



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

1595 WYNKOOP STREET  
DENVER, CO 80202-1129

Phone 800-227-8917

<http://www.epa.gov/region08>

2011 SEP 14 AM 9:58

FILED  
EPA REGION VIII  
THE ATTORNEY GENERAL

DOCKET NO.: CWA-08-2011-0028

IN THE MATTER OF: )

K. P. KAUFFMAN COMPANY, INC. )

FINAL ORDER

Respondent )

Pursuant to 40 C.F.R. §22.13(b) and 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.

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 14th Day of September, 2011

Elyana R. Sutin  
Regional Judicial Officer

2011 SEP 14 AM 9:58

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

FILED  
EPA REGION VIII  
HEARING CLERK

DOCKET NO. : CWA-08-2011-0028

In the Matter of: )  
 )  
K.P. Kauffman Company, Inc., ) **EXPEDITED CONSENT AGREEMENT**  
 )  
Respondent. )

1. Pursuant to authority under 40 C.F.R. § 22.13(b), Complainant, the United States Environmental Protection Agency, Region 8 (EPA), and Respondent, K.P. Kauffman Company, Inc., by their undersigned representatives, hereby settle the civil cause of action arising out of a spill of oil that occurred on or about June 5, 2009, and violations of the Spill Prevention Control and Countermeasure (SPCC) Plan regulations, and agree as follows:

2. Section 311(b)(3) of the Clean Water Act (the Act), as amended, 33 U.S.C. 1321(b)(3), prohibits the discharge of oil into or upon the navigable waters and adjoining shorelines of the United States in quantities that have been determined may be harmful to the public health or welfare or environment of the United States. Discharges of oil in such harmful quantities include discharges of oil that (1) violate applicable water quality standards, or (2) cause a film or sheen upon 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. 40 C.F.R. § 110.3.

3. Section 311(j)(1)(C) of the Act, 33 U.S.C. 1321(j)(1)(C) requires the issuance of regulations establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil from onshore facilities, and to contain such discharges. Regulations issued pursuant to Section 311(j)(1)(C) are found at 40 C.F.R. Part 112 and include requirements for the preparation and implementation of a Spill Prevention, Control, and Countermeasure (SPCC) Plan. 40 C.F.R. § 112.3.
4. Pursuant to Section 311(b)(6) of the Act, 33 U.S.C. § 1321(b)(6), any owner, operator, or person in charge of any onshore facility from which oil is discharged in violation of Section 311(b)(3) or who fails or refuses to comply with any regulation issued under Section 311(j) may be assessed a class I or class II administrative civil penalty.
5. Respondent admits that the EPA has jurisdiction in this proceeding.
6. Respondent waives its right to a hearing before any civil tribunal, to contest any issue of law or fact set forth in this agreement.
7. The parties agree to submit this Consent Agreement to the Regional Judicial Officer, with a request that it be incorporated into a final order.
8. This agreement, upon incorporation into a final order, applies to and is binding upon the EPA and upon Respondent and Respondent's heirs, 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 agreement.
9. This Consent Agreement, upon incorporation into a final order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete and full civil settlement of the specific violations described in this agreement.

### Count I

10. Respondent owns and/or operates an onshore facility, "Facility 7," located at Section 28, Township 1N, Range 67W, in Weld County, Colorado. Facility 7 is a central tank battery for the storage of oil and receives oil from nearby wellheads through a "flowline," or pipeline.

11. On or about June 5, 2009, the flowline leaked, discharging approximately 24 gallons of crude oil and 36 gallons of oil-containing "produced water" into or upon Big Dry Creek and/or its adjoining shorelines.

12. The discharge from Respondent's flowline caused a sheen upon, or discoloration of, or caused a sludge or emulsion to be deposited on the surface of the Big Dry Creek and/or its adjoining shoreline.

13. Big Dry Creek is a tributary of the South Platte River, a "traditionally navigable water," and is a "water of the U.S." subject to jurisdiction under the Act.

