

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8**

**IN THE MATTER OF:**

Peter K. Roosevelt  
621 17<sup>th</sup> Street, Suite 710  
Denver, Colorado 80293

Respondent.

) Docket No. CWA-08-2017-0023

)  
)  
) **COMBINED COMPLAINT AND  
CONSENT AGREEMENT**

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CLERK

The U.S. Environmental Protection Agency, Region 8 (EPA), and Peter K. Roosevelt (Respondent), by their undersigned representatives, hereby consent and agree as follows:

**I. AUTHORITY**

1. This proceeding is subject to EPA's "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits," 40 C.F.R. part 22. This Combined Complaint and Consent Agreement (CCCA) 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 is executed pursuant to 40 C.F.R. § 22.18(b)(2) and (3).
2. EPA has jurisdiction over this matter pursuant to sections 311(b)(6)(B)(ii) and 311(j) of the Clean Water Act (Act), 33 U.S.C. §§ and 1321(b)(6)(B)(ii) and 311(j), as amended by the Oil Pollution Act of 1990.

**II. PARTIES BOUND**

3. This CCCA, upon incorporation into a final order, applies to and is binding upon EPA and upon Respondent, and Respondent's officers, directors, agents, successors and assigns. Each signatory to this CCCA certifies that they are authorized to execute and legally bind the party they represent to this CCCA.

**III. STATEMENT OF THE PARTIES**

4. Respondent admits the jurisdictional allegations contained herein and neither admits nor denies EPA's specific factual allegations.
5. Respondent waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this CCCA, including any right of judicial review under the Administrative Procedure Act, 5 U.S.C. §§ 701 – 706.
6. Prior to filing this CCCA, Respondent submitted the final Spill Prevention Control and Countermeasure (SPCC) plans for the facilities to EPA and EPA confirmed the facilities were in compliance with all applicable requirements of the oil pollution prevention regulations set forth in 40 C.F.R. part 112.

7. EPA asserts that settlement of this matter is in the public interest, and EPA and Respondent agree that entry of this CCCA and its incorporation into a Final Order without further litigation and without adjudication of any issue of fact or law will avoid prolonged and complicated litigation between the parties.
8. This CCCA, upon incorporation into a final order and full satisfaction by the parties, shall be a complete and full resolution of the Respondent's liability for federal civil penalties for the violations alleged below.

#### IV. STATUTORY AND REGULATORY FRAMEWORK

9. The objective of this Act is to "restore and to maintain the chemical, physical, and biological integrity of the nation's waters." 33 U.S.C. § 1251(a).
10. Section 311(j)(1)(C) of the Act, 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 . . ."
11. Pursuant to section 311(j) of the Act, 33 U.S.C. § 1321(j), the implementing regulations for oil pollution prevention are found at 40 C.F.R. part 112.
12. 40 C.F.R. § 112.3 requires that the owner or operator of a SPCC-regulated facility must prepare a written SPCC plan in accordance with 40 C.F.R. §§ 112.7 and 112.8 and any other application section of 40 C.F.R. part 112.
13. 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 his section 311(j)(1)(C) authority to issue the regulations referenced in the preceding Paragraph for non-transportation-related onshore facilities.
14. EPA subsequently promulgated the SPCC regulations pursuant to these delegated statutory authorities, and pursuant to its authorities under the Act, 33 U.S.C. § 1251 *et seq.*, which established certain procedures, methods and requirements upon 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 upon the navigable waters of the United States and their adjoining shorelines in such quantity as EPA has determined in 40 C.F.R. § 110.3 may be harmful to the public health or welfare or the environment of the United States (harmful quantity).
15. The term "oil" is defined in section 311(a)(1) of the Act as "oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil." 33 U.S.C. § 1321(a)(1).
16. The term "navigable waters" is defined in section 502(7) of the Act as "waters of the United States, including territorial seas." 33 U.S.C. § 1362(7).
17. The term "navigable waters," as further defined in 40 C.F.R. § 110.1, "means the waters of the United States, including the territorial seas," and includes, *inter alia*: "(i) All waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce,

including all waters that are subject to the ebb and flow of the tide; (ii) All interstate waters, including interstate wetlands; ... (iv) All impoundments of waters otherwise identified as waters of the U.S. under this section; (v) All tributaries, as defined in paragraph (3)(iii) of this definition of waters identified in paragraphs (1)(i) through (iii) of this definition; ...”

