequate facility diagram in accordance with 40 C.F.R. § 112.7(a)(3);
- b. Inadequate discharge notification forms in accordance with 40 C.F.R. § 112.7(a)(4); and
- c. Inadequate discussion of conformance/stricter requirements in accordance with 40 C.F.R. § 112.7(j).

CIVIL PENALTY

34. Respondent, by signing this CCCA, herein certifies to EPA that as of the date of this CCCA, it is in compliance with all relevant requirements of 40 C.F.R. § 112.3 at its Berger Tank Battery.

35. Based on the foregoing allegations, Respondent's agreement to perform a Supplemental Environmental Project (SEP), and pursuant to the authority of section 311(b)(6)(B)(i) of the Act, 33 U.S.C. § 1321(b)(6)(B)(i), and 40 C.F.R. § 19.4, EPA proposes a penalty in the amount of Nine Thousand Seven Hundred Sixty Three Dollars (\$9,763) after considering the Respondent's willingness to perform the SEP described below, and the applicable statutory penalty factors in section 311(b)(8) of the Act, 33 U.S.C. § 1321(b)(8): the seriousness of the violation, 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.

36. Respondent consents and agrees to pay a civil penalty in the amount of Nine Thousand Seven Hundred Sixty Three Dollars (\$9,763) in the manner described below in this paragraph:

- a. Payment is due within thirty (30) calendar days from the date of the final order issued by the Regional Judicial Officer that adopts this CCCA. If the due date falls on a weekend or legal federal holiday, the due date is the next business day. The date the payment is made is considered to be the date of the deposit ticket (standard form 215) issued by the U.S. Bank. Payments must be received by 11:00 a.m. Eastern Standard Time to be considered as received that day.
- b. The payment shall be made by remitting a cashier's or certified check, **and shall reference the name and docket number of this case and the "Oil Spill Liability Trust Fund – 311,"** for Nine Thousand Seven Hundred Sixty Three Dollars (\$9,763) payable to **"Environmental Protection Agency."** **The penalty will be paid in accordance with the attached sheet entitled "Collection Information."** (Attachment 1)

A copy of the check shall be sent simultaneously to:

Donna K. Inman
Technical Enforcement Program (8ENF-UFO)
U.S. EPA Region 8
1595 Wynkoop St.
Denver, CO 80202-1129

and

Tina Artemis
Regional Hearing Clerk (8RC)
U.S. EPA Region 8
1595 Wynkoop St.
Denver, CO 80202-1129

- c. In the event payment is not received by the specified due date, interest accrues from the date of the final order, not the due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until payment in full is received (*i.e.*, on the 1st late day, thirty (30) days of interest accrues).
- d. In addition, a handling charge of fifteen dollars (\$15) shall be assessed on the 31st day from the date of the final order, and each subsequent thirty day period that the debt, or any portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if payment is not

received within 90 days of the due date (*i.e.*, the 121st day from the date the final order is signed). Payments are first applied to handling charges, 6% penalty interest, late interest and any balance is then applied to the outstanding principal amount.

- e. Respondent agrees that the penalty shall never be claimed as a federal or other tax deduction or credit.

SUPPLEMENTAL ENVIRONMENTAL PROJECT

37. The parties agree that Respondent's penalty should be mitigated by a SEP which is defined in Attachment 2 to this CCCA.

38. Within thirty (30) days of receipt of a signed final order in this matter, the Respondent agrees to complete the SEP as set forth in Attachment 2 to this CCCA. Respondent agrees to expend a total of not less than Twenty-Nine Thousand Two Hundred Ninety Dollars (\$29,290) on the SEP, in accordance with the specifications set forth in Attachment 2.

39. Respondent hereby certifies that, as of the date of this Consent Agreement, Respondent is not required to perform or develop the SEP by any federal, state or local law or regulation; nor is Respondent required to perform or develop the SEP by any other agreement, grant or as injunctive relief in this or any other case. Respondent further certifies that it has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP.

40. SEP Completion Report: Respondent shall submit a SEP Completion Report to EPA by mailing it to Donna Inman at the address listed in paragraph 36.b. within thirty (30) days of receipt of a signed final order in this matter. The SEP Completion Report shall contain the following information:

- a. A detailed description of the SEP as implemented;
- b. A description of any operating problems encountered and the solutions thereto;

- c. Itemized costs and documentation of the expenditures made in connection with the SEP;
- d. Certification that the SEP has been fully implemented pursuant to the provisions of this CCCA and Order; and
- e. A description of the environmental and public health benefits resulting from implementation of the SEP.

