

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX**

U.S.EPA - Region 09

18DEC2017 - 02:28PM

** FILED **

)	
)	
IN THE MATTER OF:)	
)	
Encore Oils, LLC , an Oregon Limited)	U.S. EPA Docket No.
Liability Company, dba SeQuential)	SPCC-09-2018-0001
Ottone-Salinas, Inc. , a California)	
Corporation)	Clean Water Act Section 311 Class I
)	Consent Agreement and Final Order
)	
)	Proceeding under
Respondents)	40 C.F.R. §§ 22.13 and 22.18
)	
)	

CONSENT AGREEMENT

A. PRELIMINARY STATEMENT

1. This is a civil administrative enforcement action initiated pursuant to 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 the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules”), 40 C.F.R. Part 22. Complainant is the United States Environmental Protection Agency, Region IX (“EPA”). Respondents are Encore Oils, LLC, an Oregon Limited Liability Company, dba SeQuential, and Ottone-Salinas, Inc., a California Corporation (“Respondents”).

2. This Consent Agreement and Final Order issued pursuant to 40 C.F.R. §§ 22.13 and 22.18 (“CA/FO”) simultaneously commences and concludes this proceeding, wherein EPA

alleges that Respondents violated Section 311(j)(1)(C) of the CWA, 33 U.S.C. § 1321(j)(1)(C), and its implementing regulations.

B. STATUTORY AND REGULATORY FRAMEWORK

3. Section 311(j)(1)(C) of the CWA, 33 U.S.C. § 1321(j)(1)(C), provides that the President shall issue regulations “establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil . . . from onshore facilities and offshore facilities, and to contain such discharges”

4. Initially by Executive Order 11548 (July 20, 1970), 35 Fed. Reg. 11,677 (Jul. 22, 1970), and most recently by Section 2(b)(1) of Executive Order 12777 (Oct. 18, 1991), 56 Fed. Reg. 54,757 (Oct. 22, 1991), the President delegated to EPA the authority under Section 311(j)(1)(C) of the CWA, 33 U.S.C. § 1321(j)(1)(C), to issue the regulations referred to in the preceding Paragraph for non-transportation-related onshore facilities.

5. EPA subsequently promulgated regulations codified at 40 C.F.R. Part 112, as amended by 67 Fed. Reg. 47,042 *et seq.* (Jul. 17, 2002) (“Oil Pollution Prevention Regulations”), pursuant to its delegated statutory authorities, and pursuant to its authorities under the CWA, 33 U.S.C. §§ 1251 *et seq.* The Oil Pollution Prevention Regulations establish certain procedures, methods, and requirements, applicable to every owner and operator of a non-transportation related onshore facility, where the facility, due to its location, could reasonably be expected to discharge oil into or on navigable waters or their adjoining shorelines in such quantities as may be harmful to the public health or welfare or the environment of the United States. *See* 40 C.F.R. § 112.1(b).

6. In promulgating 40 C.F.R. § 110.3, which implements Section 311(b)(4) of the CWA, 33 U.S.C. § 1321(b)(4), EPA determined that an oil discharge is of a harmful quantity if it

either “(a) violate[s] applicable water quality standards, or (b) cause[s] a film or sheen upon, or discoloration of the surface of the water or adjoining shorelines, or a sludge or emulsion to be deposited beneath the surface of the water or on adjoining shorelines.”

C. GENERAL ALLEGATIONS

7. Respondent Encore Oils, LLC operates a vegetable oil and grease handling, storage, and processing facility located at 1 Work Circle, Salinas, Monterey County, California (the “Facility”). Respondent Ottone-Salinas, Inc. owns the real property on which the Facility is located and leases the Facility to Encore Oils, LLC. The Facility’s aggregate above-ground storage capacity is greater than 1,320 gallons of oil, with oil/grease stored in aboveground storage tanks (“ASTs”) ranging in size from 250 to 20,000 gallons and in several 55-gallon mobile drums.

