

Eureka Terminal St. Marys, WV Docket No. CWA-03-2018-0100

U.S. EPA-REGION 3-RHC
FILED-25JUL2018AM7:42

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 ARCH STREET
PHILADELPHIA, PA 19103-2029

EXPEDITED PENALTY ACTION
AND CONSENT AGREEMENT
DOCKET NO. CWA-03-2018-0100

RESPONDENT
West Virginia Oil Gathering, LLC
2017 SR 821, Building 21A
Marietta, OH 45750

FACILITY
Eureka Terminal
157 Lower Eureka Lane
St. Marys, WV 26170

On August 30, 2017, an authorized representative of the United States Environmental Protection Agency (EPA) conducted an inspection of Respondent's facility known as Eureka Terminal at 157 Lower Eureka Lane in St. Marys, WV to determine compliance with the Oil Pollution Prevention regulations promulgated at 40 CFR Part 112 under Section 311(j) of the Clean Water Act, as amended, (33 U.S.C. §1321(j)), (the "Act" or "CWA"). The EPA representative found that Respondent had violated the regulations by failing to comply with the specific regulatory requirements noted on the attached OIL POLLUTION PREVENTION INSPECTION FINDINGS, ALLEGED VIOLATIONS AND PROPOSED PENALTY FORM (the "Form"), which is hereby incorporated by reference.

The parties enter into this Expedited Penalty Action and Consent Agreement ("Consent Agreement") to settle the civil violations set forth above for a penalty of **\$1,100**. This Consent Agreement commences and concludes this action pursuant to Sections 22.13(b), and 22.18(b)(2), and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 CFR §§ 22.13(b), and 22.18(b)(2), and (3). This Consent Agreement is being entered into by the United States Environmental Protection Agency, Region III ("EPA"), by its duly delegated official, the Director, Hazardous Site Cleanup Division, and by Respondent pursuant to Section 311(b)(6)(B)(i) of the Act, 33 U.S.C. §1321(b)(6)(B)(i), and by 40 CFR § 22.13(b).

The settlement is subject to the following terms and conditions.

EPA hereby finds the Respondent is subject to the Oil Pollution Prevention regulations and has violated the regulations as further described in the Form.

The Respondent consents to the assessment of the penalty stated above. The settlement amount was based upon Complainant's consideration of a number of factors, including, but not limited to, the seriousness of the violations and the other factors provided in CWA Section 1321(b)(8) and EPA's Civil Penalty Policy for CWA Sections 311(b)(3) and 311(j) dated August 1998. Respondent certifies, subject to civil and criminal penalties for making a false statement to the United States Government, that the violations set forth in the Oil Pollution Prevention Inspection Findings, Alleged Violations and Proposed Penalty Form have been corrected. The Respondent agrees that it shall, within 15 calendar days of receipt of an executed copy of this Consent Agreement, make payment of **\$1,100** in one of four forms: 1) electronic funds transfer ("EFT"), 2) Automated Clearinghouse, 3) Pay.Gov, or 4) a cashier's check or certified check payable to the "Environmental Protection Agency", with the Docket Number, located at the top right-hand corner of the Expedited Penalty Action, and "Oil Spill Liability Trust Fund - 311" referenced on the check.

1) Payment of the penalty amount by EFT to:

Federal Reserve Bank of New York
ABA 021030004
Account 68010727
SWIFT address FRNYUS33
33 Liberty Street
New York, NY 10045
Beneficiary: Environmental Protection Agency

2) Payment of the penalty amount by Automated Clearinghouse (ACH) to EPA can be made through the U.S. Treasury using the following information:

U.S. Treasury REX/Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22- Checking

Physical Location of the U.S. Treasury Facility:

5700 Rivertech Court
Riverdale, MD 20737

Eureka Terminal St. Marys, WV Docket No. CWA-03-2018-0100

3) Payments made through Pay.gov:

- a) Payers can use their credit or debit cards (Visa, MasterCard, American Express & Discover) as well as checking account information to make payments. Follow these steps to make a payment:
 - i. You **DO NOT** need a user name and password or account.
 - ii. Enter **SFO 1.1** in the form search box on the top left side of the screen.
 - iii. Open the form and follow the on-screen instructions
 - iv. Select your type of payment from the "Type of Payment" drop down menu.
 - v. Based on your selection, the corresponding line will open and no longer be shaded grey.
 - vi. Enter the docket number, invoice number, or other corresponding information into the field.

