



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

1595 WYNKOOP STREET
DENVER, CO 80202-1129
Phone 800-227-8917
<http://www.epa.gov/region08>

January 19, 2021
7:53 AM
Received by
EPA Region VIII
Hearing Clerk

DOCKET NO.: CWA-08-2021-0008

IN THE MATTER OF:)
)
HESS CORPORATION AND) FINAL ORDER
HESS BAKKEN INVESTMENTS II, LLC.)
)
)
)
RESPONDENT)

Pursuant to 40 C.F.R. § 22.13(b) and §§ 22.18(b)(2) and (3) of EPA’s Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order.

The Respondent is hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon filing this Consent Agreement and Final Order.

SO ORDERED THIS 19th DAY OF January, 2021.

KATHERIN HALL
Digitally signed by KATHERIN HALL
Date: 2021.01.19 07:51:41 -07'00'

Katherin E. Hall
Regional Judicial Officer

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

January 19, 2021
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IN THE MATTER OF:)		
)		EPA Region VIII
)	CONSENT AGREEMENT	Hearing Clerk
Hess Corporation and)		
Hess Bakken Investments II, LLC,)		
)		
)		
)	Docket No. CWA-08-2021-0008	
)		
Respondents)		

I. INTRODUCTION

1. This is an administrative penalty assessment proceeding pursuant to sections 22.13(b) and 22.18(b)(2) and (3) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits* (Consolidated Rules of Practice), as codified at 40 C.F.R. part 22.
2. The parties to this proceeding are Hess Corporation and Hess Bakken Investments II, LLC (collectively, Respondents) and the undersigned U.S. Environmental Protection Agency official (Complainant). Any combination of one or more of the two Respondents will sometimes be referenced below as Hess.
3. Prior to July of 2018, Hess owned and/or operated a facility known as the Fryburg Heath-Madison Unit Central Facility (the Facility), in Section 11, Township 135, Range 101, near Fryburg, North Dakota.
4. The parties, having agreed settlement of this action is in the public interest, consent to the entry of this consent agreement (Agreement) without adjudication of any issues of law or fact herein. Respondents agree to comply with the terms of this Agreement.

II. JURISDICTION

5. This Agreement is issued under the authority of section 311(b)(6) of the Clean Water Act (Act), 33 U.S.C. § 1321(b)(6). This is a Class I proceeding, as described in section 311(b)(6)(B)(i) of the Act, 33 U.S.C. § 1321(b)(6)(B)(i).
6. This proceeding is subject to the Consolidated Rules of Practice, under which this proceeding may be resolved by a final order from EPA Region 8's Regional Judicial Officer or Regional Administrator ratifying this Agreement. Upon issuance, the final order will simultaneously commence and conclude this proceeding. 40 C.F.R. § 22.13(b).

III. GOVERNING LAW

7. The objective of the Act is to restore and maintain the chemical, physical, and biological integrity of the nation's waters. 33 U.S.C. § 1251(a).
8. In 1972, Congress directed the President to issue regulations (a) establishing procedures for preventing and containing discharges of oil from onshore facilities and (b) determining those quantities of oil the discharge of which may be harmful to the public health or welfare or the environment of the United States. 33 U.S.C. §§ 1321(b)(4) and 1321(j)(1)(C). The President subsequently delegated the authority to issue these regulations to the EPA.
9. In response to the directive and delegation referenced above, the EPA promulgated 40 C.F.R. part 112, subparts A through C. These regulations are referenced as the "Spill Prevention Control and Countermeasure Regulations" or "SPCC Regulations."
10. The SPCC Regulations apply to owners and operators of non-transportation-related onshore and offshore facilities engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, or consuming oil and oil products, which, due to their location, could reasonably be expected to discharge oil in quantities that may be harmful, as described in 40 C.F.R. § 110.3, into or upon the navigable waters of the United States or adjoining shorelines. 40 C.F.R. § 112.1.
11. Quantities of oil that may be harmful include discharges that: (a) violate applicable water quality standards, (b) cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines, or (c) cause a sludge or emulsion to be deposited beneath the surface of the water or upon the adjoining shorelines. 40 C.F.R. § 110.3.
12. The SPCC Regulations require regulated facilities to prepare and implement plans, known as SPCC Plans, to prevent discharges of oil in harmful quantities into navigable waters and to adhere to certain practices to prevent and contain oil discharges.

IV. ALLEGATIONS OF FACT AND LAW

The following Allegations of Fact and Law apply at all relevant times, i.e., July of 2017 to July of 2018 (even if stated in the present tense).