8. The Facility is an onshore facility within the meaning of Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10) (“onshore facility’ means any facility . . . of any kind located in, on, or under, any land within the United States other than submerged land”), and 40 C.F.R. § 112.2.

9. Respondent Encore Oils, LLC is a limited liability company organized under the laws of Oregon with a place of business located at 3333 NW 35th Ave, Portland, Oregon. Respondent Ottone-Salinas, Inc. is a corporation organized under the laws of California with a place of business located at 295 Main Street, Suite 200, Salinas, California. Each Respondent is a “person” within the meaning of Section 311(a)(7) of the CWA, 33 U.S.C. §§ 1321(a)(7) (“‘person’ includes an individual, firm, corporation, association, and a partnership”) and 40 C.F.R. § 112.2.

10. In early 2016, Encore Oils, LLC purchased the assets of the prior Facility operator, which ran a tallow rendering plant. The rendering operations ceased at that time. On March 31, 2016, Ottone-Salinas, Inc. began leasing the Facility to Encore Oils, LLC, including the holding tanks, boiler, sewer treatment apparatus, and other buildings and improvements as detailed in a lease agreement between these two entities. On March 31, 2016, Encore Oils, LLC began operating a used cooking oil and grease storage and processing plant at the Facility whereby it collects, stores, and processes used cooking oil and grease and converts it into useable products.

11. Each Respondent is therefore an “owner or operator” of the Facility within the meaning of Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6) (“owner or operator” means . . . any person owning or operating [an] onshore facility”), and 40 C.F.R. § 112.2.

12. The Facility is located approximately 10 feet from Alisal Creek. Alisal Creek feeds into the Salinas River, a tributary of the Monterey Bay and a “navigable water” of the United States as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7) and 40 C.F.R. § 110.1.

13. The Facility is therefore a non-transportation-related onshore facility that, 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”).

14. Pursuant to the CWA, Executive Order 12777, and 40 C.F.R. § 112.1, Respondents, as the owner or operator of an SPCC-regulated facility, are subject to the Oil Pollution Prevention Regulations.

15. On September 26, 2016, EPA conducted an inspection of the Facility to determine Respondents' compliance with the Oil Pollution Prevention Regulations, which include requirements for Spill Prevention, Countermeasure, and Control ("SPCC") planning.

16. Respondents and the former operator, not named in this matter, jointly entered into an Administrative Order on Consent (EPA Docket No. OPA-311-09-2017-001) with EPA, effective June 1, 2017, to come into full compliance with the Oil Pollution Prevention Regulations at this Facility.

D. ALLEGED VIOLATIONS

17. Paragraphs 1-16 above are incorporated herein by reference.

18. As of March 31, 2016, Respondents have failed to comply with applicable SPCC requirements of the Oil Pollution Prevention Regulations, specifically by: 1) having an SPCC Plan that lacks secondary containment that is sufficiently impervious to prevent spilled product from escaping containment before cleanup can occur as required by 40 C.F.R. § 112.7(c); 2) failing to provide and maintain inspection reports, tests, and records in accordance with 40 C.F.R. § 112.7(e); 3) failing to use containers for oil storage that have material and construction that are compatible with the material stored and conditions of storage as required by 40 C.F.R. § 112.12(c)(1); and 4) failing to test or inspect each aboveground container for integrity on a regular schedule, including failing to frequently inspect the outside of containers for signs of deterioration and discharges, and keeping records of such inspections in accordance with 40 C.F.R. § 112.12(c)(6). Based on information gathered during and after EPA's September 26, 2016 Facility inspection and belief, Respondents have violated these requirements for each day during the period from March 31, 2016 through June 1, 2017.

E. CIVIL PENALTY

19. The Complainant proposes that the Respondents be assessed, and Respondents agree to pay THIRTY-ONE THOUSAND EIGHT HUNDRED NINETY-THREE DOLLARS AND FIFTY-FOUR CENTS (\$31,893.54) as the civil penalty for the violations alleged herein.

