



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

OCT 19 2011

REPLY TO THE ATTENTION OF:

SC-5J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mark S. Morgan, Esq.
Attorney at Law
4200 Wisconsin Avenue N.W.
Suite 106
Washington, D.C. 20016

Re: Oasis Oil Company, Jenkins, Minnesota
Consent Agreement and Final Order – Docket No:

EPCRA-05-2012-0001

Dear Mr. Morgan:

Enclosed please find a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The U.S. EPA has filed the other original CAFO with the Regional Hearing Clerk on October 19, 2011.

Please have your client pay the EPCRA civil penalty in the amount of \$2,000 in the manner prescribed in paragraphs 37 and 38, and reference their check with the number BD 2751244E001 and docket number EPCRA-05-2012-0001.

The payment is due on November 19, 2011

Please feel free to contact Ruth McNamara at (312) 353-3193 if you have any questions regarding the enclosed documents. Please direct any legal questions to Padmavati Bending, Associate Regional Counsel, at (312) 353-8917. Thank you for your assistance in resolving this matter.

Sincerely,


Mick Hans, Chief
Chemical Emergency Preparedness
and Prevention Section

Enclosure

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and admits the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

Statutory and Regulatory Background

9. Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and its implementing regulations at 40 C.F.R. Part 370 require the owner or operator of a facility, which is required by the Occupational Safety and Health Act (OSHA) to prepare or have available a material safety data sheet (MSDS) for a hazardous chemical, to prepare and submit to the state emergency response commission, community emergency coordinator for the local emergency planning committee, and fire department with jurisdiction over the facility by March 1, 1988, and annually thereafter on March 1, an emergency and hazardous chemical inventory form (Tier I or Tier II as described in 40 C.F.R. Part 370). The form must contain the information required by Section 312(d) of EPCRA, covering all hazardous chemicals present at the facility at any one time during the preceding year in amounts equal to or exceeding 10,000 pounds and all extremely hazardous chemicals present at the facility at any one time in amounts equal to or greater than 500 pounds or the threshold planning quantity designated by U.S. EPA at 40 C.F.R. Part 355, Appendices A and B, whichever is lower.

10. Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), assists state and local committees in planning for emergencies and makes information on chemical presence and hazards available to the public. A delay in reporting could result in harm to human health and the environment.

11. Under 29 C.F.R. § 1910.1200(b)(1), all employers are required to provide information to their employees about the hazardous chemicals to which they are exposed including, but not limited to, MSDS.

12. Under 29 C.F.R. § 1910.1200(d)(3), chemicals listed in 29 C.F.R. Part 1910, Subpart Z are hazardous.

13. Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), authorizes U.S. EPA to assess a civil penalty of up to \$25,000 for each EPCRA Section 312 violation. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note, and its implementing regulations at 40 C.F.R. Part 19 increased the statutory maximum penalty for the period of violation to \$32,500 per day of violation for violations that occurred after March 15, 2004 through January 12, 2009, and to \$37,500 per day of violation for violations that occurred after January 12, 2009.

Factual Allegations and Alleged Violations

14. Respondent is a "person" as that term is defined under Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

15. At all times relevant to this CAFO, Respondent was an owner or operator of the facility located at 2827 Lilac Street, Jenkins, Minnesota (facility).

16. At all times relevant to this CAFO, Respondent was an employer at the facility.

17. Respondent's facility consists of buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites, and which are owned or operated by the same person.

