



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

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In the Matter of:

Jay-Bee Oil & Gas, Inc.
3570 Shields Hill Road
Cairo, West Virginia 26337,

Respondent.

Jay-Bee Oil & Gas Lisby Pad (T1-03)
Big Run Road
Alma, West Virginia 26320
Lat: 39.448702
Long: -80.801966,

Jay-Bee Oil & Gas RPT5 Pad
Big Run Road
Alma, West Virginia 26320
Lat: 39.476866
Long: -80.793231,

Jay-Bee Oil & Gas RPT8 Pad
Big Run Road
Alma, West Virginia 26320
Lat: 39.483171
Long: -80.786055,

Jay-Bee Oil & Gas Gorby Pad
Big Run Road
Alma, West Virginia 26320
Lat: 39.467858
Long: -80.797607,

Facilities.

)
) EPA Docket Nos.: CAA-03-2015-0110
) EPCRA-03-2015-0110
)
) Proceedings Pursuant to Sections 112(r) and
) 113 of the Clean Air Act, 42 U.S.C.
) §§ 7412(r), 7413, and Sections 311, 312
) and 325 of the Emergency Planning and
) Community Right-to-Know Act, 42 U.S.C.
) §§ 11021, 11022, 11045, and 40 C.F.R.
) § 22.13(b) and 22.18(b)

CONSENT AGREEMENT

STATUTORY AUTHORITY

This Consent Agreement is proposed and entered into under the authority vested in the Administrator of EPA by Section 113(d) of the Clean Air Act, as amended (the “CAA”), 42 U.S.C. § 7413(d), and Section 325 of the Emergency Planning and Community Right-to-Know Act (“EPCRA”), 42 U.S.C. § 11045, and under the authority provided by the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits” (“Consolidated Rules of Practice”), 40 C.F.R. Part 22 (“Part 22”). The Administrator has delegated these authorities to the Regional Administrator of EPA, Region III, who has in turn delegated them to the Director, Hazardous Site Cleanup Division, EPA Region III (“Complainant”).

The parties agree to the commencement and conclusion of this cause of action by issuance of this Consent Agreement and Final Order (referred to collectively herein as “CA/FO”) as prescribed by the Consolidated Rules of Practice pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3), and having consented to the entry of this CA/FO, agree to comply with the terms of this CA/FO.

JURISDICTION

1. The Consolidated Rules of Practice govern this administrative adjudicatory proceeding pursuant to 40 C.F.R. §§ 22.1(a)(2) and (8).
2. The Regional Judicial Officer has the authority to approve this settlement and conclude this proceeding pursuant to 40 C.F.R. §§ 22.4(b) and 22.18(b)(3).
3. For the purpose of this proceeding, Respondent admits to the jurisdictional allegations in this Consent Agreement and agrees not to contest EPA’s jurisdiction with respect to the execution or enforcement of this Consent Agreement.
4. With the exception of Paragraph 3, above, for the purpose of this proceeding, Respondent neither admits nor denies the factual allegations or conclusions of law set forth in this Consent Agreement, but expressly waives its rights to contest said allegations.

FINDINGS OF FACT

5. Respondent, Jay-Bee Oil and Gas, Inc. is a corporation organized in the State of West Virginia, doing business in the State of West Virginia.
6. Respondent is engaged in the exploration and production of natural gas in the Marcellus Shale formation area in West Virginia. Respondent has operated a natural gas

production facility known as the Lisby Pad (T1-03), located on Big Run Road in Alma, West Virginia (the “Lisby Facility”) since 2013.

7. Respondent completed drilling the well at the Lisby Facility in late 2013. In January 2014, hydraulic fracturing of the well at the Lisby Facility was ongoing. Six 210-barrel tanks were present at the Lisby Facility storing recycled flowback water. The contents of the tanks were being circulated through piping when an explosion occurred. Based on information and belief, the explosion was caused by metal-to-metal contact on a fill pipe vibrating against the handrail of a tank. One person was injured as a result of the explosion.

8. On March 20, 2014, EPA sent an information request to Respondent pursuant to Section 104(e) of the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), 42 U.S.C. § 9604(e), and Section 114 of the CAA, 42 U.S.C. § 7414. EPA sent Respondent one additional information request pursuant to Section 114 of the CAA, 42 U.S.C. § 7414, dated August 24, 2014. The purpose of the information requests was to ascertain Respondent’s compliance with the emergency response requirements of Section 103 of CERCLA, 42 U.S.C. § 9603, and Section 304 of the Emergency Planning and Community Right-to-Know Act (“EPCRA”), 42 U.S.C. § 11004; the emergency planning and community right-to-know requirements of Sections 302, 303, 311 and 312 of EPCRA, 42 U.S.C. §§ 11002, 11003, 11021, 11022; and Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1). On April 28, 2014 and September 15, 2014, Respondent submitted responses to the information requests.

