



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

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1595 WYNKOOP STREET

DENVER, CO 80202-1129

Phone 800-227-8917

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FILED
EPA REGION VIII
HEARING CLERK

DOCKET NO.: CWA-08-2017-0021

IN THE MATTER OF:

PETROLEUM WHOLESALE, L.P.

FINAL ORDER

RESPONDENT

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 11th DAY OF September, 2017.

KATHERIN E. HALL
Katherin E. Hall
Regional Judicial Officer

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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IN THE MATTER OF:)
)
PETROLEUM WHOLESALE, L.P.)
8550 Technology Forest Place)
The Woodlands, Texas 77381-1174)
)
Respondent.)
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)
)
)

Docket No. **CWA-08-2017-0021**

COMBINED COMPLAINT AND
CONSENT AGREEMENT UNDER
SECTION 311(j) OF THE CLEAN
WATER ACT

I. PRELIMINARY STATEMENT

1. This proceeding is subject to the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, 40 Code of Federal Regulations (C.F.R.) part 22 (Consolidated Rules of Practice). This Combined Complaint and Consent Agreement (Agreement) 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. Complainant is the U.S. Environmental Protection Agency (EPA). On the EPA's behalf, the undersigned officials, are delegated authority to settle civil administrative penalty proceedings under section 311(b)(6)(A) of the Act, 33 U.S.C. § 1321(b)(6)(A).

II. JURISDICTION

3. The EPA has jurisdiction over this matter pursuant to section 311(b)(6)(B)(i) of the Clean Water Act (the Act), 33 U.S.C. § 1321(b)(6)(B)(i).
4. For the purposes of this settlement only, Petroleum Wholesale, L.P. (Respondent) admits to the jurisdiction of the EPA over the allegations contained herein.

III. GOVERNING LAW

5. Section 311(j)(1)(C) of the Act, 33 U.S.C. § 1321(j)(1)(C), directed the President to 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 . . ."
6. In response to the directive referenced in Paragraph 5, above, the EPA promulgated 40 C.F.R. part 112.
7. A facility subject to 40 C.F.R. part 112 is required to prepare a written Spill Prevention Control and Countermeasure Plan (SPCC) and to adhere to the discharge prevention and containment procedures specified in that regulation.

IV. STIPULATED FACTS

8. Respondent is a partnership incorporated under the laws of the State of Texas. Respondent's principal office is located in the Woodlands, Texas.
9. Respondent is a "person" within the meaning of sections 311(a)(7) and 502(5) of the Act, 33 U.S.C. §§ 1321(a)(7) and 1362(5).
10. Respondent owns and operated a "facility" as defined in 40 C.F.R. § 112.2, including, but not limited to, "any fixed onshore building, property ... pipe ... oil storage ... [or] oil distribution." The facility is known as the Tomahawk Truck Stop located at 12060 Sable Boulevard, Brighton, Colorado (hereinafter the Brighton Facility).
11. Six bulk storage containers as defined in 40 C.F.R. § 112.2 are located at the Brighton Facility, with a total aboveground storage capacity of approximately 79,280 gallons of gasoline and diesel fuel (oil) and is subject to the SPCC regulations.
12. Respondent acquired ownership of the Brighton Facility on December 30, 2014. Respondent ceased operating the six aboveground bulk storage containers on November 14, 2016, and formally decommissioned the tanks in February 2017. The six aboveground bulk storage containers remain on-site.
13. At all times after December 30, 2014, and prior to February 2017, Respondent was an "owner or operator" of the Brighton Facility as defined in section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6).
14. At all times after December 30, 2014, and prior to February 2017, Respondent was engaged in storing, transferring, and/or distributing oil at the Brighton Facility.
15. The Brighton Facility is an "onshore facility" as defined in section 311(a)(10) of the Act, 33 U.S.C. § 1321(a)(10), and a "non-transportation related" facility as defined in 40 C.F.R. § 112.2.
16. The oil referenced in Paragraph 11, above, meets the definition of "oil" in section 311(a)(1) of the Act, 33 U.S.C. § 1321(a)(1) and 40 C.F.R. § 112.2.
17. On July 1, 2016, the EPA met with a Respondent representative about outstanding noncompliance at the Brighton Facility (*see* section "Violations Alleged").
18. On September 8, 2015, Respondent conducted integrity testing of the aboveground containers at the Brighton Facility pursuant to 40 C.F.R. § 112.8(c)(6). Following the testing, Respondent removed two of the aboveground containers that failed the integrity testing from service therefore, Respondent complied with the requirement of 40 C.F.R. § 112.8(c)(6), alleged below.