41. In the event that Respondent fails to comply with any of the terms or provisions of this CCCA relating to the performance of the SEP described in paragraph 38. and/or to the extent that the actual expenditures for the SEP do not equal or exceed the cost of the SEP described in paragraph 38., Respondent shall be liable for stipulated penalties according to the provisions set forth below:

- a. For failure to spend \$29,290, Respondent shall pay the difference between \$29,290 and the amount actually spent by Respondent.

- b. For failure to submit the SEP Completion Report or for failure to include the requisite documentation in the SEP Completion Report required by paragraph 40. above, stipulated penalties shall accrue in the amount of \$100 for each day after the thirtieth (30th) day following the deadline described in paragraph 40. above until a fully accurate SEP Completion Report is submitted. Respondent shall pay stipulated penalties as set forth in paragraph 43. below.

42. The determinations of whether the SEP has been satisfactorily completed and whether the Respondent has made a good faith, timely effort to implement the SEP shall be in the sole discretion of EPA.

43. Respondent shall pay stipulated penalties as set forth in this CCCA not more than fifteen (15) days after receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions of paragraph 36. above. Interest and late charges shall be paid as stated in paragraph 36.

44. Any public statement, oral or written, in print, film, or other media, made by Respondent making reference to the SEP shall include the following language, "This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for alleged violations of the Clean Water Act."

45. For Federal Income Tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

TERMS AND CONDITIONS

46. Nothing in this CCCA shall relieve Respondent of the duty to comply with the Act and its implementing regulations.

47. This CCCA shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law.

48. Failure by Respondent to comply with any of the terms of this CCCA shall constitute a breach of the CCCA and may result in referral of the matter to the Department of Justice for enforcement of this CCCA and for such other relief as may be appropriate.

49. Nothing in this CCCA shall be construed as a waiver by the EPA of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondent's failure to perform pursuant to the terms of this CCCA.

50. Each undersigned representative of the parties to this CCCA certifies that he or she is fully authorized by the party represented to bind the parties to the terms and conditions of this CCCA and to execute and legally bind that party to this CCCA.

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

52. This CCCA, upon incorporation into a final order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete, full and final settlement of the violations alleged in this CCCA.

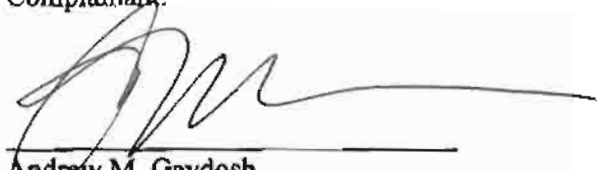
53. Each party shall bear its own costs and attorneys fees in connection with all issues associated with this CCCA.

In the Matter of Machii-Ross Petroleum Company
Berger Tank Battery
Docket No. CWA-08-2008-0023

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

Date:

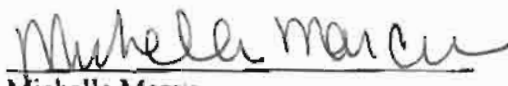
August 28/2008



Andrew M. Gaydosh
Assistant Regional Administrator
Office of Enforcement Compliance and
Environmental Justice

Date:

August 27, 2008



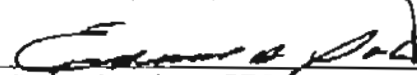
Michelle Marcu
Enforcement Attorney
Legal Enforcement Program

**MACHII-ROSS PETROLEUM COMPANY
Respondent.**

Date:

Aug 19, 2008

By: TSK Enterprises (U.S.A.), Inc., Co-Partner

By: 
Title: Edward H. Sato, CEO

By: KAR Petroleum Co., a California limited
partnership, Co-Partner

By: Pelletier Management Ltd., LLC, a California
limited liability company, the General Partner of KAR
Petroleum Company

Date:

Aug 19 2008

By: 
Title: C. Neil Rehkop, CEO



CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **COMBINED COMPLAINT AND CONSENT AGREEMENT/FINAL ORDER, DOCKET NO.: CWA-08-2008-0023** was filed with the Regional Hearing Clerk on September 30, 2008.

