

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Triangle Oil, Inc.,

Respondent.

DOCKET NO. CWA-10-2020-0064

CONSENT AGREEMENT

I. STATUTORY AUTHORITY

1.1. This Consent Agreement is issued 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), as amended by the Oil Pollution Act of 1990. CWA § 311(b)(6)(B)(i), 33 U.S.C. § 1321(b)(6)(B)(i); 33 U.S.C. § 2701 *et seq.*

1.2. In accordance with Section 22.18 of the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA issues, and Triangle Oil, Inc. (“Respondent”) agrees to the issuance of, the Final Order attached to this Consent Agreement.

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.45(b), issuance of this Consent Agreement commences this proceeding, which will conclude when the Final Order becomes effective.

2.2. The Director of the Enforcement and Compliance Assurance Division, EPA Region 10 (“Complainant”) has been delegated the authority pursuant to Section 311(b) of the

CWA, 33 U.S.C. § 1321(b), to sign consent agreements between EPA and the party against whom a Class I penalty is proposed to be assessed.

2.3. Part III of this Consent Agreement 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 implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

3.1. The Oil Pollution Prevention regulations in 40 C.F.R. Part 112 implement Section 311(j) of the CWA, and establish requirements for preventing the discharge of oil. These requirements apply to owners and operators of non-transportation-related facilities engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing or consuming oil or oil products that, due to facility location, could reasonably be expected to discharge oil in harmful quantities to navigable waters of the United States or adjoining shorelines. CWA § 311(j), 33 U.S.C. § 1321(j); 40 C.F.R. Part 112.

3.2. Quantities of oil which may be harmful to the public health or welfare or the environment of the United States include discharges of oil that cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines, or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines. CWA § 311(b)(4), 33 U.S.C. § 1321(b)(4); 40 C.F.R. § 110.3; Exec. Order No. 11735, 38 Fed. Reg. 21243 (Aug. 7, 1973).

3.3. The owner or operator of an onshore facility, located where the facility could reasonably be expected to discharge oil in harmful quantities into or upon the navigable waters of the United States or adjoining shorelines, is required to prepare and implement a Spill Prevention, Control and Countermeasure (SPCC) Plan in accordance with 40 C.F.R. § 112.7. 40 C.F.R. §§ 112.1, 112.3, 112.7.

3.4. A facility's SPCC Plan shall be prepared "in accordance with good engineering practices" and have the full approval of management with authority to commit the necessary resources to implement the plan. 40 C.F.R. § 112.7.

3.5. Respondent is a "corporation" organized under the laws of the State of Oregon, and a "person" for purposes of the CWA. CWA § 311(a)(7), 33 U.S.C. § 1321(a)(7); 40 C.F.R. § 112.2. Respondent owns and/or operates a bulk oil products storage facility located at 760 South Canyon Blvd. in John Day, Oregon ("Facility").

3.6. Respondent gathers, stores, processes, refines, transfers, distributes, uses, or consumes oil or oil products at the Facility. 40 C.F.R. § 112.1(b).

3.7. The Facility is "non-transportation-related" within the meaning of 40 C.F.R. § 112.2.

3.8. Pursuant to 40 C.F.R. §§ 112.1(b) & 112.1(d)(1)(i), at the time of inspection, due to its location and surrounding geographical features and in the hypothetical context of foreseeable adverse weather conditions and a worst case discharge, the Facility could reasonably have been expected to discharge 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 Spill Prevention, Control and Countermeasure ("SPCC") regulations at 40 C.F.R. Part 112.

3.9. The Facility had, at the time of inspection, 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.

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

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

3.12. On May 26, 2015, authorized EPA representatives inspected the Facility to determine its compliance with Section 311(j) of the CWA, and in particular with the requirements of 40 C.F.R. Part 112 related to SPCC Plans.

Counts 1 – 15

3.13. The regulation at 40 C.F.R. § 112.3(a) requires an owner or operator of a facility subject to 40 C.F.R. Part 112 to prepare and fully implement an SPCC Plan by November 10, 2011. At the time of inspection, Respondent had failed to revise the Facility's SPCC Plan in accordance with the current SPCC regulations by November 10, 2011, in violation of 40 C.F.R. § 112.3(a).

3.14. The regulation at 40 C.F.R. § 112.3(d) requires an owner or operator of a facility subject to 40 C.F.R. Part 112 to have their SPCC Plan certified by a registered Professional Engineer. At the time of inspection, it was determined that Respondent had failed to have a Professional Engineer certify its SPCC Plan, in violation of 40 C.F.R. § 112.3(d).

3.15. The regulation at 40 C.F.R. § 112.5(a) requires an owner or operator of a facility subject to 40 C.F.R. Part 112 to amend the facility's SPCC Plan within six months of any change at the facility that materially affects the potential for a discharge. At the time of inspection, Respondent had failed to amend its SPCC Plan to reflect changes at the facility, in violation of 40 C.F.R. § 112.5(a).