13. Respondent Hess Corporation is a Delaware corporation.
14. Respondent Hess Bakken Investments II, LLC is a Delaware limited liability company.
15. Each Respondent is a "person" for purposes of sections 311(a)(7) and 502(5) of the Act, 33 U.S.C. §§ 1321(a)(7) and 1362(5), and 40 C.F.R. § 112.2.
16. Each Respondent is engaged in the business of oil and gas exploration and drilling.

17. At the Facility (see paragraph 3, above), Respondents store oil.
18. The Facility has an aboveground oil storage capacity of at least 191,100 gallons (4,550 barrels), including but not limited to tanks storing gasoline, crude oil, and produced water. The five largest tanks have a storage capacity of 31,500 gallons (750 barrels) each.
19. The Facility is in the Little Missouri River watershed.
20. In the event of an uncontained spill from any of the five largest tanks at the Facility (referenced in paragraph 18, above), oil would flow three-tenths of a mile into a drainage area which, after approximately one mile, would flow into Sully Creek. The flow would then follow Sully Creek for approximately 10 miles to the Little Missouri River.
21. Sully Creek is a relatively permanent water.
22. The Little Missouri River is an interstate, traditionally navigable water.
23. Sully Creek is a “navigable water” as defined in section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 112.2 (1993).
24. The Little Missouri River is a “navigable water” as defined in section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 112.2 (1993).
25. Due to its location, the Facility could reasonably be expected to discharge oil and/or other pollutants to Sully Creek and/or its adjoining shorelines in quantities that would (a) violate applicable water quality standards or (b) cause a film or sheen upon or discoloration of the surface of the navigable waters of the United States or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of such water or adjoining shorelines.
26. Due to its location, the Facility could reasonably be expected to discharge oil and/or other pollutants to the Little Missouri River and/or its adjoining shorelines in quantities that would (a) violate applicable water quality standards or (b) cause a film or sheen upon or discoloration of the surface of the navigable waters of the United States or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of such water or adjoining shorelines.
27. The Facility is an “onshore facility” as that term is defined in section 311(a)(10) of the Act, 33 U.S.C. § 1321(a)(10).
28. The Facility is a “non-transportation related facility” as that term is defined in 40 C.F.R. § 112.2.
29. Prior to July of 2018, Respondent Hess Corporation was an “owner or operator” of the Facility as that term is defined in section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6).

30. Prior to July of 2018, Respondent Hess Bakken Investments II, LLC was an “owner or operator” of the Facility as that term is defined in section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6).
31. The Facility is subject to the SPCC Regulations.
32. On June 2, 2017, the EPA transmitted a request for information under section 308 of the Act, 33 U.S.C. § 1318, to Hess.
33. In response to the information request referenced in paragraph 32, above, on July 28, 2017, Hess provided the EPA an SPCC plan for the Facility. The plan indicated May 24, 2012 as the “Date of Last Administrative Revision.”
34. The EPA identified the following deficiencies in Hess’s SPCC plan for the Facility. In the following list, relevant regulatory citations are indicated in parentheses:
 - a. Inadequate facility diagram and description of the Facility’s layout, e.g., failing to indicate piping to tank 1141 and a test tank from which a 2016 spill had occurred (40 C.F.R. § 112.7(a)(3)).
 - b. No oil spill contingency plan following the provisions of 40 C.F.R. part 109 (40 C.F.R. § 112.7(d)(1)).
 - c. Inadequate description of pipeline maintenance program, e.g., omitting a statement of compatibility of piping with production fluid (40 C.F.R. § 112.9(d)(4)(i)).
 - d. Inadequate description of pipeline maintenance program, e.g., omitting discussion of removal and stabilization of any discharge (40 C.F.R. § 112.9(d)(4)(iv)).
35. Respondents have advised the EPA that they sold the Facility to an unrelated entity in July of 2018.

V. ALLEGED VIOLATION OF LAW

The alleged violation is set forth in the following count:

Count 1: Failure to Prepare an Adequate SPCC Plan

36. Respondents are required to prepare an SPCC plan for the Facility in accordance with the requirements of 40 C.F.R. part 112.
37. Between July of 2017 and July of 2018, Respondents’ SPCC plan for the Facility:
 - a. failed to include an adequate description of the physical layout of the Facility and adequate diagrams, in violation of 40 C.F.R. § 112.7(a)(3);

- b. failed to include an oil spill contingency plan following the provisions of 40 C.F.R. part 109, in violation of 40 C.F.R. § 112.7(d)(1); and
- c. failed to include an adequate description of the Facility's pipeline maintenance program, in violation of 40 C.F.R. § 112.9(d)(4)(i) and (iv).

