



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

1595 WYNKOOP STREET

DENVER, CO 80202-1129

Phone 800-227-8917

http://www.epa.gov/region08

2009 SEP 30 PM 2: 23

FILED  
EPA REGION VIII  
HEARING CLERK

DOCKET NO.: CWA-08-2009-0036

IN THE MATTER OF:

KENYON NOBLE READY MIX

889 West Valley Center Road

Belgrade, MT 59718

Respondent.

ORDER GRANTING FILING

OF FACSIMILE CONSENT

AGREEMENT AND

FINAL ORDER

Pursuant to 40 C.F.R. §22.18, 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 receipt by Respondent of this Consent Agreement and Final Order.

This court will accept the facsimile filing of the Consent Agreement in this matter at this time, however the Parties are to file the original Consent Agreement within seven days of issuance of this Order.

The Parties are hereby **ORDERED** to comply with all of the terms of this **Order**, effective immediately upon receipt by Parties of this **Order**.

SO ORDERED THIS 30<sup>th</sup> Day of September, 2009

Elyana R. Sutin  
Regional Judicial Officer

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

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IN THE MATTER OF )  
)  
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Kenyon Noble Ready Mix )  
889 West Valley Center Road )  
Belgrade, MT 59718 )  
Respondent. )

**COMPLAINT AND CONSENT AGREEMENT**

**DOCKET NO. : CWA-08-2009-0036**

Complainant, United States Environmental Protection Agency, Region 8 (EPA or Complainant), and Kenyon Noble Ready Mix (Respondent) by their undersigned representatives, hereby consent and agree as follows:

**A. PRELIMINARY MATTERS**

1. This Complaint and Settlement Agreement (CASA) is issued to Respondent pursuant to the authority vested in the Administrator of the Environmental Protection Agency by section 311(b)(6)(B)(i) of the Clean Water Act (CWA or the Act), 33 U.S.C. § 1321(b)(6)(B)(i), as amended by the Oil Pollution Act of 1990.
2. The Administrator has properly delegated this authority to the undersigned EPA officials.
3. This section authorizes EPA to bring an action under section 311(b)(6)(B)(i) of the Act, 33 U.S.C. § 1321(b)(6)(B)(i), for civil administrative penalties against Respondent who has violated, or is in violation of, a requirement or prohibition of the CWA or its implementing regulations.
4. This proceeding is governed by 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 (Consolidated Rules) set forth at 40 C.F.R. part 22.

5. This CASA 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 executed pursuant to 40 C.F.R. § 22.18(b)(2) and (3) of the Consolidated Rules.

6. Respondent admits the jurisdictional allegations in this CASA and neither admits nor denies the specific factual allegations contained herein.

7. Respondent waives its rights to a hearing before any tribunal and to contest any issue of law or fact set forth in this CASA.

8. This CASA, upon incorporation into a final order, applies to and is binding upon Complainant and Respondent, and Respondent's officers, directors, employees, agents, successors and assigns. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this agreement.

9. This CASA contains all terms of the settlement agreed to by the parties.

**B. ALLEGED VIOLATIONS**

10. 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), and 40 C.F.R. § 112.2.

11. Respondent is the owner and/or operator within the meaning of section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6), and 40 C.F.R. § 112.2 of the facility located at 889 West Valley Center Road, Belgrade, MT.

12. The Ketterer Ditch is located on the Respondent's property and flows to the Gallatin River.

13. The Ketterer Ditch and the Gallatin River are navigable water(s) of the United States within the meaning of 40 C.F.R. § 112.2, as amended at 73 Fed. Reg. 71,944 (November 20, 2008), and Section 502(7) of the Act, 33 U.S.C. § 1362(7).

14. The Respondent's facility has an aggregate above-ground storage capacity of 54,300 gallons, which is greater than the required minimum of 1,320 gallons of oil in containers each with a shell capacity of at least 55 gallons found at 40 C.F.R. § 112.1(d)(2)(ii).

