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BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	DOCKET NO. CWA-10-2015-0124
)	
DELTA WESTERN, INC.)	CONSENT AGREEMENT AND
)	FINAL ORDER
)	
Sitka, Alaska)	
)	
Respondent.)	

I. STATUTORY AUTHORITY

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 311(b)(6) of the Clean Water Act (“CWA” or “Act”), 33 U.S.C. § 1321(b)(6). The Administrator has delegated the authority to issue the Final Order contained in Part V of this CAFO to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Regional Judicial Officer in EPA Region 10.

1.2. Pursuant to Section 311(b)(6) of Act, 33 U.S.C. § 1321(b)(6), and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA issues, and Delta Western, Inc. (“Respondent”) agrees to issuance of, the Final Order contained in Part V of this CAFO.

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this CAFO commences this proceeding, which will conclude when the Final Order contained in Part V of this CAFO becomes effective.

2.2. The Administrator has delegated the authority to sign consent agreements between EPA and the party against whom a Class I penalty is proposed to be assessed pursuant to Section 311(b)(6)(B)(i) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(i), to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Director of the Office of Compliance and Enforcement, EPA Region 10 ("Complainant").

2.3. Part III of this CAFO contains a concise statement of the factual and legal basis for the alleged violations of the CWA together with the specific provisions of the CWA and the implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

3.1. Respondent is a corporation organized under the laws of the State of Washington 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 September 23, 2014, 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 an oil storage and distribution facility located at 4513 Halibut Point Road in Sitka, Alaska ("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. 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).

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

3.6. The Facility had, at the time of inspection, an aggregate above-ground storage capacity greater than or equal to 42,000 gallons and transferred oil over water to or from vessels.

3.7. The Facility is located immediately adjacent to the Western Channel of Sitka Sound which is in the Gulf of Alaska. The Western Channel of Sitka Sound and the Gulf of Alaska are “navigable waters” within the meaning of 40 C.F.R. § 112.2.

3.8. Sitka Sound is part of the Alexander Archipelago which is habitat for the endangered Short-tail Albatross, Brown Bears, a number of species of amphibians (Rough-skinned Newts, Northwestern Salamanders, Long-toed Salamanders, Wood Frogs, Spotted Frogs, and Boreal Toads), Leather-back and Green Turtles, bats, Dolly Varden, three species of trout, five species of Pacific salmon, whales (Humpback, gray, orca, and minke whales), sea otters and has the highest nest density of Bald Eagles in the world.

3.9. The Facility is a non-transportation facility that, due to location, could reasonably have been expected, at the time of inspection, to cause substantial harm to the environment by a discharge of 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 and FRP regulations at 40 C.F.R. Part 112.

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

3.11. Under 40 C.F.R. §§ 112.3 and 112.20, the owner or operator of an SPCC and FRP-regulated facility that was in operation on or before August 16, 2002, shall have prepared and implemented a written SPCC Plan and FRP Plan that comply with 40 C.F.R. § 112.3, 40 C.F.R. § 112.20, and other applicable sections of 40 C.F.R. Part 112.

3.12. On September 23, 2014, 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 and FRP Plans.

3.13. EPA alleges that Respondent on September 23, 2014:

- 3.13.1. Failed to amend its SPCC Plan to reflect changes at the Facility that materially affected the potential for the discharge of a spill, as required by 40 C.F.R. § 112.5(a);
- 3.13.2. Failed to have adequate containment or diversionary structures or equipment at the Facility to prevent a discharge, as required by 40 C.F.R. § 112.7(c);
- 3.13.3. Failed to conduct inspections and tests in accordance with written Plan procedures and have records available, as required by 40 C.F.R. § 112.7(e);
- 3.13.4. Failed to maintain records of annual spill prevention briefings, as required by 40 C.F.R. § 112.7(f)(3);
- 3.13.5. Failed to have adequate lighting at the Facility, as required by 40 C.F.R. § 112.7(g);
- 3.13.6. Failed to maintain adequate records of drainage events, as required by 40 C.F.R. § 112.8(c)(3)(iv);

- 3.13.7. Failed to inspect container and container supports and maintain records of inspection, as required by 40 C.F.R. § 112.8(c)(6);
- 3.13.8. Failed to test liquid level sensing devices and maintain records, as required by 40 C.F.R. § 112.8(c)(8);
- 3.13.9. Failed to inspect aboveground valves, pipes and appurtenances and maintain records, as required by 40 C.F.R. § 112.8(d)(4);
- 3.13.10. Failed to maintain records of tank inspections and secondary containment inspections, as required by 40 C.F.R. § 112.20(h)(8)(i);
- 3.13.11. Failed to conduct discharge prevention meetings at least once a year, as required by 40 C.F.R. § 112.20(h)(8)(iv); and
- 3.13.12. Failed to conduct Spill Management Team Tabletop Exercises annually and Area Exercises, as required by 40 C.F.R. § 112.21(a).
- 3.14. Respondent's failure to implement adequate SPCC and FRP Plans for the Facility in accordance with the requirements of 40 C.F.R. §§ 112.5, 112.7, 112.8, 112.20 and 112.21 violated 40 C.F.R. §§ 112.3 and 112.20.
- 3.15. Respondent's continuing failure to comply with the requirements of 40 C.F.R. Part 112 has subjected it to civil penalties pursuant to Section 311(b)(6)(B)(i) of the Act, 33 U.S.C. § 1321(b)(6)(b)(i), not to exceed \$16,000 per violation, except that the maximum amount of penalty may not exceed \$37,500.