18. The term “owner or operator” is defined in section 311(a)(6) of the Act in pertinent part as “in the case of an onshore facility, ... any person owning or operating such onshore facility ...” 33 U.S.C. § 1321(a)(6).
19. According to section 311(a)(7) of the Act, “person” includes an individual, firm, corporation, association, and a partnership.” 33 U.S.C. § 1321(a)(7) and 40 C.F.R. § 112.2.
20. The term “onshore facility” is defined in section 311(a)(10) of the Act as any facility of any kind located in, on, or under, any land within the United States other than submerged land. 33 U.S.C. § 1321(a)(10).
21. 40 C.F.R. § 112.3 requires that the owner or operator of an SPCC-regulated facility prepare and implement a written SPCC plan in accordance with 40 C.F.R. § 112.7 and any other applicable section of this part.

## V. GENERAL ALLEGATIONS

22. Respondent is, and was at all times relevant to this CCCA, an individual doing business in South Dakota.
23. Respondent is, and was at all times relevant to this CCCA, 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.
24. At all times subject to this CCCA, Respondent was or is engaged in some or all of the following: drilling, producing, gathering, storing, processing, refining, transferring, distributing, using or consuming oil or oil products at the 6-21 Porter, 11-25 Barker, and the 13-17 Benton production facilities.
25. At all times relevant to this CCCA, Respondent owned and operated the Facilities.
26. The 6-21 Porter facility, located in SENW Section 21, T9S, R2E, Fall River County, South Dakota, consists of two 400 barrel (16,800) crude oil tanks, one 400 barrel (16,800 gallon) produced water tank, one 100 barrel (4,200 gallon) heater treater, and one 100 barrel (4,200 gallon) abandoned separator vessel, and includes, but is not limited to, a pump jack, piping and other appurtenances. The 6-21 Porter facility has a total oil storage capacity greater than 58,800 gallons.
27. The 11-25 Barker facility, located in NESW Section 25, T9S, R2E, Fall River County, South Dakota, consists of two 400 barrel (16,800 gallon) crude oil tanks, one 400 barrel (16,800 gallon) produced water tank, and one 100 barrel (4,200 gallon) heater treater, and includes, but is not limited to, a pump jack, piping and other appurtenances. The 11-25 Barker facility has a total oil storage capacity greater than 54,600 gallons.

28. The 13-17 Benton facility, located in NWNW Section 17, T8S, R2E, Fall River County, South Dakota, consists of two 400 barrel (16,800 gallon) crude oil tanks, one 400 barrel (16,800 gallon) produced water tank, and one 100 barrel (4,200 gallon) heater treater, and includes, but is not limited to, a pump jack, piping and other appurtenances. The Benton facility has a total oil storage capacity greater than 54,600 gallons.
29. The facilities are onshore facilities 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.
30. The facilities are non-transportation-related facilities within the meaning of 40 C.F.R. § 112.2, Appendix A, as incorporated by reference within 40 C.F.R. § 112.2.
31. The facilities have an oil storage capacity greater than 1,320 gallons.
32. Drainage from the 6-21 Porter facility flows overland an estimated 0.39 miles southwest to Cottonwood Creek. Cottonwood Creek enters the Cheyenne River approximately 10.7 miles downstream.
33. Drainage from the 11-25 Barker facility flows overland an estimated 236 feet south to an unnamed drainage, then flows an estimated 2.73 miles to Cottonwood Creek. Cottonwood Creek enters the Cheyenne River approximately 9.13 miles downstream.
34. Drainage from the 13-17 Benton facility flows overland an estimated 0.15 miles north/northeast to an unnamed drainage. Flow continues in the drainage 0.52 miles northeast to the Cheyenne River.
35. The Cheyenne River is an interstate water and determined a traditional navigable water by the U.S. Army Corps of Engineers to an upper point at the confluence of Beaver Creek (Lat. 43.422227, Long. -103.989456).
36. The Cheyenne River and its tributaries are navigable waters of the United States within the meaning of 40 C.F.R. § 112.2 and section 502(7) of the Act, 33 U.S.C. § 1362(7).
37. The facilities are non-transportation-related onshore facilities which, due to their locations, could reasonably be expected to discharge oil to a navigable water of the United States or its adjoining shorelines in a harmful quantity and therefore are "SPCC-regulated facilities."

