

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

2011 OCT -3 PM 2:16

FILED
EPA REGION VIII
HEARING CLERK

IN THE MATTER OF:)	Docket No. CWA-08-2011-0013
)	
Family Tree Corporation)	CONSENT AGREEMENT
2150 W. 29 th Avenue, Suite 500)	
Denver, CO 80211)	
)	
Respondent.)	

Complainant, United States Environmental Protection Agency, Region 8 (EPA), and Respondent, Family Tree Corporation (Family Tree), by their undersigned representatives, hereby consent and agree as follows:

BACKGROUND

1. On May 27, 2011, EPA issued Family Tree an Administrative Complaint and Notice of Opportunity for Hearing (Complaint) pursuant to its authority under section 311(b)(6)(B) of the Clean Water Act (Act), as amended by the Oil Pollution Act of 1990. EPA alleged in the Complaint that Family Tree failed to prepare and implement a Spill Prevention Control and Countermeasure (SPCC) plan for its Pilot Butte Field facility (facility) located in Fremont County, Wyoming, in accordance with the oil pollution prevention regulations set forth at 40 C.F.R. §§ 112.7, 112.9, and 112.10, in violation of 40 C.F.R. § 112.3 and sections 311(b)(6)(A) and 311(j)(1)(C) of the Act, 33 U.S.C. §§ 1321(b)(6)(A) and 1321(j)(1)(C). The Complaint proposed a civil penalty for the violations alleged therein.

2. Family Tree admits the jurisdictional allegations of the Complaint and neither admits nor denies the specific factual allegations of the Complaint.

3. Family Tree waives its right to a hearing before any tribunal to contest any issue of law or fact set forth in the Complaint or this Consent Agreement.

4. Family Tree has returned the Pilot Butte Field facility to compliance with the applicable oil pollution prevention regulations by addressing all alleged SPCC physical deficiencies and updating the facility's SPCC plan.

5. This Consent Agreement, upon incorporation into a final order, applies to and is binding upon EPA, and Family Tree, its successors, and assigns. Any change in ownership or corporate status of Family Tree, including, but not limited to, any transfer of assets or real or personal property, shall not alter Family Tree's responsibilities under this agreement. This Consent Agreement contains all terms of the settlement agreed to by the parties.

TERMS OF SETTLEMENT

CIVIL PENALTY

6. Family Tree consents and agrees to pay a civil penalty in the amount of **forty-five thousand eight hundred dollars (\$45,800)**, in the manner described below and in Paragraphs 7:

- a. Respondent shall make an initial payment in the amount of FIVE THOUSAND, SEVEN HUNDRED TWENTY FIVE DOLLARS (\$5,725.00). Payment is due within thirty (30) calendar days from the date written on the final order, issued by the Regional Judicial Officer that adopts this Consent Agreement. 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 Mellon Bank described below. Payments received by 11:00 AM EST are processed on the same day, those received after 11:00 AM are processed on the next business day.
- b. The payment shall be made by remitting a cashier's or certified check, referencing the name and docket number of this case, and "Oil Spill Liability Trust Fund-311," for this amount, payable to "**Environmental Protection Agency**," to:

**US checks by regular
US postal service mail**

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

**Federal Express, Airborne,
or other commercial carrier:**

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

Wire transfers:

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"

On Line Payment:

WWW.PAY.GOV
Enter sfo 1.1 in the search field

Open form and complete required
fields.

Copies of the check or wire transfer shall be simultaneously sent to:

Donna K. Inman
U.S. EPA Region 8 (8ENF-UFO)
1595 Wynkoop Street
Denver, CO 80202-1129

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

- c. In the event payment is not received by the specified due date, interest accrues from the date of the final order, not the payment 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 the payment is received in full (i.e., on the 1st late day, 30 days of interest accrues).
- d. In addition to the accrual of interest specified in Paragraph 6(c) of this Agreement, a handling charge of fifteen dollars (\$15.00) shall be assessed on the 31st day from the date of the final order, and each subsequent 30-day period that the penalty, or any portion thereof, remains unpaid. In

addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if the penalty payment is not received within ninety (90) days of the due date (i.e., the 121st day from the date the final order is signed). Payments are first applied to outstanding handling charges, 6% penalty interest, and late interest. The remainder is then applied to the outstanding principal amount.

- e. Family Tree agrees that the penalty shall never be claimed as a federal or other tax deduction or credit.

7. Respondent shall make seven additional payments, each in the amount of \$5,725.00, according to the following schedule and in the same manner as referenced in Paragraph 6 above:

- a. No later than February 1, 2012;
- b. No later than May 1, 2012;
- c. No later than August 1, 2012;
- d. No later than November 1, 2012;
- e. No later than February 1, 2013;
- f. No later than May 1, 2013;
- g. No later than August 1, 2013;

8. Respondent may pay the full penalty amount any time prior to August 1, 2013, without incurring a pre-payment penalty.

9. EPA reserves the right to call due the entire amount of \$45,800, or the outstanding balance thereof, within thirty days of receipt of notice in the event that any of the above payments are late or missed.

GENERAL PROVISIONS

10. Nothing in this Consent Agreement shall relieve Family Tree of the duty to comply with the Act and its implementing regulations.

11. Failure by Family Tree to comply with any of the terms of the Consent Agreement shall constitute a breach of the agreement and may result in referral of the matter to the Department of Justice for enforcement of the Consent Agreement and for such other relief as may be appropriate in federal district court.

12. Nothing in the Consent Agreement 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 instituted as a result of Family Tree's failure to perform pursuant to the terms of the Consent Agreement.

13. The undersigned representative of Family Tree certifies that he is fully authorized to enter into and bind Family Tree to the terms and conditions of this Consent Agreement.

14. The parties agree to submit this Consent Agreement to the Regional Judicial Officer, with a request that it be incorporated into a final order.

15. Each party shall bear its own costs and attorney fees in connection with this matter.

16. The Consent Agreement, upon incorporation into a final order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete and full civil settlement of the violations alleged in the Complaint.

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

Date: 9/30/11

By: 
Matthew D. Cohn, Director
Legal Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

Date: 9/30/11

By: 
Sandra A. Stavnes, Director
UIC-FIFRA-OPA Technical Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

**FAMILY TREE CORPORATION
Respondent.**

Date: 9/30/11

By: 
Jonathon Rapacki,
Financial Planning & Analysis

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in the matter of **FAMILY TREE CORPORATION; DOCKET NO.: CWA-08-2011-0013** was filed with the Regional Hearing Clerk on October 3, 2011.

Further, the undersigned certifies that a true and correct copy of the document was delivered to Amy Swanson, Senior Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned documents were placed in the United States mail on October 3, 2011, to:

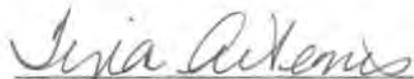
Jonathon Rapacki
Family Tree Corporation
2150 West 29th Avenue, Suite 500
Denver, CO 80211

E-mailed to:

Honorable Elyana R. Sutin
Regional Judicial Officer (8RC)
U. S. Environment Protection Agency
1595 Wynkoop Street
Denver, CO 80202

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

October 3, 2011



Tina Artemis
Paralegal/Regional Hearing Clerk