

RECEIVED

14 SEP -9 AM 8:02

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY HEARINGS CLERK
EPA -- REGION 10

In the Matter of:

NANA OILFIELD SERVICES, INC.,
Anchorage, Alaska,

Respondent.

DOCKET NO. CWA-10-2014-0167

CONSENT AGREEMENT AND FINAL
ORDER

I. STATUTORY AUTHORITY

1.1. This Consent Agreement and Final Order (CAFO) is issued under the authority vested in the Administrator of the United States Environmental Protection Agency (EPA) by Section 311(b)(6)(B)(i) of the Clean Water Act (CWA), as amended by the Oil Pollution Act of 1990. CWA § 311(b)(6)(B)(i), 33 U.S.C. § 1321(b)(6)(B)(i); 33 U.S.C. §§ 2701-2720.

1.2. The Administrator has delegated the authority to issue the Final Order contained in Part V of this CAFO to the Regional Administrator of EPA Region 10, who in turn has delegated this authority to the Regional Judicial Officer.

1.3. In accordance with Section 22.18 of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties," 40 C.F.R. Part 22, EPA issues, and NANA Oilfield Services, Inc. (Respondent) agrees to issuance of, the Final Order contained in Part V of this CAFO.

1.4. EPA is authorized to assess a civil penalty against any owner, operator, or person in charge of an onshore facility who fails or refuses to comply with any regulation issued under Section 311(j) of the CWA, not to exceed \$ 37,500. CWA § 311(b)(6)(B)(i)-(j), 33 U.S.C. § 1321(b)(6)(B)(i)-(j); 40 C.F.R. Part 19.

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2), issuance of this CAFO commences this proceeding, which will conclude when the Final Order contained in Part V of this CAFO becomes effective.

2.2. The Director of the Office of Compliance and Enforcement, EPA Region 10 (Complainant) has been delegated the authority pursuant to Section 311(b) of the CWA, 33 U.S.C. § 1321(b), to sign consent agreements between EPA and the party against whom a Class I penalty is proposed to be assessed.

2.3. Part III of this CAFO contains a concise statement of the factual and legal basis for the alleged violations of the CWA, together with the specific provisions of the CWA and implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

3.1. The Oil Pollution Prevention regulations in 40 C.F.R. Part 112 implement Section 311(j) of the CWA, and establish requirements for preventing the discharge of oil. These requirements apply to owners and operators of non-transportation-related facilities engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing or consuming oil or oil products that, due to facility location, could reasonably be expected to discharge oil in harmful quantities to navigable waters of the United States or adjoining shorelines. CWA § 311(j), 33 U.S.C. § 1321(j); 40 C.F.R. Part 112.

3.2. Quantities of oil which may be harmful to the public health or welfare or the environment of the United States include discharges of oil that 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. CWA § 311(b)(4),

33 U.S.C. § 1321(b)(4); 40 C.F.R. § 110.3; Exec. Order No. 11735, 38 Fed. Reg. 21243 (Aug. 7, 1973).

3.3. The owner or operator of an onshore facility, located where the facility could reasonably be expected to discharge oil in harmful quantities into or upon the navigable waters of the United States or adjoining shorelines, is required to prepare and implement a Spill Prevention, Control and Countermeasure (SPCC) Plan in accordance with 40 C.F.R. § 112.7. 40 C.F.R. §§ 112.1, 112.3, 112.7.

3.4. Respondent is a “corporation” organized under the laws of the State of Alaska, and a “person” for purposes of the CWA. CWA § 311(a), 33 U.S.C. § 1321(a); 40 C.F.R. § 112.2.

3.5. For all dates relevant to this CAFO, Respondent was the “owner or operator” of NOSI North Slope Terminal (Facility) located on Blocks 301 and 303 in Deadhorse, Alaska, in which it stores and distributes “oil.” CWA § 311(a)(1), (6); 33 U.S.C. § 1321(a)(1), (6); 40 C.F.R. § 112.2.

3.5.1. At all times relevant to this CAFO, Respondent stored, transferred, or distributed oil or oil products at the Facility. 40 C.F.R. § 112.1(b).

3.5.2. Respondent’s Facility is an “onshore facility” within the meaning of Section 311(a)(10) of the CWA. CWA § 311(a)(10); 33 U.S.C. § 1321(a)(10); 40 C.F.R. § 112.2.

