

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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In the Matter of:

Colvin Oil Company
Medford, Oregon

Respondent.

DOCKET NO. CWA-10-2012-0142

CONSENT AGREEMENT AND
FINAL ORDER

HEARINGS CLERK
EPA -- REGION 10

1. AUTHORITIES

1.1. This Consent Agreement and Final Order (CAFO) is issued 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 (Act), 33 U.S.C. § 1321(b)(6)(B)(i), as amended by the Oil Pollution Act of 1990. The Administrator has delegated the authority to issue the Final Order contained in Part 5 of this CAFO to the Regional Administrator of EPA Region 10, who in turn has delegated this authority to the Regional Judicial Officer.

1.2. In accordance with Section 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, EPA hereby issues, and Colvin Oil Company (Respondent) hereby agrees to issuance of, the Final Order contained in Part 5 of this CAFO.

1.3. The Oil Pollution Prevention regulations that implement Section 311(j) of the Act, 40 C.F.R. Part 112, establish requirements for preventing the discharge of oil. These requirements apply to owners or operators of non-transportation-related facilities engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing or consuming oil or oil products that, due to facility location, could reasonably be expected to discharge oil in harmful quantities to navigable waters of the United States or adjoining shorelines.

1.4. “Navigable waters” are defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 110.1.

1.5. Pursuant to Section 311(b)(4) of the Act, 33 U.S.C. § 1321(b)(4), EPA, acting through its delegated authority under Executive Order No. 11735, 38 Fed. Reg. 21243 (Aug. 7, 1973), has determined by regulation that the quantities of oil which may be harmful to the public health or welfare or the environment of the United States include discharges of oil that 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.

1.6. Under 40 C.F.R. § 112.3, the owner or operator of an onshore facility that became operational on or before August 16, 2002, that due to its location, could reasonably be expected to discharge oil in harmful quantities into or upon the navigable waters of the United States and adjoining shorelines shall have prepared and implemented a Spill Prevention, Control and Countermeasure (SPCC) Plan in accordance with 40 C.F.R. § 112.7.

1.7. Under 40 C.F.R. § 112.7, the SPCC Plan shall be prepared “in accordance with good engineering practices” and have the full approval of management with authority to commit the necessary resources to implement the plan.

2. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.45(b), issuance of this CAFO commences this proceeding, which will conclude when the Final Order contained in Part 5 of this CAFO becomes effective.

2.2. A concise statement of the factual bases for alleging violations of the Act, together with specific references to the provisions of the Act and implementing regulations Respondent is alleged to have violated, appears in Part 3 of this CAFO.

3. ALLEGATIONS

3.1. Respondent is a corporation organized under the laws of the State of Oregon and is a “person” within the meaning of Section 311(a)(7) of the Act, 33 U.S.C. § 1321(a)(7), and 40 C.F.R. § 112.2.

3.2. At the time of an EPA inspection conducted on March 25, 2010, Respondent was the “owner or operator” within the meaning of Section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6), of oil storage and distribution facilities located at 20 South Stage Road in Medford, Oregon (the “Facility”).

3.3. The Facility is an “onshore facility” within the meaning of Section 311(a)(10) of the Act, 33 U.S.C. § 1321(a)(10), and 40 C.F.R. § 112.2.

3.4. The Facility is “non-transportation-related” within the meaning of 40 C.F.R. § 112.2.

3.5. The Facility is a non-transportation facility that, due to location, could reasonably have been expected, at the time of inspection, to discharge oil from an above-ground container to a navigable water of the United States or its adjoining shorelines in a harmful quantity and is therefore subject to the SPCC regulations at 40 C.F.R. Part 112.

3.6. The Facility had, at the time of inspection, an aggregate above-ground storage capacity greater than 1,320 gallons of oil in containers each with a shell capacity of at least 55 gallons.

3.7. The Facility is located approximately .5 miles from Bear Creek, a tributary of the Rogue River, which empties into the Pacific Ocean. The Facility is also adjacent to a ditch which flows north for approximately .2 miles to Gore Creek, which flows to Bear Creek. Gore Creek, Bear Creek, the Rogue River and the Pacific Ocean are “navigable waters” within the meaning of 40 C.F.R. § 112.2.