9. In the course of settlement discussions Respondent provided to EPA further information about three other natural gas well pad facilities it operates in West Virginia, all of which are located on Big Run Road, in Alma, Tyler County, West Virginia, are listed in the caption and are referred to hereafter as “RPT5 Facility,” “RPT8 Facility,” and “Gorby Facility.”

10. The EPA and the United States Department of Justice jointly determined that this matter, although it involves alleged CAA violations that occurred more than one year before the initiation of this proceeding, is appropriate for an administrative penalty assessment. 42 U.S.C. § 7413(d); 40 C.F.R. § 19.4.

COUNT 1

FINDINGS OF FACT RELATED TO THE VIOLATIONS OF SECTION 112(r)(1) OF THE CLEAN AIR ACT

11. On November 15, 1990, the President signed into law the Clean Air Act Amendments of 1990. The Clean Air Act Amendments added Section 112(r) to the CAA, 42 U.S.C. § 7412(r).

12. Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), mandates the Administrator to promulgate a list of substances which, in the case of an accidental release, are known to cause or may reasonably be anticipated to cause death, injury, or serious adverse

effects to human health or the environment. The list of regulated substances can be found in 40 C.F.R. § 68.130.

13. Pursuant to Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), the owners and operators of stationary sources producing, processing, handling or storing substances listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), or any other extremely hazardous substance, have a general duty, in the same manner and to the same extent as 29 U.S.C. § 654, to identify hazards which may result from accidental releases of such substances using appropriate hazard assessment techniques, to design and maintain a safe facility taking such steps as are necessary to prevent releases, and to minimize the consequences of accidental releases which do occur. Section 112(r)(1) is hereinafter referred to herein as the “General Duty Clause.”

14. The General Duty Clause applies to any stationary source producing, processing, handling, or storing substances listed pursuant to Section 112(r)(3) of the CAA, or other extremely hazardous substances. Extremely hazardous substances include, but are not limited to, regulated substances listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), at 40 C.F.R. § 68.130, and chemicals on the list of extremely hazardous substances published under EPCRA at 40 C.F.R. Part 355, Appendices A and B.

15. Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), defines “stationary source,” as “any buildings, structures, equipment, installations, or substance emitting stationary activities (i) which belong to the same industrial group, (ii) which are located on one or more contiguous properties, (iii) which are under the control of the same person (or persons under common control), and (iv) from which an accidental release may occur.”

16. Section 113(d)(1)(B), 42 U.S.C. § 7413(d)(1)(B), as amended by the Debt Collection Improvement Act of 1996, authorizes EPA to commence an administrative action to assess civil penalties of not more than \$37,500 per day for each violation of Section 112(r) of the CAA that occurs after January 12, 2009.

17. According to analytical sampling results provided by Respondent to EPA, the flowback water contained in the six 210-barrel tanks at the Lisby Facility at the time of the explosion was flammable and contained methane, a listed substance under 40 C.F.R. § 68.130, Table 3.

18. Production began at the Lisby Facility in March 2014. Since that time, the same six 210-barrel tanks have stored both condensate and produced water.

19. According its Material Safety Data Sheet (“MSDS”), the condensate at the Lisby Facility is a mixture that contains the substances propane, ethane, pentane and butane, all of which are listed at 40 C.F.R. § 68.130, Table 3 as flammables, and has a flammability rating of 4. The condensate constitutes a flammable mixture.

20. According to analytical information provided by Respondent, the produced water at the Lisby Facility is a mixture containing the listed substance methane, which is flammable.

21. According to information received from Respondent, at the RPT5 Facility, Respondent stored flowback water during fracturing operations in 2014 and condensate once production began in 2014. The flowback water and condensate were of a similar chemical nature to those materials stored at the Lisby Facility, and the materials were stored in six 210-barrel tanks similar to those used at the Lisby Facility.

22. According to information received from Respondent, at the Gorby Facility, Respondent stored flowback water during fracturing operations in 2015 and condensate and produced water once production began in 2015; the flowback water, condensate and produced water were of a similar chemical nature to those materials stored at the Lisby Facility, and the materials were stored in six 210-barrel tanks similar to those used at the Lisby Facility.