Further, the undersigned certifies that a true and correct copy of the document was delivered to Michelle Marcu, Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned document were placed in the United States mail certified/return receipt requested on September 30, 2008, to:

Machii-Ross Petroleum Company
2901 28th Street, Ste. 205
Santa Monica, CA 90405-2972

E-mailed to:

Michelle Angel
U. S. Environmental Protection Agency
Cincinnati Finance Center
26 W. Martin Luther King Drive (MSD-0002)
Cincinnati, OH 45268

September 30, 2008


Tina Artemis
Paralegal/Regional Hearing Clerk



ATTACHMENT 1

COLLECTION INFORMATION

Wire Transfers

SWIFT Address MELNUS3P - (SWIFT address is only needed on international transfers)

Mellon Bank
ABA 043000261
Account 9109125
22 Morrow Drive
Pittsburgh PA 15235

Contact - Patricia McKaveney at 412-234-5805

CHECK PAYMENTS

US checks by regular US postal service mail

U.S. Environmental Protection Agency
P.O. Box 371099M
Pittsburgh, PA 15251

Contact - Patricia McKaveney at 412-234-5805

For FedEx and other non-US Postal Service express mail the correct address is:

Mellon Client Service Center
ATTN: Shift Supervisor
Lockbox 371099M Account 9109125
500 Ross Street
Pittsburgh, PA 15262-0001

HOGAN & HARTSON

Hogan & Hartson LLP
One Tabor Center, Suite 1500
1200 Seventeenth Street
Denver, CO 80202
+1.303.899.7300 Tel
+1.303.899.7333 Fax

www.hhlaw.com

August 6, 2008

Jennifer Biever
303-454-2410
jlbiever@hhlaw.com

BY ELECTRONIC MAIL

Ms. Michelle Marcu
Enforcement Attorney
Legal Enforcement Program
United States Environmental Protection Agency
1596 Wynkoop St., Region 8
Denver, CO 80202-1129

Re: Machii-Ross Petroleum Co.

Dear Ms. Marcu:

Pursuant to conversations with you and/or Donna Inman on December 6, 2007, March 19, 2008, June 12, 2008, July 24, 2008, and August 4, 2008, Machii-Ross Petroleum Co. ("Machii-Ross") presents the following revised Supplemental Environmental Project ("SEP") proposal for your consideration in the Environmental Protection Agency's ("EPA") enforcement action regarding the Rocky Mountain Fuel Tank Battery and the Berger Tank Battery operated by Machii-Ross. Machii-Ross agrees to move forward with settlement on the above-described enforcement action and respectfully requests that you consider this SEP proposal as part of any settlement agreement between Machii-Ross and EPA.

Machii-Ross proposes to assist the Frederick-Firestone Fire Protection District and the Fort Lupton Fire Department in purchasing equipment to enhance response to oil spill incidents. Machii-Ross proposes to purchase the following equipment for the Frederick-Firestone Fire Protection District (see Attachment A – Letter from Division Chief Puccetti of Frederick-Firestone Fire Protection District) at the prices estimated and described below:

1. 24' Haulmark support trailer, RT85X24WT3	\$ 9,330.00
2. Trailer stripping/paint	\$ 1,000.00
3. Trailer electrical wiring for interior lighting and power strips	\$ 1,000.00
4. 3.5KW Gasoline Powered Generator	\$ 1,000.00
5. Interior shelving	\$ 1,000.00
6. 20-5" x 10' Oil Absorbent Booms, \$120.00 each	\$ 2,400.00
7. Oil Absorbent, 15" x 15" absorbent pads, \$100.00 per box x 10 boxes	\$ 1,000.00
8. Level "C" protective clothing, 16 boxes x \$98.00	\$ 1,568.00

9. Protective boots, \$82.50 per pair x 16	\$ 1,320.00
10. Tarps, 20' x 30' disposable, \$70.00 each x 10	\$ 700.00
11. 55 gallon trash bags, 6 mil, \$75.00 per roll x 4	\$ 300.00
12. Portable lights, \$20.00 each x 5	\$ 100.00
13. 100' heavy duty extension cords, \$50.00 each x 2	\$ 100.00
	<u>\$ 100.00</u>
	Total \$20,818.00

The Fort Lupton Fire Department provided Machii-Ross with a list of the following equipment that it needs to enhance response to oil spill incidents (see Attachment B – Email and Equipment List from Fire Chief Phil Tiffany of the Fort Lupton Fire Department). Machii-Ross proposes to purchase up to \$15,326.75 worth of the equipment described on the equipment list below.