V. VIOLATIONS ALLEGED

19. The location of the Brighton Facility, is reasonably expected to discharge oil and/or other pollutants into the O'Brian Canal, Burlington Ditch, then into Barr Lake and/or its tributaries and/or its adjoining shorelines in quantities that would (a) violate applicable water quality standards or (b) cause a film or a sheen upon or discoloration of the surface of the navigable waters of the United States or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of such waters or their adjoining shorelines.

20. The O'Brian Canal and Burlington Ditch are tributaries to Barr Lake.
21. The O'Brian Canal and Barr Lake are traditionally navigable waters.
22. Barr Lake is a "navigable water" as defined in section 502(7) of the Act, 33 U.S.C. § 1362(7) and 40 C.F.R. §§ 110.1 and 112.2.
23. At all times after December 30, 2014, and prior to February 2017, the Brighton Facility has been subject to the SPCC requirements of 40 C.F.R. part 112.
24. On September 24, 2013, the EPA inspected the Brighton Facility for compliance with the SPCC requirements. During the time of inspection, the Brighton Facility was under the ownership of Silco Oil Co. During this inspection, the EPA found numerous violations of the SPCC requirements under 40 C.F.R. part 112.
25. On March 3, 2014, the EPA completed a review of a SPCC Plan for Brighton Facility dated in 2011 and determined that the SPCC plan was in violation of requirements under 40 C.F.R. part 112. Specifically, the SPCC Plan lacked the following:
 - a. The Professional Engineer certification did not contain the testing and inspection citation, in violation of 40 C.F.R. § 112.3(d);
 - b. Failure to document completion of the review and evaluation with a review statement and signature for reviewer, in violation of 40 C.F.R. § 112.5(b);
 - c. Pages 11-14 of the Brighton SPCC Plan list technical tasks that need to be completed to come into compliance with the SPCC Plan. There is no schedule of when these tasks are to be completed, in violation of 40 C.F.R. § 112.7;
 - d. No description of mobile or portable containers found at the Brighton Facility and failure to provide for the type of oil and storage capacity of each container or an estimate of the potential number of containers, in violation of 40 C.F.R. § 112.7(a)(3)(i); and
 - e. There is no description of how to restrain drainage from diked storage areas by valves to prevent a discharge into the drainage system or facility effluent treatment system, in violation of 40 C.F.R. § 112.8(b)(1)
26. The 2014 SPCC Plan, used by Respondent during its time of ownership and operation of the Facility listed the technical deficiencies at the Brighton Facility described in subparagraph 25(c), above. The technical violations of the part 112 regulations are as follows:
 - a. Grossly inadequate secondary containment that would fail to "provide a secondary means of containment for the entire capacity of the largest single container and sufficient freeboard to contain precipitation, in violation of 40 C.F.R. § 112.8(c)(2);
 - b. Inappropriate containment and/or diversionary structures or equipment to prevent a discharge during transfer, in violation of 40 C.F.R. § 112.7(c);

- c. No procedures for integrity testing of aboveground containers, in violation of 40 C.F.R. § 112.8(c)(6);
 - d. Containers not engineered to prevent a discharge, aboveground storage tanks are lacking in an overfill protection method, in violation of 40 C.F.R. § 112.8(c)(8); and
 - e. Visible discharges of oil on the tanks and accumulations of oil were not removed, in violation of 40 C.F.R. § 112.8(c)(10).
27. Due to operation of the Facility between December 30, 2014 and the formal closure of the tanks in February 2017, with the deficiencies described in subparagraphs 26(a)-(e), above, constitute violations of section 311(j) of the Act, 33 U.S.C. § 1321(j), and 40 C.F.R. part 112, for which Respondent is liable for civil administrative penalties pursuant to 311(b)(6)(A)(ii) of the Act, 33 U.S.C. § 1321(b)(6)(A)(ii).