3.5.3. The Facility is “non-transportation-related,” as defined in the Memorandum of Understanding between the Secretary of Transportation and EPA Administrator, dated November 24, 1971. 40 C.F.R. Part 112, App. A; 40 C.F.R. § 112.2.

3.6. Many of the Facility's bulk oil storage containers are located within a quarter mile of a surface water body, Colleen Lake.

3.6.1. The Facility abuts and/or is adjacent to wetlands that have a direct hydrologic connection to Colleen Lake.

3.6.2. Colleen Lake is a navigable water of the United States, and subject to the jurisdiction of Section 311 of the CWA. CWA §§ 311, 502(7), 33 U.S.C. §§ 1321, 1362(7); 40 C.F.R. § 112.2.

3.7. On August 11, 2012, EPA conducted an SPCC and FRP inspection (Inspection) at the Facility.

3.8. At all times relevant to this CAFO, the Facility had more than 24 aboveground bulk oil storage containers in service with individual capacities of at least 55 gallons, which were used to contain aviation fuel, diesel fuel, unleaded gasoline, or other oil products. 40 C.F.R. § 112.1.

3.8.1. The aboveground bulk oil storage containers at the Facility have a total oil storage capacity in excess of 1 million gallons. 40 C.F.R. § 112.20(f)(1)(ii).

3.8.2. The Facility could, because of its location, reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters or adjoining shorelines. 40 C.F.R. § 112.20(f)(1).

3.8.3. The Facility is located at a distance such that a discharge of oil from the Facility could cause injury to fish and wildlife and sensitive environments. 40 C.F.R. §§ 112.1(b), 112.20(f)(1)(ii)(B).

3.9. The Spill Prevention Control and Countermeasures (SPCC) regulations contained in 40 C.F.R. Part 112 apply to each owner and operator of a non-transportation-related onshore facility engaged in drilling, producing, gathering, storing, processing, refining, transferring,

distributing, using or consuming oil or oil products, which, 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 may be harmful, as described in 40 C.F.R. § 110.3 ("harmful quantity"). 40 C.F.R. §§ 110.3, 112.1.

3.9.1. The Facility is not otherwise exempt from the SPCC regulations. 40 C.F.R. § 112.1(d)(2).

3.10. Respondent was and is required to prepare and implement a Spill Prevention, Control and Countermeasure (SPCC) Plan in accordance with 40 C.F.R. § 112.7. 40 C.F.R. §§ 112.1, 112.3, 112.7.

3.10.1. At the time of the inspection, Respondent had a SPCC Plan for the Facility available for review at the Facility.

3.11. Respondent was and is required to prepare and implement a Facility Response Plan (FRP) in accordance with 40 C.F.R. § 112.20. CWA § 311(j)(5), 33 U.S.C. § 1321(j)(5); 40 C.F.R. § 112.20.

Count 1

3.12. Respondent was required to submit a FRP to EPA Region 10 for the Facility prior to implementing any changes which would increase the Facility's total oil storage capacity to one million gallons or more, if a discharge from the Facility could cause injury to fish and wildlife and sensitive environments. 40 C.F.R. § 112.20(a), (a)(2)(iii), (f)(1)(ii).

3.12.1. At the time of the inspection, the total oil storage capacity at Respondent's Facility exceeded one million gallons. 40 C.F.R. § 112.20(f)(1)(ii).

3.12.2. A discharge of oil from Respondent's Facility could cause injury to fish, wildlife and sensitive environments. 40 C.F.R. § 112.20(f)(1)(ii)(B); 40 C.F.R. Part 112, App. C.

3.12.3. Respondent was required to submit a FRP to EPA Region 10 prior to increasing its total oil storage capacity greater than or equal to one million gallons. 40 C.F.R. § 112.20(a).

3.12.4. Respondent did not submit a FRP to EPA until September 14, 2012.

3.13. **Count 1:** Respondent violated 40 C.F.R. § 112.20(a)(2)(iii) when Respondent failed to submit a FRP to EPA Region 10 before increasing the Facility's total oil storage capacity to one million gallons or more.

Count 2

3.14. Respondent was and is required to develop programs to train personnel at the Facility to respond to discharges of oil, and to describe that oil spill response training program in the Facility's FRP. 40 C.F.R. §§ 112.20(h)(8), 112.21(a)-(b); 40 C.F.R. Part 112, App. F § 1.8.3.