23. Applicable industry standards for the proper storage of flammable liquids include National Fire Protection Association 30, *Flammable and Combustible Liquid Code Handbook*, 8th ed. (2008) ("NFPA 30").

24. Section 22 of NFPA 30 addresses the storage of flammable liquids in aboveground storage tanks. According to NFPA 30, Section 22.7.1.1, the emergency venting capacity for a 210-barrel tank should be 300,000 standard cubic feet per hour ("SCFH").

25. Information obtained from Respondent about the Lisby Facility indicates that the total venting capacity of the aboveground storage tanks is 115,000 SCFH, consisting of the venting capacity of the vent piping, at 10,000 SCFH, and the venting capacity of the 8" thief hatch, at 105,000 SCFH.

26. According to Respondent, the total venting capacity of the aboveground 210-barrel tanks at the RPT5 Facility and the Gorby Facility is similar to the venting capacity of the tanks at the Lisby Facility.

27. EPA determined that Respondent failed to store flammable materials in aboveground tanks at the Lisby Facility, the RPT5 Facility and the Gorby Facility with sufficient emergency venting capacity to provide safety consistent with industry standards.

28. Section 6 of NFPA 30 addresses fire prevention and fire risk control at facilities where flammable or combustible liquids are stored. NFPA 30, Section 6.5.1, requires that precautions be taken to prevent ignition of flammable vapors by sources such as frictional heat or spark.

29. During the pumping of flowback from Tank #6 to Tank #1, excessive vibration of the fill pipe which ran directly over the handrail created sparks from the metal-to-metal contact. These sparks ignited vapors from the tank, causing the explosion.

30. EPA determined that Respondent failed to design the tanks and their fill pipes to prevent the ignition of flammable vapors to provide safety consistent with industry standards.

31. On or about January 23, 2014, Respondent corrected the piping configuration at this Lisby Facility so as to prevent metal-to-metal sparking.

32. On or about May 15, 2015, Respondent submitted documentation to EPA that it completed work at the Lisby Facility, the RPT5 Facility and the Gorby Facility, to provide for emergency venting capacity for the six 210-barrel tanks at the three facilities to provide safety consistent with NFPA 30.

**CONCLUSIONS OF LAW RELATED TO THE
VIOLATIONS OF SECTION 112(r)(1) OF THE CLEAN AIR ACT**

33. The findings of fact contained in Paragraphs 5 through 32 of this CA/FO are incorporated by reference herein as though fully set forth at length.

34. Respondent is a “person” as defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

35. At all times relevant to this CA/FO, Respondent has been the owner or operator of the natural gas extraction wells known as the Lisby Facility, the RPT5 Facility, and the Gorby Facility (collectively, the “CAA Facilities.”)

36. Each of the CAA Facilities is a “stationary source” pursuant to Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C).

37. The flowback water at the CAA Facilities contains methane, a substance listed as flammable pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), at 40 C.F.R. § 68.130, Table 3.

38. The condensate at the CAA Facilities contains propane, ethane, pentane and butane, substances listed as flammable pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), at 40 C.F.R. § 68.130, Table 3, and has a flammability rating of 4.

39. The produced water at the CAA Facilities contains methane, a substance listed as flammable pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), at 40 C.F.R. § 68.130, Table 3.

40. Respondent is subject to the requirements of Section 112(r)(1) of the CAA at the CAA Facilities because Respondent is the operator of the stationary sources.

41. Prior to Respondent's correction of the piping configuration on the 210-barrel tanks at the CAA Facilities to provide safety consistent with NFPA 30, Respondent failed to comply with the requirement of Section 112(r)(1) of the CAA to design and maintain a safe facility taking such steps as are necessary to prevent accidental releases.

42. Prior to Respondent's correction of the emergency venting capacity on the 210-barrel tanks at the CAA Facilities to provide safety consistent with NFPA 30, Respondent failed to comply with the requirement of Section 112(r)(1) of the CAA to design and maintain a safe facility taking such steps as are necessary to prevent accidental releases.

43. Respondent has violated Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), because Respondent failed to design a safe facility to address the hazards posed by the storage and handling of flammable substances. Respondent is, therefore, subject to the assessment of penalties under Section 113 of the CAA, 42 U.S.C. § 7413.

COUNT 2

FINDINGS OF FACT RELATED TO THE VIOLATION OF SECTION 311 OF EPCRA

44. The findings of fact and conclusions of law contained in Paragraphs 5 through 43 of this CA/FO are incorporated by reference herein as though fully set forth at length.

