

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)	Docket No. CWA-05-2015-0012
)	
Shell Pipeline Company, LP)	Proceeding to Assess a Class II Civil Penalty
Milwaukee, Wisconsin,)	Under Section 311(b)(6) of the Clean Water
)	Act, 33 U.S.C. § 1321(b)(6)
Respondent.)	
_____)	

Consent Agreement and Final Order

Preliminary Statement



1. This is an administrative action commenced and concluded under Section 311(b)(6) of the Clean Water Act (CWA), 33 U.S.C. § 1321(b)(6), and Sections 22.1(a)(2), 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified at 40 C.F.R. Part 22.

2. Complainant is the Director of the Superfund Division, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondent is Shell Pipeline Company, LP, a corporation doing business in the State of Wisconsin.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

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 Judicial Review and Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations and alleged violations in this CAFO.

8. Respondent waives its right to obtain judicial review of this CAFO under Section 311(b)(6)(G) of the CWA, 33 U.S.C. § 1321(b)(6)(G), 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

General provisions and enforcement of the CWA

9. Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), prohibits the discharge of oil into or upon the navigable waters of the United States and adjoining shorelines in such quantities as the President determines may be harmful to the public health or welfare or the environment of the United States. Section 311(a)(2) of the CWA defines “discharge” to include “any spilling, leaking, pumping, pouring, emitting, emptying or dumping” 33 U.S.C. § 1321(a)(2).

10. Pursuant to Section 311(b)(4) of the CWA, 33 U.S.C. § 1321(b)(4), EPA has determined by regulation that the quantities of oil that may be harmful to the public health or welfare or the environment of the United States include discharges of oil that violate applicable water quality standards, or cause a film or 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 adjoining shorelines. 40 C.F.R. § 110.3.

11. Section 311(a)(6)(B) of the CWA, 33 U.S.C. § 1321(a)(6)(B) and 40 C.F.R. § 112.2, define “owner or operator” in the case of an onshore facility as any person owning or operating such onshore facility.

12. Section 311(a)(7) of the CWA, 33 U.S.C. § 1321(a)(7), and 40 C.F.R. § 112.2, define “person” as including an individual, firm, corporation, association, and a partnership.

13. Respondent is the owner and 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 a pipeline facility (“the facility”).

14. The facility’s oil could reasonably be expected to flow and/or discharge through a storm sewer and enter the Wilson Creek at the North West Outfall of the Mitchell Airport. Wilson Creek flows from the Airport to the Kinnickinnic River. The Kinnickinnic River flows to Lake Michigan.

15. Lake Michigan is a navigable water 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).

16. The waters of the Kinnickinnic River flow into Lake Michigan.

17. The Kinnickinnic River is a navigable water 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).

18. The waters of the Wilson Creek flow into the Kinnickinnic River.

19. The Wilson Creek is a navigable water 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).

20. Section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1) and 40 C.F.R. § 112.2,

define “oil” as oil of any kind and in any form, including but not limited to: petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil.

21. Section 311(b)(7) of the CWA, 33 U.S.C. § 1321(b)(7), provides that: any person who is the owner, operator, or person in charge of any vessel, onshore facility, or offshore facility from which oil or a hazardous substance is discharged in violation of Section 311(b)(3) of the CWA, shall be subject to a civil penalty in an amount up to \$25,000 per day of violation or an amount up to \$1,000 per barrel of oil or unit of reportable quantity of hazardous substances discharged.

22. Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. § 2461 note; Pub. L. 101-410), as amended by the Debt Collection Improvement Act of 1996 (31 U.S.C. § 3701 note; Pub. L. 104-134), and 40 C.F.R. § 19.4, the above amounts have been adjusted upwards for inflation. For discharges occurring between January 30, 1997 and the present, the per barrel amount has been increased to \$1,100.

23. EPA may assess a class II civil penalty of up to \$16,000 per violation for each day of violation that occurred after January 12, 2009, up to a maximum of \$177,500 under Section 311(b)(6)(B)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(ii), and 40 C.F.R. Part 19.

Factual Allegations and Alleged Violation

24. Paragraphs 1 through 23 above are hereby incorporated by reference.

25. Between January 14, 2012 and January 31, 2012, Respondent discharged 215 barrels of oil from its facility, a portion of which flowed into the Wilson Creek and adjoining shorelines.

26. The release of oil occurred from a section of pipeline beneath the “Echo” Taxiway

at the General Mitchell International Airport in Milwaukee, Wisconsin.

27. The Wilson Creek is a water body subject to the jurisdiction of Section 311 of the Act as defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. §110.1.

