



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

1595 WYNKOOP STREET
DENVER, CO 80202-1129

Phone 800-227-8917

<http://www.epa.gov/region08>

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FILED
EPA REGION VIII
HEARING CLERK

DOCKET NO.: CWA-08-2018-0004

IN THE MATTER OF:

HILL ENTERPRISES, INC

RESPONDENT

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FINAL ORDER

Pursuant to 40 C.F.R. § 22.13(b) and §§ 22.18(b)(2) and (3) 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 filing this Consent Agreement and Final Order.

SO ORDERED THIS 10th DAY OF April, 2018.

Katherin E. Hall
Katherin E. Hall
Regional Judicial Officer

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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FILED
EPA REGION VIII
HEARING ROOM

IN THE MATTER OF:)
)
HILL ENTERPRISES, INC)
6301 Ralston Road)
Arvada, Colorado 80002)
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Respondent.)
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Docket No. CWA-08-2018-0004

COMBINED COMPLAINT AND
CONSENT AGREEMENT UNDER
SECTION 311(j) OF THE CLEAN
WATER ACT

I. PRELIMINARY STATEMENT

1. This proceeding is subject to the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, 40 Code of Federal Regulations (C.F.R.) part 22 (Consolidated Rules of Practice). This Combined Complaint and Consent Agreement (Agreement) 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. On the U.S. Environmental Protection Agency's (EPA) behalf, the undersigned officials, are delegated authority to settle civil administrative penalty proceedings under section 311(b)(6)(A) of the Act, 33 U.S.C. § 1321(b)(6)(A).

II. JURISDICTION

3. The EPA has jurisdiction over this matter pursuant to section 311(b)(6)(B)(i) of the Clean Water Act (the Act), 33 U.S.C. § 1321(b)(6)(B)(i).
4. For the purposes of this settlement only, Respondent admits to the jurisdiction of the EPA over the allegations contained herein.

III. GOVERNING LAW

5. Section 311(j)(1)(C) of the Act, 33 U.S.C. § 1321(j)(1)(C), directed the President to issue regulations "establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil ... from vessels and from onshore and offshore facilities, and to contain such discharges . . ."
6. In response to the directive referenced in Paragraph 5, above, the EPA promulgated 40 C.F.R. part 112.

7. A facility subject to 40 C.F.R. part 112 is required to prepare a written Spill Prevention Control and Countermeasure (SPCC) Plan and to adhere to the discharge prevention and containment procedures specified in that regulation.

IV. STIPULATED FACTS

8. Respondent is Hill Enterprises, Inc., a Colorado corporation.
9. Respondent's principal office is located at 6301 Ralston Road, Arvada, Colorado 80002.
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).
11. Respondent owns and operates a "facility" as defined in 40 C.F.R. § 112.2, including, but not limited to, "any fixed onshore building, property ... pipe ... oil storage ... [or] oil distribution." The facility is known as "Greeley Operations" located at 555 East 8th Street, Greeley, Colorado 80631 (hereinafter the Facility).
12. The Facility includes thirty-one storage containers as defined in 40 C.F.R. § 112.2. The Facility has a total aboveground storage capacity of 245,255 gallons of gasoline and diesel fuel (oil) and is subject to the SPCC regulations.
13. Respondent acquired ownership of the Facility on June 26, 2008.
14. Commencing on June 26, 2008, Respondent became an "owner or operator" of the Facility as defined in section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6).
15. Respondent is engaged in storing, transferring, and/or distributing oil at the Facility.
16. The Facility is an "onshore facility" as defined in section 311(a)(10) of the Act, 33 U.S.C. § 1321(a)(10), and a "non-transportation-related" facility as defined in 40 C.F.R. § 112.2.
17. The oil referenced in Paragraph 12, above, meets the definition of "oil" in section 311(a)(1) of the Act, 33 U.S.C. § 1321(a)(1) and 40 C.F.R. § 112.2.