VI. CIVIL PENALTY

28. Section 311(b)(6)(B)(i) of the Act, 33 U.S.C. § 1321(b)(6)(B)(i), and 40 C.F.R. part 19 authorizes the EPA to assess Class I administrative penalties of up to \$16,000 per violation for violations occurring between January 12, 2009, and November 2, 2015. For violations that occurred after November 2, 2015, and where penalties are assessed on or after January 15, 2017, 33 U.S.C. § 1321(b)(6)(B)(i), and 40 C.F.R. part 19 authorizes the EPA to assess an administrative penalty of up to \$45,268.
29. After consideration of the facts of this case as they relate to the factors set forth in section 311(b)(8) of the Act, 33 U.S.C. § 1321(b)(8), the parties agree to an administrative penalty of \$11,000 against Respondent for the violations alleged herein.
30. Respondent agrees to:
- a. pay the civil penalty of \$11,000.00 within 30 calendar days of the Effective Date of this Agreement;
 - b. pay the civil penalty of \$11,000.00 using any method, or combination of methods, provided on the website <http://www2.epa.gov/financial/additional-instructions-making-payments-epa>, and identifying each and every payment with the "Docket No." issued to this Agreement;
 - c. within 24 hours of the time of payment, a copy of the check or notification of wire transfer or online payment shall be sent to the EPA Region 8 Regional Hearing Clerk and Donna K. Inman (at the addresses provided below). A transmittal letter identifying the case title and docket number must accompany the remittance and each of the copies of the check or notification.

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

and

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

31. If Respondent fails to timely pay any portion of the penalty assessed under this Agreement, the EPA may:

- a. request the Attorney General to bring a civil action in an appropriate district court to recover: the amount assessed; interest at rates established pursuant to 26 U.S.C. § 6621 (a)(2), from the Effective Date of this Agreement; the United States' enforcement expenses; and a 20 percent quarterly nonpayment penalty, 33 U.S.C. § 1321(b)(6)(H);
- b. refer the debt to a credit reporting agency or a collection agency, 33 U.S.C. § 1321(b)(6)(H), 40 C.F.R. §§ 13.13, 13.14, and 13.33;
- c. collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to referral to the Internal Revenue Service for offset against income tax refunds, 40 C.F.R. part 13, subparts C and H; and
- d. suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with the EPA or engaging in programs the EPA sponsors or funds, 40 C.F.R. § 13.17.

VII. GENERAL PROVISIONS

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

33. Respondent:

- a. admits to the stipulated facts in this Agreement;
- b. neither admits nor denies the allegations contained herein;
- c. consents to the assessment of the administrative civil penalty;
- d. waives any rights to contest the allegations; and
- e. 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 Agreement and subsequently issued Final

Order, including any right of judicial review under the Administrative Procedure Act, 5 U.S.C. §§ 701 -706.

