

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, PA 19103

In The Matter of:

Frame and Leany
220 S. Magic Way
Henderson, NV 89015

Respondent.

**PROCEEDING UNDER SECTION 311
OF THE CLEAN WATER ACT, AS
AMENDED, TO ASSESS A CLASS II
CIVIL PENALTY FOR SPCC
VIOLATIONS**

Docket No. CWA-03-2009-0097

I. CONSENT AGREEMENT

1. This Consent Agreement is proposed and entered into under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 311(b)(6)(B)(ii) of the Clean Water Act, as amended, ("CWA"), 33 U.S.C. § 1321(b)(6)(B)(ii) and under the authority provided by Section 22.18(b) of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination, or Suspension of Permits" ("Part 22 Rules"), 40 C.F.R. Part 22. The Administrator has delegated this authority to the Regional Administrator of EPA, Region III, who in turn has delegated it to the Director of the Region's Hazardous Site Cleanup Division ("Complainant").

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

For the purposes of this proceeding, the parties, in their own capacity or by their attorneys or other authorized representatives, hereby stipulate to the following Findings of Fact and Conclusions of Law:

2. Section 311(j)(5)(A) of the CWA, 33 U.S.C. § 1321(j)(5)(A), provides that the President shall issue regulations requiring each owner or operator of certain facilities to “submit to the President a plan for responding, to the maximum extent practicable, to a worst case discharge, and to a substantial threat of such a discharge, of oil or a hazardous substance.”
3. By Section 2(d)(1) of Executive Order 12777 (October 18, 1991), the President delegated to the Administrator of EPA the authorities under Section 311(j)(5)(A) of the Act.
4. Pursuant to Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), the discharge of oil or hazardous substances into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone... in such quantities as may be harmful as determined by the President under Section 311(b)(4), 33 U.S.C. § 1321(b)(4), of this subsection is prohibited.
5. 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.”
6. Pursuant to Section 311(b)(4) of the CWA, 33 U.S.C. § 1321(b)(4), the President shall by regulation determine those quantities of oil and any hazardous substances the discharge of which may be harmful to the public health or welfare or the environment of the United States, including, but not limited to fish, shellfish, wildlife, and public and private property, shorelines and beaches.

7. 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 the Administrator his Section 311(j)(1)(C) authority to issue the regulations referenced in Paragraph 5, above, for non-transportation-related onshore facilities.
8. EPA subsequently promulgated the Spill Prevention, Control and Countermeasure (“SPCC”) regulations (“SPCC regulations”), which are codified at 40 C.F.R. Part 112, Subparts A, B, and C, pursuant to the delegated statutory authorities referred to in Paragraphs 3 and 7, and pursuant to its authorities under the CWA, which establish certain procedures, methods and requirements upon each owner and operator of a non-transportation-related onshore facility if such facility, due to its location, could reasonably be expected to discharge oil into or upon the navigable waters of the United States and their adjoining shorelines in such quantity as EPA has determined in 40 C.F.R. § 110.3 may be harmful to the public health or welfare or the environment of the United States (“harmful quantity”).
9. In promulgating 40 C.F.R. § 110.3, which implements Section 311(b)(4) of the CWA, 33 U.S.C. § 1321(b)(4), EPA has determined that discharges of harmful quantities include oil discharges that cause either: (1) a violation of applicable water quality standards; (2) a film, sheen upon, or discoloration of the surface of the water or adjoining shorelines; or (3) a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

10. Respondent is a Nevada corporation with a principal place of business at 220 S. Magic Way, Henderson, NV 89015, and formed in 1982 to purchase and operate wells in West Virginia. Respondent is 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), and 40 CFR § 112.2.
11. Respondent is the owner and operator, within the meaning of Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6), and 40 CFR § 112.2, of an onshore facility consisting of aboveground storage tanks (“ASTs”) with a total capacity of 16,800 gallons (400 barrels: 120 barrel AST; 100 barrel AST; and 180 barrel AST) of crude oil, brine and oily water, which are located at Aarons Fork Road, Elkview, Kanawha County, West Virginia (“the Facility”). The Facility is located approximately one-quarter mile away from Leatherwood Creek, a navigable water of the United States.
12. Respondent is engaged in producing, gathering, storing, processing, refining, transferring, distributing or consuming oil or oil products at the Facility.
13. On June 22, 2009, the Complainant issued an Administrative Complaint pursuant to Section 311(b)(6)(B)(ii) of the CWA, 33 U.S.C. §1321(b)(6)(B)(ii), Docket No. CWA-03-2009-0097, alleging that the Respondent was in violation of the Oil and hazardous substance regulations and the SPCC regulations (“the Complaint”). Specifically, the Complainant alleged that Respondent: (1) discharged oil into navigable waters of the United States in violation of Section 311(b)(3) of the CWA; (2) failed to prepare, certify and implement an SPCC Plan in violation of 40 C.F.R. § 112.3; (3) failed to implement requirements pertaining to inspections