3.14.1. Respondent was and is required to develop a program of oil spill response drills/exercises for the Facility, to be carried out under the response plan. 40 C.F.R. § 112.21(c).

3.14.2. At the time of the inspection, personnel at the Facility were unable to answer fundamental questions about how the Facility would respond to an oil spill.

3.15. **Count 2:** Respondent violated 40 C.F.R. Part 112 App. F § 1.8.3 in failing to adequately train personnel at the Facility to respond to discharges of oil.

Count 3

3.16. Respondent was and is required to train oil-handling personnel at the Facility in the operation and maintenance of equipment to prevent discharges; discharge procedure protocols; applicable pollution control laws, rules, and regulations; general facility operations; and the contents of the Facility SPCC Plan. 40 C.F.R. § 112.7(f)(1).

3.16.1. At the time of the inspection, personnel at the Facility were unable to answer questions about the contents of the Facility SPCC Plan, discharge procedure protocols, or applicable pollution control laws, rules, and regulations.

3.17. **Count 3:** Respondent violated 40 C.F.R. § 112.7(f)(1) in failing to adequately train personnel at the Facility about the contents of the Facility SPCC Plan, discharge procedure protocols, or applicable pollution control laws, rules, and regulations.

Count 4

3.18. At the time of the inspection, Respondent's Facility included a pipe run which transported jet fuel from the Facility to a tarmac fueling area at the nearby airport, and the majority of the pipe run was outside the Facility's containment areas.

3.18.1. Jet fuel is a type of "oil." CWA § 311(a)(1), 33 U.S.C. § 1321(a)(1); 40 C.F.R. § 112.2.

3.18.2. Respondent was and is required to provide appropriate containment and/or diversionary structures or equipment capable of containing oil, constructed so that any discharge of oil from Respondent's piping will not escape the containment system before cleanup occurs. 40 C.F.R. § 112.7(c).

3.18.3. At the time of the inspection, a discharge of oil from the pipe run between the Facility and the tarmac fueling area at the nearby airport had the potential to flow into areas that were not holding ponds or catch basins for the Facility.

3.19. **Count 4:** Respondent violated 40 C.F.R. § 112.7(c) in failing to provide appropriate containment and/or diversionary structures or equipment capable of containing oil to prevent the potential discharge of oil from Respondent's Facility before cleanup occurred.

3.20. EPA is authorized to assess a civil penalty against any owner, operator, or person in charge of an onshore facility who fails or refuses to comply with any regulation issued under

Section 311(j) of the CWA, not to exceed \$ 16,000 per violation, not to exceed \$37,500.

CWA § 311(b)(6)(B)(i)-(j), 33 U.S.C. § 1321(b)(6)(B)(i)-(j); 40 C.F.R. Part 19.

IV. CONSENT AGREEMENT

4.1. Respondent admits the jurisdictional allegations contained in Part III of this CAFO.

4.2. Respondent neither admits nor denies the specific factual allegations contained in Part III of this CAFO.

4.3. Respondent expressly waives any right to contest the allegations and waives any right to appeal the Final Order contained herein.

4.4. The provisions of this CAFO shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.5. *Penalty:* Pursuant to Section 311(b) of the CWA, 33 U.S.C. § 1321(b), and in n consideration of statutory penalty factors identified in Section 311(b)(8) of the CWA, 33 U.S.C. § 1321(b)(8), EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$37,500.

4.6. Respondent consents to the issuance of the attached Final Order and to payment of the civil penalty set forth in Paragraph 4.5 within 30 days of the effective date of the Final Order. 40 C.F.R. § 22.31(c).

4.7. Payment under this CAFO must be made by cashier's check or certified check payable to the order of "Treasurer, United States of America" and delivered via United States mail to the following address:

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

Respondent shall note on the check the title and docket number of this action, as they appear in the caption of this CAFO. Respondent may also make the penalty payment by wire transfer, ACH, or online payment in accordance with instructions, which can be provided by EPA upon request.

4.8. Respondent must deliver via United States mail photocopies of the check described in Paragraph 4.7, above, on the Regional Hearing Clerk and EPA Compliance Officer at the following addresses:

Candace Smith, Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, M/S ORC-158
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

Derek Schruhl, Compliance Officer
U.S. Environmental Protection Agency
Region 10, M/S OCE-133
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

4.9. Except as described in Subparagraph 4.10.2, below, each party shall bear its own fees and costs in bringing or defending this action.

