

U. S. ENVIRONMENTAL PROTECTION AGENCY 2018 APR -3 AM 9: 28  
REGION 7  
11201 RENNER BOULEVARD  
LENEXA, KANSAS 66219

BEFORE THE ADMINISTRATOR

IN THE MATTER OF )  
)  
) Docket No. CWA-07-2017-0342  
)  
MFA OIL COMPANY )  
)  
Respondent, ) COMPLAINT AND  
) CONSENT AGREEMENT/  
Proceedings under Sections ) FINAL ORDER  
309(g) and 311(b)(6) of the )  
Clean Water Act, )  
33 U.S.C. §§ 1319(g) and 1321(b)(6) )  
\_\_\_\_\_ )

COMPLAINT

Jurisdiction

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 311(b)(6) of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act (CWA), 33 U.S.C. § 1321(b)(6), as amended by the Oil Pollution Act of 1990, and 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), 40 C.F.R. Part 22.
2. Complainant, the U.S. Environmental Protection Agency, Region 7 (EPA) and Respondent, MFA Oil Company, have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).
3. This Complaint and Consent Agreement/Final Order (CAFO) serves as notice that the EPA has reason to believe that Respondent has violated Section 311 of the CWA, 33 U.S.C. § 1321, and regulations promulgated thereunder.

Parties

4. The authority to take action under Section 311(b)(6)(b)(i) of the CWA, 33 U.S.C. § 1321(b)(6)(b)(i), 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 the

authority under Section 311(b)(6) to the Director of the Air and Waste Management Division of EPA, Region 7 (collectively referred to as the "Complainant").

5. Respondent, MFA Oil Company, is and was at all relevant times a corporation under the laws of and authorized to conduct business in the state of Missouri.

6. Respondent is a "person" as defined by Section 311(a)(7) of the CWA, 33 U.S.C. § 1321(a)(7), and 40 C.F.R. § 112.2.

### **Statutory and Regulatory Framework**

7. Section 311(j) of the CWA, 33 U.S.C. § 1321(j), provides for the regulation of onshore facilities to prevent or contain discharges of oil. Section 311(j) of the CWA, 33 U.S.C. § 1321(j), provides in part that the President shall issue regulations "establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil and hazardous substances from vessels and from onshore facilities and offshore facilities, and to contain such discharges."

8. To implement Section 311(j), 33 U.S.C. § 1321(j), the EPA promulgated regulations to prevent oil pollution. These regulations, codified at 40 C.F.R. Part 112, set forth the requirements for the preparation and implementation of a Spill Prevention Control and Countermeasure Plan (SPCC Plan).

9. More specifically, under the authority of Section 311(j) of the CWA, 33 U.S.C. § 1321(j), 40 C.F.R. Part 112 establishes procedures, methods and other requirements to prevent the discharge of oil from non-transportation-related onshore facilities into or upon the navigable waters of the United States.

10. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines "navigable waters," in part, as the "waters of the United States," which are defined at 40 C.F.R. § 112.2, and which include tributaries to waters of the United States.

11. The requirements of 40 C.F.R. Part 112 apply to owners and operators of non-transportation-related onshore facilities engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using or consuming oil or oil products, which due to their location, could reasonably be expected to discharge oil in quantities that may be harmful into or upon the navigable waters of the United States or adjoining shorelines.

12. Further, under 40 C.F.R. Part 112, owners or operators of onshore facilities that have an aboveground storage capacity of more than 1,320 gallons of oil, and due to their location could reasonably be expected to discharge oil in harmful quantities into or upon the navigable waters of the United States or adjoining shorelines, must prepare an SPCC Plan in writing, certified by a licensed Professional Engineer, and in accordance with the requirements of 40 C.F.R. § 112.7.