V. VIOLATIONS ALLEGED

18. In the event of a discharge, the location of the Facility, is reasonably expected to discharge oil and/or other pollutants into the Ogilvy Ditch, an irrigation ditch, that flows easterly into Crow Creek before flowing into the South Platte and/or its adjoining shorelines in quantities that would (a) violate applicable water quality standards or (b) cause a film or a sheen upon, or discoloration of, the surface of the navigable waters of the United States or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of such waters or their adjoining shorelines.
19. The South Platte River is a "navigable water" as defined in section 502(7) of the Act, 33 U.S.C. § 1362(7) and 40 C.F.R. §§ 110.1 and 112.2.
20. At all times after June 26, 2008, the Facility has been subject to the SPCC requirements at 40 C.F.R. part 112.
21. On August 30, 2016, the EPA inspected the Facility for compliance with SPCC requirements.

22. During this inspection, the EPA found alleged violations of the SPCC requirements under 40 C.F.R. part 112. The technical violations of the part 112 regulations are as follows:
- a. Failure to install discharge drainage controls at the bulk storage building and drum storage building, in violation of 40 C.F.R. § 112.7(a)(3)(iii);
 - b. Failure to conduct training of oil-handling personnel on discharge prevention, in violation of 40 C.F.R. § 112.7(f)(1);
 - c. Failure to designate a person responsible for spill prevention, in violation of 40 C.F.R. § 112.7(f)(2);
 - d. Failure to conduct annual trainings for personnel each year to ensure personnel understanding of the SPCC Plan, in violation of 40 C.F.R. § 112.7(f)(3);
 - e. Failure to provide adequate containment or diversionary structures for the bulk storage containment, tank storage buildings and portable container building, in violation of 40 C.F.R. § 112.7(c);
 - f. Failure to restrain bulk storage containment by valves, in violation of 40 C.F.R. § 112.8(b)(1) and (b)(2);
 - g. Failure to design drainage from un-diked areas into ponds, in violation of 40 C.F.R. § 112.8(b)(3);
 - h. Failure to install diversion system for un-diked areas to prevent oil from migrating outside of the Facility, in violation of 40 C.F.R. § 112.8(b)(4);
 - i. Failure to seal closed the bypass valve when drainage can discharge into a storm drain or open watercourse, in violation of 40 C.F.R. § 112.8(c)(3)(i);
 - j. Failure to conduct regular integrity testing of aboveground storage containers and integrity testing after material repairs, including comparison records, in violation of 40 C.F.R. § 112.8(c)(6);
 - k. Failure to conduct frequent inspections of the outside of containers for “signs of deterioration, discharges or accumulation of oil” inside the diked areas, in violation of 40 C.F.R. § 112.8(c)(6);
 - l. Failure to remove visible discharges and accumulations of oil, in violation of 40 C.F.R. § 112.8(c)(10);
 - m. Failure to install secondary containment for drum storage building containing mobile or portable containers, and the containers were not located or positioned to prevent a discharge, in violation of 40 C.F.R. § 112.8(c)(11);
 - n. Failure to label piping origin in tank storage building, in violation of 40 C.F.R. § 112.8(d)(2); and

- o. Failure to maintain records for annual aboveground piping integrity testing, in violation of 40 C.F.R. § 112.8(d)(4).
23. On August 30, 2016, the EPA completed a review of a SPCC Plan for the Facility. The Plan was dated April 29, 2016, provided by Respondent during the inspection and determined by the EPA that the SPCC Plan was in violation of requirements under 40 C.F.R. part 112. Specifically, the SPCC Plan had the following alleged violations:
- a. The SPCC Plan contained a diagram of the Facility; however, the Plan did not (1) identify the location and contents of each fixed oil storage container or the storage area where the mobile or portable containers are located; (2) identify the location of the drum storage building; and (3) identify locations of all aboveground storage tanks, in violation of 40 C.F.R. § 112.7(a)(3);
 - b. Failure to identify the fixed containers configuration and contents of the tanks. The mobile and portable containers, types of oil, and anticipated storage capacities located at the Facility are not accurately reflected in the SPCC Plan, in violation of 40 C.F.R. § 112.7(a)(3)(i);
 - c. Failure to document all discharge prevention measures for all bulk storage, mobile/portable containers, and the loading/unloading areas, in violation of 40 C.F.R. § 112.7(a)(3)(ii);
 - d. Failure to document countermeasures for discharge discovery, response and cleanup, in violation of 40 C.F.R. § 112.7(a)(3)(iv);
 - e. Failure to complete a prediction of the direction, rate of flow, and total quantity of oil which could be discharged from the facility as a result of failures at the aboveground storage tanks and the drum storage building, in violation of 40 C.F.R. § 112.7(b); and
 - f. Failure to keep and maintain inspection records in accordance with 40 C.F.R. § 112.7(e).
24. Each of the deficiencies described in subparagraphs 22(a)-(o) and 23(a)-(f), above, constitutes a separate violation of section 311(j) of the Act, 33 U.S.C. § 1321(j), and 40 C.F.R. part 112, for which Respondent is liable for civil administrative penalties pursuant to 311(b)(6)(A)(i) of the Act, 33 U.S.C. § 1321(b)(6)(A)(i).

