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U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG.11
2008 AUG 27 AM 11:18
REGIONAL HEARING
CLERK

VIA FEDERAL EXPRESS

Regional Hearing Clerk
United States Environmental Protection Agency
Region 2
290 Broadway, 16th Floor
New York, NY 10007-1866

RE: U.S. E.P.A. v. Gulf Oil Limited Partnership
Docket No. CWA-02-20086-3401

Dear Sir/Madam:

On behalf of Gulf Oil Limited Partnership ("Gulf Oil") I am hereby submitting for filing one (1) original and one (1) copy of the enclosed Answer and Request for Hearing in connection with the above-captioned matter. By copy of this letter, I am also serving a copy of the enclosed Answer and Request for Hearing upon Christopher Saporita, Esquire, Assistant Regional Counsel for the U.S. Environmental Protection Agency and upon Dore LaPosta, Director, Division of Enforcement and Compliance Assistance, U.S. Environmental Protection Agency.

Should you have any questions, please do not hesitate to contact me.

Respectfully submitted,

DEBRA S. ROSEN

DSR/bp

Enclosure

cc: Christopher Saporita, Esquire (w/enc.) (Via Federal Express)
Dore LaPosta, Director of Div. of Enforcement
& Compliance Assistance (w/enc.) (via Federal Express)
Brian Glennon, II, Esquire (w/enc.) (Via E-Mail)
Donald Smith, P.E. (w/enc.) (Via E-Mail)

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Attorneys for Respondent, Gulf Oil Limited Partnership
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U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG.II
2009 AUG 27 AM 11:18
REGIONAL HEARING
CLERK

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

IN THE MATTER OF: GULF OIL
LIMITED PARTNERSHIP,

Respondent.

PROCEEDING TO ASSESS CLASS II
CIVIL PENALTY

Docket No.: CWA-02-2008-3401

**ANSWER AND REQUEST FOR
HEARING**

ANSWER

Respondent, Gulf Oil Limited Partnership (“Gulf Oil”) by way of this Answer to the Administrative Complaint, Findings of Violation, Notice of Proposed Assessment of an Administrative Penalty and Notice of Opportunity to Request a hearing (“Complaint”) filed by the United States Environmental Agency (“USEPA”), hereby responds as follows and does say:

1. As to paragraph 1, Gulf Oil makes no response as Paragraph 1 states a legal conclusion to which no answer is required.
2. As to Paragraph 2, Gulf Oil admits only that it has been named as a “Respondent” in the above-referenced Complaint. With respect to any remaining allegations of Paragraph 2, Gulf Oil makes no response to said allegations as they contain legal conclusions to which no answer is required. To the extent a response is required, said allegations are denied.

3. As to paragraph 3, Gulf Oil makes no response as Paragraph 3 states a legal conclusion to which no answer is required. To the extent a response is required, said allegations are denied.

4. As to paragraph 4, Gulf Oil makes no response as Paragraph 4 states a legal conclusion to which no answer is required. To the extent a response is required, said allegations are denied.

5. As to paragraph 5, Gulf Oil makes no response as Paragraph 5 states a legal conclusion to which no answer is required. To the extent a response is required, said allegations are denied.

6. As to paragraph 6, Gulf Oil makes no response as Paragraph 6 states a legal conclusion to which no answer is required. To the extent a response is required, said allegations are denied.

7. Gulf Oil denies the allegations to Paragraph 7 of the Complaint as stated.

8. Gulf Oil admits that the Gulf Oil terminal is located at 2600 Marshes Dock Road, Linden, New Jersey.

9. Gulf Oil admits that the Gulf Oil terminal located at 2600 Marshes Dock Road, Linden, New Jersey, is a bulk petroleum storage terminal which is used for the distribution of petroleum products.

10. The allegation in Paragraph 10 of the Complaint which references simply the “discharges at issue” is too vague to be responded to and accordingly, Gulf Oil is without sufficient information to admit or deny said allegation. Gulf Oil denies that any septic discharge was made directly into the Rahway River.

11. As to paragraph 11, Gulf Oil makes no response as Paragraph 11 states a legal conclusion to which no answer is required.

12. The allegation in Paragraph 12 of the Complaint which references simply the “discharges” is too vague to be responded to and accordingly, Gulf Oil is without sufficient information to admit or deny said allegation.

13. Respondent hereby incorporates by reference its responses to Paragraphs 1 through 12 in lieu of repetition.

14. Gulf Oil admits that there is an office and operations building located at the Gulf Oil terminal located at 2600 Marshes Dock Road, Linden, New Jersey.

15. Gulf Oil is without sufficient information to admit or deny the allegations of Paragraph 15 of the Complaint. To the extent an answer is required, Gulf Oil denies the allegations of Paragraph 15.

16. Gulf Oil admits the allegations of Paragraph 16.

17. Gulf Oil admits only that USEPA conducted an inspection at the Gulf Oil terminal located at 2600 Marshes Dock Road, Linden, New Jersey but Gulf Oil is without sufficient information to admit or deny the type of inspection referenced in the Complaint nor the reason for said inspection as alleged in paragraph 17.