and records in violation of 40 C.F.R. § 112.7(e)(8); (4) failure to implement requirements pertaining to personnel, training and spill procedures in violation of 40 C.F.R. § 112.7(e)(10); (5) failure to implement requirements pertaining to oil production facilities in violation of 40 C.F.R. § 112.7(e)(5)(ii)(B); and (6) failure to implement a Flow Line Maintenance Program and failure to address salt water disposal in violation of 40 C.F.R. § 112.7(e)(5)(iv)(B) and (C).

14. Complainant makes, and Respondent neither admits nor denies, the following findings of fact and conclusions of law:

- a. Respondent is the operator within the meaning of Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6), and 40 CFR § 112.2, of the Facility, which is approximately ¼ mile from away from Leatherwood Creek.
- b. Leatherwood Creek is a tributary to the Pocatamico River, which is a tributary to the Kanawha River, a navigable-in-fact water. Leatherwood Creek, the Pocatamico River, and the Kanawha River are “navigable waters” as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and 40 C.F.R. §§ 110.1 and 112.2.
- c. The Facility is an onshore facility within the meaning of Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10), and 40 C.F.R. § 112.2.
- d. The Facility is a non-transportation-related facility within the meaning of 40 C.F.R. § 112.2 and Appendix A, as incorporated by reference within 40 C.F.R. § 112.2.
- e. The Facility is a non-transportation-related onshore facility within the meaning of 40 C.F.R. § 112.2, which, due to its location, could reasonably be expected to

discharge oil to a navigable water of the United States or its adjoining shorelines in a harmful quantity ("an SPCC-regulated facility") within the meaning of 40 C.F.R. Part 112.

15. Pursuant to Section 311(j)(1)(C) of the CWA, 33 U.S.C. § 1321(j)(1)(C), and 40 C.F.R. § 112.1 Respondent, as the operator of an SPCC-regulated facility, is subject to the SPCC regulations.
16. Complainant incorporates by reference, and Respondent neither admits nor denies, the allegations set forth in Paragraphs 1 through 62 of the Complaint.

III. WAIVER OF RIGHTS

17. The Respondent admits to the jurisdiction of EPA in this matter as set forth in the Complaint and 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), and to appeal the Final Order in this matter (if issued in the form attached hereto) under Section 311(b)(6)(G)(ii) of the Act, 33 U.S.C. § 1321(b)(6)(G)(ii), and consents to the issuance of a Final Order (in the form attached hereto) without further adjudication. In addition, Respondent agrees to comply with the terms of the Administrative Order on Consent, EPA Docket No. CWA-03-2010-0051CW.

IV. PENALTY

18. Respondent consents to the assessment of a civil penalty of \$29,106.

V. PAYMENT TERMS

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

19. Payment of the civil penalty assessed herein, plus any accrued interest, shall be made in the manner and over the time period specified below:
- a. The first payment is due within 30 days of the Effective Date, in the amount of \$2,425.50.
 - b. Thereafter, every 30 days for a period of eleven months, an additional payment of \$2,425.50 + 3% interest on the unpaid balance, shall be due.
 - c. There will be no penalty for pre-payment on any unpaid balance.
20. Pursuant to the above schedule, Respondent will remit total payments for the civil penalty in the amount of 29,106 (\$29,106) in principal, along with interest payments at 3% per anum on the unpaid balance accruing each month provided, however, that on payment due dates, Respondent may pre-pay the total of future principal payments (and accrued interest) and thereby avoid paying future interest payments.
21. Payments required pursuant to Paragraph 19 shall be made by a cashier's or certified check, or by an electronic funds transfer ("EFT").
22. If paying by check, the Respondent shall submit a cashier's or certified check, payable to "Environmental Protection Agency," and bearing the notation "OSLTF - 311." If the Respondent sends payment by the U.S. Postal Service, the payment shall be addressed to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077

St. Louis, MO 63197-9000

If the Respondent sends payment by a private delivery service, the payment shall be addressed to:

U.S. Environmental Protection Agency
U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101
Attn: Natalie Pearson (314/418-4087)