## **VI. SPECIFIC ALLEGATIONS**

38. Authorized EPA employees entered the facilities with the consent of Respondent on September 11, 2013, to determine the facilities' compliance with the oil pollution prevention SPCC regulations.
39. The facilities did not have SPCC plans as required by 40 C.F.R. § 112.3(a) at the time of the September 11, 2013, inspection.
40. In addition, the following SPCC deficiencies were identified at the 6-21 Porter facility at the time of the September 11, 2013 Inspection:

- a. No or inadequate containment for some areas, such as loading/unloading areas and flowlines (40 C.F.R. § 112.7(c));
- b. Inspections and tests not in accordance with written procedures in Plan (40 C.F.R. § 112.7(e));
- c. Record of inspections not signed by facility supervisor (40 C.F.R. § 112.7(e));
- d. Record of inspections not maintained for three years (40 C.F.R. § 112.7(e)).

41. The following SPCC implementation measures were found to be deficient at the 11-25 Barker facility at the time of the September 11, 2013 inspection:

- a. No Spill Prevention, Control and Countermeasure Plan (40 C.F.R. § 112.3(a));
- b. No or inadequate containment for some areas, such as loading/unloading areas and flowlines (40 C.F.R. § 112.7(c));
- c. Inspections and tests not in accordance with written procedures in Plan (40 C.F.R. § 112.7(e));
- d. Record of inspections not signed by facility supervisor (40 C.F.R. § 112.7(e));
- e. Record of inspections not maintained for three years (40 C.F.R. § 112.7(e));
- f. No training of oil-handling personnel on discharge prevention (40 C.F.R. § 112.7(f)(1)).

42. The following SPCC implementation measures were found to be deficient at the 13-17 Benton facility at the time of the September 11, 2013 inspection:

- a. No Spill Prevention, Control and Countermeasure Plan (40 C.F.R. § 112.3(a));
- b. No or inadequate containment for some areas, such as loading/unloading areas and flowlines (40 C.F.R. § 112.7(c));
- c. Inspections and tests not in accordance with written procedures in Plan (40 C.F.R. § 112.7(e));
- d. Record of inspections not signed by facility supervisor (40 C.F.R. § 112.7(e));
- e. Record of inspections not maintained for three years (40 C.F.R. § 112.7(e));
- f. No training of oil-handling personnel on discharge prevention (40 C.F.R. § 112.7(f)(1));
- g. No secondary containment or inadequately sized to contain largest single container with freeboard for precipitation (40 C.F.R. § 112.8(c)(2) or 112.6(a)(3)(ii)).

43. Respondent's failure to prepare and implement a written SPCC plan for the facilities constitutes a 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).

## VII. CIVIL PENALTY

44. Pursuant to section 311(b)(6)(B)(ii) of the Act, 33 U.S.C. § 1321(b)(6)(B)(ii), and after consideration of the facts of this case as they relate to the factors set forth in section 311(b)(8) of the Act, 33 U.S.C. § 1321(b)(8), EPA has determined that a civil penalty of fifty thousand dollars (\$50,000.00) is appropriate to settle this matter.

45. Respondent consents and agrees to pay a civil penalty in the amount of fifty thousand dollars (\$50,000.00) in the manner described below:

- a. Payment shall be in a single payment of \$50,000, due no later than thirty (30) calendar days from the date of the Final Order. If the due date for the payment falls on a weekend or federal holiday, then the due date is the next business day. The date the payment is made is considered to be the date processed by U.S. Bank, as described below. Payment must be received by 11:00 a.m. Eastern Standard Time to be considered as received that day.
- b. The payment shall be made by remitting a check or making a wire transfer or on-line payment in the amount stated above, referencing the name and docket number of this case, and "Oil Spill Liability Trust Fund-311," payable to "**Environmental Protection Agency.**" The payment shall be remitted as follows:

If remitted by regular U.S. mail:

