



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

SEP 24 2014

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Brian D. Campbell
President
Lindsey-Campbell Oil Company, Inc.
Lindsey-Campbell Bulk Plant
P.O. Box 637
Elizabethtown, North Carolina 28337

Re: Consent Agreement and Final Order
Docket Number: CWA-04-2014-7009(B)

Dear Mr. Campbell:

Enclosed please find a fully executed Consent Agreement and Final Order (CA/FO) issued pursuant to Section 311(b)(6)(B)(i) of the Clean Water Act (CWA), 33 U.S.C. § 1321(b)(6)(B)(i). Please note that payment of the penalty is due within thirty calendar days of the effective date of this CA/FO. Should you have any questions please feel free to contact William Kappler at (404) 562-8498.

Sincerely,

A handwritten signature in blue ink, appearing to read "César A. Zapata".

César A. Zapata, Chief
RCRA and OPA Enforcement and Compliance
Branch
RCRA Division

Enclosure

cc Lars P. Simonsen, Simonsen Law Firm, P.C.
Greg Luetscher, EPA Region 4

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

RECEIVED
EPA REGION IV
2014 SEP 24 PM 8:46
HEARING CLERK

IN THE MATTER OF)
) CWA SECTION 311 CLASS I CONSENT
) AGREEMENT AND FINAL ORDER
) UNDER 40 C.F.R. § 22.13(b)
)
)
Lindsey-Campbell Oil Company, Inc.)
Lindsey-Campbell Bulk Plant)
612 East 17th Street) Docket No. CWA-04-2014-7009(B)
Lumberton, North Carolina 28358)
)
Respondent)

I. LEGAL AUTHORITY

1. This Consent Agreement is proposed and entered into under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 311(b)(6)(B)(i) of the Clean Water Act ("CWA"), 33 U.S.C. § 1321(b)(6)(B)(i), as amended by the Oil Pollution Act of 1990, and under the authority provided by 40 C.F.R. §§ 22.13(b) and 22.18(b)(2). The Administrator has delegated these authorities to the Regional Administrator of EPA, Region 4, who has in turn delegated these authorities through the Director, RCRA Division, to the Chief, RCRA and OPA Enforcement and Compliance Branch, RCRA Division ("Complainant").

II. CONSENT AGREEMENT

2. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to settle this action. Accordingly, before any testimony has been taken upon the pleadings and without any admission of violation or adjudication of any issue of fact or law and in accordance with 40 C.F.R. § 22.13(b), Complainant and Respondent

have agreed to the execution of this Consent Agreement and Final Order (“CA/FO”), and Respondent hereby agrees to comply with the terms of this CA/FO. For purposes of this CA/FO and settlement of this action, Respondent admits to the jurisdictional statements contained herein.

III. STIPULATIONS

3. Lindsey-Campbell Oil Company, Inc. (“Respondent”) is a corporation organized under the laws of North Carolina and registered to do business in North Carolina. Respondent is a “person” within the meaning of Section 311(a)(7) of the CWA, 33 U.S.C. § 1321(a)(7).

4. Respondent is the “owner or operator” within the meaning of Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6), of a non-transportation-related facility engaged in storing and selling oil, located at 612 East 17th Street in Lumberton, Robeson County, North Carolina (“the Facility”). The Facility consists of the buildings, structures, installations and pipes, including several aboveground storage tanks and ancillary equipment situated north of 16th Street (the manned Bulk Plant), and the unmanned Card Lock Fueling facility situated south of 16th Street (the Tank Car and Truck Loading/Unloading Area). The Facility includes storage tanks with a total tank shell capacity of approximately 3,986 barrels of gasoline, kerosene, fuel oil, diesel fuel, methanol, and hydraulic/lubrication oils, all of which constitute “oil” as that term is defined in Section 311(a)(1) of the CWA, 42 U.S.C. § 1321(a)(1).