4) Payment of the penalty amount by regular US Postal Service shall be sent via certified mail to:

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

Payment of the penalty amount by overnight mail (FedEx or other non-US Postal Service express mail) shall be sent to:

U.S. Bank
 1005 Convention Plaza
 Mail Station SL-MO-C2GL
 St. Louis, MO 63101

Within 24 hours of payment, the Respondent shall also send proof of payment to:

Rachel Simkins, SPCC/FRP Inspector
 U.S. Environmental Protection Agency, Region III
 Oil & Prevention Branch (3HS61)
 1650 Arch Street
 Philadelphia, PA 19103-2029

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 No. CWA-03-2018-0100.

The payment made pursuant to this Consent Agreement is a penalty within the meaning of Section 162(f) of the Internal Revenue Code, 26 U.S.C. §162(f), and, therefore, Respondent shall not claim it as a tax deductible expenditure for purposes of federal, state or local law.

This Consent Agreement and the accompanying Final Order resolve only the civil penalty claims for the specific violations alleged in this Consent Agreement. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. Nor shall anything in this Consent Agreement and the accompanying Final Order be construed to limit the United States authority to pursue criminal sanctions. In addition this settlement is subject to all limitations on the scope of resolution and the reservation of rights set forth in 40 C.F.R. § 22.18(c). Further, Complainant reserves any rights and remedies available to it under the CWA, the regulations promulgated thereunder, and any other federal laws or regulations for which Complainant has jurisdiction, to enforce the provisions of this Consent Agreement and accompanying Final Order following its filing with the Regional Hearing Clerk. The Final Order does not constitute a waiver, suspension or modification of the requirements of Section 311 of the CWA, 33 U.S.C. § 1321, or any regulations promulgated thereunder, and does not affect the right of the Administrator or the United States to pursue any applicable injunctive or other equitable relief or criminal sanctions for any violation of law.

Respondent neither admits nor denies the allegations set forth in the Form, but agrees that jurisdiction has been established for this Consent Agreement. Also, upon EPA's final approval of the Consent Agreement, Respondent expressly waives its right to contest the allegations, to a hearing under Section 311(b)(6)(B)(i) of the Act, 33 U.S.C. §1321(b)(6)(B)(i), and to appeal this Order under Section 311(b)(6)(G)(i) of the Act, 33 U.S.C. §1321(b)(6)(G)(i). Moreover, in entering into this Consent Agreement, the Respondent agrees to bear its own costs and attorney's fees related to this Consent Agreement.

If Respondent does not sign and return this Consent Agreement as presented within 30 days of the date of its receipt, the proposed Consent Agreement is withdrawn without prejudice to EPA's ability to file any other enforcement action for the violations identified in the Form.

Eureka Terminal St. Marys, WV Docket No. CWA-03-2018-0100

ACCEPT THE PROPOSED PENALTY

I/we consent to the proposed penalty.

DECLINE THE PROPOSED PENALTY

I/we decline the proposed penalty. If you choose to decline this proposed penalty, you may be subject to formal enforcement action and, in that event, will have an opportunity to a hearing related to any subsequent penalty assessment.

COST OF COMPLIANCE

Respondent certifies that it has expended \$ 5717.07 to correct the alleged violations and to come into compliance.

EFFECTIVE DATE

This Consent Agreement will be effective upon filing.

The undersigned representative of Respondent certifies that he or she is fully authorized by Respondent to execute this Consent Agreement and to legally bind the party whom he or she represents thereto.