18. Gulf Oil admits only that there was a discussion with USEPA with respect to sanitary waste water. The remaining allegations of Paragraph 18 are denied as stated.

19. Gulf Oil admits in response to the allegations in Paragraph 19 that on June 26, 2007, Gulf Oil first became aware that there was connection between the septic tank which collected sanitary waste water from the facility’s office and operations buildings and the storm water collection system. Gulf Oil denies the remaining allegations of paragraph 19.

20. As to paragraph 20, Gulf Oil makes no response as Paragraph 20 states a legal conclusion to which no answer is required.

21. As to paragraph 21, Gulf Oil makes no response as Paragraph 21 states a legal conclusion to which no answer is required. To the extent a response is required, said allegations are denied.

22. Gulf Oil admits only that on or about July 3, 2007, Gulf Oil installed portable sanitary units and thereafter disconnected any connection between storm water and septic tank on or about July 23, 2007. Gulf Oil denies the remaining allegations of Paragraph 22.

23. As to paragraph 23, Gulf Oil makes no response as Paragraph 23 states a legal conclusion to which no answer is required. To the extent a response is required, said allegations are denied.

PROPOSED CIVIL PENALTIES

Gulf Oil disputes both the nature and amount of the penalty proposed by USEPA to be imposed upon Gulf Oil.

SEPARATE DEFENSES OF GULF OIL

FIRST SEPARATE DEFENSE

In light of the nature, circumstances, extent and gravity of Gulf Oil's alleged violations, the amount of the penalty assessed by the USEPA is inappropriate, arbitrary, unreasonable and excessive pursuant to Section 309(g) of the Clean Water Act, 33 U.S.C. §1319(g).

SECOND SEPARATE DEFENSE

USEPA is barred and/or limited from bringing this action and/or seeking a penalty pursuant to the Statute of Limitations, including but not necessarily limited to 28 U.S.C. §2462, and/or pursuant to the doctrine of laches.

THIRD SEPARATE DEFENSE

USEPA fails to allege any environmental harm and, accordingly, said Complaint should be dismissed.

FOURTH SEPARATE DEFENSE

Without admitting any liability, if it is determined that Gulf Oil engaged in any of the activities alleged, such activities and/or any impact were *de minimis*.

FIFTH SEPARATE DEFENSE

Without admitting any liability, if it is determined that the allegations as set forth in the Complaint are true, said discharges were created and/or caused, in whole or in part, by a party other than Gulf Oil and over whom Gulf Oil had any right or ability to control.

SIXTH SEPARATE DEFENSE

Without admitting any liability, Gulf Oil at all times acted in good faith.

SEVENTH SEPARATE DEFENSE

Without admitting any liability, the condition which caused the alleged discharges was a hidden and not obvious and Gulf Oil had no knowledge concerning said condition.

EIGHTH SEPARATE DEFENSE

Without admitting any liability, at the time Gulf Oil or its predecessor took title to the facility, it was represented that all necessary permits had been obtained and were valid and in full force and effect for the operation of the facility as it was then being operated.

REQUEST FOR HEARING

Pursuant to 40 C.F.R. §22.15(c), Respondent Gulf Oil hereby requests a hearing upon the issues raised by both the Complaint and this Answer.

SERVICE INFORMATION

Correspondence, notices, inquiries and other communication should be specifically directed to Debra S. Rosen, Esquire, c/o of Archer & Greiner, P.C., Attorneys for Respondent, Gulf Oil, One Centennial Square, Haddonfield, New Jersey 08033 who can also be reached at (856) 354-3084.

CERTIFICATION

Pursuant to 40 C.F.R. §22.5, I hereby certify that the Answer and Request for Hearing by Respondent, Gulf Oil in the matter of Gulf Oil Limited Partnership, Docket No. CWA-02-2008-3401 was served in the following manner:

An original and one (1) copy of the Answer and Request for Hearing was served upon the Regional Hearing Clerk, United States Environmental Protection Agency, Region 2, 290 Broadway, 16th Floor, New York, New York 10007-1866 by overnight express-priority mail;

A copy of the Answer and Request for Hearing was served upon counsel for the Complainant, Christopher Saporita, Esquire, Assistant Regional Counsel Office of Regional Counsel, Water and General Law Branch, US Environmental Protection Agency, Region 2, 290 Broadway, 16th Floor, New York, New York 10007-1866 and upon Dore LaPosta, Director, Division of Enforcement and Compliance Assistance, U.S. Environmental Protection Agency, Region 2, 290 Broadway, New York, New York 10007 by overnight express-priority mail.

I certify that the foregoing statements made by me are true and accurate to the best of my knowledge and belief. I further certify that I am aware that I am subject to punishment if any of the foregoing statements are knowingly false.

ARCHER & GREINER
A Professional Corporation
Attorneys for Respondent, Gulf Oil
Limited Partnership

By: 
DEBRA S. ROSEN

Dated: August 26, 2008
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