5. The Facility is an “onshore facility” within the meaning of Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10).

6. Pursuant to 40 C.F.R. § 112.1, the Spill Prevention, Control and Countermeasure (“SPCC”) regulations contained in 40 C.F.R. Part 112 apply to each owner and operator of a non-transportation-related onshore facility engaged in drilling, producing, gathering, storing,

processing, refining, transferring, distributing, using or consuming oil or oil products, which, due to its location, could reasonably be expected to discharge oil into or upon the navigable waters of the United States and their adjoining shorelines in such quantities as may be harmful, as described in 40 C.F.R. § 110.3 (“harmful quantity”).

7. A “harmful quantity” is defined at 40 C.F.R. § 110.3 to include oil discharges that could: (a) violate applicable water quality standards; or (b) cause a film or sheen upon or discoloration of the surface of the navigable waters of the United States or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of such water or adjoining shorelines.

8. Respondent is engaged in drilling, producing, gathering, storing, processing, transferring, distributing, using, or consuming oil or oil products located at the Facility.

9. The Facility has an aggregate aboveground storage capacity greater than 1,320 gallons of oil in containers, each with a capacity of at least 55 gallons, and therefore, does not qualify for the exemption under 40 C.F.R. § 112.1(d)(2).

10. The Facility is a “non-transportation-related” facility within the meaning of 40 C.F.R. § 112.2, as described in 40 C.F.R. Part 112, Appendix A.

11. The Facility is located adjacent to a storm water drain which discharges to a drainage ditch located across 17th Street about 350 feet north of the Facility. The drainage ditch discharges to Meadow Branch Creek approximately 2,000 feet to the north. Meadow Branch Creek joins Fivemile Branch which flows through Saddletree Swamp and continues to the Lumber River, approximately 0.75 miles southwest of the Facility. The Lumber River continues into the State of South Carolina and joins the Little Pee Dee River, which discharges into the Pee Dee River, which discharges into Winyah Bay and then into Atlantic Ocean near Georgetown.

Meadow Branch Creek and its downstream water bodies are “navigable waters” as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and 40 C.F.R. § 112.2.

12. The Facility is therefore a non-transportation-related onshore facility which, due to its location, could reasonably be expected to discharge a harmful quantity of oil to a navigable water of the United States or its adjoining shorelines and is, as such, an SPCC-regulated facility.

13. Pursuant to 40 C.F.R. § 112.3, the owner or operator of an SPCC-regulated facility must prepare in writing and implement an SPCC plan in accordance with 40 C.F.R. § 112.7 and other applicable sections of 40 C.F.R. Part 112.

IV. ALLEGATIONS

Complainant alleges, and Respondent neither admits nor denies, that:

14. On October 27, 2010, an inspection was conducted by EPA at Respondent’s Facility to determine compliance with SPCC regulations.

15. Respondent failed to amend its written SPCC Plan (“Plan”) in accordance with 40 C.F.R. §§ 112.7, 112.8, and other applicable sections of 40 C.F.R. Part 112, as required by 40 C.F.R. § 112.3(a). Specifically, Respondent failed to amend its 1995 written Plan and failed to have the Plan available for EPA’s review at the Facility pursuant to 40 C.F.R. § 112.3.

16. Additionally, Respondent failed to implement the Facility’s Plan in accordance with 40 C.F.R. §§ 112.7, 112.8, and other applicable sections of 40 C.F.R. Part 112, as required by 40 C.F.R. § 112.3(a). Specifically, Respondent failed to provide acceptable secondary containment to hold the capacity of the largest single compartment of a tank car/truck loading/unloading area at the Facility as required by 40 C.F.R. § 112.7(h)(1).

17. EPA therefore alleges that Respondent violated the regulatory requirements cited in paragraphs 15 through 16 above, and is therefore in violation of 40 C.F.R. Part 112.