45. Section 311 of EPCRA, 42 U.S.C. § 11021, as implemented by 40 C.F.R. Part 370, requires an owner or operator of a facility required to prepare or have available a Material Safety Data Sheet ("MSDS") for a hazardous chemical in accordance with the Occupational Safety and Health Administration ("OSHA") Hazard Communication Standard, 29 U.S.C. §§ 651 *et seq.*, and 29 C.F.R. § 1910.1200, and at which facility is present at any one time a hazardous chemical (including, but not limited to, a hazardous chemical which also qualifies as an extremely hazardous substance ("EHS") in a quantity equal to or greater than its applicable minimum threshold level for reporting ("MTL") or threshold planning quantity ("TPQ") established by 40 C.F.R. § 370.10, to submit either MSDSs for, or a list identifying, those hazardous chemicals to the appropriate state emergency response commission ("SERC"), local emergency planning committee ("LEPC"), and local fire department with jurisdiction over the facility, on or before October 17, 1990, or within three months after meeting the MTL or TPQ.

46. Respondent's response to EPA's first information request indicated that Respondent had present at the Lisby Facility two chemicals – diesel fuel and hydraulic fluid – in amounts exceeding 10,000 pounds for the first time during calendar year 2013.

47. Respondent's response to EPA's first information request indicated that Respondent did not submit MSDSs to the SERC, the LEPC or the local fire department within 90 days of the two chemicals first being present at the Lisby Facility in amounts exceeding the reporting thresholds.

48. The SERC for the Lisby Facility is the West Virginia Division of Homeland Security and Emergency Management, located at 1900 Kanawha Boulevard, East, Building 1 – Room EB-80, in Charleston, West Virginia.

49. The LEPC for the Lisby Facility is the Tyler County Local Emergency Planning Committee, at 504 Cherry Street, in Middlebourne, West Virginia.

50. The local fire department for the Lisby Facility is the Alma Volunteer Fire Department, located on Conaway Run in Alma, West Virginia.

51. According to information provided to EPA by Respondent, on or about February 17, 2015, Respondent submitted an Emergency and Hazardous Chemical Inventory Form to the appropriate SERC, LEPC, and local fire department with jurisdiction over the Lisby Facility for calendar year 2013. The form listed diesel fuel and hydraulic fluid in the list of hazardous chemicals present at the Lisby Facility during calendar year 2013.

52. Respondent failed to submit to the SERC, LEPC, and local fire department either MSDSs for diesel fuel and hydraulic fluid, or a list of hazardous chemicals identifying the hazardous chemicals as present at the Facility in quantities equal to or exceeding their respective MTLs, no later than three (3) months after the chemicals were present at the Facility in an amount equal to or greater than their respective MTLs.

**CONCLUSIONS OF LAW RELATED TO THE
VIOLATION OF SECTION 311 OF EPCRA**

53. The findings of fact contained in Paragraphs 5 through 52 of this CA/FO are incorporated by reference herein as though fully set forth at length.

54. At all times relevant to this Consent Agreement, Respondent has been the operator of the Lisby Facility within the meaning of Section 311 of EPCRA, 42 U.S.C. § 11021.

55. The Lisby Facility is a “facility” as defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and its regulations, 40 C.F.R. § 370.66.

56. At the Lisby Facility, Respondent is engaged in a business where chemicals are either used, distributed, or are produced for use or distribution.

57. At the Lisby Facility, Respondent is an “employer” as that term is defined at 29 C.F.R. § 1910.1200(c).

58. Diesel fuel and hydraulic fluid are “hazardous chemicals” as defined by Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 40 C.F.R. § 370.66.

59. At the Lisby Facility, Respondent is the owner or operator of a facility that is required to prepare or have available MSDSs for the hazardous chemicals listed above under the OSHA Hazard Communication Standard, 29 U.S.C. §§ 651 *et seq.*, and 29 C.F.R. § 1910.1200.

60. Pursuant to 40 C.F.R. § 370.10, the MTL for each of the two chemicals, diesel fuel and hydraulic fluid, is 10,000 pounds.

61. Respondent was required to submit to the SERC, LEPC and local fire department either the MSDSs for diesel fuel and hydraulic fluid, or a list of hazardous chemicals identifying diesel fuel and hydraulic fluid as being present at the Lisby Facility, no later than three (3) months after the two hazardous chemicals were present at the Lisby Facility in an amount equal to or greater than their respective MTLs.