Respondent

Signature  Date 6-4-18

Name and Title (print): Steve Bernatison Director operations

Eureka Terminal St. Marys, WV Docket No. CWA-03-2018-0100

SIGNATURE BY COMPLAINANT:

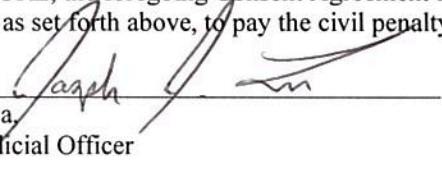
U.S. EPA-REGION 3-RHC
FILED-25JUL2018AM7:42


Date JUL 23 2018
Karen Melvin, Director
Hazardous Site Cleanup Division

FINAL ORDER

Pursuant to Section 311(b)(6) of the CWA, 33 U.S.C. §1321(b)(6), and in accordance with the Consolidated Rules of Practice, 40 CFR Part 22, and having relied upon the representations of the parties set forth in the Consent Agreement, I have determined that the penalty assessed herein is based on a consideration of the factors set forth in CWA Section 1321(b)(8) and EPA's Civil Penalty Policy for CWA Sections 311(b)(3) and 311(j) dated August 1998.

THEREFORE, the foregoing Consent Agreement is hereby approved and incorporated by reference into the Final Order. The Respondent is ORDERED, as set forth above, to pay the civil penalty.


Joseph J. Lisa,
Regional Judicial Officer

July 24, 2018
Date

**Spill Prevention Control and Countermeasure Inspection
Findings, Alleged Violations, and Proposed Penalty Form**

(Note: Do not use this form for an FRP-regulated facility, a farm, or if secondary containment is absent)

These Findings, Alleged Violations and Penalties are issued by EPA Region __ under the authority vested in the Administrator of EPA by Section 311(b)(6)(B)(I) of the Clean Water Act, as amended by the Oil Pollution Act of 1990.

Company Name: West Virginia Oil Gathering, LLC		Docket Number: CWA-03-2018-0100	
Facility Name: Eureka Terminal		Date: August 30, 2017	
Address: 157 Lower Eureka Lane		Inspection Number: SPCC-WV-2017-00023	
City: St. Marys		Inspector Name: Rachel Simkins	
State: WV	Zip Code: 26170	EPA Approving Official: Karen Melvin	
Contact: Robert Douglas		Enforcement Contact: Rachel Simkins	



**Summary of Findings
(Bulk Storage Facilities)**

GENERAL TOPICS: §112.3(a), (d), (e); §112.5(a), (b), (c); §112.7 (a), (b), (c), (d)
(When the SPCC Plan review penalty exceeds \$1,500.00 enter only the maximum allowable of \$1,500.00.)

- No Spill Prevention Control and Countermeasure Plan - 112.3\$1,500.00
- Plan not certified by a professional engineer - 112.3(d)..... 450.00
- Certification lacks one or more required elements - 112.3(d)(1)..... 100.00
- Plan not maintained on site (if manned at least four (4) hrs/day) or not available for review - 112.3(e)(1).....300.00
- No plan amendment(s) if the facility has had a change in: design, construction, operation, or maintenance which affects the facility's discharge potential - 112.5(a)..... 75.00
- No evidence of five-year review of plan by owner/operator - 112.5(b)..... 75.00
- Amendment(s) not certified by a professional engineer - 112.5(c)..... 150.00
- No management approval of plan - 112.7.....450.00
- Plan does not follow sequence of the rule and/or cross-reference not provided - 112.7.....150.00
- Plan does not discuss additional procedures/methods/equipment not yet fully operational - 112.7.....75.00
- Plan does not discuss conformance with SPCC requirement - 112.7(a)(1)75.00
- Plan does not discuss alternative environmental protection to SPCC requirements - 112.7(a)(2).....200.00