V. WAIVER OF RIGHTS

18. Solely for the purpose of this Consent Agreement, Respondent waives the right to contest the allegations contained herein, to a hearing under Section 311(b)(6)(B)(i) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(i), and to appeal any Final Order in this matter under Section 311(b)(6)(G)(i) of the CWA, 33 U.S.C. § 1321(b)(6)(G)(i), and consents to the issuance of a Final Order without further adjudication.

19. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during any discussions with, or to be served with and reply to, any memorandum or communication addressed to EPA officials where the purpose of such discussion, memorandum, or communication is to persuade such official to accept and issue this CA/FO.

20. Respondent waives its right to challenge the validity of this CA/FO and the settlement of the matters addressed in this CA/FO based on any issue based on the Paper Reduction Act, 44 U.S.C. § 3501 *et seq.*

21. The Final Order does not constitute a waiver, suspension or modification of the requirements of Section 311 of the CWA, 33 U.S.C. § 1321, or any regulations promulgated thereunder, and does not affect the right of the Administrator or the United States to pursue any applicable injunctive or other equitable relief or criminal sanctions for any violation of law.

VI. PAYMENT OF CIVIL PENALTY

22. Respondent consents to the payment of a civil penalty in the amount of FIVE THOUSAND DOLLARS (\$5,000.00), which is to be paid within thirty (30) calendar days of the effective date of this CA/FO.

23. Payment shall be made by a corporate/cashier's or certified check, by electronic funds transfer (EFT), or on-line. If paying by check, Respondent shall submit a corporate/

cashier's or certified check, payable to the "Environmental Protection Agency." The check shall bear the notation "OSLTF - 311" and Respondent shall reference the title and docket number of this case on the face of the check.

If Respondent sends payment by the U.S. Postal Service, the payment shall be sent to:

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

If Respondent sends payment by an overnight commercial delivery service such as DHL, FedEx, or UPS, the payment shall be sent to:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, Missouri 63101
(314) 425-1818

If Respondent sends payment by wire transfer, the wire transfer 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, New York 10045

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

Respondent may also elect the On-Line Payment Option, available through the Department of Treasury. This payment option can be accessed at www.pay.gov. Enter sfo 1.1 in the search field and then open the form and complete required fields.

24. Respondent shall submit copies of each check (or, in the case of a wire transfer or on-line payment, a copy of the wire transfer or on-line confirmation) to the following people:

Patricia Bullock
Regional Hearing Clerk
U.S. EPA, Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

and to:

William Kappler
RCRA and OPA Enforcement and Compliance Branch
RCRA Division
U.S. EPA, Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

25. Penalties paid pursuant to this CA/FO are not deductible for federal purposes under 26 U.S.C. § 162(f).

26. Respondent's failure to pay the penalty assessed by the Final Order in full by its due date may subject Respondent to a civil action to collect the assessed penalty, plus interest, attorney's fees, costs and an additional quarterly nonpayment penalty pursuant to Section 311(b)(6)(H) of the CWA, 33 U.S.C. § 1321(b)(6)(H). In any such collection action, the validity, amount, and appropriateness of the penalty agreed to herein shall not be subject to review.

VII. GENERAL PROVISIONS

27. The Final Order shall be binding upon Respondent and Respondent's officers, directors, agents, and successors or assigns.

28. No change in ownership, partnership, corporate, or legal status relating to the Facility will in any way alter Respondent's obligations and responsibilities under this CA/FO.

29. Compliance with this CA/FO resolves Respondent's liability for federal civil penalties for the violations and facts stipulated to and alleged herein.

30. The undersigned representative of Respondent hereby certifies that he or she is fully authorized to enter into and execute this Consent Agreement and to legally bind Respondent to the terms and conditions of this Consent Agreement and the attached Final Order.