1. Booms, Absorbent (3M TYPE 270, 4 per bag, 5 cases)	\$ 843.55
2. Paratech Leak sealing plugs (1 kit)	\$ 433.55
3. Absorbents Floor Dri (9 x 22lb)	\$ 200.00
4. Neutralizers, Lime (2 x 50)	\$ 200.00
5. Neutralizers, Soda Ash (2 x 50)	\$ 200.00
6. Respirators (3M 7500 Series (20) 3 sm, 5 md, and 12 lg)	\$ 500.00
7. Barricade tape (5 rolls)	\$ 150.00
8. Gas detector (our spec)	\$ 1,500.00
9. Absorbent pads (5 cases 16" x 20")	\$ 500.00
10. Absorbent pads (5 cases 12" x 12")	\$ 215.00
11. SPC SOCS (2 cases all WIK 3" x 8")	\$ 110.00
12. Overpak allwik (2 – 95 gallon)	\$ 1,377.22
13. Chemical tape for sleeves and pants (3 rolls)	\$ 100.00
14. Plastic shovels (5)	\$ 100.00
15. Drum wrenches (2)	\$ 59.00
16. Drum pump (1)	\$ 518.00
17. Ground clamps and bonding supply	\$ 1,080.00
18. ALS Plier Clamps (10)	\$ 199.00
19. EP3 C Clamp (5)	\$ 3,005.00
20. Safety glasses (100 pairs)	\$ 400.00
21. Ear plugs (200 pairs)	\$ 50.00
22. Drum cradle	\$ 260.00
23. Oil absorbent socks (4 cases)	\$ 256.00
24. Chemical absorbent (4 cases)	\$ 260.00
25. Laptop computer for hazardous material loads	\$ 2,500.00
26. High tension hack saw (2)	\$ 50.00
27. Saw ALS electric (2)	\$ 250.00
28. Little Giant ladder	\$ 600.00
29. Goggles (100 pairs)	\$ 500.00
	<u>\$ 500.00</u>
	Total \$16,416.32
	Total To Be Paid By Machii-Ross \$15,326.75

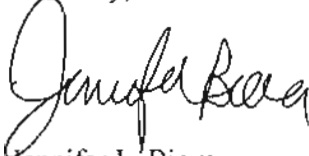
Ms. Michelle Marcu
Enforcement Attorney
Legal Enforcement Program
July 7, 2008
Page 3

In total, Machii-Ross proposes to provide a total of \$36,144.75 to the Fort Lupton Fire Department and the Frederick-Firestone Fire Protection District to enhance their spill response programs. Machii-Ross understands, as discussed in our telephone conference with you on March 19, 2008, that the penalty proposed by EPA may be reduced by no more than 75% through completion of an appropriate SEP. (In other words, the final settlement penalty must equal at least 25% of the penalty proposed by EPA.) However, as agreed to in our March 19, 2008, telephone conversation, Machii-Ross, as a small business, can receive 100% credit for every dollar spent on a SEP project to achieve that 75% reduction of the proposed penalty. Accordingly, with respect to the Berger Tank Battery, Machii-Ross is eligible to receive SEP credit for up to \$29,289.75 of the \$39,053 proposed penalty. Machii-Ross desires that the \$20,818 to be provided to the Frederick-Firestone Fire Protection District be applied as SEP credit at the Berger Tank Battery along with \$8,471.75 of the \$15,326.75 to be provided to the Fort Lupton Fire Department. Accordingly, at the Berger Tank Battery, Machii-Ross proposes to receive SEP credit in the total amount of \$29,289.75. With respect to the Rocky Mountain Fuel Tank Battery, Machii-Ross is eligible to receive SEP credit for up to \$6,855 of the \$9,140 proposed penalty. Machii-Ross desires that the remaining \$6,855 of the \$15,326.75 to be provided to the Fort Lupton Fire Department, be applied as SEP credit at the Rocky Mountain Fuel Tank Battery.

