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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION III

2013 DEC -5 PM 2: 10

IN THE MATTER OF:

Tri-State Petroleum Corporation
2627 Vance Avenue
Wheeling, WV 26003,

Respondent.

Tri-State Petroleum Corporation
98 South Main Street
New Martinsville, WV 26155,

Facility.

REGIONAL HEARING CLERK
EPA REGION III PHIL A. BA
**CLEAN WATER ACT SECTION 311 CLASS I
CONSENT AGREEMENT
AND FINAL ORDER
UNDER 40 CFR §§ 22.13(b) AND 22.18(b)(2)**

Docket No. CWA-03-2014-0018

LEGAL AUTHORITY

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)(i) of the Clean Water Act ("Act"), as amended 33 U.S.C. § 1321(b)(6)(B)(i), and under the authority provided by 40 C.F.R. §§ 22.13(b) and 22.18(b)(2). The Administrator has delegated these authorities to the Regional Administrator of EPA, Region III, who has in turn delegated them to the Director of the Region's Hazardous Site Cleanup Division ("Complainant").

CONSENT AGREEMENT

Factual Allegations and Conclusions of Law

2. For the purpose of this proceeding, and with the exception of Paragraph 12, below, Respondent neither admits nor denies the following factual allegations and conclusions of law, but expressly waives its rights to contest said allegations.

3. Respondent, Tri-State Petroleum Corporation, is a corporation duly organized and existing under the laws of West Virginia, headquartered at 2627 Vance Avenue, Wheeling, West Virginia, 26003. Respondent is a person within the meaning of Section 311(a)(7) of the Act, 33 U.S.C. § 1321(a)(7), and 40 C.F.R. § 112.2.

4. Respondent is the owner and operator of the Tri-State Petroleum Bulk Plant Facility (“the Facility”), where Respondent stores diesel fuel in two 12,000-gallon aboveground storage tanks and one 16,000-gallon aboveground storage tank and gasoline in one 16,000-gallon aboveground storage tank. The Facility is an onshore facility within the meaning of Section 311(a)(10) of the Act, 33 U.S.C. § 1321(a)(10), and 40 C.F.R. § 112.2.

5. Section 311(b)(3) of the Act prohibits the discharge of oil or hazardous substances into or upon the navigable waters of the United States or adjoining shorelines in such quantities that have been determined may be harmful to the public health or welfare or environment of the United States.

6. For purposes of Section 311(b)(3) and (b)(4) of the Act, 33 U.S.C. § 1321(b)(3) and (b)(4), discharges of oil into or upon the navigable waters and adjoining shorelines of the United States in such quantities that have been determined may be harmful to the public health or welfare or environment of the United States are defined in 40 C.F.R. § 110.3 to include discharges of oil that violate applicable water quality standards or cause a film or a 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 the adjoining shorelines.

7. On July 31, 2012, approximately 5,417 gallons of gasoline were released from Respondent’s aboveground storage tank at the Facility (the “July 2012 discharge”).

8. On September 30, 2012, approximately 800 gallons of diesel fuel were released from Respondent's aboveground storage tank at the Facility (the "September 2012 discharge").

9. During both the July 2012 discharge and the September 2012 discharge, oil entered the waters of Fishing Creek, which is a tributary to the Ohio River, a navigable waterway of the United States as defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 110.1.

10. The July 2012 discharge and the September 2012 discharge each caused a sheen upon or discoloration of the surface of Fishing Creek, and, therefore, were in a quantity that has been determined may be harmful under 40 C.F.R § 110.3, which implements Section 311(b)(3) and (b)(4) of the Act, 33 U.S.C. § 1321(b)(3) and (b)(4).

11. Respondent's July 2012 discharge and September 2012 discharge from its Facility into or upon Fishing Creek and the adjoining shoreline, in a quantity that has been determined may be harmful under 40 C.F.R. § 110.3, violated Section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3).

Waiver of Rights

For the purpose of this proceeding, Respondent:

12. Admits the jurisdictional allegations in this Consent Agreement and agrees not to contest EPA's jurisdiction with respect to the execution or enforcement of this Agreement.

13. Waives the right to a hearing under Section 311(b)(6)(B)(i) of the Act and to appeal any Final Order in this matter under Section 311(b)(6)(G)(i) of the Act, 33 U.S.C.

§ 1321(b)(6)(G)(i), and consents to the issuance of a Final Order without further adjudication.

Penalty

14. The Complainant proposes, and Respondent consents to, the assessment of a civil penalty of **\$12,185**.

Payment Terms

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

15. Within thirty days of the effective date of the Final Order, Respondent shall pay the amount of \$12,185 by means of a cashier's or certified check, or by electronic funds transfer (EFT). If paying by check, Respondent shall submit a cashier's or certified check, payable to "Environmental Protection Agency," and bearing the notation "OSLTF – 311." If 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
Contact: Heather Russell, (513) 487-2044

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

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101
Attn: Heather Russell, (513) 487-2044

If paying by EFT, Respondent shall transfer the payment to:

Federal Reserve Bank of New York
ABA 021030004
Account 68010727
Swift Address FRNYUS33
33 Liberty Street
New York, NY 10045

If paying by EFT, field tag 4200 of the Fedwire message shall read: (D 68010727
Environmental Protection Agency).

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 to make the payment. Note that the type of payment is "civil penalty," the docket number "CWA-03-2014-0018" should be included in the "Court Order # or Bill #" field, and 3 should be included as the Region number.

16. If paying by check, Respondent shall note on the penalty payment check the title and docket number of this case. 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

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

Lee M. Zarzecki
Assistant Regional Counsel (3RC41)
U.S. Environmental Protection Agency – Region III
1650 Arch Street
Philadelphia, PA 19103-2029
(215) 814-2616

17. Failure by 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

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

19. 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 of the Act alleged herein.

20. The undersigned officer of Respondent represents and warrants that he or she has the authority to bind Tri-State Petroleum Corporation and its successors or assigns to this Consent Agreement.

21. Each party to this action shall bear its own costs and attorney's fees.

TRI-STATE PETROLEUM CORPORATION

Date: 11/26/2013

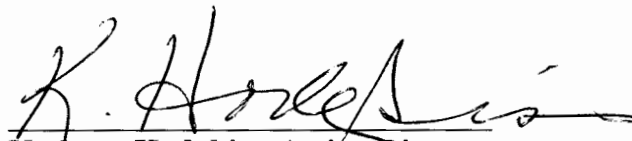
Sheila C. Romanek
[Signature]

Sheila C. Romanek
Name (print or type)

Facilities & Environmental Compliance Manager
Title

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 12/2/2013

A handwritten signature in black ink, appearing to read 'K. Hodgkiss', written over a horizontal line.

**Kathryn Hodgkiss, Acting Director
Hazardous Site Cleanup Division**

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Docket No. CWA-03-2014-0018

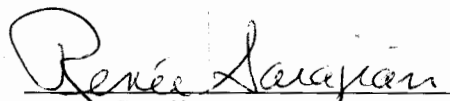
FINAL ORDER

1. Pursuant to Section 311(b)(6) of the Clean Water Act, as amended, 33 U.S.C. § 1321(b)(6), and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits," codified at 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. Respondent is ordered to pay the **\$12,185** penalty and otherwise comply with the terms of the Consent Agreement.

Effective Date

2. This Final Order shall become effective on the date it is filed with the Regional Hearing Clerk.

Date: 12/5/13


Renee Sarajian
Regional Judicial Officer