31. A copy of any documents that Respondent files in this action shall be sent to the following attorney who represents the EPA in this matter and who is authorized to receive service for the EPA in this proceeding:

Gregory D. Luetscher
Attorney/Advisor
Office of Environmental Accountability
U.S. EPA, Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960
404-562-9677
luetscher.greg@epa.gov

32. A copy of any documents that Complainant files in this action shall be sent to the following individual who represents Respondent in this matter and who is to receive service for Respondent in this proceeding:

Lars P. Simonsen
Simonsen Law Firm
P.O. Box 848
106 E. Queen Street
Edenton, North Carolina 27932
(252) 482-2175
Lars@simonsenlawfirm.com

33. By executing this CA/FO, Respondent certifies that all violations alleged herein, which are neither admitted nor denied, have been corrected.

VIII. SEVERABILITY

34. It is the intent of the parties that the provisions of this CA/FO are severable. If any provision or authority of this CA/FO or the application of this CA/FO to any party or circumstance is held by any judicial or administrative authority to be invalid or unenforceable, the application of such provisions to other parties or circumstances and the remainder of the CA/FO shall remain in force and shall not be affected thereby.

IX. EFFECTIVE DATE

35. This Consent Agreement and Final Order is effective when the Final Order is filed with the Regional Hearing Clerk.

SIGNATURES ON NEXT PAGE

CONSENTED AND AGREED TO:

LINDSEY-CAMPBELL OIL COMPANY, INC.

Date: 9-22-14 BY: 
(Signature)
Name: Brian D. Campbell
(Please type or print)
Title: President

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 9/23/14 BY: 
César A. Zapata, Chief
RCRA and OPA Enforcement and Compliance Branch
RCRA Division

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

)	
)	
IN THE MATTER OF)	CWA SECTION 311 CLASS I CONSENT
)	AGREEMENT AND FINAL ORDER
)	UNDER 40 C.F.R. § 22.13(b)
)	
Lindsey-Campbell Oil Company, Inc.)	
Lindsey-Campbell Bulk Plant)	
612 East 17 th Street)	Docket No. CWA-04-2014-7009(B)
Lumberton, North Carolina 28358)	
)	
Respondent)	

FINAL ORDER

The foregoing Consent Agreement is hereby approved, ratified and incorporated by reference into this Final Order in accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, 40 C.F.R. Part 22. The Respondent is hereby ORDERED to comply with all of the terms of the foregoing Consent Agreement effective immediately upon filing of this Consent Agreement and Final Order with the Regional Hearing Clerk. This Order disposes of this matter pursuant to 40 C.F.R. §§ 22.18 and 22.31.

BEING AGREED, IT IS SO ORDERED this 23 day of Sept., 2014.

BY: Susan S. Schub
Susan Schub
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the Foregoing Consent Agreement and Final Order, in the matter of **Lindsey-Campbell Oil Company, Inc., Lindsey-Campbell Bulk Plant, Docket No. CWA-04-2014-7009(B)**, on the parties listed below in the manner indicated:

Gregory D. Luetscher
Attorney/Advisor
Office of Environmental Accountability
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, SW
Atlanta, Georgia 30303

(Via EPA's internal mail)

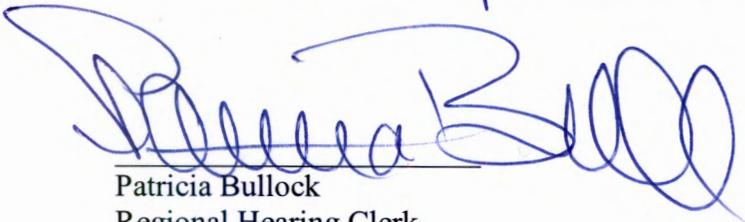
Quantindra Smith
RCRA & OPA Enforcement and Compliance Branch
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, SW
Atlanta, Georgia 30303

(Via EPA's internal mail)

Lars Simonsen
Simonsen Law Firm, P.C.
P.O. Box 848
106 E. Queen Street
Edenton, North Carolina 27932

(Via Certified Mail)

Dated this 24 day of September, 2014.



Patricia Bullock
Regional Hearing Clerk
U.S. EPA – Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, Georgia 30303-8960