VI. TERMS OF CONSENT AGREEMENT

38. For the purpose of this proceeding, Respondents:
- a. admit the facts set forth in paragraph 3 of this Agreement;
 - b. admit the jurisdictional allegations in section II of this Agreement;
 - c. neither admit nor deny the factual allegations in sections IV and V of this Agreement;
 - d. consent to the assessment of a civil penalty as stated below;
 - e. acknowledge this Agreement constitutes an enforcement action for purposes of considering Respondents' compliance history in any subsequent enforcement action; and
 - f. waive any right to contest the allegations in this Agreement and to appeal any final order approving this Agreement.
39. Section 311(b)(6) of the Act, 33 U.S.C. § 1321(b)(6), establishes the civil administrative penalty amounts the EPA may assess in this type of proceeding. The maximum amounts have been adjusted for inflation under 40 C.F.R. part 19.
40. Having considered the seriousness of the violations cited in the Alleged Violations of Law, above, the economic benefit to Respondents, if any, resulting from the violations, the degree of culpability involved, any other penalty for the same violations, any history of prior violations, the economic impact of the penalty on Respondents, and any other matters as justice may require, in accordance with section 311(b)(8) of the Act, 33 U.S.C. § 1321(b)(8), the Complainant has determined the civil administrative penalty amount agreed upon below is appropriate to settle this matter.
41. Respondents agree to:
- a. pay a civil penalty in the amount of **\$20,000** within 30 calendar days of date the final order approving this Agreement is filed with the Regional Hearing Clerk;
 - b. pay the civil penalty using any method provided on the website <https://www.epa.gov/financial/makepayment>;

- c. indicate each and every payment is payable to “Oil Spill Liability Trust Fund-311” and identify each and every payment with the docket number that appears on the final order;
 - d. within 24 hours of payment, email proof of payment to Donna Inman, Environmental Scientist, EPA Region 8, at inman.donna@epa.gov (whom the Complainant designates for service of proof of payment) and the Regional Hearing Clerk for EPA Region 8 at haniewicz.melissa@epa.gov. “Proof of payment” means, as applicable, a copy of the check, confirmation of credit card or debit card payment confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate payment has been made according to EPA requirements, in the amount due, and identified with the docket number that appears on the final order.
42. If Respondents fail to timely pay any portion of the penalty assessed under the final order approving this Agreement, the EPA may:
- a. request the Attorney General to bring a civil action under section 311(b)(6)(H) of the Act, 33 U.S.C. § 1321(b)(6)(H), in an appropriate district court to recover the amount assessed, plus interest at currently prevailing rates from the date of the final order, attorney’s fees and costs for collection proceedings, and a 20% quarterly nonpayment penalty for each quarter during which failure to pay persists;
 - b. refer the debt to a credit reporting agency or a collection agency under 40 C.F.R. §§ 13.13, 13.14, and 13.33;
 - c. collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, under 40 C.F.R. part 13, subparts C and H; and
 - d. suspend or revoke Respondents’ licenses or other privileges or suspend or disqualify Respondents from doing business with the EPA or engaging in programs the EPA sponsors or funds under 40 C.F.R. § 13.17.
43. Consistent with section 162(f)(1) of the Internal Revenue Code, 26 U.S.C. § 162(f)(1), Respondents will not deduct penalties paid under this Agreement for federal tax purposes.
44. This Agreement applies to Respondents and their officers, directors, employees, agents, trustees, authorized representatives, successors, and assigns.
45. The undersigned representative of each Respondent certifies he or she has authority to bind the relevant Respondent to this Agreement.

46. Except as qualified by paragraph 42, above, each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.

VII. EFFECT OF CONSENT AGREEMENT

47. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this Agreement resolves only Respondents' liability for federal civil penalties for the violations specifically alleged above.

48. The terms of this Agreement may not be modified or amended except upon the written agreement of all parties, and approval of the Regional Judicial Officer or Regional Administrator for EPA Region 8.

49. Nothing in this Agreement shall relieve Respondents of the duty to comply with all applicable provisions of the Act, any regulation, order, or permit issued pursuant to the Act, and any other federal, state, or local laws, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

50. Nothing herein shall be construed to limit the power of the EPA to pursue injunctive or other equitable relief, or criminal sanctions for any violations of law or to undertake any action against Respondents or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.

51. If and to the extent the EPA finds, after signing this Agreement, that any information provided by Respondents was materially false or inaccurate at the time such information was provided to the EPA, the EPA reserves any and all of its legal and equitable rights.