28. Respondent's discharge of oil between January 14, 2012 and January 31, 2012, from its facility caused a sheen upon the surface of the Wilson Creek.

29. Since Respondent's release of oil caused a sheen upon the surface of Wilson Creek in a quantity that may be harmful under 40 C.F.R § 110.3, Respondent is in violation of Section 311(b)(3) of the Act.

30. On February 22, 2012, EPA entered into an Administrative Order on Consent (AOC) with Shell Pipeline Company, LP and Milwaukee County. The AOC was issued pursuant to EPA's authority under Sections 311(c) and (e) of the Clean Water Act. The AOC required downstream monitoring and cleanup of oil, as well as cleanup of the pipeline spill area on airport property, which has been completed.

31. As alleged in the preceding Paragraph, and pursuant to Section 311(b)(6)(B)(ii) of the Act and 40 C.F.R. § 19.4, Shell Pipeline Company, LP, as the owner and operator of the Pipeline at the time of the discharge described in the foregoing paragraph, is liable for a civil penalty of up to \$1,100 per barrel discharged, pursuant to Section 311(b)(7)(A) of the CWA, 33 U.S.C. § 1321(b)(7)(A), and 40 C.F.R. § 19.4.

Civil Penalty

32. Based on analysis of the factors specified in Section 311(b)(8) of the CWA, 33

U.S.C. § 1321(b)(8), the facts of this case, the *Civil Penalty Policy for Section 311(b)(3) and Section 311(j) of the Clean Water Act*, dated August 1998, Complainant has determined that an appropriate civil penalty to settle this action is \$132,500.

33. Within 45 days after the effective date of this CAFO, Respondent must pay a \$132,500 civil penalty by an 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, New York 10045
Field Tag 4200 of the Fedwire message should read:
“D68010727 Environmental Protection Agency”

The comment or description field of the electronic funds transfer must state Respondent’s name and the docket number of this CAFO.

34. Respondent must send a notice of payment that states Respondent’s name and the docket number of this CAFO to EPA at the following addresses when it pays the penalty:

Ellen Riley (SC-5J)
Enforcement Officer
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

Robert Thompson (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, IL 60604

Regional Hearing Clerk (E-19J)
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, IL 60604

35. This civil penalty is not deductible for federal tax purposes.

36. If Respondent does not pay timely the civil penalty, EPA may request the Attorney General of the United States to bring an action to collect any unpaid portion of the penalty with interest, nonpayment penalties and the United States enforcement expenses for the collection action under Section 311(b)(6)(H) of the CWA, 33 U.S.C. § 1321(b)(6)(H). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

37. Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2). Respondent must pay the United States enforcement expenses, including but not limited to attorney fees and costs incurred by the United States for collection proceedings. In addition, Respondent must pay a nonpayment penalty each quarter during which the assessed penalty is overdue. This nonpayment penalty will be 20 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter. 33 U.S.C. § 1321(b)(6)(H).

General Provisions

38. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in this CAFO.

39. The CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

40. This CAFO does not affect Respondent's responsibility to comply with the CWA and other applicable federal, state and local laws. Compliance with this CAFO will not be a defense for any violations not alleged in this CAFO to any actions subsequently commenced pursuant to federal laws administered by EPA.

41. Respondent certifies that its facility is in full compliance with Section 311 of the CWA and the oil pollution prevention regulations at 40 C.F.R. Part 112.

42. This CAFO constitutes a "prior violation(s)" as that term is used in EPA's Civil Penalty Policy for Section 311(b)(3) and Section 311(j) of the Clean Water Act to determine Respondent's "history of prior violations" under Section 311(b)(8) of the CWA 33 U.S.C. § 1321(b)(8).

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

44. 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.


45. Each party agrees to bear its own costs and attorney fees in this action.

46. This CAFO constitutes the entire agreement between the parties.

47. Complainant has provided public notice of and reasonable opportunity to comment on the proposed issuance of this CAFO in accordance with Section 311(b)(6)(C)(i) of the CWA, 33 U.S.C. § 1321(b)(6)(C)(i) and 40 C.F.R. § 22.45(b).

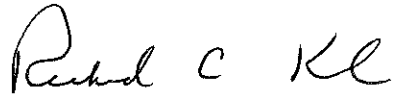
Shell Pipeline Company, LP., Respondent

4/9/2015
Date


[Company Representative]
[Title] PRESIDENT
Shell Pipeline Company, LP, Inc.

United States Environmental Protection Agency, Complainant

4-21-15
Date


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