IV. CONSENT AGREEMENT

4.1. Respondent admits the jurisdictional allegations of this CAFO.

4.2. Respondent neither admits nor denies the specific factual allegations contained in this CAFO.

4.3. As required by Section 311(b)(8) of the CWA, 33 U.S.C. § 1321(b)(8), EPA has taken into account the seriousness of the alleged violations; Respondent's economic benefit of noncompliance; the degree of culpability involved; any other penalty for the same incident; any history of prior violations; the nature, extent, and degree of success of any efforts of the violator to minimize or mitigate the effects of the discharge, if any; the economic impact of the penalty on the violator; and any other matters as justice may require. After considering all of these factors, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$15,000.

4.4. Respondent agrees to pay the total civil penalty set forth in Paragraph 4.3 within 30 days of the effective date of the Final Order contained in Part V of this CAFO.

4.5. Payment under this CAFO must be made by a cashier's check or certified check payable to the order of "Treasurer, United States of America" 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, MO 63197-9000

Respondent must note on the check the title and docket number of this action.

4.6. Respondent must serve photocopies of the check described in Paragraph 4.5 on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-113
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

Kate Spaulding
U.S. Environmental Protection Agency
Region 10, Mail Stop OCE-101
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

4.7. If Respondent fails to pay the penalty assessed by this CAFO in full by its due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. Such failure may also subject Respondent to a civil action to collect the assessed penalty under the CWA, together with interest, fees, costs, and additional penalties described below. In any collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

4.7.1. Interest. Pursuant to Section 311(b)(6)(H) of the CWA, 33 U.S.C. § 1321(b)(6)(H), any unpaid portion of the assessed penalty shall bear interest at a rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the Final Order set forth in Part V provided, however, that no interest shall be payable on any portion of the assessed penalty that is paid within 30 days of the effective date of the Final Order.

4.7.2. Attorneys Fees, Collection Costs, Nonpayment Penalty. Pursuant to Section 311(b)(6)(H) of the CWA, 33 U.S.C. § 1321(b)(6)(H), if Respondent fails to pay on a timely basis the penalty set forth in Paragraph 4.3, 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 20% of the aggregate amount of Respondent's penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.

4.8. The penalty described in Paragraph 4.3, including any additional costs incurred under Paragraph 4.7 above, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.9. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this CAFO and to bind Respondent to this document.

4.10. The undersigned representative of Respondent also certifies that, as of the date of Respondent's signature of this CAFO, Respondent is in compliance with SPCC and FRP regulations.

4.11. Except as described in Subparagraph 4.7.2, above, each party shall bear its own costs in bringing or defending this action.

4.12. Respondent expressly waives any right to contest the allegations and waives any right to appeal the Final Order set forth in Part V.

4.13. The provisions of this CAFO shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.14. Subject to Paragraph 4.2, the above provisions are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

8/13/15

FOR RESPONDENT:

RONALD MARZ VICE PRESIDENT + GENERAL COUNSEL
DELTA WESTERN, INC.

DATED:

8/18/2015

FOR COMPLAINANT:

Edward J. Kowalski

EDWARD J. KOWALSKI, Director
Office of Compliance and Enforcement
EPA Region 10

V. FINAL ORDER

5.1. The terms of the foregoing Parts I-IV are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

5.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to the CWA for the violations alleged in Part III. 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 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 CWA and regulations promulgated or permits issued thereunder.

5.3. This Final Order shall become effective upon filing.

SO ORDERED this 25th day of August, 2015.


M. SOCORRO RODRIGUEZ
Regional Judicial Officer
EPA Region 10

Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of: Delta Western, Inc., Docket No.: CWA-10-2015-0124**, 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:

Stephanie Mairs
U.S. Environmental Protection Agency
1200 Sixth Avenue, ORC-113, Suite 900
Seattle, WA 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:

Don Martin, Esq.
Vice President and General Counsel
North Star Petroleum, Inc.
1177 Fairview Avenue North
Seattle, WA 98109

DATED this 26th day of August, 2015



Signature

Candace H. Smith
Regional Hearing Clerk
EPA Region 10