4.10. If Respondent fails to pay any portion of the penalty assessed by this CAFO by its due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. Such failure may also subject Respondent to a civil action to collect the assessed penalty under the CWA, together with interest, fees, costs, and additional penalties described below. In any collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

4.10.1. *Interest.* Interest shall accrue from the effective date of the Final Order, at the rate established by the Secretary of the Treasury, and applied to any portion of the assessed penalty which remains unpaid 30 days after the effective date of the Final Order.

CWA § 311(b)(6)(H), 33 U.S.C. § 1321(b)(6)(H); 31 U.S.C. § 3717(a)(1); 40 C.F.R. § 13.11(a)(3).

4.10.2. *Attorneys Fees, Collection Costs, Nonpayment Penalty.* Pursuant to Section 311(b)(6)(H) of the CWA, 33 U.S.C. § 1321(b)(6)(H), if Respondent fails to pay on a timely basis the penalty set forth in Paragraph 4.5, Respondent shall pay (in addition to any assessed penalty and interest) attorneys fees and costs for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to twenty percent of the aggregate amount of Respondent's penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.

4.11. *Federal Tax.* Penalties paid pursuant to this Final Order are administrative civil penalties assessed by EPA and shall not be deductible for federal tax purposes. 26 U.S.C. § 162(f).

4.12. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this CAFO and to bind Respondent to the terms and conditions of this document.

4.13. Respondent expressly waives any right to contest the allegations and waives any right to appeal the Final Order set forth in Part V.

4.14. Compliance with all the terms and conditions of this CAFO shall result in full settlement and satisfaction of all claims for penalties alleged in Part III of this CAFO.

4.15. The above provisions are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

8/29/14

FOR RESPONDENT:

Brad Osborne

BRAD OSBORNE, President
NANA Oilfield Services, Inc.

DATED:

9-4-14

FOR COMPLAINANT:

Edward J. Kowalski

EDWARD J. KOWALSKI, Director
Office of Compliance and Enforcement

V. FINAL ORDER

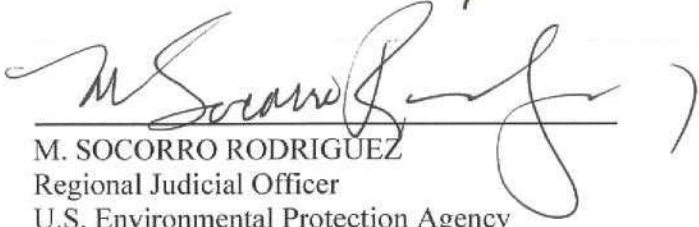
5.1. The terms of the foregoing Parts I-IV are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement in the Consent Agreement.

5.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to the CWA for the violations alleged in Part III. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This CAFO does not waive, extinguish or otherwise affect Respondent's obligations to comply with all applicable provisions of the CWA and regulations promulgated or permits issued thereunder.

5.3. Respondent waives any and all claims for relief and otherwise available rights or remedies to judicial or administrative review which Respondent may have with respect to any issue of fact or law set forth in this CAFO, including, but not limited to, any right of judicial review under the Administrative Procedure Act, 5 U.S.C. §§ 701-708.

5.4. This Final Order shall become effective upon filing.

SO ORDERED this 8th day of September, 2014.



M. SOCORRO RODRIGUEZ
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 10

Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of : NANA OILFIELD SERVICES, INC. Docket No.: CWA-10-2014-0167**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

The undersigned certifies that a true and correct copy of the document was delivered to:

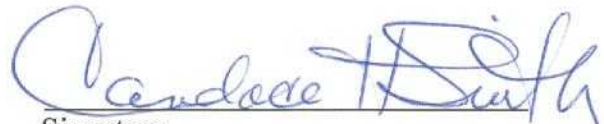
Chris Bellovary, Esquire
U.S. Environmental Protection Agency
1200 Sixth Avenue, ORC-158
Suite 900
Seattle, Washington 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt to:

Brad Osborne, President
NANA Oilfield Services, Inc.
3150 C Street, Suite 260
Anchorage, AK 99503

Peter Reckmeyer
General Counsel
NANA Development Corporation
909 West 9th Avenue
Anchorage, AK 99501

DATED this 9th day of September, 2014


Signature

Candace H. Smith
Regional Hearing Clerk
EPA Region 10