

UNITED STATES
ENVIRONMENTAL PROTECTION
AGENCY-REGION 7
2015 DEC 15 AM 8:31

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)	
)	
Home Service Oil Company)	Docket No. CWA-07-2015-0065
)	
Respondent)	COMPLAINT AND
)	CONSENT AGREEMENT/
Proceedings under Section 311(b)(6) of the)	FINAL ORDER
Clean Water Act, 33 U.S.C. § 1321(b)(6))	
_____)	

COMPLAINT

Jurisdiction

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 311(b)(6) of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act (CWA), 33 U.S.C. § 1321(b)(6), as amended by the Oil Pollution Act of 1990, and 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.

2. Complainant, the United States Environmental Protection Agency, Region 7 (EPA) and Respondent, Home Service Oil Company, have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) and (3) of 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), 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

3. This Complaint and Consent Agreement/Final Order (CAFO) serves as notice that the EPA has reason to believe that Respondent has violated Section 311 of the CWA, 33 U.S.C. § 1321, and regulations promulgated thereunder.

Parties

4. The authority to take action under Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6), is vested in the Administrator of the EPA. The Administrator has delegated this authority to the Regional Administrator, EPA, Region 7, who in turn has delegated the authority under Section 311(b)(6) to the Director of the Air and Waste Management Division (collectively referred to as the Complainant).

5. Respondent, Home Service Oil Company, is and was at all relevant times a corporation under the laws of and authorized to conduct business in the State of Missouri.

6. Respondent is a “person” as defined by Section 311(a)(7) of the CWA, 33 U.S.C. § 1321(a)(7), and 40 C.F.R. § 112.2.

Statutory and Regulatory Framework

Spill Prevention Control and Countermeasures

7. Section 311(j) of the CWA, 33 U.S.C. § 1321(j), provides for the regulation of onshore facilities to prevent or contain discharges of oil. Section 311(j) of the CWA, 33 U.S.C. § 1321(j), provides in part that the President shall issue regulations “establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil and hazardous substances from vessels and from onshore facilities and offshore facilities, and to contain such discharges.”

8. To implement Section 311(j), 33 U.S.C. § 1321(j), the EPA promulgated regulations to prevent oil pollution. These regulations, codified at 40 C.F.R. Part 112, set forth the requirements for the preparation and implementation of a Spill Prevention Control and Countermeasure Plan (SPCC Plan).

9. More specifically, under the authority of Section 311(j) of the CWA, 33 U.S.C. § 1321(j), 40 C.F.R. Part 112 establishes procedures, methods and equipment and other requirements to prevent the discharge of oil from non-transportation-related onshore facilities into or upon the navigable waters of the United States or adjoining shorelines.

10. The requirements of 40 C.F.R. Part 112 apply to owners and operators of non-transportation-related onshore facilities engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using or consuming oil or oil products, which due to their location, could reasonably be expected to discharge oil in quantities that may be harmful into or upon the navigable waters of the United States or adjoining shorelines.

11. Further, under 40 C.F.R. Part 112, owners or operators of onshore facilities that have an aboveground storage capacity of more than 1,320 gallons of oil, and due to their location could reasonably be expected to discharge oil in harmful quantities into or upon the navigable waters of the United States or adjoining shorelines, must prepare a SPCC Plan in writing, certified by a licensed Professional Engineer, and in accordance with the requirements of 40 C.F.R. § 112.7.

EPA’s General Allegations

12. Respondent is and was at all times relevant to this action the “owner or operator,” within the meaning of 40 C.F.R. § 112.2 and Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6), of the Home Service Oil Company Sulphur Springs Terminal, which is a wholesale

distributor of petroleum products, located at 630 Burgess Street, Sulphur Springs, Missouri 63052 (the Facility).

13. The Facility is located approximately 200 feet from both the Missouri River and Glaize Creek, which within approximately 1200 feet also reaches the Mississippi River.