18. Respondent's facility is a "facility" as that term is defined under Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).
19. Fuel oil CAS# 68476-34-6 is a "hazardous chemical" within the meaning of Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 29 C.F.R. § 1910.1200(c).
20. Fuel oil CAS# 68476-34-6 has a minimum threshold level of 10,000 pounds, as provided in 40 C.F.R. Part 370.
21. OSHA requires Respondent to prepare, or have available, an MSDS for fuel oil.
22. During at least one period of time in both calendar years 2007 and 2008, fuel oil was present at the facility in an amount equal to or greater than the minimum threshold level.
23. Gasoline CAS# 8006-61-9 is a "hazardous chemical" within the meaning of Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 29 C.F.R. § 1910.1200(c).
24. Gasoline CAS# 8006-61-9 has a minimum threshold level of 10,000 pounds, as provided in 40 C.F.R. Part 370.
25. OSHA requires Respondent to prepare, or have available, an MSDS for gasoline.
26. During at least one period of time in both calendar years 2007 and 2008, gasoline was present at the facility in an amount equal to or greater than the minimum threshold level.
27. Section 312 of EPCRA required Respondent to submit to the SERC and fire department with jurisdiction over the facility a completed emergency and hazardous chemical inventory form including fuel oil and gasoline on or before March 1, 2009, for calendar year 2008.
28. Section 312 of EPCRA required Respondent to submit to the SERC and fire department with jurisdiction over the facility a completed emergency and hazardous chemical

inventory form including fuel oil and gasoline on or before March 1, 2008, for calendar year 2007.

29. At all times relevant to this Complaint, the Division of Homeland Security and Emergency Management was the SERC for Minnesota under Section 301(a) of EPCRA, 42 U.S.C. § 11001(a).

30. At all times relevant to this Complaint, the Pequot Fire Department was the fire department with jurisdiction over the facility.

Count 1

31. Respondent submitted to the SERC and Pequot Fire Department a completed Emergency and Hazardous Chemical Inventory Form including gasoline and fuel oil on April 2, 2009, and April 6, 2009, respectively, for calendar year 2007.

32. Each day that Respondent failed to submit to the SERC and Pequot Fire Department a completed Emergency and Hazardous Chemical Inventory Form including gasoline and fuel oil by March 1, 2008, for calendar year 2007 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Count 2

33. Respondent submitted to the SERC a completed Emergency and Hazardous Chemical Inventory Form including gasoline and fuel oil on April 2, 2009, and April 6, 2009, respectively, for calendar year 2008.

34. Each day that Respondent failed to submit to the SERC a completed Emergency and Hazardous Chemical Inventory Form including gasoline and fuel oil by March 1, 2009, for calendar year 2008 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Count 3

35. Respondent submitted to the Pequot Fire Department a completed Emergency and Hazardous Chemical Inventory Form including gasoline and fuel oil on April 2, 2009, and April 6, 2009, respectively, for calendar year 2008.

36. Each day that Respondent failed to submit to the Pequot Fire Department a completed Emergency and Hazardous Chemical Inventory Form including gasoline and fuel oil by March 1, 2009, for calendar year 2008 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Civil Penalty

37. Complainant has determined that an appropriate civil penalty to settle this action is \$2,000. In determining the penalty amount, Complainant considered the nature, circumstances, extent, and gravity of the violations, and with respect to Respondent, its ability to pay, and any other matters as justice may require. Complainant also considered U.S. EPA's Enforcement Response Policy for Sections 304, 311 and 312 of the Emergency Planning and Community Right-to-Know Act and Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act, dated September 30, 1999 (EPCRA/CERCLA Enforcement Response Policy).

Within 30 days after the effective date of this CAFO, Respondent must pay a \$2,000 civil penalty for the EPCRA violations by one of the following methods:

[for check sent by express mail]

sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines and Penalties
1005 Convention Plaza

Mail Station SL-MO-C2-GL
St. Louis, MO 63101

The check must note the following: In the Matter of Oasis Oil Company, the docket number of this CAFO, and the billing document number 2751244E001.

[for electronic funds transfer]

electronic funds transfer, payable to "Treasurer, United States of America," and sent to:

Federal Reserve Bank of New York

ABA No. 021030004

Account No. 68010727

33 Liberty Street

New York, NY 10045

Field Tag 4200 of the Fedwire message should read:

" D68010727 Environmental Protection Agency"

[In the comment or description field of the electronic funds transfer, state the following: In the Matter of: Oasis Oil Company, the docket number of this CAFO, and the billing document number 2751244E001.