<input checked="" type="checkbox"/>	Plan has inadequate or no facility diagram, - 112.7(a)(3)	75.00
<input checked="" type="checkbox"/>	Inadequate or no listing of type of oil and storage capacity of containers - 112.7(a)(3)(i).....	50.00
<input type="checkbox"/>	Inadequate or no discharge prevention measures - 112.7(a)(3)(ii).....	50.00
<input type="checkbox"/>	Inadequate or no description of drainage controls - 112.7(a)(3)(iii).....	50.00
<input type="checkbox"/>	Inadequate or no description of countermeasures for discharge discovery, response and cleanup - 112.7(a)(3)(iv).....	50.00
<input type="checkbox"/>	Methods of disposal of recovered materials not in accordance with legal requirements - 112.7(a)(3)(v).....	50.00
<input type="checkbox"/>	No contact list & phone numbers for response & reporting discharges - 112.7(a)(3)(vi).....	50.00
<input type="checkbox"/>	Plan has inadequate or no information and procedures for reporting a discharge - 2.7(a)(4).....	100.00
<input type="checkbox"/>	Plan has inadequate or no description and procedures to use when a discharge may occur - 112.7(a)(5).....	150.00
<input type="checkbox"/>	Inadequate or no prediction of equipment failure which could result in discharges - 112.7(b).....	150.00
<input type="checkbox"/>	Plan does not discuss and facility does not implement appropriate containment/diversionary structures/equipment - 112.7(c).....	400.00
<input type="checkbox"/>	Inadequate containment or drainage for Loading Area - 112.7(c)	400.00
<input type="checkbox"/>	Plan has no or inadequate discussion of any applicable more stringent State rules, regulations, and guidelines -112.7(j)	75.00
<input type="checkbox"/>	Plan does not include a signed copy of the Certification of the Applicability of the Substantial Harm Criteria per 40 CFR Part 112.20(e)	150.00

- If claiming impracticability of appropriate containment/diversionary structures:

<input type="checkbox"/>	Impracticability has not been clearly denoted and demonstrated in plan - 112.7(d).....	100.00
<input type="checkbox"/>	No periodic integrity and leak testing - 112.7(d).....	150.00
<input type="checkbox"/>	No contingency plan - 112.7(d)(1).....	150.00
<input type="checkbox"/>	No written commitment of manpower, equipment, and materials - 112.7(d)(2).....	150.00
<input type="checkbox"/>	Plan has no or inadequate discussion of general requirements not already specified - 112.7(j).....	75.00

QUALIFIED FACILITY REQUIREMENTS: §112.6

<input type="checkbox"/>	Qualified Facility: No Self certification - 112.6(a).....	450.00
<input type="checkbox"/>	Qualified Facility: Self certification lacks required elements - 112.6(a) or (b)	100.00
<input type="checkbox"/>	Qualified Facility: Technical amendments not certified - 112.6(a) or (b).....	150.00
<input type="checkbox"/>	Qualified Facility: Qualified Facility Plan includes alternative measures not certified by licensed Professional Engineer - 112.6(b).....	150.00

- Facility: Environmental Equivalence or Impracticability not certified by licensed Professional Engineer - 112.6(b)(4).....350.00

WRITTEN PROCEDURES AND INSPECTION RECORDS: §112.7(e)

- Plan does not include inspections and test procedures in accordance with 40 CFR Part 112 - 112.7(e)..... 75.00
- Inspections and tests required are not in accordance with written procedures developed for the facility.- 112.7(e)75.00
- No Inspection records were available for review - 112.7(e)..... 200.00
 - Written procedures and/or a record of inspections and/or customary business records:
- Are not signed by appropriate supervisor or inspector- 112.7(e)..... 75.00
- Are not maintained for three years - 112.7(e)..... 75.00

PERSONNEL TRAINING AND DISCHARGE PREVENTION PROCEDURES: §112.7(f)

- No training on the operation and maintenance of equipment to prevent discharges and for facility operations - 112.7(f)(1)..... 75.00
- No training on discharge procedure protocols - 112.7(f)(1)..... 75.00
- No training on the applicable pollution control laws, rules, and regulations and/or SPCC plan - 112.7(f)(1).... 75.00
- No designated person accountable for spill prevention - 112.7(f)(2)..... 75.00
- Spill prevention briefings are not scheduled and conducted at least once a year - 112.7(f)(3)..... 75.00
- Plan has inadequate or no discussion of personnel training and spill prevention procedures - 112.7(a)(1)..... 75.00