14. Respondent's discharge constitutes a violation of Section 311(b)(3) of the Act.

### Count II

15. Respondent owns an onshore facility, "Facility 8," located at Section 1, Township 1N, Range 67W, in Weld County, Colorado. Facility 8 is a central tank battery for the storage of oil.

16. Respondent admits that Facility 7 and Facility 8 are subject to the SPCC regulations. Respondent prepared an SPCC plan dated March 2, 2011, covering its facilities including Facility 7 and Facility 8.

17. The EPA has reviewed the SPCC plan and determined that the plan does not meet the requirements set forth under 40 C.F.R. § 112. The deficiencies in the SPCC Plan are set forth in the attached list, Attachment I, incorporated herein by reference.

18. Respondent failed to prepare and implement an adequate, written SPCC Plan for its Facility 7 and Facility 8 in accordance with 40 C.F.R. § 112. Respondent's failure to prepare and implement an adequate, written SPCC Plan for its Facility 7 and Facility 8 constitutes a violation of Section 311(j)(1)(C) of the Act.

#### Final Settlement

19. Respondent agrees to correct the cited deficiencies listed in Attachment 1 within thirty (30) days of the effective date of a final order incorporating the terms of this agreement unless an extension for achieving compliance is granted by the EPA at its discretion.

20. Respondent agrees to submit a revised copy of the SPCC Plan for its Facility 7 and Facility 8 to the EPA for its review and approval within forty-five (45) days of the effective date of a final order unless an extension is granted by the EPA at its discretion.

21. Respondent agrees to the assessment of a total civil penalty of \$4,075 (the sum of \$500 for the discharge of oil in violation of Section 311(b)(3) of the Act, and \$3,575 for violations of Section 311(j) of the Act) which shall be paid no later than thirty (30) days after the effective date of the Final Order by means of a cashier's or certified check, or by wire transfer. If paying by check, the Respondent shall submit a cashier's or certified check, payable to "Environmental Protection Agency," and bearing the notations "OSLTF - 311" and the title and docket number of this case. If the Respondent sends payment by the U.S. Postal Service, the payment shall be addressed to:

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

If the Respondent sends payment by overnight mail, the payment should be sent to:

U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, MO 63101  
Contact: Natalie Pearson  
314-418-4087

Wire transfers should be directed to:

Federal Reserve Bank of New York  
ABA: 021030004  
Account: 68010727  
SWIFT address: FRNYUS33  
33 Liberty Street  
New York, NY 10045

Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency."

22. The Respondent shall submit copies of the check (or, in the case of a wire transfer, copies of the confirmation) to the following persons:

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

and

Cynthia Peterson  
Technical Enforcement Program (8ENF-UFO)  
U.S. EPA Region 8  
1595 Wynkoop  
Denver, CO 80202-1129

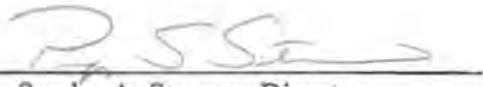
23. Respondent states, under penalty of perjury, that they have (1) investigated the cause of the spill; (2) cleaned up the spill pursuant to federal requirements; (3) taken corrective measures to prevent future spills; and (4) Respondent will revise, implement, and maintain an SPCC plan in accordance with 40 C.F.R. § 112.

24. Respondent further agrees and consents that if Respondent fails to pay the penalty amount as required by this agreement once incorporated into the Final Order, or fails to make the corrective measures to obtain compliance or has not cleaned up the discharged oil as represented, this agreement is null and void, and the EPA may pursue any applicable enforcement options.

25. Each party shall bear its own costs and attorneys fees in connection with this matter.


26. The undersigned representative of Respondent certifies that he/she is fully authorized to enter into the terms and conditions for this agreement and to bind Respondent to the terms and conditions of this agreement.