23. If paying by EFT, the Respondent shall make the transfer to:

Federal Reserve Bank of New York
ABA 021030004
Account 68010727
33 Liberty Street
New York, NY 10045

- a. If paying by EFT, field tag 4200 of the Fedwire message shall read: "(D 68010727 Environmental Protection Agency)."
 - b. In the case of an international transfer of funds, the Respondent shall use SWIFT address FRNYUS33.
24. If paying through the Department of Treasury's Online Payment system, please access "www.pay.gov," enter sfo 1.1 in the search field. Open the form and complete the required fields and make payments. Note that the type of payment is "civil penalty," the EPA Docket Number "CWA-03-2009-0097" should be included in the "Court Order # or Bill #" field and should be included as the Region number.
25. If paying by check, the Respondent shall note on the penalty payment check the title and docket number ("CWA-03-2009-0097") of this case. The Respondent

shall submit a copy of the check (or, in the case of an EFT transfer, a copy of the EFT confirmation) to the following person:

Lydia Guy
Regional Hearing Clerk (3RC00)
U.S. Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103-2029

The Respondent must also provide a copy of its check to the attorney representing EPA in this matter at the following address:

Pamela J. Lazos
Sr. Assistant Regional Counsel (3RC42)
U.S. Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103-2029

26. Failure by the Respondent to pay the penalty assessed by the Final Order in full by due dates set forth in Paragraph 19 may subject Respondent to a civil action to collect the assessed penalty, 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 agreed to herein shall not be subject to review.

VI. CERTIFICATION OF COMPLIANCE

27. Within thirty (30) days of the Effective Date, Respondent shall submit to Pamela J. Lazos, Sr. Assistant Regional Counsel (at the address in Paragraph 25), a Certification of Compliance stating that it is in compliance with the statutory

requirements for each violation alleged in the Complaint. The Certification of Compliance must include the following language:

Except as provided below, I certify that the information contained in or accompanying this Certification of Compliance is true, accurate and complete. As to (the/those) portion(s) of this Certification of Compliance, for which I cannot personally verify (its/their) accuracy, I certify under the penalty of law that this Certification of Compliance and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Signature: _____
Name(print): _____
Title: _____

VII. GENERAL PROVISIONS


28. Pursuant to Section 311(b)(6)(C) of the CWA, 33 U.S.C. § 1321(b)(6)(C), the Complainant is providing public notice of and reasonable opportunity to comment on this proposed issuance of a Final Order assessing administrative penalties against the Respondent.
29. The provisions of the Final Order, if issued, shall be binding upon Respondent and Respondent's successors or assigns.
30. The Final Order does not constitute a waiver, suspension or modification of the requirements of Section 311 of the CWA, 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 applicable injunctive or other equitable relief or criminal sanctions for any violation of law. Payment of the penalty pursuant to

this Consent Agreement resolves only Respondent's liability for federal civil penalties for the violations and facts alleged in the Administrative Complaint.

31. As used in this Consent Agreement, the term "Effective Date" shall mean the date on which the Final Order is served on Respondent.
32. The undersigned representative of Respondent certifies that he is fully authorized to enter into the terms and conditions of this Consent Agreement and bind Respondent hereto.

FOR THE RESPONDENT, FRAME AND LEANY RESOURCES:

Date: 12-17-09

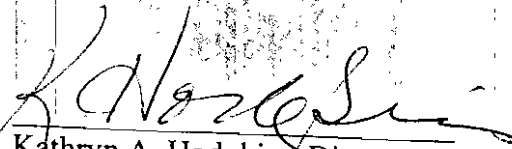
By Frame & Leany Resources


Name: George D. Frame

Title: Manager

FOR THE COMPLAINANT, U.S. ENVIRONMENTAL PROTECTION AGENCY:

Date: 1/13/10


Kathryn A. Hodgkiss, Director
Hazardous Site Cleanup Division

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

In The Matter of:

Frame and Leany Resources
220 S. Magic Way
Henderson, NV 89015

Respondent.

FINAL ORDER

**PROCEEDING UNDER SECTION 311
OF THE CLEAN WATER ACT, AS
AMENDED, TO ASSESS A CLASS II
CIVIL PENALTY FOR FRP AND SPCC
VIOLATIONS**

Docket No. CWA-03-2009-0097

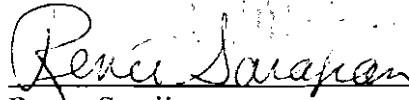
FINAL ORDER

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, (*Consolidated Rules*)" codified at 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order.

