

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

Docket No.: CWA-08-2009-0020

2009 JUN 30 AM 10:26

EPA REGION VIII
RECEIVED

IN THE MATTER OF

MCR, LLC
Shelby, Montana

Respondent.

**COMPLAINT AND
CONSENT AGREEMENT**

(Proceeding to Assess Class II
Civil Penalty Under Section 311
of the Clean Water Act)

The United States Environmental Protection Agency, Region 8 (EPA or Complainant), and MCR, LLC (Respondent) by its undersigned representatives, hereby consent and agree as follows:

A. PRELIMINARY MATTERS

1. This Complaint and Consent Agreement (CCA) is issued to Respondent for violating section 311(j)(5) of the Clean Water Act (CWA or the Act), 33 U.S.C. § 1321(j)(5), and the implementing regulations at 40 C.F.R. part 112.
2. The undersigned EPA, Region 8 officials have been properly delegated the authority to issue this CCA under the authority vested in the Administrator of EPA by section 311(b)(6)(B)(ii) of the Act, 33 U.S.C. § 1321(b)(6)(B)(ii) to bring an action for civil administrative penalties against a respondent who has violated, or is in violation of, a requirement or prohibition of the CWA or its implementing regulations.
3. This proceeding is governed by the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action

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Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules) set forth at 40 C.F.R. part 22.

4. This CCA is entered into by the parties for the purpose of simultaneously commencing and concluding this matter, as authorized by 40 C.F.R. § 22.13(b), and executed pursuant to 40 C.F.R. § 22.18(b)(2) and (3) of the Consolidated Rules.
5. Respondent admits the jurisdictional allegations in this CCA and neither admits nor denies the specific factual allegations contained herein.
6. Respondent waives its rights to a hearing before any tribunal to contest any issue of law or fact set forth in this CCA.
7. Complainant and Respondent agree that this CCA proposing to issue an order assessing a Class II civil penalty is subject to public notice of and reasonable opportunity to provide comment.
8. Complainant asserts that settlement of this matter is in the public interest, and Complainant and Respondent agree that entry of this CCA and Final Order without further litigation and without adjudication of any issue of fact or law, is the most appropriate means of resolving this matter.
9. This CCA, upon incorporation into a Final Order, applies to and is binding upon EPA and upon Respondent and upon Respondent's officers, directors, agents, successors and assigns. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this agreement.

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10. This CCA contains all terms of the settlement agreed to by the parties.

B. ALLEGED VIOLATIONS

1. Respondent is incorporated in the state of Montana.

2. Section 311(j)(1)(C) of the Act, 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 vessels and from onshore and offshore facilities, and to contain such discharges"

3. EPA promulgated the oil pollution prevention regulations set forth at 40 C.F.R. part 112.

4. 40 C.F.R. § 112.1(b) states that the requirements of part 112 apply

“to owners or operators of non-transportation related onshore and offshore facilities engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using, or consuming oil or oil products, and which, due to their location, could reasonably be expected to discharge oil in harmful quantities, as defined in part 110 of this chapter, into or upon the navigable waters of the United States or adjoining shorelines”

5. Respondent purchased several oil production facilities (the facilities) located in Toole, Liberty, Pondera and Teton counties, Montana, during the period September 1, 2004, through November 2007. These facilities are listed in Respondent’s Containment Schedule (Attachment 1).

6. Respondent is the owner and/or operator within the meaning of section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6), and 40 C.F.R. § 112.2 of the facilities.

7. At all times pertinent to this Complaint, the facilities included crude oil tank batteries, producing oil wells, and flow lines each with an aggregate above-ground storage capacity greater than 1,320 gallons of oil in containers each with a shell capacity of at least 55 gallons.