62. Respondent's failure to submit to the SERC, LEPC, and local fire department either MSDSs for diesel fuel and hydraulic fluid, or a list of hazardous chemicals identifying diesel fuel and hydraulic fluid as present at the Lisby Facility in quantities equal to or exceeding their respective MTLs, no later than three (3) months after the chemicals were present at the Lisby Facility in an amount equal to or greater than their respective MTLs, constitutes a violation of Section 311 of EPCRA, 42 U.S.C. § 11021, and is, therefore, subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

COUNTS 3-5

FINDINGS OF FACT RELATED TO THE VIOLATIONS OF SECTION 312 OF EPCRA

63. The factual allegations contained in Paragraphs 5 through 62 of this CA/FO are incorporated by reference herein as though fully set forth at length.

64. Section 312 of EPCRA, 42 U.S.C. § 11022, as implemented by 40 C.F.R. Part 370, requires the owner or operator of a facility required to prepare or have available an MSDS for a hazardous chemical in accordance with OSHA's Hazard Communication Standard, 29 U.S.C. §§ 651 *et seq.*, and 29 C.F.R. § 1910.1200, and at which facility a hazardous chemical (including, but not limited to, a hazardous chemical which also qualifies as an EHS) is present at any one time during a calendar year in a quantity equal to or greater than its applicable MTL or TPQ to submit on or before March 1, 1988, and by March 1st of each year thereafter, a completed Emergency and Hazardous Chemical Inventory Form ("Chemical Inventory Form") identifying the hazardous chemical and providing the information described in Section 312(d) of EPCRA, 42 U.S.C. § 11022(d), to the appropriate SERC, LEPC, and local fire department with jurisdiction over the facility.

65. Respondent began drilling operations at the Lisby Facility in 2013, during which time Respondent stored 99,900 pounds of diesel fuel and 17,856 pounds of hydraulic fluid at the Lisby Facility.

66. Respondent began drilling operations at the RPT5 Facility in 2013, during which time Respondent stored 48,000 pounds of diesel fuel at the RPT5 Facility.

67. Respondent began drilling operations at the RPT8 Facility in 2013, during which time Respondent stored 48,000 pounds of diesel fuel at the RPT8 Facility.

68. Respondent had present at the Lisby Facility two chemicals in quantities equal to or exceeding their respective MTLs during calendar year 2013.

69. Respondent had present at the RPT5 Facility and the RPT8 Facility one chemical, diesel fuel, in a quantity equal to or exceeding its MTL during calendar year 2013.

70. Respondent did not submit to the SERC, LEPC, and local fire department a Chemical Inventory Form for calendar year 2013 by March 1, 2014, identifying diesel fuel and hydraulic fluid as present at the Lisby Facility in quantities equal to or greater than the MTL, and providing the information required by Section 312(d) of EPCRA, 42 U.S.C. § 11022(d).

71. Respondent did not submit to the SERC, LEPC, and local fire department a Chemical Inventory Form for calendar year 2013 by March 1, 2014, identifying diesel fuel as present at the RPT5 Facility in a quantity equal to or greater than the MTL, and providing the information required by Section 312(d) of EPCRA, 42 U.S.C. § 11022(d).

72. Respondent did not submit to the SERC, LEPC, and local fire department a Chemical Inventory Form for calendar year 2013 by March 1, 2014, identifying diesel fuel as present at the RPT8 Facility in a quantity equal to or greater than the MTL, and providing the information required by Section 312(d) of EPCRA, 42 U.S.C. § 11022(d).

73. The SERC for the RPT5 Facility and the RPT8 Facility is the West Virginia Division of Homeland Security and Emergency Management, located at 1900 Kanawha Boulevard, East, Building 1 – Room EB-80, in Charleston, West Virginia.

74. The LEPC for the RPT5 Facility and the RPT8 Facility is the Tyler County Local Emergency Planning Committee, at 504 Cherry Street, in Middlebourne, West Virginia.

75. The local fire department for the RPT5 Facility and the RPT8 Facility is the Alma Volunteer Fire Department, located on Conaway Run in Alma, West Virginia.

76. On or about February 17, 2015, Respondent submitted a Chemical Inventory Form to the SERC, the LEPC, and the local fire department for hazardous chemicals present at the Lisby Facility during calendar year 2013 in amounts greater than their reporting thresholds.

77. On or about February 17, 2015, Respondent submitted a Chemical Inventory Form to the SERC, the LEPC, and the local fire department for hazardous chemicals present at

the RPT5 Facility during calendar year 2013 in amounts greater than their reporting thresholds, including diesel fuel.

78. On or about February 17, 2015, Respondent submitted a Chemical Inventory Form to the SERC, the LEPC, and the local fire department for hazardous chemicals present at the RPT8 Facility during calendar year 2013 in amounts greater than their reporting thresholds, including diesel fuel.