SECURITY (excluding Production Facilities): §112.7(g)

- Plan does not describe how the facility secures and controls access to the oil handling, processing and storage areas - 112.7(g)..... 150.00
- Master flow and drain valves not secured - 112.7(g)..... 300.00
- Starter controls on oil pumps not secured to prevent unauthorized access - 112.7(g)..... 75.00
- Out-of-service and loading/unloading connections of oil pipelines not adequately secured - 112.7(g)..... 75.00
- Plan does not address the appropriateness of security lighting to both prevent acts of vandalism and assist in the discovery of oil discharges - 112.7(g) 150.00

FACILITY TANK CAR AND TANK TRUCK LOADING/UNLOADING RACK: §112.7(h)

- Inadequate secondary containment, and/or rack drainage does not flow to catchment basin, treatment system, or quick drainage system - 112.7(h)(1).....750.00
- Containment system does not hold at least the maximum capacity of the largest single compartment of any tank car or tank truck - 112.7(h)(1).....450.00
- There are no interlocked warning lights, or physical barrier system, or warning signs, or vehicle brake interlock system to prevent vehicular departure before complete disconnect from transfer lines - 112.7(h)(2)300.00
- There is no inspection of lowermost drains and all outlets prior to filling and departure of any tank car or tank truck - 112.7(h)(3)..... 150.00
- Plan has inadequate or no discussion of facility tank car and tank truck loading/unloading rack-112.7(a)(1) 75.00

QUALIFIED OIL OPERATIONAL EQUIPMENT: §112.7(k)

- Failure to establish and document procedures for inspections or a monitoring program to detect equipment failure and/or a discharge - 112.7(k)(2)(i).....150.00
- Failure to provide an oil spill contingency plan - 112.7(k)(2)(ii)(A)..... 150.00
- No written commitment of manpower, equipment, and materials - 112.7(k)(2)(ii)(B)..... 150.00

FACILITY DRAINAGE: §112.8(b) & (c) and/or §112.12(b) & (c)

- Two “lift” pumps are not provided for more than one treatment unit - 112.8(b)(5).....50.00
- Secondary Containment circumvented due to containment bypass valves left open and/or pumps and ejectors not manually activated to prevent a discharge - 112.8(b)(1)&(2) and 112.8(c)(3)(i)..... 600.00
- Dike water is not inspected prior to discharge and/or valves not open & resealed under responsible supervision - 112.8(c)(3)(ii)&(iii).....450.00
- Adequate records (or NPDES permit records) of drainage from diked areas not maintained - 112.8(c)(3)(iv)..75.00
- Drainage from undiked areas do not flow into catchment basins ponds, or lagoons, or no diversion systems to retain or return a discharge to the facility - 112.8(b)(3)&(4)..... 450.00
- Plan has inadequate or no discussion of facility drainage - 112.7(a)(1) 75.00

BULK STORAGE CONTAINERS: § 112.7(i), §112.8(c) and/or §112.12(c)

- Failure to conduct evaluation of field-constructed aboveground containers for risk of discharge or failure due to brittle fracture or other catastrophe - 112.7(i).....300.00
- Material and construction of containers not compatible with the oil stored and the conditions of storage such as pressure and temperature - 112.8(c)(1).....450.00
- Secondary containment capacity is inadequate - 112.8(c)(2).....750.00