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8. Crude oil is an oil within the meaning of “oil” as defined at § 311(a)(1) of the Act, 33 U.S.C. § 1321(a)(1).
9. From September 1, 2004, to the date of this CCA, Respondent produced, stored, transferred, distributed, used or consumed oil or oil products at the facilities.
10. At all times pertinent to this Complaint, the facilities were “non-transportation related” onshore facilities within the meaning of 40 C.F.R. § 112.2.
11. At all times pertinent to this Complaint, each of the facilities was a non-transportation related onshore facility which, due to its location, could reasonably have been expected to discharge oil to a navigable water of the United States (as defined by section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 110.1) or the adjoining shorelines that would have either (1) violated applicable water quality standards or (2) caused a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or caused a sludge or emulsion to be deposited beneath the surface of the water or upon the adjoining shorelines.
12. At all times pertinent to this Complaint, each of the facilities was subject to the oil pollution prevention requirements of 40 C.F.R. part 112, pursuant to section 311(j) of the Act, 33 U.S.C. § 1321(j), and its implementing regulations.
13. 40 C.F.R. § 112.3 requires that owners or operators of onshore and offshore facilities prepare a written Spill Prevention, Control, and Countermeasure (SPCC) Plan in accordance with applicable sections of part 112, including, but not limited to, sections 112.7, 112.9 and 112.10.
14. Section 311(b)(6)(A) of the Act, 33 U.S.C. § 1321(b)(6)(A), states in pertinent

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part that “any owner, operator, or person in charge of any vessel, onshore facility or offshore facility (ii) who fails or refuses to comply with any regulation issued under subsection (j) of this section to which that owner, operator, or person in charge is subject, may be assessed a class I or class II civil penalty by ... the Administrator.”

15. The facilities did not have written SPCC plans nor did they have adequate SPCC implementation and containment measures to prevent unauthorized discharges of oil to waters of the United States.

16. Respondent failed to prepare and implement written SPCC plans in accordance with the regulations at 40 C.F.R. §§ 112.7, 112.9 and 112.10 as required by 40 C.F.R. § 112.3.

17. Respondent’s failure to prepare and implement written SPCC plans in accordance with the regulations at 40 C.F.R. §§ 112.7, 112.9 and 112.10 from September 1, 2004, through the date of this CCA for its facilities, constitutes violations of 40 C.F.R. § 112.3 and sections 311(b)(6)(A), 33 U.S.C. § 1321(b)(6)(A), and 311(j)(1)(C), 33 U.S.C. § 1321(j)(1)(C), of the Act.

18. As alleged in the preceding Paragraphs, and pursuant to section 311(b)(6)(B)(ii) of the Act, 33 U.S.C. § 1321(b)(6)(B)(ii) and 40 C.F.R. § 19.4, the Respondent is liable for civil penalties.

C. COMPLIANCE SCHEDULE

1. Respondent agrees to prepare and implement written SPCC plans for all facilities listed in Attachment 1 to bring them into compliance with applicable requirements of 40 C.F.R. part 112 and section 311 of the Act, 33 U.S.C. § 1321, by no later than August 31, 2010.

2. Respondent agrees to prepare and submit an interim report to EPA documenting the compliance measures completed by July 31, 2009. A second interim report will be submitted to

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EPA documenting the completion of compliance measures by no later than December 31, 2009. A final completion report will be submitted to EPA documenting completion of all remaining compliance measures by September 30, 2010.

3. The interim and completion report(s) described in paragraph C.2., above, shall be submitted to:

Jane Nakad (8ENF-UFO)
U.S. EPA Region 8
Technical Enforcement Program
1595 Wynkoop St.
Denver, CO 80202-1129

D. CIVIL PENALTY

1. As alleged in the preceding Paragraphs, and pursuant to section 311(b)(6)(B)(ii) of the Act, 33 U.S.C. § 1321(b)(6)(B)(ii), and 40 C.F.R. § 19.4, the Respondent is liable for civil penalties of up to \$16,000 per day for each day during which the violation continues, up to a maximum total of \$177,500 for all violations.

2. Based on the foregoing Allegations and pursuant to the authority of section 311(b)(6)(B)(ii) of the Act, 33 U.S.C. § 1321(b)(6)(B)(ii), and 40 C.F.R. § 19.4, Complainant proposes the assessment of administrative penalties against the Respondent of fifty thousand dollars (\$50,000).