VI. CIVIL PENALTY

25. Section 311(b)(6)(B)(i) of the Act, 33 U.S.C. § 1321(b)(6)(B)(i), and 40 C.F.R. part 19.4 authorizes the EPA to assess Class I administrative penalties of up to \$46,192 for violations that occurred after November 2, 2015, and where penalties are assessed on or after January 15, 2018.
26. 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), the parties agree to an administrative penalty of \$33,000 for the violations alleged herein.

27. Respondent agrees to:

- a. pay the civil penalty of within 30 calendar days of the Effective Date of this Agreement;
- b. pay the civil penalty of \$33,000 using any method, or combination of methods, provided on the website <http://www2.epa.gov/financial/additional-instructions-making-payments-epa>, and identifying each and every payment with the "Docket No."
- c. send a copy of the check or notification of wire transfer or online payment, within 24 hours of the time of payment, to the EPA Region 8 Regional Hearing Clerk and Darla Hohman (at the addresses provided below). A transmittal letter identifying the case title and docket number must accompany the remittance and each of the copies of the check or notification.

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

and

Darla Hohman
U.S. Environmental Protection Agency (8ENF-W-WO)
1595 Wynkoop Street
Denver, Colorado 80202-1129

28. If Respondent fails to timely pay any portion of the penalty assessed under this Agreement, the EPA may:

- a. request the Attorney General bring a civil action in an appropriate district court to recover: the amount assessed; interest at rates established pursuant to 26 U.S.C. § 6621(a)(2) from the Effective Date of this Agreement; the United States' enforcement expenses; and a 20 percent quarterly nonpayment penalty, authorized by 33 U.S.C. § 1321(b)(6)(H);
- b. refer the debt to a credit reporting agency or a collection agency, 33 U.S.C. § 1321(b)(6)(H), 40 C.F.R. §§ 13.13, 13.14, and 13.33;
- c. collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, 40 C.F.R. part 13, subparts C and H; and
- d. suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with the EPA or engaging in programs the EPA sponsors or funds, 40 C.F.R. § 13.17.

VII. GENERAL PROVISIONS

29. This Agreement, upon incorporation into a Final Order, applies to and is binding upon the EPA and upon Respondent, and Respondent's officers, directors, agents, successors and assigns. Each signatory to this Agreement certifies that they are authorized to execute and legally bind the party they represent in this Agreement.
30. Respondent:
- a. admits to the stipulated facts in this Agreement;
 - b. neither admits nor denies the allegations contained herein;
 - c. agrees to pay the administrative civil penalty;
 - d. agrees to waive any rights to contest the allegations; and
 - e. agrees to waive 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 Agreement and subsequently issued Final Order, including any right of judicial review under the Administrative Procedure Act, 5 U.S.C. §§ 701-706.
31. Nothing herein shall be construed to limit the power of the EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.
32. The provisions of this Agreement shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representative, successors, and assigns. From the Effective Date of this Agreement until full payment of the civil penalty, Respondent must give written notice and a copy of this Agreement to any successors in interest, prior to any transfer of ownership, or control of any portion, of the Facility. Simultaneously with such notice, Respondent shall provide written notice of such transfer, assignment, or delegation to the EPA. In the event of any such transfer, assignment, or delegation, Respondent shall not be released from the obligations or liabilities of this Agreement unless the EPA has provided written approval of the release of said obligations or liabilities.
33. By signing this Agreement, Respondent certifies that the information it has supplied concerning this matter was, at the time of submission, true, accurate, and complete for each such submission, response and statement. Respondent acknowledges that there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.
34. Each party will bear its own attorney's fees, costs and disbursements incurred in this proceeding.
35. Penalties paid pursuant to this Agreement shall not be deductible for purposes of federal taxes.
36. This Agreement constitutes the entire agreement and understanding of the parties and supersedes any prior agreements or understandings, whether written or oral, among the parties with represent to the

subject matter hereof, with the exception of the Final Order to be issued by the Regional Judicial Officer.