CONCLUSIONS OF LAW RELATED TO THE VIOLATIONS OF SECTION 312 OF EPCRA

79. The findings of fact and conclusions of law contained in Paragraphs 5 through 78 of this CA/FO are incorporated by reference herein as though fully set forth at length.

80. The RPT5 Facility and the RPT8 Facility are each a “facility” as defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and its regulations, 40 C.F.R. § 370.66.

81. At the RPT5 Facility and the RPT8 Facility, Respondent is engaged in a business where chemicals are either used, distributed, or are produced for use or distribution.

82. At the RPT5 Facility and the RPT8 Facility, Respondent is an “employer” as that term is defined at 29 C.F.R. § 1910.1200(c).

83. At the Lisby Facility, RPT5 Facility and the RPT8 Facility, Respondent is the owner or operator of a facility that is required to prepare or have available MSDSs for the hazardous chemicals listed above under the OSHA Hazard Communication Standard, 29 U.S.C. §§ 651 *et seq.*, and 29 C.F.R. § 1910.1200.

84. At all times relevant to this Agreement, Respondent has been the operator of the Lisby Facility, the RPT5 Facility and the RPT8 Facility within the meaning of Section 312 of EPCRA, 42 U.S.C. § 11022.

85. Respondent is required to have an MSDS at the Lisby Facility, the RPT5 Facility and the RPT8 Facility for each hazardous chemical it uses, pursuant to 29 C.F.R. § 1910.1200(g).

86. Respondent’s failure to timely submit to the SERC, LEPC, and local fire department with jurisdiction over the Lisby Facility, the RPT5 Facility, and the RPT 8 Facility complete and accurate Chemical Inventory Forms for the three facilities for calendar year 2013 constitute three violations of Section 312 of EPCRA, 42 U.S.C. § 11022. The violations are subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

SETTLEMENT

87. In full and final settlement and resolution of all allegations referenced in the foregoing Findings of Fact and Conclusions of Law, and in full satisfaction of all civil penalty claims pursuant thereto, for the purpose of this proceeding, the Respondent consents to the assessment of a civil penalty for the violations of Section 112(r)(1) of the Clean Air Act, 42 U.S.C. § 7412(r)(1), set forth above, in the amount of \$43,173 (“CAA Penalty”), and a civil penalty for the violations of Sections 311 and 312 of EPCRA, 42 U.S.C. §§ 11021 and 11022, set forth above, in the amount of \$15,073.50 (“EPCRA Penalty”), for a total penalty of \$58,246.50 (“EPA Penalty”).

PAYMENT TERMS

88. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent agrees to:

a. Within thirty (30) days of the Effective Date of this CA/FO (the “Final Due Date”), pay the civil penalty of \$58,246.50 (“EPA Penalty”) for the EPCRA and CAA violations, with the payment identified with “EPA Docket No. CAA-03-2015-0110/EPCRA-03-2015-0110, and using one of the methods identified in Subparagraphs 88.b-e, below:

b. *Check.*

- (i) All checks shall be made payable to United States Treasury;
- (ii) All payments made by check and sent by regular mail shall be addressed to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000
Contact: Heather Russell, 513-487-2044

- (iii) All payments made by check and sent by overnight delivery service shall be addressed for delivery to:

U.S. Bank
Government Lockbox 979077
U.S. EPA, Fines & Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

Contact: 314-418-1028

- (iv) All payments made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

Cincinnati Finance
US EPA, MS-NWD
26 M.L. King Drive
Cincinnati, OH 45268-0001

- c. *Electronic Wire Transfer.* All payments made by electronic wire transfer shall be directed to:

Federal Reserve Bank of New York
ABA = 021030004
Account No. = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message should read:
D 68010727 Environmental Protection Agency

- d. *ACH.* All electronic payments made through the Automated Clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

US Treasury REX / Cashlink ACH Receiver
ABA = 051036706
Account No.: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – Checking

Physical location of U.S. Treasury Lisby Facility:
5700 Rivertech Court
Riverdale, MD 20737
Contact: Jesse White 301-887-6548 or REX, 1-866-234-5681

- e. *On-Line Payment Option.*

WWW.PAY.GOV/PAYGOV
Enter sfo 1.1 in the search field. Open and complete the form.