14. At all relevant times, Respondent's Facility included eight aboveground tanks for containment of gasoline, diesel fuel and #2 fuel oil with an aggregate aboveground storage capacity of approximately 124,300 gallons. The Facility also includes nine bulk storage tanks with an aggregate aboveground storage capacity of 4 million gallons that have been permanently closed and taken out of service.

15. Glaize Creek and the Mississippi River are "navigable waters of the United States" as defined by 40 C.F.R. § 112.2 and Section 502(7) of the CWA, 33 U.S.C § 1362(7).

16. Respondent's Facility is an "onshore facility" within the meaning of 40 C.F.R. § 112.2 and Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10).

17. Respondent's Facility is a "non-transportation-related facility" as defined by Appendix A to 40 C.F.R. Part 112, as incorporated by reference within 40 C.F.R. § 112.2.

18. Respondent's Facility is engaged in the wholesale distribution of petroleum products, e.g., gasoline, diesel fuel and #2 fuel oil.

19. Petroleum products, including gasoline, diesel fuel and #2 fuel oil, are forms of oil as defined by 40 C.F.R. § 112.2 and Section 311(a)(1) of the CWA, 33 U.S.C. § 321(a)(1).

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

21. Pursuant to the CWA and 40 C.F.R. § 112.1, Respondent, as the owner and operator of an SPCC-regulated facility, is subject to the SPCC regulations.

22. On February 11, 2014, the EPA performed an inspection of the Facility (Inspection) under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a). The purpose of the Inspection was to evaluate the Facility's compliance with the CWA, including its SPCC program.

23. During the Inspection, the EPA inspector obtained from Respondent a copy of a document entitled Spill Prevention Control & Countermeasure Plan & Program for Home Service Oil Company (hereafter referred to as the SPCC Plan) most recently revised in September 1985. The Facility's previous plan was dated May 1975.

24. A copy of EPA's SPCC Field Inspection and Plan Review Checklist Form was sent by mail to Respondent by letter dated March 27, 2014.

EPA's Specific Allegations

25. For each of the following Counts, Paragraphs 1 through 24 above are re-alleged and incorporated herein by reference.

**Count 1
SPCC Plan Violations**

26. 40 C.F.R. § 112.3 requires that the owner or operator of an SPCC-regulated facility that was in operation on or before August 16, 2002, must prepare, maintain and implement its SPCC plan, and must amend it, if necessary to comply with 40 C.F.R. Part 112, no later than November 20, 2011. The facility was in operation prior to Aug 16, 2002.

27. 40 C.F.R. § 112.5(a) requires that the owner or operator of an SPCC-regulated facility must amend the SPCC plan in accordance with 40 C.F.R. § 112.7 and any other applicable section of 40 C.F.R. Part 112, including 40 C.F.R. § 112.8 for onshore facilities, within six months after a change to the facility design, construction, operation or maintenance that materially affected its potential for discharge, including but not limited to decommissioning containers.

28. 40 C.F.R. § 112.5(b) requires that the owner or operator of an SPCC-regulated facility must complete a review and evaluation of its SPCC plan every five years. As a result of such review and evaluation, the owner or operator must update the SPCC plan within six months of the review to include more effective prevention and control technology if the technology has been field-proven at the time of the review and will significantly reduce the likelihood of a discharge from the facility. Additionally, the owner or operator must document completion of the review and evaluation and state whether or not the SPCC Plan will be amended.

29. 40 C.F.R. § 112.7 and its subsections require that the owner or operator of a facility subject to the SPCC requirements prepare an SPCC plan that meets all applicable requirements listed therein. 40 C.F.R. § 112.8 and its subsections require that the owner or operator of an onshore facility meets the requirements of § 112.7 and also specific discharge prevention and containment procedures listed within § 112.8.

30. The EPA's inspection in February 2014 and review of Respondent's SPCC Plan found that the Plan had not been amended, as required by § 112.5(a), to identify eight aboveground tanks for containment of gasoline, diesel fuel and #2 fuel oil with an aggregate aboveground storage capacity of approximately 124,000 gallons, nor did the Plan indicate that nine bulk storage tanks with an aggregate aboveground storage capacity of 4 million gallons have been permanently closed and taken out of service.