**EPA's Specific Allegations**

13. Respondent is and was at all times relevant to this action the “owner or operator,” within the meaning of 40 C.F.R. § 112.2 and Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6), of five bulk oil storage facilities (“Facilities”):

- a. The Bulk Plant and Petro Card facility located at 624 Ashcroft Road, Poplar Bluff, Missouri. The facility includes seven aboveground storage tanks with a total oil storage capacity of 107,500 gallons and is located approximately 1,400 feet from the Black River. During the EPA inspection, the inspector learned that the Poplar Bluff facility had recently acquired a tank farm from an adjacent property.
- b. The Bulk Plant and Petro Card facility located at 128 Northwest Highway 50, Warrensburg, Missouri. The facility includes seven aboveground storage tanks and approximately 22 drums with a total oil storage capacity of 72,210 gallons and is located approximately 2,800 feet from Post Oak Creek.
- c. The Bulk Plant and Petro Card facility located at 1200 West 29<sup>th</sup> Street, Higginsville, Missouri. The facility includes four aboveground storage tanks with a total oil storage capacity of 72,855 gallons and is located approximately 800 feet from an unnamed tributary of Tabo Creek.
- d. The Bulk Plant facility located at 13472 East Highway 24, Lexington, Missouri. The facility includes five aboveground storage tanks with a total oil storage capacity of 77,800 gallons and is located approximately 500 feet from the Lick Fork of Tabo Creek.
- e. The Petro Card facility located at South 24<sup>th</sup> Street, Lexington, Missouri. The facility includes three aboveground storage tanks with a total oil storage capacity of 30,660 gallons and is located approximately 3,600 feet from the Lick Fork of Tabo Creek.

14. The Black River, Post Oak Creek, Tabo Creek and their tributaries are “waters of the United States” as defined by 40 C.F.R. § 112.2 and Section 502(7) of the CWA, 33 U.S.C § 1362(7).

15. Respondent’s Facilities are “onshore facilities” within the meaning of 40 C.F.R. § 112.2 and Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10).

16. Respondent’s Facilities are “non-transportation-related facilities” as defined by Appendix A to 40 C.F.R. Part 112, as incorporated by reference within 40 C.F.R. § 112.2.

17. Respondent’s Facilities are non-transportation-related onshore facilities which, due to their locations, could reasonably be expected to discharge oil to a navigable water of the United States in a harmful quantity. Therefore, pursuant to the CWA and 40 C.F.R. § 112.1,

Respondent, as the owner and operator of an SPCC-regulated facilities, is subject to the SPCC regulations.

18. Between May 3, 2016 and May 10, 2016, the EPA performed an inspection of each of the Facilities under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a). The purpose of the Inspection was to evaluate the Facilities' compliance with the CWA, including its SPCC program.

19. During the Inspections, the EPA inspector obtained from Respondent copies of the Facilities' SPCC Plans.

#### **Count 1**

##### **Failure to certify amended SPCC Plan**

20. 40 C.F.R. § 112.5 requires regulated facilities to obtain certification from a Professional Engineer for changes in facility design, construction, operation or maintenance that materially affects its potential for a discharge, including decommissioning containers.

21. A review of records from the Lexington facility during the EPA inspection revealed that Respondent failed to obtain certification from a Professional Engineer when it decommissioned a 560-gallon biodiesel tank in 2013. Thus, Respondent failed to certify the amended SPCC Plan in accordance with 40 C.F.R. § 112.5.

#### **Count 2**

##### **Insufficient Descriptions of Facilities in SPCC Plans**

22. 40 C.F.R. § 112.7(a)(3) requires that an SPCC Plan describe the physical layout of the facility and include a facility diagram, including the location and contents of each fixed oil storage container. The Plan must address: (i) the type of oil in each fixed container and its storage capacity. For mobile or portable containers either provide the type of oil and storage capacity for each container or provide an estimate of the potential number of mobile or portable containers, type of oil, and anticipated storage capacities and (ii) discharge or drainage controls, such as secondary containment around containers, and other structures, equipment, and procedures for the control of a discharge.

23. A review of records from the EPA inspection revealed that:

a. The SPCC Plan for the Poplar Bluff facility did not include:

- i. a full description of five portable aboveground storage tanks;
- ii. an estimate of the number of 55-gallon drums containing product in the warehouse; and
- iii. a description of the recently acquired adjacent tank farm.