3.8. Respondent, at the time of inspection, was engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using or consuming oil or oil products at the Facility, as described in 40 C.F.R. § 112.1(b).

3.9. The Facility began operating before August 16, 2002.

3.10. Under 40 C.F.R. § 112.3, the owner or operator of an SPCC-regulated facility that was in operation on or before August 16, 2002, shall have prepared and implemented a written SPCC Plan that complies with 40 C.F.R. §§ 112.3 and 112.7.

3.11. On March 25, 2010, authorized EPA representatives inspected the Facility to determine compliance with Section 311(j) of the Act, and in particular with the requirements of 40 C.F.R. Part 112 related to SPCC Plans.

3.12. EPA alleges that Respondent:

3.12.1.1. Failed to have an adequate SPCC Plan at the Facility that meets the requirements of 40 C.F.R. §§ 112.3, 112.7 and 112.8;

3.12.1.2. Failed to provide records of inspections and tests, as required by 40 C.F.R. § 112.7(e).

3.12.1.3. Failed to conduct and document the training of oil-handling personnel, as required by 40 C.F.R. § 112.7(f);

3.12.1.4. Failed to implement and document security measures, as required by 40 C.F.R. § 112.7(g);

3.12.1.5. Failed to have adequate containment capacity at the loading/unloading area at the Facility, as required by 40 C.F.R. § 112.7(h);

3.12.1.6. Failed to perform brittle fracture testing, as required by 40 C.F.R. § 112.7(i);

- 3.12.1.7. Failed to implement adequate secondary containment, failed to implement adequate rainwater drainage procedures, failed to perform integrity tests, failed to use alarms on bulk storage containers, and failed to visually inspect containers, as required by 40 C.F.R. §§ 112.8(c) and 112.12(c);
- 3.12.1.8. Failed to follow the requirements for buried piping, including inspection and testing, as required by 40 C.F.R. §§ 112.8(d) and 112.12(d);
- 3.13. Respondent's failure to prepare and implement an adequate SPCC Plan for the Facility in accordance with the requirements of 40 C.F.R. §§ 112.7 and 112.8 violated 40 C.F.R. §112.3.

4. CONSENT AGREEMENT

- 4.1. Respondent admits the jurisdictional allegations contained in Part 3 of this CAFO.
- 4.2. Respondent neither admits nor denies the specific factual allegations contained in Part 3 of this CAFO.
- 4.3. Respondent expressly waives any rights to contest the allegations and to appeal the Final Order contained herein.
- 4.4. The provisions of this CAFO shall bind Respondent and its servants, employees, successors and assigns.
- 4.5. Except as provided in Paragraph 4.10 below, each party shall bear its own costs in bringing or defending this action.
- 4.6. Pursuant to Section 311(b) of the Act, 33 U.S.C. § 1321(b), EPA has determined and Respondent agrees that an appropriate penalty to settle this action is TWENTY-SIX-THOUSAND DOLLARS (\$26,000). This penalty amount has been agreed upon in consideration of statutory penalty factors identified in Section 311(b)(8) of the Act, 33 U.S.C. § 1321(b)(8).

4.7. Respondent consents to the issuance of the attached Final Order and to payment of the civil penalty cited in the foregoing paragraph within thirty (30) days of the effective date of the Final Order.

4.8. Payment under this CAFO shall be made by cashier's check or certified check, payable to "Environmental Protection Agency" and bearing the notation "OSLTF-311."

Payment sent by the U.S. Postal Service shall be addressed to:

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

Payment sent by express mail via a non-U.S. Postal Service carrier shall be addressed to:

U.S. Bank
Government Lockbox 979077
U.S. E.P.A. Fines and Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101

Respondent shall note on the check the title and docket number as they appear in the caption of this CAFO.

