



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

1595 WYNKOOP STREET
DENVER, CO 80202-1129
Phone 800-227-8917
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2017 JUN 27 PM 3:02

FILED
EPA REGION VIII
HEARING CLERK

DOCKET NO.: CWA-08-2017-0016

IN THE MATTER OF:

JMAC RESOURCES, INC.

RESPONDENT


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FINAL ORDER

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 27th DAY OF June, 2017.



Katherin E. Hall
Regional Judicial Officer

2017 JUN 27 PM 3:02

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

FILED
EPA REGION VIII
HEARING CLERK

IN THE MATTER OF:)

JMAC Resources, Inc.)
121 48th Avenue SW)
Williston, North Dakota 58801-9182)

Docket No. **CWA-08-2017-0016**

**COMBINED COMPLAINT AND
CONSENT AGREEMENT**

Respondent.)

**Proceeding to Assess Civil Penalty
Under Section 311
of the Clean Water Act**

The U.S. Environmental Protection Agency, Region 8 (EPA), and JMAC Resources, Inc. (Respondent), by their undersigned representatives, hereby consent and agree as follows:

I. AUTHORITY

1. This proceeding is subject to EPA's "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits," 40 C.F.R. part 22. This Combined Complaint and Consent Agreement (CCCA) 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 is executed pursuant to 40 C.F.R. § 22.18(b)(2) and (3).
2. EPA has jurisdiction over this matter pursuant to section 311(b)(6) of the Clean Water Act (CWA), 33 U.S.C. § 1321(b)(6).

II. PARTIES BOUND

3. This CCCA, upon incorporation into a Final Order, applies to and is binding upon EPA and upon Respondent, and Respondent's officers, directors, agents, successors and assigns. Each signatory to this CCCA certifies that they are authorized to execute and legally bind the party they represent to this CCCA.

III. STATEMENT OF THE PARTIES

4. Respondent admits the jurisdictional allegations contained herein and neither admits nor denies the specific factual allegations contained herein.
5. Respondent waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth

in this CCCA, including any right of judicial review under the Administrative Procedure Act, 5 U.S.C. §§ 701 – 706.

6. EPA asserts that settlement of this matter is in the public interest, and EPA and Respondent agree that entry of this CCCA and its incorporation into a Final Order without further litigation and without adjudication of any issue of fact or law will avoid prolonged and complicated litigation between the parties.
7. This CCCA, upon incorporation into a Final Order and full satisfaction by the parties, shall be a complete and full resolution of Respondent's alleged liability for federal civil penalties for the violation alleged below.

IV. STATUTORY AND REGULATORY FRAMEWORK

8. The objective of the CWA is to restore and maintain the chemical, physical, and biological integrity of the nation's waters. 33 U.S.C. § 1251(a).
9. Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), in pertinent part, prohibits discharging oil into or upon the navigable waters of the United States in such quantities as may be harmful as determined under section 311(b)(4) of the CWA, 33 U.S.C. § 1321(b)(4).
10. The term "discharge" is defined in section 311(a)(2) of the CWA, 33 U.S.C. § 1321(a)(2), to include, in pertinent part, "any spilling, leaking, pumping, pouring, emitting, emptying or dumping . . ."
11. The term "oil" is defined in section 311(a)(1) of the CWA, in pertinent part, as "oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge . . ." 33 U.S.C. § 1321(a)(1).
12. The term "navigable waters" is defined in section 502(7) of the CWA as "waters of the United States, including the territorial seas." 33 U.S.C. § 1362(7).
13. In accordance with section 311(b)(4) of the CWA, 33 U.S.C. § 1321(b)(4), the President, through a delegation to the EPA, has determined, by regulation, those quantities of oil the discharge of which may be harmful to the public health or welfare or the environment of the United States. Exec. Order No. 11735, 38 Fed. Reg. 21243 (Aug. 3, 1973), and Executive Order 12777, 56 Fed. Reg. 54757 (October 22, 1991). Discharges of oil in such quantities as may be harmful include discharges of oil that: "(a) Violate applicable water quality standards; or (b) 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." 40 C.F.R. § 110.3.
14. Pursuant to section 311(b)(6)(A) of the CWA, 33 U.S.C. § 1321(b)(6)(A), any owner, operator, or person in charge of any vessel, onshore facility or offshore facility from which oil is discharged in

violation of section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), may be assessed a class I or class II civil penalty.

15. The term “owner or operator” is defined in section 311(a)(6) of the CWA in pertinent part as “in the case of an onshore facility, . . . any person owning or operating such onshore facility . . .” 33 U.S.C. § 1321(a)(6).
16. According to section 311(a)(7) of the CWA, “person” includes an individual, firm, corporation, association, and a partnership. 33 U.S.C. § 1321(a)(7).
17. The term “onshore facility” is defined in section 311(a)(10) of the CWA as “any facility (including, but not limited to, motor vehicles and rolling stock) of any kind located in, on, or under, any land within the United States other than submerged land.” 33 U.S.C. § 1321(a)(10).

