



UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

Docket No.: CWA-08-2009-0005

IN THE MATTER OF	)	<b>COMPLAINT AND</b>
	)	<b>SETTLEMENT AGREEMENT</b>
Rocky Mountain Pipeline System, LLC	)	(Proceeding to Assess Class II
333 Clay St., Suite 1600	)	Civil Penalty Under Section 311
Houston, TX 77002	)	of the Clean Water Act)
<u>Respondent.</u>	)	

Complainant, United States Environmental Protection Agency, Region 8 ("EPA") or ("Complainant"), and Rocky Mountain Pipeline System, LLC (hereinafter "Respondent") by its undersigned representatives, hereby consent and agree as follows:

**A. PRELIMINARY MATTERS**

1. This Complaint and Settlement Agreement ("CASA") is issued to Respondent for violating section 311(j)(5), 33 U.S.C. §1321(j)(5) of the Clean Water Act ("CWA" or "the Act") and the implementing regulations at 40 C.F.R. §§ 112.20 and 112.21.
2. The undersigned Environmental Protection Agency ("EPA"), Region 8 officials have been properly delegated the authority to issue this CASA 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), as amended by the Oil Pollution Act of 1990, to bring an action for civil administrative penalties against a respondent who has violated, or is in violation of, a requirement or prohibition of the CWA or its implementing regulations.
3. 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.

4. 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.

5. Respondent admits the jurisdictional allegations in this CASA and neither admits nor denies the specific factual allegations contained herein.

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

7. Complainant and Respondent agree that this CASA proposing to issue an order assessing a Class II civil penalty is subject to public notice of and reasonable opportunity to provide comment.

8. Complainant asserts that settlement of this matter is in the public interest and Complainant and Respondent agree that entry of this CASA and Final Order without further litigation and without adjudication of any issue of fact or law, is the most appropriate means of resolving this matter.

9. This CASA, 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 agreement.

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

**B. ALLEGED VIOLATIONS**

1. 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).

2. Respondent is an "owner and operator" of the following four "non-transportation" "onshore facilities" (hereinafter, "the facilities" or "the facility") as those terms are defined in 40 C.F.R. §112.2 and sections 311(a)(6) and (10), respectively, 33 U.S.C. §§1321(a)(6) and (10) of the Act, within the meaning of sections 311(a)(6)(B) of the Act, 33 U.S.C. §§1321(a)(6)(B):

- a. Dupont Terminal located at 8610 Krameria Avenue, Dupont, Colorado;
- b. Fountain Terminal located at 1004 South Santa Fe, Fountain, Colorado;
- c. Cheyenne Terminal located at 1112 Parsley Boulevard, Cheyenne, Wyoming; and
- d. Rapid City Terminal located at 3225 Eglin Street, Rapid City, South Dakota.

3. Section 311(j)(5) of the CWA, 33 U.S.C. § 1321(j)(5) and 40 C.F.R. §§ 112.20 provide that the owner or operator of a facility that "could reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters or adjoining shorelines shall prepare and submit" a Facility Response Plan (FRP) to EPA pursuant to 40 C.F.R. § 112.20.

4. Regulations provide that a facility can reasonably be expected to cause substantial harm to the environment if the facility has an oil storage capacity of over one million gallons and, among other things: has inadequate secondary containment to contain a complete loss of its largest capacity tank (40 C.F.R. § 112.20(f)(1)(i)(A)); is located such that a discharge from the facility could cause injury to fish, wildlife or sensitive environments (40 C.F.R. §112.20(f)(1)(ii)(B)); is located at a distance such that a discharge from the facility would shut down a public drinking water intake (40 C.F.R. §112.20(f)(1)(ii)(C)); or has discharged more than 10,000 gallons of oil into

or on the navigable waters or adjoining shorelines within the prior five years (40 C.F.R.

§ 112.20(f)(1)(ii)(D)).

5. An owner or operator of any facility in operation after August 30, 1994, that satisfies the regulations in paragraph B.4, *supra*, is required to prepare and submit an FRP. (40 C.F.R.

§ 112.10(a)).

6. Respondent's Rapid City Products Terminal has an oil storage capacity of approximately 11,165,112 gallons.

7. Respondent's Fountain Terminal has an oil storage capacity of approximately 14,836,900 gallons.

8. Respondent's Dupont Terminal has an oil storage capacity of approximately 31,990,896 gallons.

9. Respondent's Cheyenne Terminal has an oil storage capacity of approximately 14,206,416 gallons.

10. Each of the Respondent's facilities referenced in Paragraphs 6 through 9 is located such that a discharge from the facility could cause injury to fish, wildlife or sensitive environments as determined by planning distance calculations specified in 40 C.F.R. Part 112, Appendix C, Attachment C-III, Calculation of the Planning Distance, § 1.6.

11. Based on information submitted by Respondent, each of the following facilities: Dupont, Fountain, Cheyenne, and Rapid City Products Terminals, is subject to the FRP requirements and 40 C.F.R. § 112.2(b)(a).