[for Automated Clearinghouse (ACH) also known as REX or remittance express]

ACH electronic funds transfer, payable to "Treasurer, United States of America," and sent to:

US Treasury REX / Cashlink ACH Receiver

ABA" 051036706

Account Number: 310006, Environmental Protection Agency

CTX Format Transaction Code 22-checking

In the comment area of the electronic funds transfer, state the following: In the Matter of Oasis Oil Company, docket number of this CAFO, and the billing document number 2751244E001

[for on-line payments]

To pay on-line, go to www.pay.gov. Use the Search Public Forms option on the tool bar and enter SFO 1.1 in the search field. Open the form and complete the information requested.

38. A transmittal letter, stating Respondent's name, the case title, Respondent's

complete address, the case docket number, and the billing document must accompany the payment. Respondent must send a copy of the check and transmittal letter to:

Regional Hearing Clerk, (E-19J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Ruth McNamara (SC-5J)
Chemical Emergency Preparedness
and Prevention Section
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Padmavati Bending (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

39. This civil penalty is not deductible for federal tax purposes.
40. If Respondent does not timely pay the civil penalty, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties, and the United States enforcement expenses for the collection action. The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action. U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties, and the United States enforcement expenses for the collection action. The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.
41. Pursuant to 31 C.F.R. §901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date the payment was due at a rate established pursuant to 31 U.S.C. § 3717. Respondent must pay a \$15

handling charge each month that any portion of the penalty is more than 30 days past due. In addition, U.S. EPA will assess a 6 percent per year penalty on any principal amount 90 days past due.

42. Respondent certifies that it is not required to perform or develop the SEP by any law, regulation, grant, order, or agreement, or as injunctive relief as of the date it signs this CAFO. Respondent further certifies that it has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.

43. U.S. EPA may inspect the facility at any time to monitor Respondent's compliance with this CAFO's SEP requirements.

General Provisions

44. This CAFO only resolves Respondent's liability for federal civil penalties for the violations and facts alleged in the CAFO.

45. This CAFO does not affect the rights of U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

46. Respondent certifies that it is complying with Section 312 of EPCRA, 42 U.S.C. § 11022.

47. This CAFO does not affect Respondent's responsibility to comply with EPCRA and CERCLA and other applicable federal, state, and local laws and regulations.

48. This CAFO is a "final order" for purposes of U.S. EPA's EPCRA/CERCLA Enforcement Response Policy.

49. The terms of this CAFO bind Respondent and its successors and assigns.

50. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

U.S. ENVIRONMENTAL
PROTECTION AGENCY
OCT 10 8 50 AM
OFFICE OF REGIONAL
COUNSEL

51. Each party agrees to bear its own costs and attorney's fees in this action.
52. This CAFO constitutes the entire agreement between the parties.

Oasis Oil Company, Respondent

9-30-11
Date

Mike A. Durham
Mike A. Durham
President, Oasis Oil Company

U.S. Environmental Protection Agency, Complainant

10-11-11
Date

Richard C. Karl
Richard C. Karl
Director
Superfund Division
U.S. Environmental Protection Agency
Region 5

In the Matter of: Oasis Oil Company, Jenkins, Minnesota
Docket No. EPCRA-05-2012-0001

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

10-17-11

Date



Susan Hedman
Regional Administrator
U.S. Environmental Protection Agency
Region 5

RECEIVED
OCT 19 2011
REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

In the Matter of: Oasis oil Company, Jenkins, Minnesota
Docket No. EPCRA-05-2012-0001

Certificate of Service

I, Ruth McNamara, certify that I filed the original and a copy of the Consent Agreement and Final Order (CAFO) with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 5, delivered a copy of the CAFO by intra-office mail to the Regional Judicial Officer, U.S. Environmental Protection Agency, Region 5, and mailed the second original CAFO by first-class, postage prepaid, certified mail, return receipt requested, to Respondent by placing it in the custody of the United States Postal Service addressed as follows:

Mark S. Morgan, Esq.
Attorney at Law
4200 Wisconsin Avenue N.W.
Suite 106
Washington, D.C. 20016

RECEIVED
OCT 19 2011

on the 19th day of October, 2011.

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

Ruth McNamara
Ruth McNamara
U.S. Environmental Protection Agency
Region 5