

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7

10 JUN 10 AM 8:50

ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF

Nusser Oil Company)


) Docket No. CWA-07-2010-0011

Respondent)
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ORDER

Pursuant to 40 C.F.R. § 22.5(a)(1), facsimile filing of page 5 of the Consent Agreement and Final Order is authorized in this proceeding.

Dated: *June 10, 2010*



Robert Patrick
Regional Judicial Officer

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
901 NORTH FIFTH STREET
KANSAS CITY, KANSAS 66101

10 JUN 10 AM 8:50
ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

In the Matter of)
)
Nusser Oil Company) Docket No. CWA-07-2010-0011
Hanston, Kansas)
)
Respondent.)

CONSENT AGREEMENT AND FINAL ORDER

This proceeding for the assessment of civil penalties was initiated on or about November 23, 2009, pursuant to Section 311 of the Clean Water Act (CWA), 33 U.S.C. § 1321, when the United States Environmental Protection Agency (Complainant or EPA) issued to the Nusser Oil Company, Hanston, Kansas, (Respondent) a Complaint and Notice of Opportunity for Hearing.

The Complaint charged Respondent with violations of Section 311(j) of the CWA, 33 U.S.C. § 1321(j) and the regulations promulgated thereunder and codified at 40 C.F.R. Part 112, which set forth the requirements for the preparation and implementation of Spill Prevention Control and Countermeasure Plans (SPCC Plans) to prevent oil pollution.

The Complaint proposed a penalty of Forty-Six Thousand One Hundred and Thirty-Four Dollars (\$46,134) for these violations. The Complainant and Respondent subsequently entered into negotiations in an attempt to settle the allegations in the Complaint.

This Consent Agreement and Final Order (CA/FO) is a result of the above negotiations and resolves all issues relating to the administrative claims arising from the allegations in the Complaint.

CONSENT AGREEMENT

1. The terms of this Consent Agreement and the Final Order shall not be modified except by a subsequent written agreement between the parties.
2. Solely for the purposes of this Consent Agreement, Respondent admits the jurisdictional allegations of the Complaint and this CA/FO and agrees not to contest the EPA's jurisdiction in this proceeding or any subsequent proceeding related to the Complaint to enforce the terms of the Final Order.
3. Respondent neither admits nor denies the factual allegations and legal conclusions set

forth in the Complaint.

4. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above, and its right to appeal the Final Order.

5. Respondent and Complainant agree to conciliate the matters set forth in the Complaint without the necessity of a formal hearing and agree to bear their own costs and attorney's fees.

6. This CA/FO resolves all civil and administrative claims for the CWA violations specifically alleged in the Complaint.

7. Nothing contained in this CA/FO shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state and local environmental statutes and regulations and applicable permits.

8. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this CA/FO and to execute and legally bind Respondent to it.

9. Respondent certifies by the signing of this CA/FO that, to the best of its knowledge, it is in compliance at Nusser Oil Company's Hanston, Kansas Facility with the requirements of Section 311(j) of the CWA.

10. Respondent consents to payment of a civil penalty of \$15,000 as set forth in paragraph 1 of the Final Order.

11. Respondent understands that failure to pay any portion of the civil penalty on the date the same is due shall cause the entire civil penalty assessed to be immediately due and owing, and may result in the commencement of a civil action in Federal District Court to collect said penalty, along with interest thereon at the applicable statutory rate, together with any late charges and or handling charges which may be authorized by statute.

FINAL ORDER

Pursuant to the authority of Section 311 of the CWA, 33 U.S.C. § 1321, and according to terms of the Consent Agreement, IT IS HEREBY ORDERED THAT:

1. Respondent shall pay a mitigated civil penalty of Fifteen Thousand Dollars (\$15,000) within 30 days of the effective date of the Final Order.

2. Payment of the Payment shall be by cashier's or certified check made payable to the "United States Treasury" and sent to:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, Missouri 63197-9000.

Payment shall identify the Respondent by name and docket number (CWA-07-2010-0011).
Copies of the check shall be mailed to:

Kristen Nazar
Assistant Regional Counsel
U.S. Environmental Protection Agency - Region 7
901 North 5th Street
Kansas City, Kansas 66101

and

Kathy Robinson
Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 7
901 North 5th Street
Kansas City, Kansas 66101.

3. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this CA/FO shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

4. This 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 CA/FO.

5. Respondent and Complainant shall bear their respective costs and attorney's fees.

COMPLAINANT:
United States Environmental Protection Agency

Date 5/26/10

Becky Weber
Becky Weber
Director
Air and Waste Management

Date 5/24/2010

Kristen Nazar
Kristen Nazar
Assistant Regional Counsel
Office of Regional Counsel

In the Matter of Nussler Oil Company
Collect Agreement and Final Order
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RESPONDENT:
Nussler Oil Company

5/24/10
Date

Terry L. Nussler
Signature

Name: Terry L. Nussler

Title: Owner

Address: 403 Praughton

610 S. Main
Jetmore, KS 67854

IT IS SO ORDERED.

This Order shall become effective immediately.

Date: June 10, 2010



ROBERT L. PATRICK
Regional Judicial Officer

IN THE MATTER OF Nusser Oil Company, Respondent
Docket No. CWA-07-2010-0011

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Order and Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy hand delivered to
Attorney for Complainant:

Kristen Nazar
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Mr. Shawn Stogsdill
Van Osdol & Magruder, PC
2400 Commerce Tower
911 Main Street
Kansas City, Missouri 64105

Copy by Facsimile and
First Class Pouch Mail to:

The Honorable Susan L. Biro
Chief Administrative Law Judge
U. S. Environmental Protection Agency
Office of Administrative Law Judges
1200 Pennsylvania Avenue, NW
Mail Code 1900L
Washington, D. C. 20005

Dated: 12/10/10



Kathy Robinson
Hearing Clerk, Region 7