12. In a letter dated August 24, 2007, Respondent submitted notification to EPA in accordance with the EPA Audit Policy entitled, "Incentives for Self-Policing: Discovery, Disclosure, Correction

and Prevention of Violations” that its Dupont, Fountain, and Cheyenne Terminal facilities were not in compliance with the FRP requirements found at 40 C.F.R. part 112.”

13. On or about September 17, 2007, Respondent submitted an FRP for the Dupont, Fountain, and Cheyenne Terminal facilities which were subsequently approved by EPA in July 2008.

14. In a letter dated March 17, 2008, Respondent submitted its FRP for the Rapid City Products Terminal facility which was subsequently conditionally approved by EPA in July 2008.

15. Respondent’s failure to prepare and submit an FRP for the Dupont, Fountain, and Cheyenne Terminal facilities until September 2008, and an FRP for the Rapid City Products Terminal facility until March 2008, constitutes violations of Section 311(j)(5) of the CWA, 33 U.S.C. § 1321(j)(5) and 40 C.F.R. §§ 112.20.

### **C. CIVIL PENALTY**

1. As alleged in the preceding Paragraphs, and pursuant to section 311(b)(6)(B)(ii) of the Act, 33 U.S.C. § 1321(b)(6)(B)(ii), and 40 C.F.R. § 19.4, the Respondent is liable for civil penalties of up to \$11,000 per day for each day during which the violation continues, up to a maximum total of \$157,500 for all violations.

2. Based on the foregoing Allegations and pursuant to the authority of section 311(b)(6)(B)(ii) of the Act, 33 U.S.C. § 1321(b)(6)(B)(ii), and 40 C.F.R. § 19.4, Complainant proposes the assessment of administrative penalties against the Respondent in the amount of one hundred twenty-five thousand dollars (\$125,000).

3. Complainant proposes this penalty amount after considering the Respondent’s notification under EPA’s Self Audit Policy 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.

4. Respondent 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 one hundred twenty-five thousand dollars (\$125,000) in the manner described below in this paragraph:

a. **Payment is due within 30 calendar days from the date written on the Final Consent Order**, issued by the Regional Judicial Officer, that adopts this Consent Agreement. 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 is considered to be the date processed by the Bank described below. Payments received by 11:00 AM, EST are processed on the same day, those received after 11:00 AM are processed on the next business day.

b. The payment in paragraph C.2, supra, shall be made by remitting a cashier's or certified check, including the name and docket number of this case, referencing "Oil Spill Liability Trust Fund-311," for the amount, **payable to the "Environmental Protection Agency,"** to:

**CHECK PAYMENTS:**

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

**OVERNIGHT MAIL:**

U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, MO 63101

Contact: Natalie Pearson  
314-418-4087

**WIRE TRANSFERS:**

Wire transfers should be directed to the Federal Reserve Bank of New York

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 "

**ACH (also known as REX or remittance express)**

Automated Clearinghouse (ACH) for receiving US currency

PNC Bank

808 17th Street, NW

Washington, DC 20074

Contact – Jesse White 301-887-6548

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 Dept. of Treasury.

This payment option can be accessed from the information below:

[WWW.PAY.GOV](http://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:

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

and

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

c. 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**

1. 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.
2. 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.
3. 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.

4. The parties agree to submit this CASA to the Regional Judicial Officer, with a request that it be incorporated into a Final Order.

5. 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.

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

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

Date: 3 February 2009 Sharon Z Kerch  
for Andrew M. Gaydosh,  
Assistant Regional Administrator  
Office of Enforcement, Compliance  
and Environmental Justice

Date: 2-5-09 Brenda Morris  
Brenda Morris, Enforcement Attorney  
U.S. EPA, Region 8

**ROCKY MOUNTAIN PIPELINE SYSTEM, LLC  
Respondent.**

Date: 1-16-09 By Troy E. Valenzuela MEK  
Troy E. Valenzuela  
VP Environmental Health & Safety

## CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **COMPLAINT AND SETTLEMENT AGREEMENT/FINAL ORDER** in the matter **ROCKY MOUNTAIN PIPELINE SYSTEM, LLC.; DOCKET NO.: CWA-08-2009-0005**, the **COMPLAINT AND SETTLEMENT AGREEMENT** was filed with the Regional Hearing Clerk on February 5, 2009, the **FINAL ORDER** was filed on March 13, 2009.


Further, the undersigned certifies that a true and correct copy of the documents were delivered to Brenda Morris, 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 certified/return receipt requested on February 13, 2009, to:

Troy E. Valenzuela  
Vice President Environmental Health and Safety  
Rocky Mountain Pipeline System, LLC.  
333 Clay Street, Suite 1600  
Houston, TX 77002

E-mailed to:

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

February 13, 2009

  
Tina Artemis  
Paralegal/Regional Hearing Clerk