15. Respondent is engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using or consuming oil or oil products located at the facility.

16. The facility is a non-transportation-related facility within the meaning of 40 C.F.R. § 112.2 Appendix A, as incorporated by reference within 40 C.F.R. § 112.2.

17. 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.

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

19. 40 C.F.R. § 112.3 requires that the owner or operator of an SPCC-regulated facility must prepare and implement a written SPCC plan in accordance with 40 C.F.R. §§ 112.7, and 112.8.

20. On July 15, 2008, EPA inspected the Respondent's facility and found that Respondent had failed to amend its SPCC plan for the facility to reflect changes that materially affect the potential for discharge from the facility, such as the removal and installation of tanks.

21. Respondent's failure to amend its SPCC plan for the facility violated 40 C.F.R. § 112.5.

**C. CIVIL PENALTY**

22. As alleged in the preceding Paragraphs, and pursuant to section 311(b)(6)(B)(i) of the Act, 33 U.S.C. §1321(b)(6)(B)(i), and 40 C.F.R. §19.4, the Respondent is liable for civil penalties of up to \$11,000 per day for each day during which the violation continues, up to a maximum total of \$37,500 for all violations.

23. Respondent, by signing this CASA herein certifies to EPA that Respondent is now in compliance with each of the relevant provisions of the CWA that formed the basis of the Complaint.

24. Based on the foregoing alleged violations and pursuant to the authority of section 311(b)(6)(B)(i) of the Act, 33 U.S.C. §1321(b)(6)(B)(i), and 40 C.F.R. § 19.4, Complainant proposes the assessment of administrative penalties against the Respondent in the amount of eight thousand dollars (\$8,000).

25. Complainant proposes this penalty amount after considering the applicable statutory penalty factors in section 311(b)(8) of the Act, 33 U.S.C. §1321(b)(8): the seriousness of the violation; the economic benefit to the violator, if any, resulting from the violation; the degree of culpability involved; any other penalty for the same incident; any history of prior violations; the nature, extent, and degree of success of any efforts of the violator to minimize or mitigate the effects of the discharge; the economic impact of the penalty on the violator; and any other matters as justice may require.

26 Respondent, by signing this CASA, consents to the issuance of a final order and consents for the purposes of settlement to the payment of the civil penalty in the amount of eight thousand dollars (\$8,000).

27. **Payment is due within 30 calendar days from the date written on the Final Order**, issued by the Regional Judicial Officer, that incorporates 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 the 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.

28. The payment in paragraph 24 shall be made by remitting a cashier's or certified check, including the name and docket number of this case, referencing "Oil Spill Liability Trust Fund-311," for the amount, **payable to the "Environmental Protection Agency,"** to:

**CHECK PAYMENTS:**

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

**OVERNIGHT MAIL:**

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

Contact: Natalie Pearson  
314-418-4087

**WIRE TRANSFERS:**

Wire transfers should be directed to the Federal Reserve Bank of New York

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 "

**ACH (also known as REX or remittance express)**

Automated Clearinghouse (ACH) for receiving US currency  
PNC Bank  
808 17th Street, NW  
Washington, DC 20074  
Contact – Jesse White 301-887-6548  
ABA = 051036706  
Transaction Code 22 - checking  
Environmental Protection Agency  
Account 310006  
CTX Format

**ON LINE PAYMENT:**

There is now an On Line Payment Option, available through the Department of Treasury. This payment option can be accessed from the information below:

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

Open form and complete required fields.

A copy of the check, or wire transfer, shall be sent simultaneously to:

Jane Nakad (8ENF-UFO)	and	Tina Artemis
U.S. EPA Region 8		Regional Hearing Clerk
Technical Enforcement Program		Office of Regional Counsel
1595 Wynkoop St.		1595 Wynkoop St.
Denver, CO 80202-1129		Denver, CO 80202-1129

Payment of the penalty in this manner does not relieve Respondent of its obligations to comply with the requirements of the statute and regulations. Payment of the penalty in this manner shall constitute consent by Respondent to the assessment of the proposed penalty and a waiver of Respondent's right to a hearing on this matter.