20. The proposed penalty was calculated in accordance with the Civil Penalty Policy for Section 311(b)(3) and Section 311(j) of the Clean Water Act, dated August 1998, and was adjusted for inflation in accordance with the Debt Collection Improvement Act of 1993, *see* 40 C.F.R. § 19.4, and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (“2015 Act”), *see* 28 U.S.C. § 2461, note.

F. ADMISSIONS AND WAIVERS

21. For purposes of this proceeding, Respondents admit and agree that EPA has jurisdiction and authority over the subject matter of the action commenced in this CA/FO and over Respondents. Respondents consent to and agree not to contest EPA’s jurisdiction and authority to enter into and issue this CA/FO to enforce its terms. Further, Respondents will not contest EPA’s jurisdiction and authority to compel compliance with this CA/FO in any enforcement proceedings, either administrative or judicial, or to impose sanctions for violations of this CA/FO.

22. Except in an action to enforce this CA/FO, Respondents neither admit nor deny any allegations of fact or law set forth in Section D of this CA/FO and do not admit any liability arising out of the occurrences alleged in this CA/FO. Respondents hereby waive any rights Respondents may have to appeal the Final Order attached to this Consent Agreement and made part of the CA/FO. Respondents hereby consent to the terms of this CA/FO and the issuance of this CA/FO without adjudication.

G. PARTIES BOUND

23. This CA/FO shall apply to and be binding upon Respondents and their agents, successors, and assigns, and upon all persons acting under or for Respondents, until such time as the civil penalty required under Section E has been paid in accordance with Section I, and any delays in performance and/or stipulated penalties have been resolved. At such time as those matters are concluded, this CA/FO shall terminate and constitute full settlement of the violations alleged herein.

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

25. Until termination of this CA/FO, Respondents shall give notice of this CA/FO to any successor in interest prior to transfer of Respondents' ownership or operation of the Facility and shall notify EPA at least seven (7) days prior to such transfer.

26. The undersigned representative of each Respondent hereby certifies that he or she is fully authorized by Respondent to enter into this CA/FO and to execute and legally bind Respondent to it.

H. CERTIFICATION OF COMPLIANCE

27. Each Respondent certifies by signing this CA/FO that, to the best of its knowledge, as of the Effective Date of this CA/FO, it is in compliance with the requirements of Section 311(j) of the Act, 33 U.S.C. § 1321(j), at the Facility.

28. The signatory for each Respondent certifies under penalty of law that this certification of compliance is based upon true, accurate, and complete information, which the signatory can verify personally or regarding which the signatory has inquired of the person or persons directly responsible for gathering the information.

I. PAYMENT OF CIVIL PENALTY

29. Respondents hereby consent to the assessment of, and agree to pay a civil penalty of THIRTY-ONE THOUSAND EIGHT HUNDRED NINETY-THREE DOLLARS AND FIFTY-FOUR CENTS (\$31,893.54) in settlement of the violations set forth in this CA/FO. This CA/FO constitutes a settlement of all claims alleged in this CA/FO.

30. Respondents shall pay the civil penalty within thirty (30) days of the Effective Date of this CA/FO. The Effective Date of this CA/FO is the date that the Final Order is filed with the Regional Hearing Clerk after it is signed by the Regional Judicial Officer.

31. Respondents shall submit the payment due under this CA/FO in accordance with one of the options set forth below, and shall reference the Respondents' name and state that payment is being made pursuant to this CA/FO.

a. Payments

1. Check Payment. If paying by check, the Respondents shall submit a cashier's or certified check in the amount of \$31,893.54 payable to the "Treasurer, United States of America." The check shall specify in the notation section the docket number of this case. The cover letter transmitting each check should include Respondents' name, the case title, the docket number, and the amount of the penalty.