31. The EPA's inspection in February 2014 and review of Respondent's SPCC Plan revealed no documentation indicating that the Plan had been periodically reviewed or evaluated as required by 40 C.F.R. § 112.5(b), and in fact had not been reviewed or updated since its completion in September 1985.

32. The EPA's inspection in February 2014 and review of Respondent's SPCC Plan found that the Plan did not include all of the required provisions of 40 C.F.R. §§ 112.7 and 112.8.

33. Respondent's failure to must prepare, maintain and implement the SPCC Plan for the Facility, and failure to periodically review and evaluate the Plan and amend it to reflect changes at the Facility, are violations of 40 C.F.R. §§ 112.3, 112.5, 112.7 and 112.8, and as such, are violations of Sections 311 of the CWA, 33 U.S.C. § 1321.

Count 2
Failure to Implement the SPCC Plan

34. 40 C.F.R. § 112.3 requires that the owner or operator of an SPCC-regulated facility that was in operation on or before August 16, 2002, must prepare, maintain and implement its SPCC plan, and must amend it, if necessary to comply with 40 C.F.R. Part 112, no later than November 20, 2011. The facility was in operation prior to Aug 16, 2002.

35. 40 C.F.R. § 112.7(e) requires that the owner or operator of an SPCC-regulated facility must conduct inspections and tests required by 40 C.F.R. Part 112 in accordance with written procedures that are developed for the facility. The written procedures and a record the inspection and tests, signed by the inspector, must be kept with the SPCC Plan for a period of three years. Facility's SPCC Plan, including pages 36-37 and the inspection and report forms appended to the Plan, address the inspection and testing requirements of Part 112.

36. 40 C.F.R. § 112.7(f)(1) requires that the owner or operator of an SPCC-regulated facility must at a minimum, train its oil-handling personnel in the operation and maintenance of equipment to prevent discharges; discharge procedure protocols; applicable pollution control laws, rules and regulations; general facility operations; and the contents of the facility SPCC Plan.

37. 40 C.F.R. § 112.7(f)(3) requires that discharge prevention briefings for oil-handling personnel must be scheduled and conducted at least once a year to assure adequate understanding of the SPCC Plan for the facility. Such briefings must highlight and describe known discharges as described in 40 C.F.R. § 112.1(b) or failures, malfunctioning components, and any recently developed precautionary measures.

38. The EPA's February 2014 inspection of Respondent's Facility and operations found that the Facility had no records of any inspections or tests for its SPCC-regulated facility, as required by 40 C.F.R. Part 112.7(e).

39. The EPA's February 2014 inspection of Respondent's Facility and operations also revealed that Respondent had failed to train its oil-handling personnel as required by 40 C.F.R. § 112.7(f)(1) and (3).

40. Respondent's failure to implement an adequate SPCC plan for the Facility on or before November 10, 2011, , including failure to perform inspections, testing and training, is a

violation of 40 C.F.R. §§ 112.3 and 112.7, and as such, is a violation of Sections 311 of the CWA, 33 U.S.C. § 1321.

Penalty

41. As alleged in the preceding paragraphs, and pursuant to Section 311(b)(6)(B)(i) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(i), as adjusted pursuant to 40 C.F.R. § 19.4, Respondent is liable for civil penalties of up to \$16,000 per day for each day during which the violation continues, up to a maximum of \$37,500.

42. Based on the forgoing allegations, and pursuant to the authority of Section 311(b)(6)(B)(i) of the CWA, 33 U.S.C. § 1319(b)(6)(B)(i), as adjusted pursuant to 40 C.F.R. § 19.4, the Complainant has determined that an appropriate administrative penalty for Counts 1 and 2 is \$7,500.

CONSENT AGREEMENT

43. Respondent and EPA agree to the terms of this Consent Agreement/Final Order.

44. Respondent admits the jurisdictional allegations of this Complaint and Consent Agreement/Final Order and agrees not to contest the EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of this Consent Agreement/Final Order.