37. In accordance with 40 C.F.R. § 22.18(c), this Agreement, upon incorporation into a Final Order, and full payment of the penalty assessed shall be a complete and full resolution of Respondent's liability for federal civil penalties for the violations alleged, above.
38. A violation of the Final Order may result in civil judicial action for an injunction or civil penalties as provided in section 309(b) of the Act, 33 U.S.C. § 1319(b), as well as criminal sanctions as provided in 309(c) of the Act, 33 U.S.C. § 1319(c). The EPA may use the information submitted under this Order in an administrative, civil judicial, or criminal action.

VIII. CONTINUING OBLIGATION TO COMPLY

39. Neither assessment nor payment of the administrative penalty shall affect Respondent's continuing obligation to comply with the Act and any regulation, order or permit issued pursuant to the Act, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit.

IX. EFFECTIVE DATE

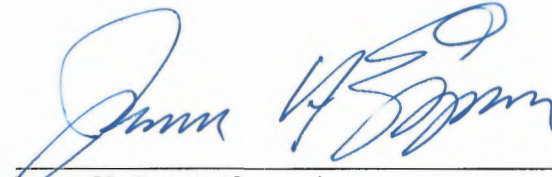
40. Respondent and the EPA agree to the issuance of a Final Order ratifying this Agreement. Upon filing, the Regional Judicial Officer will transmit a copy of the filed Agreement to Respondent. The "Effective Date" of this Agreement is the date of issuance of a Final Order by the Regional Judicial Officer.

**ENVIRONMENTAL PROTECTION AGENCY
REGION 8
Complainant**

Date:

4/3/18

By:

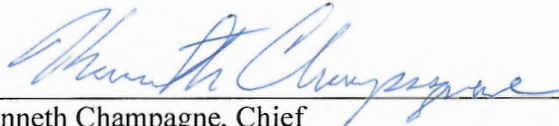


James H. Eppers, Supervisory Attorney
Legal Enforcement Program
Office of Enforcement, Compliance,
and Environmental Justice
United States Environmental Protection Agency, Region 8
1595 Wynkoop Street (8ENF-L)
Denver, Colorado 80202-1129

Date:

4/4/2018

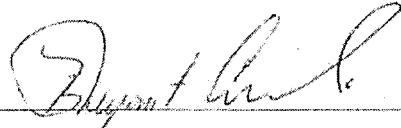
By:



Kenneth Champagne, Chief
OPA and Wetlands Enforcement Unit
Technical Enforcement Program
Office of Enforcement, Compliance,
and Environmental Justice
United States Environmental Protection Agency, Region 8
1595 Wynkoop Street (8ENF-W)
Denver, Colorado 80202-1129

HILL ENTERPRISES, INC..
Respondent

Date: April 3 2018

By: 
BRYANT AMIS
V.P.

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **COMBINED COMPLAINT AND CONSENT AGREEMENT and FINAL ORDER** in the matter of **HILL ENTERPRISES, INC; DOCKET NO.: CWA-08-2018-0004** was filed with the Regional Hearing Clerk on April 10, 2018.

Further, the undersigned certifies that a true and correct copy of the documents were emailed to, Lauren Hammond, Enforcement Attorney. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt on April 10, 2018, to:

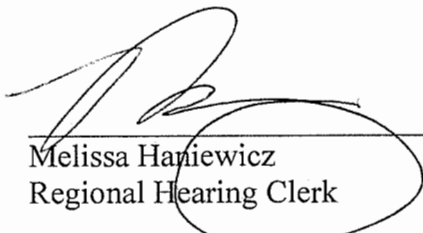
Respondent

Mr. Bryant Gimlin
Vice President of Operations
Hill Enterprises, Inc.
6301 Ralston Road
Arvada, Colorado 80002

And emailed to:

Jessica Chalifoux
U. S. Environmental Protection Agency
Cincinnati Finance Center
26 W. Martin Luther King Drive (MS-0002)
Cincinnati, Ohio 45268

April 10, 2018



Melissa Haniewicz
Regional Hearing Clerk