- f. Additional payment guidance is available at:
<http://www2.epa.gov/financial/additional-instructions-making-payments-epa>

g. Within 24 hours of payment of the EPA Penalty, Respondents shall send proof of payment to:

Cynthia T. Weiss
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency, Region III
1650 Arch Street (3RC42)
Philadelphia, PA 19103-2029

and

Lydia Guy
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region III
1650 Arch Street (3RC00)
Philadelphia, PA 19103-2029

The term “proof of payment” means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with “EPA Docket Nos. CAA-03-2015-0110/EPCRA-03-2015-0110.”

89. The CAA Penalty stated herein is based upon Complainant’s consideration of a number of factors, including, but not limited to, the penalty criteria set forth in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), and is consistent with 40 C.F.R. Part 19 and the *Combined Enforcement Policy for Clean Air Act Sections 112(r)(1), 112(r)(7) and 40 C.F.R. Part 68* (June 2012).

90. The EPCRA Penalty stated herein is based upon Complainant’s consideration of a number of factors, including, but not limited to, the penalty authority set forth in Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), and is consistent with 40 C.F.R. Part 19 and *the Enforcement Response Policy for Sections 304, 311 and 312 of the Emergency Planning and Community Right-to-Know Act and Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act* (September 30, 1999).

91. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent’s failure to make timely payment by the Final Due Date or to comply with the conditions in this CA/FO shall result in the assessment of late payment charges, including interest, penalties, and/or administrative costs of handling delinquent debts.

92. Interest on the civil penalty assessed in this CA/FO will begin to accrue on the date that a copy of this CA/FO is mailed or hand-delivered to Respondent. However, EPA will waive interest on any amount of the civil penalty that is paid by the Final Due Date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).

93. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue in accordance with 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's Resources Management Directives - Cash Management, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the Final Due Date and an additional \$15.00 for each subsequent thirty (30) day period the penalty remains unpaid.

94. A penalty charge of six (6) percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent more than ninety (90) calendar days in accordance with 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent, in accordance with 31 C.F.R. § 901.9(d).

GENERAL PROVISIONS

95. For the purpose of this proceeding, Respondent expressly waives its right to a hearing and to appeal the Final Order under Section 325 of EPCRA, 42 U.S.C. § 11045, and Section 325 of EPCRA, 42 U.S.C. § 11045, and under Section 113(d)(2) of the CAA, 42 U.S.C. § 7413(d)(2).

96. The provisions of the CA/FO shall be binding upon Respondent, its officers, directors, agents, servants, employees, and successors or assigns. By his or her signature below, the person signing this Consent Agreement on behalf of the Respondent is acknowledging that he or she is fully authorized by the party represented to execute this Consent Agreement and to legally bind Respondent to the terms and conditions of the Consent Agreement and accompanying Final Order.

97. This CA/FO resolves only those civil claims which are alleged herein. Nothing herein shall be construed to limit the authority of the Complainant to undertake action against any person, including the Respondent, in response to any condition which Complainant determines may present an imminent and substantial endangerment to the public health, public welfare or the environment. Nothing in this CA/FO shall be construed to limit the United States' authority to pursue criminal sanctions.

98. By signing this Consent Agreement, Respondent acknowledges that this CA/FO will be available to the public and agrees that this CA/FO does not contain any confidential business information or personally identifiable information.

99. By signing this Consent Agreement, the undersigned representative of Respondent certifies that he or she is fully authorized to execute and enter into the terms and conditions of this Consent Agreement and has the legal capacity to bind the party he or she represents to this Consent Agreement.

100. By signing this Consent Agreement, both parties agree that each party's obligations under this Consent Agreement and attached Final Order constitute sufficient consideration for the other party's obligations.

101. Penalties paid pursuant to this Consent Agreement shall not be deductible for purposes of federal taxes.

102. By signing this Consent 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.

103. Each party to this action shall bear its own costs and attorney's fees.

104. This Consent 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 respect to the subject matter hereof.

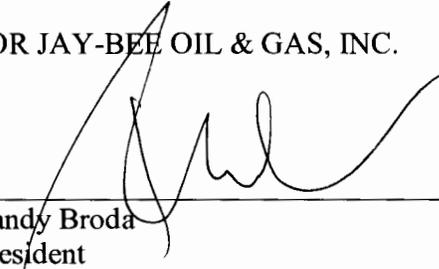
105. Nothing in this Consent Agreement shall relieve Respondent of the duty to comply with all applicable provisions of the CAA, EPCRA and other federal, state, or local laws or statutes, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

106. Nothing herein shall be construed to limit the power of 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.

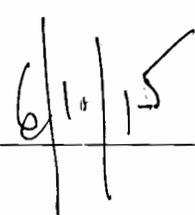
In re: Jay-Bee Oil & Gas, Inc.