45. Respondent neither admits nor denies the factual allegations and legal conclusions asserted by the EPA in this Complaint and Consent Agreement/Final Order.

46. Respondent waives its right to contest any issue of fact or law set forth above, and its right to appeal this Consent Agreement/Final Order.

47. Respondent and Complainant agree to conciliate the matters set forth in this Consent Agreement/Final Order without the necessity of a formal hearing and agree to bear their own costs and attorney's fees incurred as a result of this action.

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

49. Respondent understands and agrees that this Consent Agreement/Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement/Final Order.

50. Respondent certifies by the signing of this Consent Agreement/Final Order that to the best of its knowledge, Respondent's Facility is in current compliance with Section 311 of the CWA, 33 U.S.C. § 1321, and applicable regulations.

Penalty Payment

51. Respondent agrees that, in settlement of the claims alleged in this Consent Agreement/Final Order, Respondent shall pay a civil penalty of **Seven Thousand, Five Hundred Dollars (\$7,500)** pursuant to the authority of Section 311(b)(6)(B)(i) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(i), to be paid in full no later than 30 days after the effective date of this Consent Agreement/Final Order as set forth below.

52. The payment of penalties must reference docket number “CWA-07-2015-0065 - OSLTF” and be remitted using one of the payment methods specified in Appendix A to this Order.

53. Copies of the checks or verification of another payment method for the penalty payments remitted as directed by above, shall be mailed to:

Kathy Robinson
Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

and to

Patricia Gillispie Miller
Senior Counsel
U.S. Environmental Protection Agency – Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

54. Respondent agrees that no portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Consent Agreement/Final Order shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

55. Respondent understands that, pursuant to 40 C.F.R. § 13.18, its failure to make any payment according to the above schedule will automatically accelerate the debt which will become due and owing in full, immediately. Interest on any late payment will be assessed at the annual interest rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. The interest will be assessed on any overdue amount from the due date through the date of payment. Failure to pay the civil penalty when due may result in the commencement of a civil action in Federal District Court to collect said penalty, together with costs or interest.

Effect of Settlement and Reservation of Rights

56. Respondent’s payment of the entire civil penalty pursuant to this Consent Agreement/Final Order resolves all civil and administrative claims pursuant to Section 1321(b)(6)(B) of the CWA, 33 U.S.C. § 1321(b)(6)(B), for violations alleged in this Complaint

and Consent Agreement/Final Order. Complainant reserves the right to take any enforcement action with respect to any other violations of the CWA or any other applicable law.

57. The effect of settlement described above is conditional upon the accuracy of the Respondent's representations to the EPA, as memorialized in Paragraph 50 of this Consent Agreement/Final Order.

58. Nothing contained in this Consent Agreement/Final Order shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state and local environmental statutes and regulations and applicable permits.

59. Notwithstanding any other provision of this Consent Agreement/Final Order, the EPA reserves the right to enforce the terms of this Consent Agreement/Final Order by initiating a judicial or administrative action pursuant to Section 311 of the CWA, 33 U.S.C. § 1321, and to seek penalties against Respondent or to seek any other remedy allowed by law.

60. With respect to matters not addressed in this Consent Agreement/Final Order, the EPA reserves the right to take any enforcement action pursuant to the CWA and its implementing regulations, or any other available legal authority, including without limitation, the right to seek injunctive relief, penalties and damages.

General Provisions

61. This Consent Agreement/Final Order shall be entered and become effective upon signature by the Regional Judicial Officer. All time periods herein shall be calculated therefrom unless otherwise provided in this Consent Agreement/Final Order. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

62. The executed Complaint and Consent Agreement/Final Order shall be filed with the Regional Hearing Clerk, U.S. Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219.

63. The headings in this Consent Agreement/Final Order are for convenience of reference only and shall not affect interpretation of this Consent Agreement/Final Order.

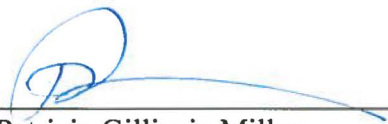
64. Respondent and Complainant agree that this Consent Agreement/Final Order may be signed in part and counterpart.