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

By:   
Sandra A. Stavnes, Director  
UIC/FIFRA/OPA Technical Enforcement Program  
Office of Enforcement, Compliance and  
Environmental Justice

Date: 9/13/11

**K.P. Kauffman Company, Inc., Respondent.**

By: 

Date: 9/14/11

Name: Kevin P. Kauffman

Title: Chairman and C.E.O.



## KP Kauffman – Facilities 7 & 8

### SPCC List of Violations

Plan is not certified by a PE in violation of 40 C.F.R § 112.3(d). A PE must certify the whole plan, not just the appendices for each facility.

Facility description is inadequate in violation of 40 C.F.R § 112.7(a)(3) . Buried tanks, partially buried or bunkered tanks, methanol and treatment chemical tanks/drums, blowdown tanks and dehydration units, diesel tanks/drums, solvent tanks/drums are discussed in the text of the plan, but not shown on the diagram. Plan should address the specific information for each of the facilities rather than include generic text that may or may not apply to any or all the facilities.

Discharge prevention measures and discharge drainage controls are inadequate in violation of 40 C.F.R § 112.7(a)(3)(ii). Text is generic rather than specific to the facilities. Requirements should be stated as “must” or “will” rather than “can” or “should.”

Discharge drainage controls are inadequate in violation of 40 C.F.R § 112.7(a)(3)(iii). Text is generic rather than specific to the facilities. Requirements should be stated as “must” or “will” rather than “can” or “should.”

Inadequate discussion of countermeasure in violation of 40 C.F.R § 112.7(a)(3)(iv). Discovery of spill must be discussed.

Discharge notification procedures are not organized in a way that facilitates spill response in violation of 40 C.F.R § 112.7(a)(5). Title page directs responders to Appendix A, although much of the needed information is included in Appendices B and C.

Inadequate discharge prediction in violation of 40 C.F.R § 112.7(b). Rate of discharge is not specific to the type of failure.

Inadequate discussion of general secondary containment in violation of 40 C.F.R § 112.7(c). Secondary containment for aboveground piping is not discussed. Discussion of secondary containment at loading/unloading areas is generic rather than specific to the facilities. Requirements should be stated as “must” or “will” rather than “can” or “should.”

Inadequate contingency plan in violation of 40 C.F.R § 112.7(d)(1). See attached checklist.

Inadequate discussion of drainage from diked areas being restrained in violation of 40 C.F.R § 112.9(b)(1). Valves are discussed in the text but not shown on the diagram. Requirements should be stated as “must” or “will” rather than “can” or “should.”

No discussion of removal of accumulated oil and records of removal being kept in violation in violation of 40 C.F.R § 112.9(b)(1).



Inadequate discussion of sized secondary containment in violation of 40 C.F.R § 112.9(c)(2). Discussion of containment capacity calculation needs to be expanded. Displacement does not appear to be correctly calculated for Facility 7.

No discussion of undiked drainage being contained in a catchment basin or holding pond in violation of 40 C.F.R § 112.9(c)(2).

No discussion of saltwater disposal facilities in violation of 40 C.F.R § 112.9(d)(2).

Inadequate flowline maintenance plan in violation of 40 C.F.R § 112.9(d)(3).

No discussion of "Specific Requirement for Onshore Oil Drilling and Workover Facilities" in violation of 40 C.F.R § 112.10.

General comment: When the Facility 8 SPCC plan is updated next, underground piping should be shown in the facility diagram.

## CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **EXPEDITED CONSENT AGREEMENT AND FINAL ORDER** in the matter of **K. P. KAUFFMAN COMPANY, INC.; DOCKET NO.: CWA-08-2011-0028**, was filed with the Regional Hearing Clerk on September 14, 2011.


Further, the undersigned certifies that a true and correct copy of the document was delivered to Linda Kato, Senior 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 14, 2011, to:

Kevin P. Kauffman, Chairman and C.E.O  
K. P. Kauffman Co., Inc.  
1675 Broadway, Suite 2800  
Denver, CO 80202

And emailed to:

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

September 14, 2011

  
Tina Artemis  
Paralegal/Regional Hearing Clerk