



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8
1595 WYNKOOP STREET
DENVER, CO 80202-1129
Phone 800-227-8917
http://www.epa.gov/region08

2010 SEP 28 AM 11:59

FILED
EPA REGION VIII
HEARING CLERK

DOCKET NO.: CWA-08-2010-0034

IN THE MATTER OF:

MICHAEL JOHNSON, INDIVIDUALLY
d/b/a JOHNSON MOTORS
1300 MT Highway 91 North
Dillon, MT 59725-9515

Respondent.

ORDER GRANTING FILING
OF FACSIMILE CONSENT
AGREEMENT AND
FINAL ORDER

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.

This court will accept the facsimile filing of the Consent Agreement in this matter at this time, however the Parties are to file the original Consent Agreement within seven days of issuance of this Order.

The Parties are hereby ORDERED to comply with all of the terms of this Order, effective immediately upon receipt by Parties of this Order.

SO ORDERED THIS 28th Day of September, 2010

Elyana R. Sutin
Regional Judicial Officer

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2010 SEP 28 PM 12:13

FILED
EPA REGION VIII
HEARING CLERK

IN THE MATTER OF)
)
Michael Johnson, Individually, and)
d/b/a Johnson Motors)
1300 MT Highway 91 North)
Dillon, MT 59725-9515)
Respondent.)

COMPLAINT AND CONSENT AGREEMENT

DOCKET NO. : CWA-08-2010-0034

Complainant, United States Environmental Protection Agency, Region 8 (EPA or Complainant), and Michael Johnson, Individually, and d/b/a Johnson Motors (Respondent) by their undersigned representatives, hereby consent and agree as follows:

A. PRELIMINARY MATTERS

1. This Complaint and Settlement Agreement (CASA) is issued to Respondent for violating sections 311(b)(3), 33 U.S.C. §1321(b)(3), 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) of the Clean Water Act (CWA) as amended by the Oil Pollution Act of 1990, and the implementing regulations at 40 C.F.R. part 112.
2. The Administrator has properly delegated this authority to the undersigned EPA officials.
3. This section authorizes EPA to bring an action under section 311(b)(6)(B)(i) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(i), for civil administrative penalties against Respondent who has violated, or is in violation of, a requirement or prohibition of the CWA 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 CASA is entered into by the parties 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 CASA and neither admits nor denies the specific factual allegations contained herein.

7. Respondent waives its rights to a hearing before any tribunal and to contest any issue of law or fact set forth in this CASA.

8. This CASA, upon incorporation into a final order, applies to and is binding upon Complainant and Respondent, and Respondent's officers, directors, employees, agents, successors and assigns. Any change in ownership 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.

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

B. ALLEGED VIOLATION

10. Respondent is a person within the meaning of Section 311(a)(7) of the Act, 33 U.S.C. § 1321(a)(7).

11. Respondent is the "owner and/or operator" of a vehicle classified as an "onshore facility" within the meaning of Sections 311(a)(6) and (a)(10) of the Act, 33 U.S.C. § 1321(a)(6) and (a)(10).

12. Section 311(b)(3) of the Act prohibits the discharge of oil into or upon the navigable waters of the United States or adjoining shorelines in such quantities that have been determined may be harmful to the public health or welfare or environment of the United States.

13. For purposes of Section 311(b)(3) and (b)(4) of the Act, 33 U.S.C. §1321(b)(3) and (b)(4), discharges of oil into or upon the navigable waters of the United States in such quantities that have been determined may be harmful to the public health or welfare or environment of the United States are defined in 40 C.F.R. §110.3 to include discharges of oil that (1) violate applicable water quality standards and/or (2) cause a film or a sheen upon or discoloration of the surface of the water or adjoining shorelines and/or cause a sludge or emulsion to be deposited beneath the surface of the water or upon the adjoining shorelines.

14. On September 16, 2007, Respondent discharged approximately five (5) to seven (7) gallons of diesel fuel, defined as "oil" in Section 311(a)(1) of the Act, 33 U.S.C. §1321(a)(1), and 40 C.F.R. §110.1, from its vehicle into the Blacktail Deer Creek and its adjoining shorelines.

15. The Blacktail Deer Creek is a water body subject to the jurisdiction of Section 311 of the Act as defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. §110.1.

16. Respondent's September 16, 2007 discharge of oil from its facility caused (1) a violation of applicable State water quality standards and (2) a sheen upon or discoloration of the surface of the Blacktail Deer Creek and a sludge or emulsion to be deposited beneath the surface of the Blacktail Deer Creek, and, therefore, was in a quantity that has been determined may be harmful under 40 C.F.R §110.3, in violation of Section 311(b)(3) of the Act.