FOR THE COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY

Dec 8, 2015
Date



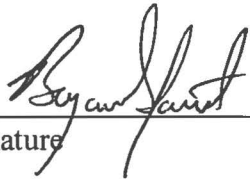
John J. Smith
Director
Air and Waste Management Division
U.S. Environmental Protection Agency
Region 7



Patricia Gillispie Miller
Senior Counsel
U.S. Environmental Protection Agency
Region 7

FOR THE RESPONDENT:
HOME SERVICE OIL COMPANY

11-3-15
Date


Signature

Bryan Goforth
Name (Print)

Executive Vice President
Title

FINAL ORDER

Pursuant to 40 C.F.R. § 22.18(b)-(c) of EPA's Consolidated Rules of Practice, the foregoing Consent Agreement resolving this matter is incorporated by reference into this Final Order and is hereby ratified.

The Respondent is ORDERED to comply with all terms of the Consent Agreement effective immediately.

IT IS SO ORDERED.

12-9-2015
Date

Karina Boromeo
Karina Boromeo
Regional Judicial Officer

CERTIFICATE OF SERVICE

I certify that on the date below I hand delivered the original and one true copy of this Complaint and Consent Agreement/Final Order to the Regional Hearing Clerk, United States Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219. I further certify that on the date below I sent a true and correct copy of the original Complaint and Consent Agreement/Final Order by certified mail, return receipt requested, to:

Home Service Oil Company
6910 Front Street
Barnhart, Missouri 63012

David E. Mangelsdorf
President and Registered Agent
Home Service Oil Company
PO Box 9
Barnhart, Missouri 63012

12/15/15
Date

Kathy Robinson
Name

Appendix A
Penalty Payment Information for Consent Agreement and Final Order

Complete information regarding making payments to the US EPA may be found at:
<http://www.epa.gov/financial/makepayment>

For your convenience, the following is a summary of the acceptable payment methods for the civil penalty required to be paid pursuant to the Consent Agreement and Final Order:

1. Cashier's or Certified Check: If payment is being made by cashier's or certified check, submit the check, including the name and docket number of this case, payable to "Treasurer, United States of America," to:

US Postal Service:

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

Common Carriers (Fedex, DHL, UPS):

U.S. Environmental Protection Agency
Government Lockbox 979077
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101

2. Wire Transfer: If payment is being made by wire transfer, the wire transfer must indicate the name and docket number of this case and be sent directly to the Federal Reserve Bank in New York City with the following information:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 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

3. Automated Clearing House (ACH) or Remittance Express (REX): If using ACH or REX, payments must indicate the name and docket number of the case and can be made through the US Treasury using the following information:

US Treasury REX/Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format
Transaction Code 22 – checking
Physical location of US Treasury Facility:
5700 Rivertech Court
Riverdale, MD 20737
US Treasury Contact Information:
John Schmid: 202-874-7026
Remittance Express (REX): 1-866-234-5681

4. On-line Payment: On-Line Payment is available through the Department of Treasury, and can be accessed using the information below:

www.pay.gov

Enter “sfo 1.1” (without quotation marks) in the SEARCH PUBLIC FORMS field.

You should see the following information as your search result:

*Form Number: **SFO Form Number 1.1***

Use this form to pay civil penalties, FOIA request, Superfund, Citations, Compliance Orders, and other miscellaneous payments.

Click the link to open the form, complete the required fields, then click SUBMIT DATA button at the bottom of the form.

Payment Tips

To ensure proper credit please include the following information on your payment:

- Company/remitter's name (as it appears on EPA document)
- Complete address, including city, state, zip
- Remitter's point of contact person and phone number
- EPA document number (case, contract, grant, purchase order, etc.)—NOT the remitter's number
- EPA contact name and phone number, if available
- Reason for payment

Note: It is important to direct payment to the appropriate EPA finance center to ensure your remittance is credited to the proper account. Each finance center has its own unique agency location code, and each U.S. depository has a unique bank routing number.