V. EPA’S FINDINGS OF FACT AND OF VIOLATION

18. Respondent is and was at all relevant times a corporation organized under the laws of North Dakota.
19. Respondent is and was at all relevant times a “person” within the meaning of sections 311(a)(7) and 502(5) of the CWA, 33 U.S.C. §§ 1321(a)(7) and 1362(5).
20. At all relevant times, Respondent operated the truck and cargo tank (Tanker Truck) involved in the release referenced in paragraph 22 below.
21. The Tanker Truck was at all relevant times used to transport diesel fuel and meets the definition of an “onshore facility” within the meaning of section 311(a)(10), 33 U.S.C. § 1321(a)(10).
22. On or about July 30, 2015, the Tanker Truck was traveling on Highway 1804 near East Dakota Parkway in Williston, North Dakota when a mechanical failure resulted in the release of approximately 10 barrels of diesel fuel from the Tanker Truck.
23. EPA learned of the discharge described in paragraph 22 above after Respondent reported the discharge to the United States Coast Guard National Response Center (NRC) on or about July 30, 2015 (NRC Report No. 1124349).
24. The discharge described in paragraph 22 above impacted a stormwater drainage ditch which flows to the Missouri River.
25. The discharge referenced in paragraph 22 above violated water quality standards, caused a film or sheen upon or discoloration of the surface of the water and/or its adjoining shorelines, and/or caused a sludge or emulsion to be deposited beneath the surface of the water(s) and/or upon the adjoining shorelines of a stormwater drainage to the Missouri River.

26. The discharged diesel fuel referenced in paragraph 22 above meets the definition of “oil” in section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1) and 40 C.F.R. § 112.2.
27. When discharged into water, the diesel fuel referenced in paragraph 22 above also meets the definition of “pollutant” in section 502(6) of the CWA, 33 U.S.C. § 1362(6).
28. The release of diesel fuel referenced in paragraph 22 above was at all relevant times a “discharge” within the meaning of section 311(a)(2) of the CWA, 33 U.S.C. § 1321(a)(2).
29. The diesel fuel that was discharged into the stormwater drainage to the Missouri River, and upon its adjoining shorelines as a result of the release referenced in paragraph 22 above was discharged in “quantities as may be harmful” within the meaning of section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), and 40 C.F.R. § 110.3.
30. The Missouri River identified in paragraph 24 above is and was at all relevant times a “navigable water” within the meaning of section 502(7) of the CWA, 33 U.S.C. § 1362(7).
31. Therefore, Respondent’s discharge of diesel fuel referenced in paragraph 22 above constitutes a violation of section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3).

VI. CIVIL PENALTY

32. Section 311(b)(6)(B)(i) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(i), and 40 C.F.R. part 19 authorize the assessment of a class I civil penalty for violations of section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3).
33. Pursuant to section 311(b)(6)(A) of the CWA, 33 U.S.C. § 1321(b)(6)(A), and after consideration of the facts of this case as they relate to the factors set forth in section 311(b)(8) of the CWA, 33 U.S.C. § 1321(b)(8), EPA has determined that a civil penalty of three thousand and five hundred dollars (\$3,500.00) is appropriate to settle this matter.
34. Respondent consents and agrees to pay a civil penalty in the amount of three thousand and five hundred dollars (\$3,500.00) in the manner described below:
 - a. Payment shall be in a single payment of \$3,500.00, due no later than thirty (30) calendar days from the date of the Final Order. If the due date for the payment falls on a weekend or federal holiday, then the due date is the next business day. The date the payment is made is considered to be the date processed by U.S. Bank, as described below. Payment must be received by 11:00 a.m. Eastern Time to be considered as received that day.
 - b. The payment shall be made by remitting a check or making a wire transfer or on-line payment. If paying by check, Respondent shall submit a cashier’s or certified check,

payable to “Environmental Protection Agency,” and bearing the notations “OSLTF - 311” and the title and docket number of this case. The payment shall be remitted as follows:

If remitted by regular U.S. mail:

U.S. Environmental Protection Agency
P.O. Box 979077
St. Louis, Missouri 63197-9000

If remitted by any overnight commercial carrier:

U.S. Bank
Government Lockbox No. 979077
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, Missouri 63101
Contact: Craig Steffen, 513-487-2091, steffen.craig@epa.gov

If remitted by wire transfer: Any wire transfer must be sent directly to the Federal Reserve Bank in New York City using the following information:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, New York 10045
Beneficiary: US Environmental Protection Agency

If remitted through the Automated Clearing House (ACH) for receiving U.S. currency:

U.S. Treasury REX / Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 -- checking

Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, Maryland 20737

If remitted online with a debit card or credit card: No user name, password, or account number is necessary for this option. Online payment can be accessed via WWW.PAY.GOV, entering SFO 1.1 in the form search box on the left side of the screen, opening the form, and following the directions on the screen.