A check sent by regular U.S. Postal Service mail should be addressed to:

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

A check sent by overnight mail should be addressed to:

U.S. Environmental Protection Agency
Government Lockbox 979077
U.S. EPA Fines and Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
Contact: Craig Steffen (513-487-2091)

2. Electronic Transfer. Alternatively, payment may be made by electronic transfer. Respondents' name, the case title and the docket number shall be provided as part of the payment transmittal. An electronic payment shall be made as follows:

Wire transfers must 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 = 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 (301-877-6548)
ABA = 051036706
Transaction Code 22 – checking
Environmental Protection Agency
Account 31006
CTX Format

b. Notification. A copy of each check, or notification that the payment has been made by one of the other methods listed above, including proof of the date payment was made,

shall be sent with a transmittal letter, indicating Respondents' name, the case title, and docket number, to each of the following:

Connor Adams (ENF-3-2)
Enforcement Division
U.S. EPA, Region IX
75 Hawthorne Street
San Francisco, CA 94105

and

Steve Armsey
Acting Regional Hearing Clerk (ORC-1)
U.S. EPA, Region IX
75 Hawthorne Street
San Francisco, CA 94105

32. In accordance with the Debt Collection Act of 1982 and U.S. Treasury directive (TFRM 6-8000), failure to send the penalty by the due date will result in imposition of interest from the effective date of this CA/FO at the current interest rate published by the U.S. Treasury, as described at 40 C.F.R. § 13.11. In addition, a twelve percent (12%) per annum penalty will be applied on any principal amount not paid within ninety (90) days of the due date.

33. The penalties specified in this CA/FO shall represent civil penalties assessed by EPA and shall not be deducted by Respondents or any other person or entity for federal, state, or local taxation purposes.

J. RESERVATION OF RIGHTS

34. Except as addressed in this CA/FO, EPA expressly reserves all rights and defenses that it may have.

35. Except as addressed by this CA/FO, EPA hereby reserves all of its statutory and regulatory powers, authorities, rights, and remedies, both legal and equitable, including any right EPA may have to require that Respondents perform tasks in addition to those required by this

CA/FO. EPA further reserves all of its statutory and regulatory powers, authorities, rights, and remedies, both legal and equitable, which may pertain to Respondents' failure to comply with any of the requirements of this CA/FO, including, without limitation, the assessment of penalties under Section 311(b) of the CWA, 33 U.S.C. § 1321(b). This CA/FO shall not be construed as a covenant not to sue, a release, waiver, or limitation of any rights, remedies, powers, or authorities, civil or criminal, which EPA has under the CWA, or any other statutory, regulatory, or common law enforcement authority of the United States, except as otherwise set forth herein.

36. Compliance by Respondents with the terms of this CA/FO shall not relieve Respondents of their obligations to comply with any applicable local, state, or federal laws and regulations.

37. The entry of this CA/FO and Respondents' consent to comply shall not limit or otherwise preclude EPA from taking, nor limit or otherwise preclude Respondents from asserting rights and defenses in additional enforcement actions should EPA determine that such actions are warranted except as they relate to Respondents' liability for federal civil penalties for the specific alleged violations and facts as set forth in Section D of this CA/FO. Full payment of the penalty proposed herein shall resolve Respondents' liability for federal civil penalties for the violations and facts alleged herein.

38. Except in an action to enforce this CA/FO, Respondents expressly reserve all rights to assert that neither this CA/FO nor anything in this CA/FO shall be admissible in any proceeding as evidence of an admission by, or to prove the liability of Respondents for the allegations stated herein.

K. MISCELLANEOUS

39. This CA/FO may be amended or modified only by written agreement executed by both EPA and each Respondent.

40. The headings in this CA/FO are for convenience of reference only and shall not affect interpretation of this CA/FO.

41. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in this proceeding.

42. EPA and Respondents consent to entry of this CA/FO without further notice.

L. EFFECTIVE DATE

43. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.13(b), this CA/FO shall be effective on the date that the Final Order contained in this CA/FO, having been approved and issued by the Regional Judicial Officer, is filed with the Regional Hearing Clerk.


