

FILED

2008 FEB 27 PM 4: 53

U.S. EPA REGION IX
REGIONAL HEARING CLERK

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

_____)	
IN THE MATTER OF:)	
)	
Warner Petroleum, Inc.)	COMPLAINT/
310 Nord Avenue)	CONSENT AGREEMENT
Chico, California 95927)	AND FINAL ORDER
)	Class I Penalty Pursuant to Section
Respondent)	311(b)(6) of the Clean Water Act
)	
_____)	Docket No. SPCC-9-2008-0010

CONSENT AGREEMENT

Stipulations

EPA and Warner Petroleum, Inc. ("Warner" or "Respondent"), in their own capacity or by their attorneys or other authorized representatives, hereby stipulate, and, for the purpose of this CAFO, Respondent admits to the following jurisdictional allegations:

1. 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"

2. 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 EPA the authority under Section 311(j)(5) of the CWA to issue the regulations for non-transportation-related onshore facilities.

3. EPA subsequently promulgated regulations codified at 40 C.F.R. Part 112, as amended by 67 Fed. Reg. 47140 *et seq.* (July 17, 2002) (“the SPCC regulations”), pursuant to its delegated statutory authorities, and pursuant to its authorities under the CWA, 33 U.S.C. § 1251 *et seq.* The SPCC regulations establish certain procedures, methods and requirements on 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 on navigable waters and their adjoining shorelines in such quantities as EPA has determined in 40 C.F.R. Part 110 may be harmful to the public health or welfare or the environment of the United States (“harmful quantity”).

4. 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 determined that an oil discharge of a harmful quantity includes an oil discharge that causes either (1) a violation of applicable water quality standards, or (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 on adjoining shorelines.

5. Warner is a corporation incorporated in the state of California and is a “person” within the meaning of Section 311(a)(7) of the CWA, 33 U.S.C. § 1321(a)(7), and 40 C.F.R. § 112.2.

6. Respondent owns and operates a petroleum bulk storage facility at 310 Nord

Avenue in Chico, California (the "Facility"). Respondent is an "owner or operator" within the meaning of Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6), and 40 C.F.R. § 112.2. The Facility is an "onshore facility" as defined at 33 U.S.C. § 1321(a)(10). The Facility is adjacent to Big Chico Creek.

7. The Facility has an aggregate above-ground oil storage capacity that exceeds 1,320 gallons in containers each with a shell capacity of at least 55 gallons.

8. Big Chico Creek flows into the Sacramento River. Big Chico Creek and the Sacramento River are navigable waters, as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and 40 C.F.R. § 112.2.

9. Respondent is engaged in gathering, storing, distributing, using or consuming oil or oil products at the facility.

10. The Facility is a non-transportation-related 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.

11. The Facility therefore is a non-transportation-related onshore facility which, due to its location, reasonably could be expected to discharge oil to navigable waters or adjoining shorelines in a harmful quantity (an "SPCC regulated facility").

12. Pursuant to the CWA, Executive Order 12777, and 40 C.F.R. § 112.1, Respondent, as the owner of an SPCC regulated facility, is subject to the SPCC regulations.

Allegation

EPA alleges, and Respondent neither admits nor denies, but agrees for this purpose of the CAFO, that:

13. On or about April 25, 2007, EPA inspected the Facility and observed that the

facility had inadequate secondary containment for the four fixed above ground storage containers, the two 5,000 gallon capacity portable storage containers, the 550 gallon waste oil tank, and the warehouse where approximately eighty 55 gallon drums and 16 portable storage totes are located.

Waiver of Hearing

14. Respondent waives the right to a hearing under Section 311(b)(6)(B)(i) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(i), to appeal any Final Order in this matter under Section 311(b)(6)(G)(i) of the CWA, 33 U.S.C. § 1321(b)(6)(G)(i), and consents to the issuance of a Final Order without further adjudication.

Penalty

15. EPA calculated a class I penalty of \$6,000 against Respondent for failing to maintain adequate secondary containment for oil storage tanks as required by 40 C.F.R. § 112.7.

Payment Terms

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

16. Within thirty (30) days after the effective date of the Final Order, the Respondent shall pay the amount of \$6,000 by means of cashier's or certified check, or by electronic funds transfer ("EFT"). 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" and the docket number of this case. If the Respondent sends payment by the U.S. Postal Service, the payment shall be addressed to:

U.S. Environmental Protection Agency
P.O. Box 371099M

Pittsburgh, PA 15251

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

Mellon Client Service Center
ATTN: Shift Supervisor
Lockbox 371099M Account 9109125
500 Ross Street
Pittsburgh, Pa. 15262-0001

If paying by EFT, the Respondent shall transfer \$6,000 to:

Mellon Bank
ABA 043000261
Account 9109125
22 Morrow Drive
Pittsburgh, Pa. 15235

If EPA's payment protocol changes, EPA will provide written notice of a change in payment instructions to the Respondent, which will be effective as incorporated into this CAFO.

17. The Respondent shall submit copies of the check (or, in the case of an EFT transfer, copies of the EFT confirmation) to the following persons:

Danielle Carr
Regional Hearing Clerk
EPA Region IX
75 Hawthorne Street
San Francisco, CA 94105

and to:

J. Andrew Helmlinger (ORC-3)
Office of Regional Counsel
EPA Region IX
75 Hawthorne Street
San Francisco, CA 94105

and to:

Mark Samolis (SFD-9-4)
Oil Program

U.S. EPA Region IX
75 Hawthorne Street
San Francisco, CA 94105

The facsimile number for Danielle Carr and Andrew Helmlinger is (415) 947-3570, and for Mark Samolis is (415) 947-3518.

18. Failure by the Respondent to pay the penalty assessed by the Final Order in full by its due date 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 Act, 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.

General Provisions

19. The provisions of the Final Order shall be binding upon Respondent and Respondent's officers, directors, agents, servants, employees, and successors or assigns.

20. The Final Order does not constitute a waiver, suspension or modification of the requirements of Section 311 of the Act, 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.

[Signatures on following page.]

For Respondent, Warner Petroleum, Inc.:


PRES.

Date: 1-29-08

For the U.S. Environmental Protection Agency:


Keith A. Takata, Director
Superfund Division, Region 9
U.S. Environmental Protection Agency
75 Hawthorne Street
San Francisco, CA 94105

Date: 22 February 2008

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," codified at 40 C.F.R. Part 22, the forgoing Consent Agreement is hereby approved and incorporated by reference into this Final Order, and the Stipulations by the parties and the Allegations by the Complainant are adopted as Findings in this Final Order.

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

Date: 02/27/08



Steve Jawgiel
Regional Judicial Officer
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, CA 94105

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX

IN THE MATTER OF

Warner Petroleum, Inc.
310 Nord Avenue

CHICO, CALIFORNIA

DOCKET NO. OPA-9-2008-0010

CONSENT AGREEMENT
AND FINAL ORDER

Resolving Class I Civil Penalty Under
Clean Water Act § 311

CERTIFICATE OF SERVICE

I certify that the foregoing "Consent Agreement" and "Final Order" were sent to the following persons, in the manner specified, on the date specified:

One copy hand-delivered:

J. Andrew Helmlinger
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region IX
75 Hawthorne Street
San Francisco, CA 94105

One copy via certified mail, return
receipt requested:

David Warner
Warner Petroleum, Inc.
310 Nord Avenue
Chico, CA 95927

Dated:

Feb. 29, 2008
San Francisco, California

For

Steven Ramsey
Danielle Carr