U.S. Environmental Protection Agency  
P.O. Box 979077  
St. Louis, Missouri 63197-9000

If remitted by any overnight commercial carrier:

U.S. Bank  
Government Lockbox No. 979077  
1005 Convention Plaza  
SLMO-C2-GL  
St. Louis, Missouri 63101

Contact: Craig Steffen, 513-487-2091, [steffen.craig@epa.gov](mailto:steffen.craig@epa.gov)

If remitted by wire transfer: Any wire transfer must be sent directly to the Federal Reserve Bank in New York City using the following information:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, New York 10045  
Beneficiary: US Environmental Protection Agency

If remitted through the Automated Clearing House (ACH) for receiving US currency:

U.S. Treasury REX / Cashlink ACH Receiver  
ABA: 051036706  
Account Number: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22 -- checking

Physical location of U.S. Treasury facility:

5700 Rivertech Court  
Riverdale, Maryland 20737  
Contacts: REX (Remittance Express): 866-234-5681

If remitted online with a debit card or credit card: No user name, password, or account number is necessary for this option. Online payment can be accessed via WWW.PAY.GOV, entering SFO 1.1 in the form search box on the left side of the screen, opening the form, and following the directions on the screen.

Copies of the check or record of payment shall be sent to:  
Darla Hohman  
U.S. Environmental Protection Agency (8ENF-W-WO)  
1595 Wynkoop Street  
Denver, Colorado 80202-1129

and

Melissa Haniewicz  
Regional Hearing Clerk  
U.S. Environmental Protection Agency (8RC)  
1595 Wynkoop Street  
Denver, Colorado 80202-1129

A transmittal letter identifying the case title and docket number must accompany the remittance and copies of the check.

46. If the payment is not received by the specified due date, interest accrues from the date of the Final Order, not the 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 payment in full is received (e.g., on the 1<sup>st</sup> late day, 30 days of interest will have accrued).
47. A handling charge of fifteen dollars (\$15) shall be assessed the 31<sup>st</sup> day from the date of the Final Order, and for each subsequent 30-day period that the debt, or any portion thereof, remains unpaid. In addition, a 6% per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 30 days of the due date. Payments are first applied to outstanding handling charges, second to penalty assessments, third to accrued interest, and then to the outstanding principal amount.
48. Respondent agrees that the penalty shall never be claimed as a federal or other tax deduction or credit.

## VIII. PUBLIC NOTICE

49. As required by section 311(b)(6)(C) of the Act, 33 U.S.C. § 1321(b)(6)(C), and 40 C.F.R. § 22.45, EPA will provide public notice and a reasonable opportunity to comment on the penalty that Respondent has agreed to pay in this matter. EPA may modify or withdraw its consent to this CCCA if comments received disclose facts or considerations which indicate that this CCCA is inappropriate, improper, or inadequate.

50. If comments received during the public comment period do not require modification or withdrawal by EPA from this CCCA, the parties agree to submit this CCCA to the Regional Judicial Officer for Region 8 following the close of the public comment period specified in 40 C.F.R. § 22.45, with a request that it be incorporated into a final order.

**IX. GENERAL PROVISIONS**

51. Nothing in this CCCA shall relieve Respondent of the duty to comply with the Act and any regulation, order, or permit issued pursuant to the Act.

52. Any failure by Respondent to comply with this CCCA shall constitute a breach of this CCCA and may result in referral of the matter to the United States Department of Justice for enforcement of this CCCA and such other relief as may be appropriate.

53. Nothing in this CCCA shall be construed as a waiver by 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 any failure by Respondent to comply with this CCCA.

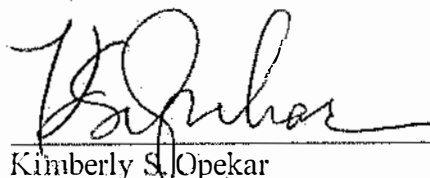
54. Each party shall bear its own costs and attorney's fees in connection with this matter.

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

Date:

13 Sept 2017

By:



Kimberly S. Opekar  
Acting Assistant Regional Administrator  
Office of Enforcement, Compliance  
and Environmental Justice

**PETER K. ROOSEVELT**  
Respondent

Date:

5 Sept. 2017

By:

  
Peter K. Roosevelt