3.16. The regulation at 40 C.F.R. § 112.5(b) requires an owner or operator of a facility subject to 40 C.F.R. Part 112 to Review and evaluate the facility's SPCC Plan at least once every five years. At the time of inspection, Respondent had failed to conduct five-year SPCC Plan reviews, in violation of 40 C.F.R. § 112.5(b).

3.17. The regulation at 40 C.F.R. § 112.7 requires an owner or operator of a facility subject to 40 C.F.R. Part 112 to include in the facility's SPCC Plan "Management Approval" at a level of authority to commit the necessary resources to fully implement the Plan. At the time of

inspection, Respondent had failed to obtain and include the requisite management approval in its SPCC Plan, in violation of 40 C.F.R. §112.7.

3.18. The regulation at 40 C.F.R. § 112.7(a) requires an owner or operator of a facility subject to 40 C.F.R. Part 112 to prepare an SPCC Plan that includes a description of the facility's physical layout and a diagram including a number of necessary items. At the time of inspection, Respondent had failed to adequately describe the physical layout of the Facility, the type of oil and storage capacity onsite, the availability of a licensed spill contractor, and information on procedures to be followed in the event of a spill, in violation of 40 C.F.R. § 112.7(a).

3.19. The regulation at 40 C.F.R. § 112.7(b) requires an owner or operator of a facility subject to 40 C.F.R. Part 112 to prepare an SPCC Plan that includes a prediction of the direction, rate of flow, and total quantity of oil that could be discharged for each type of major equipment failure where experience indicates a reasonable potential for equipment failure. At the time of inspection, Respondent had failed to include oil discharge predictions in its SPCC Plan, in violation of 40 C.F.R. § 112.7(b).

3.20. The regulation at 40 C.F.R. § 112.7(c) requires an owner or operator of a facility subject to 40 C.F.R. Part 112 to define and implement adequate secondary containment for bulk storage containers, mobile/portable containers, piping and related appurtenances, and transfer areas/equipment/activities. At the time of inspection, the inspector determined that Respondent failed to define and implement adequate secondary containment for at least one of the areas or objects for which such secondary containment is required, in violation of 40 C.F.R. §112.7(c).

3.21. The regulation at 40 C.F.R. § 112.7(e) requires an owner or operator of a facility subject to 40 C.F.R. Part 112 to conduct regular inspections and keep signed records of such inspections for at least three years. At the time of inspection, Respondent had failed to keep records of monthly visual inspections, in violation of 40 C.F.R. § 112.7(e).

3.22. The regulation at 40 C.F.R. § 112.7(f) requires an owner or operator of a facility subject to 40 C.F.R. Part 112 to require oil-handling personnel to be trained, and conduct adequate training of personnel, in operation and maintenance of equipment to prevent discharges; discharge procedure protocols; applicable pollution control laws, rules, and regulations; general facility operations; and the contents of the facility's SPCC Plan. At the time of inspection, Respondent had failed to conduct adequate training of Facility personnel and to designate a person accountable for discharge prevention, in violation of 40 C.F.R. § 112.7(f).

3.23. The regulation at 40 C.F.R. § 112.7(g) requires an owner or operator of a facility subject to 40 C.F.R. Part 112 to prepare an SPCC Plan that includes descriptions of certain security-related practices, including how to: (1) Secure and control access to the oil handling, processing and storage areas; (2) Secure master flow and drain valves; (3) Prevent unauthorized access to starter controls on oil pumps; (4) Secure out-of-service and loading/unloading connections of oil pipelines; and (5) Address the appropriateness of security lighting to both prevent acts of vandalism and assist in the discovery of oil discharges. At the time of inspection, Respondent had failed to specify in its SPCC Plan and complete necessary security measures, in violation of 40 C.F.R. § 112.7(g).

3.24. The regulation at 40 C.F.R. § 112.7(h) requires an owner or operator of a facility subject to 40 C.F.R. Part 112 to prepare an SPCC Plan that specifies adequate secondary containment at a facility's truck loading rack, if any. At the time of inspection, Respondent had failed to specify and implement adequate secondary containment at the Facility's truck loading rack, specifically the largest tank truck compartment, in violation of 40 C.F.R. § 112.7(h).

3.25. The regulation at 40 C.F.R. § 112.7(j) requires an owner or operator of a facility subject to 40 C.F.R. Part 112 to prepare an SPCC Plan that includes a discussion of conformance with applicable more stringent State rules, regulations, and guidelines and other effective

discharge prevention and containment procedures. At the time of inspection, Respondent had failed to discuss in the SPCC Plan conformance with state or local regulations that may be more stringent, in violation of 40 C.F.R. §112.7(j).