3. Complainant proposes this penalty amount after considering the compliance measures agreed to in Section C., above, as well as the applicable statutory penalty factors in section 311(b)(8) of the Act, 33 U.S.C. § 1321(b)(8): the seriousness of the violation, the economic benefit to the violator, if any, resulting from the violation, the degree of culpability involved, any other penalty for the same

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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, the economic impact of the penalty on the violator, and any other matters as justice may require.

4. Respondent consents to the issuance of a Final Order and consents for the purposes of settlement to the payment of the civil penalty of fifty thousand dollars (\$50,000) in the manner described below:

a. **Payment is due within thirty (30) calendar days from the date written on the Final Consent Order**, issued by the Regional Judicial Officer, that adopts this CCA. If the due date falls on a weekend or legal federal holiday, then the due date becomes the next business day. The date the payment is made is considered to be the date processed by the Bank described below. Payments received by 11:00 AM. EDT are processed on the same day, those received after 11:00 AM are processed on the next business day.

b. The payment in paragraph D.2, supra, shall be made by remitting a cashier's or certified check, including the name and docket number of this case, referencing "Oil Spill Liability Trust Fund-311," for the amount, **payable to the "Environmental Protection Agency,"** to:

CHECK PAYMENTS:

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

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OVERNIGHT MAIL:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

Contact: Natalie Pearson
314-418-4087

WIRE TRANSFERS:

Wire transfers should be directed to the Federal Reserve Bank of New York

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 301-887-6548

ABA = 051036706
Transaction Code 22 - checking
Environmental Protection Agency
Account 310006
CTX Format

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ON LINE PAYMENT:

WWW.PAY.GOV

Enter sfo 1.1 in the search field. Open form and complete required fields.

A copy of the check, or wire transfer, shall be sent simultaneously to:

Jane Nakad (8ENF-UFO)
U.S. EPA Region 8
Technical Enforcement Program
1595 Wynkoop St.
Denver, CO 80202-1129

and

Tina Artemis
Regional Hearing Clerk (8RC)
U.S. EPA Region 8
1595 Wynkoop
Denver, CO 80202-1129

c. Payment of the penalty in this manner does not relieve Respondent of its obligations to comply with the requirements of the Act and the implementing regulations. Payment of the penalty in this manner shall constitute consent by Respondent to the assessment of the proposed penalty and a waiver of Respondent's right to a hearing on this matter.

E. TERMS AND CONDITIONS

1. Failure by Respondent to comply with any of the terms of this CCA shall constitute a breach of the CCA and may result in referral of the matter to the Department of Justice for enforcement of this agreement and for such other relief as may be appropriate.

2. Nothing in this CCA shall be construed as a waiver by the EPA or any other federal entity of its authority to seek costs or any appropriate penalty associated with any collection action

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instituted as a result of Respondent's failure to perform pursuant to the terms of this CCA.

3. Each undersigned representative of the parties to this CCA certifies that he or she is fully authorized by the party represented to bind the parties to the terms and conditions of this CCA and to execute and legally bind that party to this CCA.

4. The parties agree to submit this CASA to the Regional Judicial Officer, with a request that it be incorporated into a Final Order.

5. This CCA, upon incorporation into a Final Order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete, full and final settlement of the violations alleged in this CCA.

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6. Each party shall bear its own costs and attorneys fees in connection with all issues associated with this CCA.

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8, Office of Enforcement, Compliance
and Environmental Justice, Complainant.**

Date: 6/30/09

Eddie A. Sierra
Eddie A. Sierra, Acting Assistant Regional Administrator
Office of Enforcement, Compliance and
Environmental Justice

Date: June 26, 2009

Marc Weiner
Marc Weiner, Enforcement Attorney
U.S. EPA, Region 8
999 18th Street, Suite 300 (8ENF-L)
Denver, CO 80202-2466
Tel. (303) 312-6913

**MCR, LLC
Respondent.**

Date: JUNE 17, 2009

By: Gary McDermott
Gary McDermott, Authorized Agent for Respondent