Machii-Ross can provide the funds immediately following finalization and public comment on the settlement agreement. The equipment provision to the Frederick-Firestone Fire Protection District and Fort Lupton Fire Department is an environmentally beneficial project that Machii-Ross is not otherwise legally required to perform. The equipment protects and reduces risks to the public health and environment by enhancing the ability of those departments to contain and cleanup future oil spills in and around the area of Machii-Ross's operations.

Machii-Ross appreciates the opportunity to provide the above-described SEP to EPA and respectfully requests that EPA include the SEP proposal as part of its proposed settlement. Please feel free to contact me with any further questions.

Sincerely,



Jennifer L. Bieber

cc: Howard L. Boigon, Esq.
Machii-Ross Petroleum Co.

ATTACHMENT A

**FREDERICK-FIRESTONE
FIRE PROTECTION DISTRICT**



Fire Prevention Division

Office: (303) 833-2742

Fax: (303) 833-3736

E-Mail: dpuccetti@fffd.us

June 25, 2008

Mr. Andy Peterson
Peterson Energy Management, Inc.
Office: 1-970-669-7411
Fax: 1-970-669-4077
Cell: 1-970-203-4263

Mr. Peterson,

Per our telephone conversation on June 24, 2008, here is a list of equipment that the Frederick-Firestone Fire Protection District needs to expand our response to oil spill incidents.

1. 24' Haulmark support trailer, RT85X24WT3	\$9,330.00
2. Trailer Stripping/Paint	\$1000.00
3. Trailer Electrical wiring for interior lighting and power strips	\$1000.00
4. 3.5KW Gasoline Powered Generator	\$1000.00
5. Interior shelving	\$1000.00
6. 20-5" x 10' Oil Absorbent Booms, \$120.00 each	\$2400.00
7. Oil Absorbent, 15" x 15" absorbent pads, \$100.00 per box x 10 boxes	\$1000.00
8. Level "C" protective clothing, 16 boxes x \$98.00	\$1568.00
9. Protective Boots, \$82.50 per pair x 16	\$1320.00
10. Tarps, 20' x 30' disposable, \$70.00 each x 10	\$700.00
11. 55 Gallon trash bags, 6 mil, \$75.00 per roll x 4	\$300.00
12. Portable lights, \$20.00 each x 5	\$100.00
13. 100' heavy duty extension cords \$50.00 each x 2	\$100.00
Total	\$20,818.00

Please contact either Fire Chief Ted Poszywak or myself if you have additional questions.

Thank you,

David P. Puccetti
Division Chief/Fire Marshal

ATTACHMENT B

----- Original Message -----

From: Phil Tiffany

To: Andy Peterson

Sent: Friday, July 18, 2008 9:15 AM

Andy,

Here is a list that we have come up with.

Let me know if there are any concerns or changes that need to be considered.

Thanks again.

Phil Tiffany

Fire Chief

Ft. Lupton Fire Protection District

1121 Denver Avenue

Fort Lupton, CO 80621

303-857-4603 Office

303-857-6619 Fax

www.fortluptonfire.org

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Haz Mat Spill/Leak Containment Equipment

Booms, Absorbent (3M TYPE 270) (4 per bag) 5 Cases	843.55
Paratech Leak sealing plugs (1 kit)	433.55
Absorbents Floor Dri (9 X22 lb)	200
Neutralizers, Lime (2x50)	200
Neutralizers, Soda Ash (2x50)	200
Respirators, 3M 7500 Series (20) 3 sm, 5 md, and 12 lg	500
5 rolls Barricade tape	150
Gas Detector our spec	1500
5 cases 16"x20" absorbent pads	500
5 cases 12"x12" absorbent pads	215
2 cases All WIK 3"x8" SPC SOCS	110
2 - 95 gallon overpak allwik	1377.12
3 rolls Chemical tape for sleeves and pants	100
5 Plastic Shovels	100
2 drum wrenches	59
1 Drum pump	518
Ground clamps and bonding supply	1080
10 ALS Plier clamps	199
5 EP3 C Clamp	3005
100 pairs Safety glasses	400
200 pairs Ear Plugs	50

Drum Cradle	260
4 cases oil absorbent socks	256
4 cases Chemical absorbent	260
Lap Top computer for haz mat loads	2500
2 High Tension Hack Saw	50
2 Saw als electric	250
Little Giant ladder	600
100 pair Goggles	500
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