34. Nothing herein shall be construed to limit the power of the EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.
35. The provisions of this Agreement shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representative, successors, and assigns. From the Effective Date of this Agreement until full payment of the civil penalty, Respondent must give written notice and a copy of this Agreement to any successors in interest, prior to any transfer of ownership, or control of any portion of, in the Brighton Facility. Simultaneously with such notice, Respondent shall provide written notice of such transfer, assignment, or delegation to the EPA. In the event of any such transfer, assignment, or delegation, Respondent shall not be released from the obligations or liabilities of this Agreement unless the EPA has provided written approval of the release of said obligations or liabilities.
36. By signing this Agreement, Respondent certifies that the information it has supplied concerning this matter was at the time of submission, true, accurate, and complete for each such submission, response, and statement. Respondent acknowledges that there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.
37. Each party will bear its own attorney's fees, costs, and disbursements incurred in this proceeding.
38. Penalties paid pursuant to this Agreement shall not be deductible for purposes of federal taxes.
39. This Agreement constitutes the entire agreement and understanding of the parties and supersedes any prior agreements or understandings, whether written or oral, among the parties with represent to the subject matter hereof, with the exception of the Final Order to be issued by the Regional Judicial Officer.
40. In accordance with 40 C.F.R. § 22.18(c), this Agreement, upon incorporation into a Final Order, and full payment of the penalty assessed shall be a complete and full resolution of Respondent's liability for federal civil penalties for the violations alleged, above.
41. A violation of the Final Order may result in civil judicial action for an injunction or civil penalties as provided in section 309(b) of the Act, 33 U.S.C. § 1319(b), as well as criminal sanctions as provided in 309(c) of the Act, 33 U.S.C. § 1319(c). The EPA may use the information submitted under this Order in an administrative, civil judicial, or criminal action.

VIII. CONTINUING OBLIGATION TO COMPLY

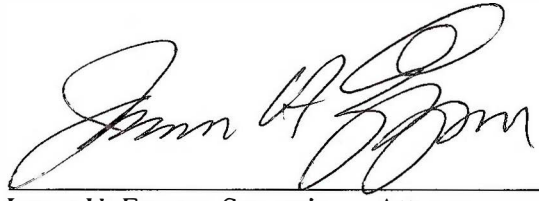
42. Neither assessment nor payment of the administrative penalty shall affect Respondent's continuing obligation to comply with the Act and any regulation, order, or permit issued pursuant to the Act, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit.

IX. EFFECTIVE DATE

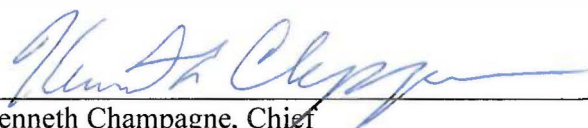
43. Respondent and the EPA agree to the issuance of a Final Order ratifying this Agreement. Upon filing, the Regional Judicial Officer will transmit a copy of the filed Agreement to Respondent. The “Effective Date” of this Agreement is the date of issuance of a Final Order by the Regional Judicial Officer.

**ENVIRONMENTAL PROTECTION AGENCY
REGION 8
Complainant**

Date: 9/2/17

By: 
James H. Eppers, Supervisory Attorney
Legal Enforcement Program
Office of Enforcement, Compliance,
and Environmental Justice
United States Environmental Protection Agency, Region 8
1595 Wynkoop Street (8ENF-L)
Denver, Colorado 80202-1129

Date: 9/8/2017

By: 
Kenneth Champagne, Chief
OPA and Wetlands Enforcement Unit
Technical Enforcement Program
Office of Enforcement, Compliance,
and Environmental Justice
United States Environmental Protection Agency, Region 8
1595 Wynkoop Street (8ENF-)
Denver, Colorado 80202-1129

PETROLEUM WHOLESALE, L.P.
Respondent

By: PWI GP, LLP
General Partner

By: PWI Holdings, LLP

Date: 9-7-2017

By: 

John Cook
Managing Partner

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **COMBINED COMPLAINT AND CONSENT AGREEMENT and FINAL ORDER** in the matter of **PETROLEUM WHOLESALE, L.P.; DOCKET NO.: CWA-08-2017-0021** was filed with the Regional Hearing Clerk on September 14, 2017.

Further, the undersigned certifies that a true and correct copy of the documents were emailed to, Lauren Hammond, Enforcement Attorney. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt on September 14, 2017, to:

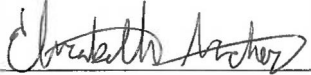
Respondent

Mr. John Cook
Managing Partner
Petroleum Wholesale, L.P.
8550 Technology Forest Place
The Woodlands, Texas 77381-1174

And emailed to:

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

September 14, 2017


Elizabeth Archer
Acting Regional Hearing Clerk