

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219

UNITED STATES
ENVIRONMENTAL PROTECTION
AGENCY-REGION 7
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BEFORE THE ADMINISTRATOR

IN THE MATTER OF)
)
Brooks Grease Service, Inc.) CONSENT AGREEMENT
) AND
) FINAL ORDER
)
) Docket No. CWA-07-2017-0034
)
Respondent.)
_____)

The U.S. Environmental Protection Agency, Region 7 (“EPA” or “Complainant”) and Brooks Grease Service, Inc. (“Respondent”) have agreed to a settlement of this action before filing a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b), 22.18(b)(2), and 22.18(b)(3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, and the Revocation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b), 22.18(b)(2), and 22.18(b)(3).

Stipulations

Jurisdiction

1. This is an administrative action for the assessment of Class II civil penalty instituted pursuant to Section 311(b)(6) of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act (CWA or the Act), 33 U.S.C. § 1321(b)(6), and in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, (Administrative Proceedings Not Governed by Section 554 of the Administrative Procedures Act), 40 C.F.R. Part 22, Subpart I.

2. This Consent Agreement and Final Order (“CAFO”) serves as notice that EPA has reason to believe that Respondent has violated Sections 311(j) of the CWA, 33 U.S.C. § 1321(j), and regulations promulgated thereunder.

Parties

3. The Respondent is Brooks Grease Service, Inc., located at 218 East James St., Kansas City, KS 66118 (the “facility”).

4. The authority to take action under Section 311(b)(6) of the CWA, 33 U.S.C.

§ 1321(b)(6), is vested in the Administrator of the EPA. The Administrator has delegated this authority to the Regional Administrator, EPA, Region 7, who in turn has delegated it to the Director of the Air and Waste Management Division of EPA, Region 7.

Statutory and Regulatory Framework

5. 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”

6. EPA subsequently promulgated the Spill Prevention Control and Countermeasure (SPCC) regulations pursuant to these delegated statutory authorities, and pursuant to its authorities under the CWA, 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”).

7. In promulgating 40 C.F.R. § 110.3, which implements Section 311(b)(4) of the Act, 33 U.S.C. § 1321(b)(4), EPA has determined that discharges of harmful quantities include oil discharges that cause either (1) a violation of applicable water quality standards, or (2) a film, sheen upon, or discoloration of the surface of the water or adjoining shorelines, or (3) a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

Factual Background

8. Respondent is a foreign corporation authorized to conduct business under the laws of Kansas. 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.

9. Respondent is the owner/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.

10. The facility has an estimated aggregate above-ground storage capacity of 36,000 gallons.

11. Respondent’s facility drains overland into storm water drainage inlets at two locations at the facility. The storm water drainage collected from the inlets directly flows into the Kansas River. The Kansas River is a 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).

12. Respondent is engaged in storing, processing, using or consuming oil or oil products located at the facility.

13. The facility is a non-transportation-related facility within the meaning of 40 C.F.R. § 112 Appendix A, as incorporated by reference within 40 C.F.R. § 112.2.

14. 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.

15. The facility is 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”).

16. Pursuant to Section 311(j)(1)(C) of the Act, E.O. 12777, and 40 C.F.R. § 112.1 Respondent, as the owner and/or operator of an SPCC-regulated facility, is subject to the SPCC regulations.

17. On or about December 23, 2015, EPA conducted an inspection of Respondent’s facility. At the time of EPA’s inspection, Respondent did not have a fully prepared or implemented SPCC plan or records of implementation of the SPCC program, as required by 40 C.F.R. Part 112.

18. A copy of EPA’s inspection report documenting EPA’s findings of violations of the SPCC regulations was mailed to Respondent on January 28, 2016.

Alleged Violations

19. Complainant hereby incorporates the allegations contained in Paragraphs 1 through 18 above, as if fully set forth herein.