CAA-03-2015-0110
EPCRA-03-2015-0110

FOR JAY-BEE OIL & GAS, INC.



Randy Broda
President

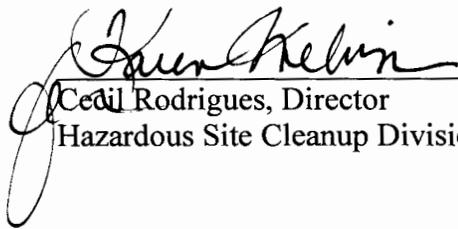


Date

In re: Jay-Bee Oil & Gas, Inc.

CAA-03-2015-0110
EPCRA-03-2015-0110

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY



Cecil Rodrigues, Director
Hazardous Site Cleanup Division

JUN 22 2015

Date

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

In the Matter of:)
) EPA Docket Nos.: CAA-03-2015-0110
Jay-Bee Oil & Gas, Inc.) EPCRA-03-2015-0110
3570 Shields Hill Road)
Cairo, West Virginia 26337,)
Respondent.)
) Proceedings Pursuant to Sections 112(r) and
) 113 of the Clean Air Act, 42 U.S.C.
) §§ 7412(r), 7413, and Sections 311, 312
) and 325 of the Emergency Planning and
) Community Right-to-Know Act, 42 U.S.C.
) §§ 11021, 11022, 11045, and 40 C.F.R.
) § 22.13(b) and 22.18(b)
Jay-Bee Oil & Gas Lisby Pad (T1-03))
Big Run Road)
Alma, West Virginia 26320)
Lat: 39.44856)
Long: -80.801786,)
)
Jay-Bee Oil & Gas RPT5 Pad)
Big Run Road)
Alma, West Virginia 26320)
Lat: 39.476494)
Long: -80.792727,)
)
Jay-Bee Oil & Gas RPT8 Pad)
Big Run Road)
Alma, West Virginia 26320)
Lat: 39.483171)
Long: -80.786055,)
)
Jay-Bee Oil & Gas Gorby Pad)
Big Run Road)
Alma, West Virginia 26320)
Lat: 39.461048)
Long: -80.793685,)
)
Facilities.)
)
_____)

FINAL ORDER

Complainant, the Director of the Hazardous Site Cleanup Division, U.S. Environmental Protection Agency, Region III, and Respondent, JayBee Oil & Gas, Inc., have executed a

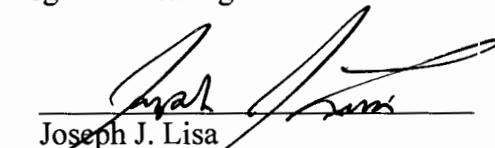
document entitled "Consent Agreement," which I hereby ratify as a Consent Agreement in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits," ("Consolidated Rules of Practice"), 40 C.F.R. Part 22, with specific references to Sections 22.1(a)(2) and (8), 22.13(b) and 22.18(b)(2) and (3). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.

Based on the representations of the parties in the attached Consent Agreement, the penalty agreed to herein is consistent with 40 C.F.R. Part 19, and is based upon consideration of, *inter alia*, the statutory factors set forth in Section 113(e) of the Clean Air Act ("CAA"), 42 U.S.C. § 7413(e), EPA's *Combined Enforcement Policy for Clean Air Act Sections 112(r)(1), 112(r)(7), and 40 C.F.R. Part 68* (June 2012), the penalty authority set forth in Section 325(c) of the Emergency Planning and Community Right-to-Know Act ("EPCRA"), 42 U.S.C. § 11045(c), and the penalty factors set forth in EPA's *Enforcement Response Policy for Sections 304, 311 and 312 of the Emergency Planning and Community Right-to-Know Act and Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act* (September 30, 1999).

NOW, THEREFORE, PURSUANT TO Section 113(d) of the CAA, 42 U.S.C. § 7413(d), Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), and the Consolidated Rules of Practice, IT IS HEREBY ORDERED that Respondent pay a civil penalty of FIFTY-EIGHT THOUSAND TWO HUNDRED FORTY-SIX DOLLARS AND FIFTY CENTS (\$58,246.50), plus any applicable interest, and comply with the terms and conditions of the Consent Agreement.

The effective date of the foregoing Consent Agreement and this Final Order, signed by the Regional Administrator of U.S. EPA Region III or the Regional Judicial Officer, is the date on which this Final Order is filed with the Regional Hearing Clerk.

Date: 6-30-15



Joseph J. Lisa
Regional Judicial Officer
U.S. EPA, Region III