3.26. The regulation at 40 C.F.R. § 112.8(c) requires an owner or operator of a facility subject to 40 C.F.R. Part 112 to construct all bulk storage tank installations with secondary containment to hold the capacity of largest container and sufficient freeboard for precipitation as well as conduct certain integrity testing, liquid level sensing, and other housekeeping requirements. At the time of inspection, Respondent had failed to provide information in the SPCC Plan on the amount of freeboard needed for precipitation and capacity calculation for bulk containers; failed to implement maintenance of the containment capacity; failed to conduct integrity testing; failed to address and implement appropriate liquid sensing; and failed to specify and implement secondary containment for portable oil storage containers, in violation of 40 C.F.R. § 112.8(c).

3.27. The regulation at 40 C.F.R. § 112.8(d) requires an owner or operator of a facility subject to 40 C.F.R. Part 112 to inspect any onsite exposed buried piping for deterioration and corrosion damage, and to take corrective action if any is found. At the time of inspection, Respondent had failed to address inspection of buried piping in its SPCC Plan, in violation of 40 C.F.R. § 112.8(d).

3.28. Respondent's failure to comply with the requirements of 40 C.F.R. Part 112 subjects it to civil penalties pursuant to Section 311(b)(6)(B)(i) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(i).

IV. CONSENT AGREEMENT

4.1. Respondent admits the jurisdictional allegations contained in Paragraphs 3.5–3.12 of this Consent Agreement.

4.2. Respondent neither admits nor denies the specific factual allegations contained in Paragraphs 3.13–3.28 of this Consent Agreement.

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 violation or violations, the economic benefit to the violator, if any, resulting from the violation, 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, 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 \$27,000.

4.4. Respondent agrees to pay the total civil penalty set forth in Paragraph 4.3 within thirty (30) days of the effective date of the Final Order.

4.5. Payment under this Consent Agreement must be made by cashier’s check or certified check payable to the order of “Treasurer, United States of America” and delivered via United States mail to the following address:

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 deliver via United States mail a photocopy of the check described in Paragraph 4.5 to the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, Mail Stop 11-C07
1200 Sixth Avenue, Suite 155
Seattle, WA 98101

U.S. Environmental Protection Agency
Region 10, M/S 20-C04
1200 Sixth Avenue, Suite 155
Seattle, WA 98101
Attn: Kate Spaulding

4.7. If Respondent fails to pay the penalty assessed by this Consent Agreement in full by the due date set forth in Paragraph 4.4, 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, provided however, that no interest shall be payable on any portion of the assessed penalty that is paid within thirty (30) days of the effective date of the Final Order.

4.7.2. Attorney's 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) attorney's 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 twenty percent (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 Consent Agreement 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 Consent Agreement, Respondent has begun measures to correct the violation(s) alleged in Part III above.

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

4.12. Respondent expressly waives any right to contest or raise affirmative defenses to the allegations contained herein and waives any right to appeal the Final Order to be issued accompanying this Consent Agreement.

4.13. This Consent Agreement does not affect Respondent's responsibility to comply with 40 C.F.R. Part 112 and other applicable federal, state, and local laws.


4.14. The provisions of this Consent Agreement shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.15. The above provisions are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

3/4/20

FOR RESPONDENT:



TRENT WRIGHT, Manager
Triangle Oil, Inc.

DATED:

FOR COMPLAINANT:

EDWARD
KOWALSKI

Digitally signed by EDWARD
KOWALSKI
Date: 2020.03.26 11:00:56
-07'00'

EDWARD J. KOWALSKI, Director
Enforcement and Compliance Assurance Division

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Triangle Oil, Inc.,

Respondent.

DOCKET NO. CWA-10-2020-0064

FINAL ORDER

1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of the U.S. Environmental Protection Agency (EPA) Region 10, who has in turn delegated this authority to the Regional Judicial Officer in EPA Region 10.

2. The terms of the foregoing Consent Agreement are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

3. The Consent Agreement and this Final Order constitute a settlement by EPA of all claims for civil penalties pursuant to the Clean Water Act (CWA) for the violations alleged in Part III of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(a), nothing in this Final Order 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 Final Order 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.

4. This Final Order shall become effective upon filing.

SO ORDERED this ___ day of _____, 2020.

Mednick, Richard

Digitally signed by Mednick,
Richard
Date: 2020.03.30 08:36:23 -07'00'

Richard Mednick
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 10

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in: **In the Matter of: Triangle Oil, Inc., Docket No. CWA-10-2020-0064**, was filed, and served as follows, on the signature date below.

The undersigned certifies that a true and correct electronic copy of the document was delivered to:

J. Matthew Moore
U.S. Environmental Protection Agency
Region 10, M/S: 11-C07
1200 Sixth Avenue, Suite 155
Seattle, WA 98101
206-553-6266
Moore.johnm@epa.gov

Further, the undersigned certifies that a true and correct copy of this document was placed in the United States mail, certified/return receipt, to:

Brooks Foster
Chenoweth Law Group
510 SW 5th Ave #500,
Portland, Oregon 97204

Dated

Teresa Young
Regional Hearing Clerk
EPA Region 10