20. At the time of the December 2015 inspection, and thereafter, Respondent failed to fully prepare and implement an SPCC Plan, as required by 40 C.F.R. § 112.3(a), as follows:

- (i) Respondent failed to prepare and fully implement an SPCC Plan prior to beginning operations., in violation of 40 C.F.R. 112.3(a);
- (ii) Respondent failed to implement the discharge prevention measures for the routine handling of products described in the Plan, in violation of 40 C.F.R. § 112.7(a)(3)(ii);
- (iii) Respondent failed to implement the active discharge and drainage controls and procedures in the Plan required where there is no secondary containment, in violation of 40 C.F.R. § 112.7(a)(3)(iii);
- (iv) Respondent failed to include an adequate prediction of the direction of flow of oil which could be discharged from the facility in each type of major equipment failure, in violation of 40 C.F.R. § 112.7(b);
- (v) Respondent failed to provide appropriate containment and/or diversionary

structures or equipment to prevent a discharge at bulk storage tanks, piping, and transfers at the bulk storage tanks and dispenser pump, in violation of 40 C.F.R. § 112.7(c);

- (vi) Respondent failed to maintain records of facility inspections or testing, in violation of 40 C.F.R. 112.7(e);
- (vii) Respondent failed to conduct training for oil handling personnel on 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, in violation of 40 C.F.R. § 112.7(f)(1);
- (viii) Respondent failed to conduct annual discharge prevention briefings for oil handling personnel to ensure adequate understanding of the SPCC Plan, in violation of 40 C.F.R. § 112.7(f)(3);
- (ix) Respondent failed to perform integrity testing of the facility's bulk storage tanks at the frequency/intervals provided in the Plan, and failed to maintain comparison records for tanks, in violation with 40 C.F.R. § 112.8(c)(6); and
- (x) Respondent failed to equip bulk storage tanks with overfill protection devices, in violation of 40 C.F.R. § 112.8(c)(8).

21. Respondent's failure to prepare and implement an SPCC Plan for the facility in accordance with the requirements of 40 C.F.R. Part 112, as described in Paragraph 20, violated 40 C.F.R. § 112.3.

22. In accordance with Section 311(b)(6)(A)(ii) of CWA, 33 U.S.C. § 1321(b)(6)(A)(ii), EPA may assess a civil penalty to any owner or operator in charge of any onshore facility who fails to comply with any regulation issued under Section 311(j) of CWA, 33 U.S.C. § 1321(j).

CONSENT AGREEMENT

23. Respondent and EPA agree to the terms of this CAFO and Respondent has read the Consent Agreement, finds it reasonable, consents to its issuance and will comply with the terms of the Final Order.

24. Respondent admits the jurisdictional allegations of this CAFO and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order set forth below.

25. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this CAFO.

26. Respondent waives its right to a judicial or administrative hearing on any issue of

fact or law set forth above and its right to appeal the Final Order accompanying this Consent Agreement.

27. Respondent certifies by signing this CAFO that it has prepared and implemented a SPCC plan for the facility, and has contracted to have work performed and completed to address secondary containment sufficiency by no later than the effective date of this CAFO, and to the best of its knowledge, when this work is completed, Respondent's facility will be in compliance with the CWA and all regulations promulgated thereunder.

28. Nothing in this Consent Agreement shall be construed as a release from any other action under any law and/or regulation administered by EPA. Nothing contained in this CAFO shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state and local environmental statutes and regulations and applicable permits.

29. Failure to pay the assessed penalty may result in the referral of this matter to the United States Department of Justice for collection. If payment is not received on or before the due date, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. The interest will be assessed on the overdue amount from the due date through the date of payment. A late payment handling charge will be imposed after thirty (30) days and an additional charge for each subsequent thirty (30) day period will be assessed. Additionally, as provided by 31 U.S.C. § 3717(e)(2), a six percent (6%) per annum penalty (late charge) may be assessed on any amount not paid within ninety (90) days of the due date.

30. Each party shall bear its own costs and attorneys' fees in the action resolved by this CAFO.

31. Each signatory of this Agreement certifies that he or she is fully authorized to enter into the terms of this CAFO.

32. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of a civil penalty in the amount of Twenty-Five Thousand Dollars (\$25,000.00) as specified in Paragraph 38. Payment of this civil penalty shall resolve all civil and administrative claims for all violations of the CWA specifically alleged in Paragraphs 20 to 22 of this document, through the Effective Date of the Final Order.