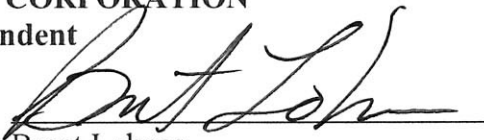
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 8

Date: _____

By: **JANICE PEARSON**
Digitally signed by JANICE PEARSON
Date: 2021.01.12 14:24:35 -07'00'
Janice Pearson, Chief
RCRA and OPA Enforcement Branch
Complainant

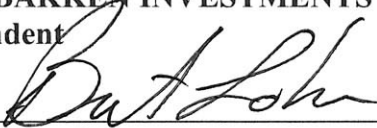
**HESS CORPORATION
Respondent**

Date: 1/4/2021

By: 
Brent Lohnes
General Manager - North Dakota

Date: 1/4/2021

HESS BAKKEN INVESTMENTS II, LLC
Respondent

By: 
Brent Lohnes
General Manager - North Dakota

From: [Livingston, Peggy](#)
To: [Haniewicz, Melissa](#)
Cc: [Reback, Harrison](#); [Janoe, Scott](#); [Lindsey, Alan](#); [Inman, DonnaK](#)
Subject: Filing Hess Fryburg Consent Agreement with Office of the Regional Hearing Clerk
Date: Wednesday, January 13, 2021 1:34:14 PM
Attachments: [Hess Consent Agreement Signed by Hess & ECAD.pdf](#)
[RHC Cover Sheet for Hess Fryburg CA.pdf](#)

Ms. Haniewicz:

Attached to this email please find (1) a Consent Agreement signed by representatives of Hess Corporation, Hess Bakken Investments II, LLC, and EPA Region 8, and (2) a cover sheet.

Would you please assign a docket number and present the consent agreement to the Regional Judicial Officer for approval?

Please see below for an email from counsel for Hess agreeing to electronic service of the final order approving the consent agreement.

Please let me know if you have any questions or comments.

Thank you very much.

ECN 311.0014.2017

From: Reback, Harrison <harrison.reback@bakerbotts.com>
Sent: Wednesday, January 13, 2021 12:25 PM
To: Livingston, Peggy <Livingston.Peggy@epa.gov>
Cc: Inman, DonnaK <Inman.DonnaK@epa.gov>; Janoe, Scott <Scott.Janoe@BakerBotts.com>
Subject: RE: Hess Fryburg Consent Agreement

Peggy,

Thank you for the update.

I represent the respondents in this case and consent to receive service of the final order at the email address harrison.reback@bakerbotts.com on behalf of the respondents.

Please let me know if you need anything else.

Best,
Harrison

Harrison Reback
harrison.reback@bakerbotts.com
T +1.713.229.1567
M +1.832.316.2478

From: Livingston, Peggy <Livingston.Peggy@epa.gov>
Sent: Wednesday, January 13, 2021 12:42 PM
To: Reback, Harrison <harrison.reback@bakerbotts.com>
Cc: Inman, DonnaK <Inman.DonnaK@epa.gov>
Subject: Hess Fryburg Consent Agreement

[EXTERNAL EMAIL]

Harrison:

Region 8's management has approved the consent agreement for the Fryburg site. I'd like to file it with the Regional Hearing Clerk so that the Regional Judicial Officer can issue a final order approving it.

But there is one more thing I need to provide the RHC: a statement from you (or another attorney for Hess, if you prefer) indicating that you represent the respondents in this case and that on behalf of the respondents you consent to receive service of the final order at the email address harrison.reback@bakerbotts.com (or, if another attorney would be receiving service, that attorney's email address). If you reply to this email with that statement, I can include it with what I file with the Regional Hearing Clerk.

Thank you very much. Please let me know if you have any questions or comments.

ECN 311.0014.2017

Peggy Livingston
Co-Coordinator, National Administrative Litigation Practice Group
Senior Assistant Regional Counsel
Region 8, U.S. Environmental Protection Agency
1595 Wynkoop Street
Denver, CO 80202
303-312-6858

Confidentiality Notice:

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CERTIFICATE OF SERVICE

The undersigned certifies that the attached **CONSENT AGREEMENT** and the **FINAL ORDER** in the matter of **HESS CORPORATION AND HESS BAKKEN INVESTMENTS II, LLC.; DOCKET NO.: CWA-08-2021-0008** was filed with the Regional Hearing Clerk on January 19, 2021.

Further, the undersigned certifies that a true and correct copy of the documents were emailed to, Peggy Livingston, Enforcement Attorney, and sent via certified receipt email on January 19, 2021, to:

Respondent

Alan Lindsey, Senior Legal Counsel
Hess Corporation
alindsey@hess.com

Legal Representation

Harrison Reback, Attorney
Baker Botts
harrison.reback@bakerbotts.com

EPA Financial Center

Jessica Chalifoux
U. S. Environmental Protection Agency
Cincinnati Finance Center
Chalifoux.Jessica@epa.gov

January 19, 2021

MELISSA
HANIEWICZ

Digitally signed by
MELISSA HANIEWICZ
Date: 2021.01.19
12:15:45 -07'00'

Melissa Haniewicz
Regional Hearing Clerk