- Secondary containment systems are not sufficiently impervious to contain oil - 112.8(c)(2)..... 375.00
- Completely buried metallic tanks are not protected from corrosion or are not subjected to regular pressure testing - 112.8(c)(4)..... 150.00
- Buried sections of partially buried metallic tanks are not protected from corrosion - 112.8(c)(5)..... 150.00
- Above ground containers are not subject to periodic integrity testing techniques such as visual inspections, hydrostatic testing, or other nondestructive testing methods - 112.8(c)(6).....450.00
- Above ground tanks are not subject to visual inspections - 112.8(c)(6)..... 450.00
- Records of inspections (or customary business records) do not include inspections of container supports/foundation, signs of container deterioration, discharges and/or accumulations of oil inside diked areas - 112.8(c)(6)..... 75.00
- Steam return /exhaust of internal heating coils that discharge into an open water course are not monitored, passed through a settling tank, skimmer, or other separation system - 112.8(c)(7)..... 150.00
- Container installations are not engineered or updated in accordance with good engineering practice because none of the following are present - 112.8(c)(8).....450.00
 - high liquid level alarm with audible or visual signal, or audible air vent - 112.8(c)(8)(i)
 - high liquid level pump cutoff devices set to stop flow at a predetermined level - 112.8(c)(8)(ii)
 - direct audible or code signal communication between container gauger and pumping station - 112.8(c)(8)(iii)
 - fast response system for determining liquid level of each bulk storage container, or direct vision gauges with a person present to monitor gauges and the overall filling of bulk storage containers - 112.8(c)(8)(iv)
- No testing of liquid level sensing devices to ensure proper operation - 112.8(c)(8)(v)..... 75.00
- Effluent treatment facilities not observed frequently to detect possible system upsets that could cause a discharge as described in §112.1(b) - 112.8(c)(9)..... 150.00
- Causes of leaks resulting in accumulations of oil in diked areas are not promptly corrected - 112.8(c)(10)450.00
- Mobile or portable storage containers are not positioned or located to prevent discharged oil from reaching navigable water, or have inadequate secondary containment - 112.8(c)(11).....150.00
- Secondary containment inadequate for mobile or portable storage tanks - 112.8(c)(11).....500.00
- Plan has inadequate or no discussion of bulk storage tanks - 112.7(a)(1)75.00

FACILITY TRANSFER OPERATIONS, PUMPING, AND FACILITY PROCESS: §112.8(d) and §112.12(d)

- Buried piping is not corrosion protected with protective wrapping, coating, or cathodic protection - 112.8(d)(1)..... 150.00
- Corrective action is not taken on exposed sections of buried piping when deterioration is found - 112.8(d)(1).....450.00

- Not-in-service or standby piping is not capped or blank-flanged and marked as to origin - *112.8(d)(2)*.....75.00
- Pipe supports are not properly designed to minimize abrasion and corrosion, and allow for expansion and contraction - *112.8(d)(3)*.....75.00
- Above ground valves, piping and appurtenances are not inspected regularly- *112.8(d)(4)*300.00
- Periodic integrity and leak testing of buried piping is not conducted at time of installation, modification, construction, relocation, or replacement - *112.8(d)(4)*.....150.00
- Vehicle traffic is not warned of aboveground piping or other oil transfer operations - *112.8(d)(5)*.....150.00
- Plan has inadequate or no discussion of facility transfer operations, pumping, and facility process - *112.7(a)(1)*75.00

TOTAL \$1,100



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

Expedited Settlement Agreement

In the Matter of: West Virginia Oil Gathering, LLC, 2017 SR 821, Marietta, OH, 45750
Proceedings under Section 311 of the Clean Water Act, 33 U.S.C. § 1321

EPA Docket No.: CWA-03-2018-0100

CERTIFICATE OF SERVICE

I certify that on JUL 25 2018, the original and one (1) copy of foregoing **Consent Agreement and Final Order**, were filed with the EPA Region III Regional Hearing Clerk. I further certify that on the date set forth below, I served a true and correct copy of the foregoing to each of the following persons, in the manner specified below, at the following addresses:

Copy served via **Certified Mail, Return Receipt Requested, Postage Prepaid**, to:

Steve Cornelison, Director of Operations
West Virginia Oil Gathering, LLC
2017 SR 821
Building 21A
Marietta, OH 45750

Copy served via **Hand Delivery or Inter-Office Mail** to:

Rachel Simkins, SPCC/FRP Inspector
Hazardous Site Cleanup Division - 3HS61
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

Dated: 7/25/2018

Bevin Esposito
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region III

TRACKING NUMBER(S): 70022410000514050014