4.9. Respondent shall serve photocopies of the check described above on the Regional Hearing Clerk and EPA at the following two addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
1200 Sixth Avenue, Suite 900
Mail Stop ORC-158
Seattle, Washington 98101

Ms. Kimberly Ogle
Unit Manager, NPDES Compliance Unit
1200 Sixth Avenue, Suite 900
Mail Stop OCE-133
Seattle, Washington 98101

4.10. If Respondent fails to pay the penalty assessed by paragraph 4.6 of this CAFO in full by its due date, the entire unpaid balance of penalty and accrued interest shall become

immediately due and owing. Such a failure may subject Respondent to a civil action to collect the assessed penalty under the Act. In any collection action, the validity, amount and appropriateness of the penalty set out in paragraph 4.6 shall not be subject to review.

4.10.1. Interest. Pursuant to Section 311(b)(6)(H) of the Act, 33 U.S.C. § 1321 (b)(6)(H), any unpaid portion of the assessed penalty shall bear interest at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the Final Order contained herein.

4.10.2. Attorneys Fees, Collection Costs, Nonpayment Penalty. Pursuant to Section 311(b)(6)(H) of the Act, 33 U.S.C. § 1321(b)(6)(H), should Respondent fail to pay on a timely basis the amount of the penalty assessed by the Final Order contained herein, Respondent shall pay (in addition to any assessed penalty and interest), attorneys fees and costs for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to twenty percent (20%) of the aggregate amount of Respondent's penalties and nonpayment penalties that are unpaid as of the beginning of such quarter.

4.11. The penalty described in Paragraph 4.6, including any costs incurred under Paragraph 4.10 above, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.12. Respondent represents that it is authorized to execute this CAFO and that the party signing this CAFO on its behalf is authorized to bind Respondent to the terms of this CAFO. This CAFO may be executed in multiple counterparts, each of which shall be deemed to have the same force and effect as an original. A facsimile signature shall be treated as an original.

4.13. Compliance with all the terms and conditions of this CAFO shall result in full settlement and satisfaction of all claims for penalties alleged in Section 3 above.

STIPULATED AND AGREED:

FOR RESPONDENT COLVIN OIL COMPANY

Name

Dated: _____

FOR COMPLAINANT


Edward J. Kowalski, Director
Office of Compliance and Enforcement
U. S. Environmental Protection Agency Region 10

Dated: _____

4.13. Compliance with all the terms and conditions of this CAFO shall result in full settlement and satisfaction of all claims for penalties alleged in Section 3 above.

STIPULATED AND AGREED:


FOR RESPONDENT COLVIN OIL COMPANY



Name

Dated: 7-9-2012

FOR COMPLAINANT



Edward J. Kowalski, Director
Office of Compliance and Enforcement
U. S. Environmental Protection Agency Region 10

Dated: 7/20/2012

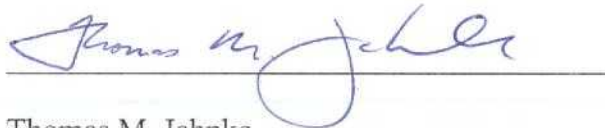
5. FINAL ORDER

5.1. The terms of the foregoing Consent Agreement are hereby ratified and incorporated by reference into this Final Order. Respondent is hereby ordered to comply with the terms of settlement contained in the Consent Agreement.

5.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to the Clean Water Act for the particular violations alleged in Part 3 above. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate injunctive relief or other equitable relief or criminal sanctions for any violations of law. This CAFO does not waive, extinguish or otherwise affect Respondent's obligations to comply with all applicable provisions of the Act and regulations and permits there under.

5.3. This Final Order shall become effective upon filing.

SO ORDERED this 24th day of July, 2012.



Thomas M. Jahnke
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 10

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of Colvin Oil Company, Docket No.: CWA-10-2012-0142**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

The undersigned certifies that a true and correct copy of the document was delivered to:

Ms. Stephanie L. Mairs, Esq.
U.S. Environmental Protection Agency
1200 Sixth Avenue, ORC-158
Suite 900
Seattle, Washington 98101

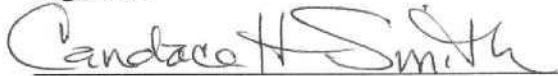
Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt to:

Mr. Christopher A. Rycewicz, Esq.
Miller Nash LLP
3400 U.S. Bancorp Tower
111 S.W. 5th Ave.
Portland, Oregon 97204

DATED this 24th day of July, 2012



Signature



Print Name

Regional Hearing Clerk
EPA Region 10