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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX

2007 OCT 24 AM 8:24

U.S. EPA, REGION IX
REGIONAL HEARING CLERK

IN THE MATTER OF

Petro Resources, Inc.
a Texas Corporation,
Tank Farm
Santa Clarita, CA

Respondent.

CWA SECTION 311 CLASS II
CONSENT AGREEMENT
AND FINAL ORDER

SPCC-09-2008-0012
~~0012~~

Docket No. **EPA-9-2007-0005**

STATUTORY AUTHORITY

This Consent Agreement and Final Order ("CAFO") is entered into 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 ("CWA"), 33 U.S.C. § 1321(b)(6)(B)(i), as amended by the Oil Pollution Act of 1990, and under the authority provided by 40 C.F.R. § 22.18(b)(2). The Administrator has delegated these authorities to the Regional Administrator of EPA Region IX, who has in turn delegated them to the Director, Superfund Division of EPA Region IX ("Complainant").

CONSENT AGREEMENT

I. Stipulations

Petro Resources, Inc. (hereafter "Petro Resources" or "Respondent"), for the purpose of this CAFO, admits to the following jurisdictional allegations:

1. Petro Resources is a Texas corporation, and is a person within the meaning of Section 311(a)(7) of the CWA, 33 U.S.C. § 1321(a)(7), and 40 C.F.R. § 112.2.

2. Respondent owns and operates a crude oil production facility and tank battery in Santa Clarita, California (the "Facility"). On or about June 22, 2005, a pipeline attached to an oil storage tank at the Facility was damaged due to an apparent landside. An estimated 1,000 - 1,500 gallons of heavy crude oil and produced water discharged from the ruptured pipeline into a creek bed and migrated through a subterranean storm drain and through an outfall into a tributary of Placerita Creek. Respondent is the owner or operator of the production facility within the meaning of Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6), and 40 C.F.R. § 112.2. The Facility is an "onshore facility" as defined at 33 U.S.C. § 1321(a)(10) and 40 C.F.R. § 112.2.

3. Placerita Creek drains into the Santa Clara river, which is 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, and is within the jurisdiction of Section 311 of the CWA.

4. Crude petroleum and oily water at the Facility are oils within the definition stated at Section 311(a)(1), 33 U.S.C. § 1321(a)(1).

5. The June 2005 discharge caused a harmful quantity of oil, as defined at 40 C.F.R. § 110.3(b), to enter into a tributary to Placerita Creek.

6. The June 2005 discharge of oil from the oil storage tank went into or onto navigable waters of the United States or adjoining shorelines to waters of the United States.

7. The Facility is a non-transportation-related facility within the meaning of 40 C.F.R. § 112.2 Appendix A, as incorporated by reference within 40 C.F.R. § 112.2.

8. 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 to contain such discharges"

9. Initially by Executive Order 11548 (July 20, 1970), 35 Fed. Reg. 11677 (July 22, 1970), and most recently by Section 2(b)(1) of Executive Order 12777 (October 18, 1991), 56 Fed. Reg. 54757 (October 22, 1991), the President delegated to EPA his Section 311(j)(5) authority to issue the regulations referenced in the preceding Paragraph for non-transportation-related onshore facilities.

10. EPA subsequently promulgated regulations, codified at 40 C.F.R. Part 112, as amended by 67 Fed. Reg. 47140 *et seq.* (July 17, 2002), (“the SPCC regulations”), pursuant to these delegated statutory authorities and pursuant to its authorities under the CWA, 33 U.S.C. § 1251 *et seq.*, which set forth certain procedures, methods and requirements applicable to the operator of the Facility if, due to its location, the Facility reasonably could be expected to discharge oil into or on navigable waters and their adjoining shorelines in such quantities as EPA has determined in 40 C.F.R. Part 110 may be harmful to the public health or welfare or the environment of the United States.

11. The Facility is a non-transportation-related onshore facility that, due to its location, reasonably could be expected to discharge oil to navigable waters or adjoining shorelines in a harmful quantity.

II. Allegations

EPA alleges, and Respondent neither admits nor denies, but agrees for the purpose of this proceeding not to contest, that:

12. On or about June 22, 2005, at least 1,500 gallons of oil and oily produced water discharged from the oil storage tank causing sheen or emulsion in a tributary of Placerita Creek.

13. As of June 22, 2005, Respondent had failed to adequately maintain secondary containment as required by the SPCC regulations and Respondent’s Spill Prevention, Control and Countermeasure Plan adopted pursuant to the SPCC regulations.

III. Waiver of Rights

14. Respondent waives the right to a hearing under Section 311(b)(6)(B)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(ii), to appeal any Final Order in this matter under Section 311(b)(6)(G)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(G)(ii), and consents to the issuance of a Final Order without further adjudication.