Nothing in the foregoing Consent Agreement relieves the Respondent from otherwise complying with the applicable requirements set forth in the CWA.

The Respondent is ordered to comply with the terms of the foregoing Consent Agreement.

Date: 1/20/10


Renee Sarajian
Regional Judicial Officer

CERTIFICATION OF SERVICE

I hereby certify that on this date I caused to be filed the original Consent Agreement and Final Order with the Regional Hearing Clerk:

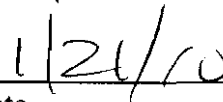
Lydia Guy (3RC00)
Regional Hearing Clerk
US EPA Region III
1650 Arch Street
Philadelphia, PA 19103

with copies to the following via certified mail, return receipt requested:

Kathy G. Beckett
Jackson Kelly PLLC
1600 Laidley Tower
500 Lee Street East - Floor 10
Charleston, WV 25322



Pam Lazos
Sr. Asst. Regional Counsel



Date

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

1/11/10

SUBJECT: Frame and Leany
Docket No. CWA-03-2010-0051CW
Docket No. CWA-03-2009-0097

FROM: Cecil Rodrigues (3PM50)
Chief, Office of Remediation Enforcement

Karen Melvin (3HS60) *Karen Melvin*
Associate Director, Office of Enforcement
Hazardous Sites Cleanup Division

TO: Kathryn A. Hodgkiss
Acting Director, Hazardous Sites Cleanup Division

This transmittal memorandum summarizes the key issues associated with the entry of a Consent Agreement and Final Order ("CAFO") and Administrative Order on Consent ("AOC") issued to Frame and Leany, 220 S. Magic Way, Henderson, NV 89015 ("Frame and Leany" or "Respondent"), for violations of Section 404 of the Clean Water Act ("Act"), 33 U.S.C. §1344, as authorized by Section 309(g) of the Clean Water Act ("Act"), 33 U.S.C. Section §1319(g).

Respondent, a Nevada corporation, is the owner and operator of an onshore facility located at Aarons Fork Road, Elkview, Kanawha County, West Virginia (the "Facility"). The Facility has storage consisting of aboveground storage tanks ("ASTs") with a total capacity of 16,800 gallons (400 barrels: 120 barrel AST; 100 barrel AST; and 180 barrel AST) of crude oil, brine and oily water. The Facility is located approximately one-quarter mile away from Leatherwood Creek, a navigable water of the United States. Leatherwood Creek is a tributary to the Pocatalico River which is a tributary to the Kanawha River, a navigable-in-fact water. Leatherwood Creek, the Pocatalico River, and the Kanawha River are "navigable waters" as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and 40 C.F.R. §§ 110.1 and 112.2.

On November 7, 2007, Respondent discharged between 20 and 35 barrels of crude oil into Leatherwood Creek, a tributary to Pocatalico River, which is a tributary to the Kanawha River, a navigable waterway, which discharge caused a sheen or discoloration on the surface of the water in violation of 40 C.F.R. § 110.3(b). Respondent reported the spill to the National Response Center ("NRC"), but did not take responsibility for it.

At the time of EPA's inspection on May 1, 2008, Respondent did not have an SPCC Plan. In addition, Respondent had various implementation violations including: 1) failure to prepare, certify and implement an SPCC Plan in violation of 40 C.F.R. § 112.3; (2) failure to implement



requirements pertaining to inspections and records in violation of 40 C.F.R. § 112.7(e)(8); (3) failure to implement requirements pertaining to personnel, training and spill procedures in violation of 40 C.F.R. § 112.7(e)(10); (4) failure to implement requirements pertaining to oil production facilities in violation of 40 C.F.R. § 112.7(e)(5)(ii)(B); and (5) failure to implement a Flow Line Maintenance Program, and failure to address salt water disposal in violation of 40 C.F.R. § 112.7(e)(5)(iv)(B) and (c).

The Respondent has agreed to pay a penalty of \$29,106 for the above-named violations, eliminating the need for litigation. The attached CAFO fully resolves this matter pursuant to 40 C.F.R. §22.18. In addition, the AOC requires that Respondent prepare and implement a complete SPCC Plan for nine additional wells that Respondent is still operating, but which have no or inadequate SPCC Plans.

We request that you approve the attached CAFO and AOC. Questions concerning this matter may be directed to Pamela J. Lazos, Sr. Assistant Regional Counsel, at ext. 2658.

cc: Kathy Beckett, Esq.