**D. TERMS AND CONDITIONS**

29. Failure by Respondent to comply with any of the terms of this CASA shall constitute a breach of the CASA and may result in referral of the matter to the Department of Justice for enforcement of this agreement and for such other relief as may be appropriate.

30. Nothing in this CASA 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 Respondent's failure to perform pursuant to the terms of this CASA.

31. Each undersigned representative of the parties to this CASA certifies that he or she is fully authorized by the party represented to bind the parties to the terms and conditions of this CASA and to execute and legally bind that party to this CASA.

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

33. This CASA, upon incorporation into a final order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete, full and final settlement of the violations alleged in this CASA.

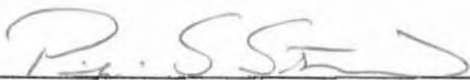
34. Each party shall bear its own costs and attorneys fees in connection with all issues associated with this CASA.



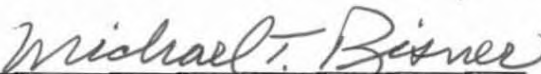
In The Matter Of: Kenyon Noble Ready Mix  
Continued

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8, Office of Enforcement, Compliance  
and Environmental Justice, Complainant.**

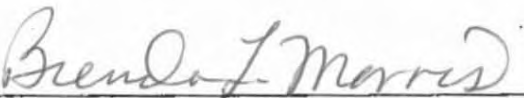
Date: 9-29-09

By:   
for Mark A. R. Chalfant, Director  
Technical Enforcement Program

Date: 9/29/09

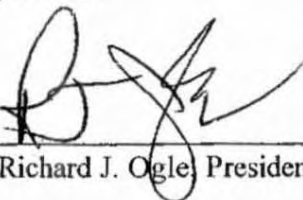
By:   
Michael T. Risner, Director  
Legal Enforcement Program

Date: 9/29/09

By:   
Brenda L. Morris, Attorney  
Legal Enforcement Program

**KENYON NOBLE READY MIX  
Respondent.**

Date: \_\_\_\_\_

By:   
Richard J. Ogle, President

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on September 30, 2009, the original and one copy of the Request to File a Faxed Signature and the Complaint and Consent Agreement (CASA) were hand-carried to the Regional Hearing Clerk, EPA, Region 8, 1595 Wynkoop St., Denver, Colorado, and that true copies of the same were delivered as follows:

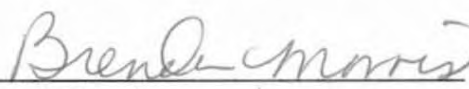
Copy hand-carried to:

Honorable Elyana R. Sutin  
Regional Judicial Officer  
U.S. Environmental Protection Agency  
1595 Wynkoop St. (8RC)  
Denver, CO 80202-1129

Copy by regular mail and facsimile to:

Mr. Richard Ogle  
Kenyon Noble Ready Mix  
889 West Valley Center Road  
Belgrade, MT 59718

September 30, 2009

By:   
Brenda Morris  
US EPA, Region 8  
Legal Enforcement Program

## CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **ORDER GRANTING FACSIMILE FILING OF CONSENT AGREEMENT AND FINAL ORDER** in the matter of **KENYON NOBLE READY MIX DOCKET NO.: CWA-08-2009-0036**, was filed with the Regional Hearing Clerk on September 30, 2009.

Further, the undersigned certifies that a true and correct copy of the document was delivered to Brenda Morris, Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned document was placed in the United States mail on September 30, 2009, to:

Mr. Richard Ogle  
Kenyon Noble Ready Mix  
889 West Valley Center Road  
Belgrade, MT 59718

And hand-carried to:

Honorable Elyana R. Sutin  
Regional Judicial Officer  
1595 Wynkoop Street (8RC)  
Denver, CO 80202

September 30, 2009



Tina Artemis  
Paralegal/Regional Hearing Clerk