IV. Penalty and Payment Terms

15. EPA calculated a Class II penalty of \$48,615 against Respondent for the discharge of a harmful quantity of oil to waters of the United States or adjoining shorelines, and for the failure to comply with the SPCC regulations, and the alleged violations of 33 U.S.C. § 1321(b)(3) and (j).

Based on the foregoing, the parties, in their own capacity or by their attorneys or authorized representatives, hereby agree that:

16. The Respondent shall pay by cashier's or certified check the total amount of \$48,615 payable to the "Environmental Protection Agency," with the notation "Oil Spill Liability Trust Fund - 311" and the docket number of this CAFO. Respondent shall send the check by certified mail postmarked within thirty (30) days after the Effective Date of the Final Order to:

U.S. Environmental Protection Agency
P.O. Box 371099M
Pittsburgh, PA 15251

17. Respondent shall submit copies of the check by certified mail postmarked within thirty (30) days after the Effective Date of the Final Order to the following persons:

Danielle Carr
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region IX
75 Hawthorne Street (ORC-1)

San Francisco, California 94105

and to:

Barbara Lee
U.S. Environmental Protection Agency
Region IX
75 Hawthorne Street (SFD-9)
San Francisco, California 94105

18. The facsimile number for Danielle Carr and Andrew Helmlinger is (415) 947-3570, and for Barbara Lee is (415) 947-3518.

19. Respondent's failure to pay the penalty assessed by the Final Order in full within the time provided in Paragraph 16 may subject Respondent to a civil action to collect the assessed penalties, plus interest, attorney's fees, costs and an additional quarterly nonpayment penalty pursuant to Section 311(b)(6)(H) of the CWA, 33 U.S.C. § 1321(b)(6)(H). In any such collection action, the validity, amount and appropriateness of the penalty and of this CAFO shall not be subject to review.

V. General Provisions

20. The Effective Date of this Consent Agreement is the date that the Final Order is signed by the EPA Regional Judicial Officer.

21. Pursuant to 40 C.F.R. § 22.45(b), prior to entry of this CAFO, Complainant must notify the public and provide no less than forty (40) days for public comment. Complainant reserves the right, pursuant to 40 C.F.R. § 22.45(c)(4)(iii), to withdraw this Consent Agreement and proposed Final Order within fifteen (15) days of receipt of a commenter's petition requesting, pursuant to 40 C.F.R. § 22.45(c)(4)(ii), that the Regional Administrator set aside the Consent Agreement and proposed Final Order on the basis that material evidence was not considered.

22. The provisions of the Final Order shall be binding on Respondent and Respondent's officers, directors, agents, servants, employees, and successors or assigns. No change in ownership or corporate or legal status of Respondent in regard to the Facility shall in any way alter Respondent's obligations and responsibilities under this Consent Agreement.

23. The Final Order does not constitute a waiver, suspension or modification of the requirements of Section 311 of the Act, 33 U.S.C. § 1321, or any regulations promulgated thereunder, and does not affect the right of the Administrator or the United States to pursue any criminal sanctions for any violation of law. Payment of the penalty pursuant to this Consent Agreement resolves only Respondent's civil liability for the violations and facts alleged in this Consent Agreement.

24. The undersigned representative of Respondent hereby certifies that he is authorized to execute this Consent Agreement on behalf of Respondent and to legally bind Respondent to the terms and conditions set forth herein.

25. Each party shall bear its own costs and attorney's fees in connection with this proceeding.


For Respondent, Petro Resources, Inc.:



W. Kent Riley, President

Date: 8/22/07

U.S. ENVIRONMENTAL PROTECTION AGENCY

for 

Keith A. Takata, Director
Superfund Division, Region 9
U.S. Environmental Protection Agency
75 Hawthorne Street
San Francisco, CA 94105

Date: 12 September 2007

FINAL ORDER

Pursuant to Section 311(b)(6) of the Act, 33 U.S.C. § 1321(b)(6) and the delegated authority of the undersigned, and in accordance with the "Consolidated Rules 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 forgoing Consent Agreement is hereby approved and incorporated by reference into this Final Order.

The Respondent is ordered to comply with the terms of the Consent Agreement. This order shall become effective on the date subscribed below, and shall constitute a full adjudication of the allegations stated in the Consent Agreement.

Date: 10/23/07



Steven Jawgiel
Regional Judicial Officer
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, CA 94105

CERTIFICATION OF SERVICE

I certify that the original and the foregoing SPCC Consent Agreement and Final Order in the matter of **Petro Resources, Inc., SPCC-09-2008-0002** has been filed with the Region 9 Hearing Clerk and that copies were sent return receipt requested to the following:

Mr. W. Kent Riley
Petro Resources, Inc.
4200 Easton Dr., Suite 16
Bakersfield, CA 93309

Certified Mail No.:
7005 2570 0001 6436 7768

Date: 10-25-07 *Danielle E. Carr*
Danielle Carr
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region IX
75 Hawthorne Street
San Francisco, CA 94105