C. CIVIL PENALTY

17. As alleged in the preceding Paragraph, and pursuant to Section 311(b)(6)(B)(i) of the Act and 40 C.F.R. § 19.4, the Respondent is liable for civil penalties of up to \$11,000 per violation,

up to a maximum of \$32,500¹.

18. Respondent, herein certifies to EPA that Respondent is in compliance with each of the relevant provisions of the CWA that formed the basis of the Complaint.

19. Based on the foregoing alleged violations 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, Complainant proposes the assessment of administrative penalties against the Respondent in the amount of five hundred dollars (\$500).

20. Complainant proposes this penalty amount after considering 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.

21. Respondent, by signing this CASA, consents to the issuance of a final order and consents for the purposes of settlement to the payment of the civil penalty in the amount of five hundred dollars (\$500).

22. **Payment is due within 30 calendar days from the date written on the Final Order**, issued by the Regional Judicial Officer. If the due date falls on a weekend or legal federal holiday, then the due date becomes the next business day. The date the payment is made

¹Pursuant to the amendments to 40 C.F.R. § 19.4, the regulations implementing the Debt Collection Improvement Act of 1996, the amount applies to violations occurring before January 12, 2009.

ABA = 051036706
Transaction Code 22 - checking
Environmental Protection Agency
Account 310006
CTX Format

ON LINE PAYMENT:

There is now an On Line Payment Option, available through the Department of Treasury. This payment option can be accessed from the information below:

WWW.PAY.GOV

Enter sfo 1.1 in the search field

Open form and complete required fields.

A copy of the check, or wire transfer, shall be sent simultaneously to:

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

and Tina Artemis
Regional Hearing Clerk
Office of Regional Counsel
1595 Wynkoop St.
Denver, CO 80202-1129

24. In addition, a handling charge of fifteen dollars (\$15) shall be assessed 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 consent order is signed). Payments are first applied to outstanding handling charges, 6% penalty interest, and late interest. The remainder is then applied to the outstanding principal amount.

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

26. Payment of the penalty in this manner does not relieve Respondent of its obligations to comply with the requirements of the statute and regulations. Payment of the penalty in this

manner shall constitute consent by Respondent to the assessment of the proposed penalty and a waiver of Respondent's right to a hearing on this matter.


D. TERMS AND CONDITIONS

27. Failure by Respondent to comply with any of the terms of this CASA shall constitute a breach of the CASA and may result in referral of the matter to the Department of Justice for enforcement of this agreement and for such other relief as may be appropriate.
28. Nothing in this CASA shall be construed as a waiver by the EPA or any other federal entity 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 CASA.
29. Each undersigned representative of the parties to this CASA certifies that he or she is fully authorized by the party represented to bind the parties to the terms and conditions of this CASA and to execute and legally bind that party to this CASA.
30. The parties agree to submit this CASA to the Regional Judicial Officer, with a request that it be incorporated into a final order.
31. This CASA, 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 CASA.
32. Each party shall bear its own costs and attorneys fees in connection with all issues associated with this CASA.

-8-

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8, Office of Enforcement, Compliance
and Environmental Justice, Complainant.**

Date: 9-22-10

By: 
Philip Stroebel, Acting Director
Technical Enforcement Program

Date: 9/23/2010

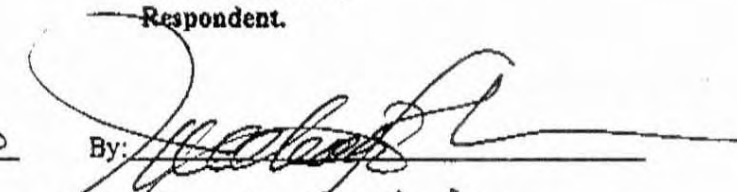
By: David Rochlin
David Rochlin, Supervisor
Legal Enforcement Program

Date: 9/23/10

By: Brenda L. Morris
Brenda L. Morris, Attorney
Legal Enforcement Program

**Michael Johnson,
Respondent.**

Date: 9-22-2010

By: 
Michael Johnson
Print Name

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **COMPLAINT, ORDER GRANTING FACSIMILE FILING OF CONSENT AGREEMENT AND FINAL ORDER** in the matter of **MICHAEL JOHNSON, INDIVIDUALLY, and d/b/a JOHNSON MOTORS; DOCKET NO.: CWA-08-2010-0034**, was filed with the Regional Hearing Clerk on September 28, 2010.


Further, the undersigned certifies that a true and correct copy of the documents were delivered to Brenda Morris, Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned documents were placed in the United States mail on September 28, 2010, to:

Michael Johnson, Individually
d/b/a Johnson Motors
1300 MT Highway 91 North
Dillon, MT 59725-9515

E-mailed to:

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

September 28, 2010


Tina Artemis
Paralegal/Regional Hearing Clerk