Copies of the check or record of payment shall be sent to:

Darla Hohman
U.S. Environmental Protection Agency (8ENF-W-WO)
1595 Wynkoop Street
Denver, Colorado 80202-1129

and

Melissa Haniewicz
Regional Hearing Clerk
U.S. Environmental Protection Agency (8RC)
1595 Wynkoop Street
Denver, Colorado 80202-1129

A transmittal letter identifying the case title and docket number must accompany the remittance and copies of the check.

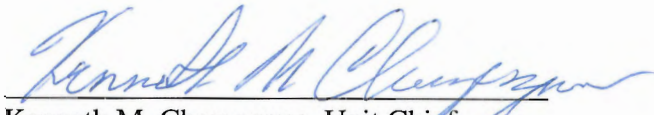
35. If the payment is not received by the specified due date, interest accrues from the date of the Final Order, not the due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until payment in full is received.
36. A handling charge of fifteen dollars (\$15) shall be assessed the 31st day from the date of the Final Order, and for each subsequent 30-day period that the debt, or any portion thereof, remains unpaid. In addition, a 6% per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 30 days of the due date. Payments are first applied to outstanding handling charges, second to penalty assessments, third to accrued interest, and then to the outstanding principal amount.
37. Respondent agrees that the penalty shall never be claimed as a federal or other tax deduction or credit.

VII. GENERAL PROVISIONS

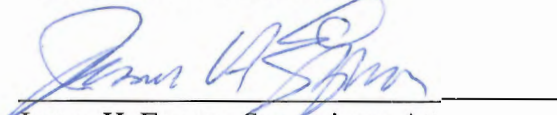
38. Nothing in this CCCA shall relieve Respondent of the duty to comply with the CWA and any regulation, order, or permit issued pursuant to the CWA.
39. Any failure by Respondent to comply with this CCCA shall constitute a breach of this CCCA and may result in referral of the matter to the United States Department of Justice for enforcement of this CCCA and such other relief as may be appropriate.
40. Nothing in this CCCA shall be construed as a waiver by EPA or any other federal entity of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of any failure by Respondent to comply with this CCCA.
41. Each party shall bear its own costs and attorneys' fees in connection with this matter.

**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8,**

Date: 6/22/2017

By: 
Kenneth M. Champagne, Unit Chief
Wetlands & OPA Technical Enforcement Program
Office of Enforcement, Compliance,
and Environmental Justice

Date: 6/22/2017

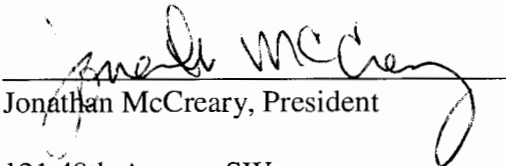
By: 
James H. Eppers, Supervisory Attorney
Legal Enforcement Program
Office of Enforcement, Compliance,
and Environmental Justice

United States Environmental Protection Agency
1595 Wynkoop Street, 8ENF
Denver, Colorado 80202-1129

Complainants

JMAC RESOURCES, INC.

Date: 6.12.2017

By: 
Jonathan McCreary, President
121 48th Avenue SW
Williston, North Dakota 58801-9182

Respondent

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **COMBINED COMPLAINT AND CONSENT AGREEMENT and FINAL ORDER** in the matter of **JMAC RESOURCES, INC.; DOCKET NO.: CWA-08-2017-0016** was filed with the Regional Hearing Clerk on June 27, 2017.

Further, the undersigned certifies that a true and correct copy of the documents were emailed to, Abigail Dean, Enforcement Attorney. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt on June 27, 2017, to:

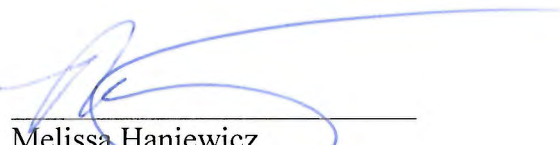
Respondent

LAWCO of North Dakota, Inc.
Registered Agent for JMAC Resources, Inc.
208 20th Street East
Williston, North Dakota 58801

And emailed to:

Jessica Chalifoux
U. S. Environmental Protection Agency
Cincinnati Finance Center
26 W. Martin Luther King Drive (MS-0002)
Cincinnati, Ohio 45268

June 27, 2017



Melissa Haniewicz
Regional Hearing Clerk