33. The effect of the settlement described above is conditioned upon the accuracy of the Respondent's representations to EPA, as memorialized in Paragraph 27 above.

34. Notwithstanding any other provision of this CAFO, EPA reserves the right to enforce the terms of the Final Order portion of this CAFO by initiating a judicial or administrative action under Section 311 of the CWA, 33 U.S.C. § 1321, and to seek penalties against Respondent or to seek any other remedy allowed by law.

35. Complainant reserves the right to take enforcement action against Respondent for any future violations of the CWA and its implementing regulations and to enforce the terms and

conditions of this CAFO.

36. This CAFO shall be effective upon entry of the Final Order by the Regional Judicial Officer for EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

37. This executed CAFO shall be filed with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 7, 11201 Renner Boulevard, Lenexa, Kansas, 66219.

38. Respondent shall pay a civil penalty of Twenty-Five Thousand Dollars (\$25,000.00). Payment shall be by cashier's or certified check made payable to the "Environmental Protection Agency OSLTF-311" and remitted to:

U.S. EPA
P.O. Box 979077
St. Louis, Missouri 63197-9000.

39. The Respondent shall reference the Docket Number CWA-07-2017-0034 and **In the Matter of Brooks Grease Service Inc.** on the check. A copy of each check shall also be mailed to:

Regional Hearing Clerk
United States Environmental Protection Agency
Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

and

Nacenté Seabury
Office of Regional Counsel
United States Environmental Protection Agency
Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

40. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this CAFO shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

41. This CAFO shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this CAFO.

42. The headings in this CAFO are for convenience of reference only and shall not affect

interpretation of this Agreement.

43. Complainant reserves the right to take enforcement action against Respondent for any future violations of the CWA and its implementing regulations and to enforce the terms and conditions of this CAFO.

44. This Consent Agreement and Final Order shall be effective upon filing of the Final Order with the Regional Hearing Clerk for EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY

9/28/17
Date

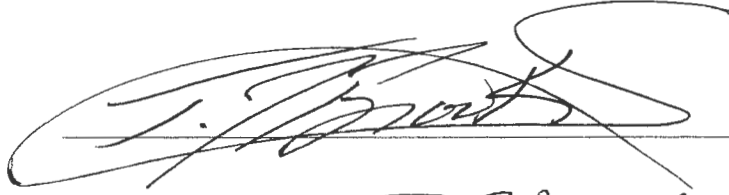
for Becky Weber
Becky Weber
Director
Air and Waste Management Division

9/27/17
Date

Nacenté Seabury
Nacenté Seabury
Office of Regional Counsel

RESPONDENT:
Brooks Grease Service, Inc.

2/31/17
Date



Printed Name T J BROOKS

Title Treasurer

FINAL ORDER

Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

The Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.

Date: Sept. 28, 2017

Karina Borromeo
Signature

KARINA BORROMEO
Name

REGIONAL JUDICIAL OFFICER
Title

CERTIFICATE OF SERVICE

I certify that on the date below, I hand delivered the original and one true copy of this Consent Agreement and Final Order to the Regional Hearing Clerk, United States Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219. I further certify that on the date below I sent, return receipt requested, a true and correct copy of the original Consent Agreement and Final Order to the following:

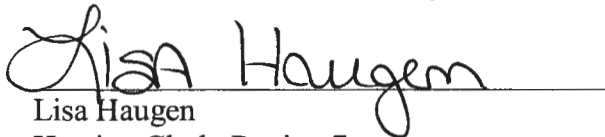
Copy emailed to Attorney for Complainant:

Seabury.Nacente@epa.gov

Copy by First Class Mail to Respondent:

Tyrell J. Brooks
Registered Agent
Brooks Grease Service, Inc.
3104 N. Erie Avenue
Tulsa, Oklahoma 74115

Dated this 28 day of September, 2017.



Lisa Haugen
Hearing Clerk, Region 7