///

///

///

IT IS SO AGREED,

For Respondent Encore Oils, LLC, an Oregon Limited Liability Company, dba SeQuential


Name: Tyson Keever
Title: CEO

Date: 11/2/17

For Respondent Ottone-Salinas, Inc., a California Corporation

Name: _____
Title: _____

Date: _____

For Complainant U.S. Environmental Protection Agency:

Kathleen Johnson
Director, Enforcement Division
U.S. Environmental Protection Agency Region 9
75 Hawthorne Street
San Francisco, CA 94105


Date: _____

IT IS SO AGREED,

For Respondent Encore Oils, LLC, an Oregon Limited Liability Company, dba SeQuential

_____ Date: _____
Name: _____
Title: _____

For Respondent Ottone-Salinas, Inc., a California Corporation

 Date: November 2, 2017
Name: MATTHEW OTTONE
Title: SECRETARY

For Complainant U.S. Environmental Protection Agency:

_____ Date: _____
Kathleen Johnson
Director, Enforcement Division
U.S. Environmental Protection Agency Region 9
75 Hawthorne Street
San Francisco, CA 94105

IT IS SO AGREED,

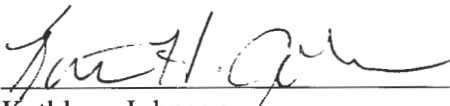
For Respondent Encore Oils, LLC, an Oregon Limited Liability Company, dba SeQuential

_____ Date: _____
Name: _____
Title: _____

For Respondent Ottone-Salinas, Inc., a California Corporation

_____ Date: _____
Name: _____
Title: _____

For Complainant U.S. Environmental Protection Agency:

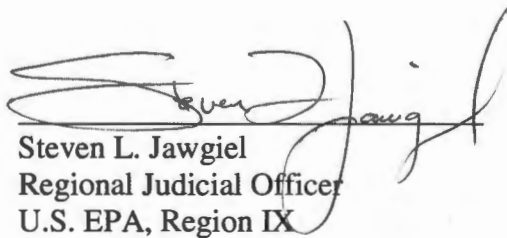
 _____ Date: 12/11/18
Kathleen Johnson
Director, Enforcement Division
U.S. Environmental Protection Agency Region 9
75 Hawthorne Street
San Francisco, CA 94105

FINAL ORDER

Pursuant to Section 311(b)(6) of the Clean Water Act, 33 U.S.C. §1321(b)(6) and the delegated authority of the undersigned, and in accordance with the “Consolidated Rule of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits,” codified at 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order.

It is Hereby Ordered that this Consent Agreement and Final Order (EPA Docket No. SPCC-09-2018-0001) be entered and that Respondents shall pay a civil penalty in the amount of \$31,893.54 in accordance with the terms of this Consent Agreement and Final Order.

Date: December 18, 2017


Steven L. Jawgiel
Regional Judicial Officer
U.S. EPA, Region IX

CERTIFICATE OF SERVICE

I hereby certify the attached Consent Agreement and Final Order was sent to the Respondents by U.S. Certified Mail, Return Receipt Requested this 14th day of December, 2017 to:

Mr. Tyson Keever
CEO
Encore Oils, LLC
3333 NW 35th Ave
Buildings C & D
Portland, OR 97210

Certified Mail Number: 7016 1370 0000 0748 8361

Mr. Matthew Ottone
Secretary
Ottone-Salinas Inc
295 Main Street
Suite 200
Salinas, CA 93901

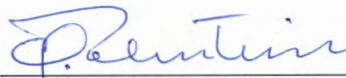
Certified Mail Number: 7016 1370 0000 0748 8378

An additional copy was delivered to the following U.S. EPA case attorney:

Ms. Sara Goldsmith
Office of Regional Counsel
U.S. EPA, Region IX
75 Hawthorne St., ORC-3
San Francisco, CA 94105

12/15/17

Date



Steven Armsey
Acting Regional Hearing Clerk
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105