- b. The SPCC Plan for the Lexington Bulk Plant facility did not include the removal of the biodiesel tank.

These failures to accurately describe the Facilities are violations of 40 C.F.R. § 112.7(a)(3)(i).

### **Count 3 Inadequate Reporting Procedures in SPCC Plans**

24. 40 C.F.R. § 112.7(a)(4) requires that an SPCC Plan include information and procedures to report a discharge. The Plan must provide information that enables a person to relate information on the exact address or location and phone number of the facility, the date and time of the discharge, the type of material discharged, estimates of the total quantity discharged, estimates of the quantity discharged, the source of the discharge, a description of all affected media, the injuries caused by the discharge, actions being used to stop, remove, and mitigate the effects of the discharge, whether an evacuation may be needed, and the names of individuals and/or organizations who have also been contacted.

25. A review of records from the EPA inspection revealed that the SPCC Plans for the Poplar Bluff, Warrensburg and Higginsville facilities did not include details for spill reporting procedures. These failures to have adequate reporting procedures are violations of 40 C.F.R. § 112.7(a)(4).

### **Count 4 Failure to Maintain Records**

26. 40 C.F.R. § 112.7(e) requires Respondent to maintain records of required inspections and tests for a period of three years.

27. A review of the records at the Lexington Petro Card facility during the EPA inspection revealed that Respondent failed to maintain records of containment drainage logs since May 2015. This failure to maintain records is a violation of 40 C.F.R. § 112.7(e).

### **Count 5 Failure to Describe Appropriate Containment and/or Diversionary Structures**

28. 40 C.F.R. § 112.7(c) requires that Respondent's SPCC Plans describe appropriate containment and/or diversionary structures or equipment to prevent a discharge.

29. A review of the records at the Warrensburg and Lexington Petro Card facilities during the EPA inspections revealed that Respondent failed to describe appropriate containment and/or diversionary structures to prevent a discharge. These failures to describe appropriate containment and/or diversionary structures in Respondent's SPCC Plans are violations of 40 C.F.R. § 112.7(c).

**Count 6**  
**Failure to Meet General SPCC Plan Requirements**

30. 40 C.F.R. § 112.8(a) requires Respondent to meet the general requirements of its SPCC Plan found in 40 C.F.R. § 112.7 and specific discharge and prevention and containment procedures.

31. The EPA inspection revealed that:

- a. Drivers at the Poplar Bluff facility were not trained on discharge prevention procedures, discharge procedure protocols, applicable pollution control laws, rules and regulations, general facility operations, and contents of the SPCC Plan, and that the Poplar Bluff facility failed to retain documentation of employee training and briefing in accordance with its SPCC Plan.
- b. Records indicate that annual training at the Higginsville facility was not conducted since August 2013 as required by its SPCC Plan.

These failures to meet general SPCC Plan requirements are violations of 40 C.F.R. § 112.8(a).

**Count 7**  
**Failure to Restrain Drainage from Diked Storage Areas**

32. 40 C.F.R. § 112.8(b) requires Respondent to restrain drainage from diked storage areas by valves to prevent a discharge into the drainage system or facility effluent treatment system.

33. During the EPA inspection of the Poplar Bluff facility, the inspector identified that the drain valve at the tank farm acquired from Home Oil Company was open. This failure to restrain drainage is a violation of 40 C.F.R. § 112.8(b).

**Count 8**  
**Failure to Follow Integrity Testing Requirements**

34. 40 C.F.R. § 112.8(c)(6) requires Respondent to test or inspect each aboveground container for integrity on a regular schedule and whenever you make material repairs, and to retain records of inspections and tests that are completed under usual and customary business practices.

35. The EPA inspection revealed that the SPCC Plans for all five facilities failed to include adequate integrity testing standards. These failures to include adequate integrity testing standards in Respondent's SPCC Plans are violations of 40 C.F.R. § 112.8(c)(6).

### **Count 9**

#### **Failure to Provide Secondary Containment for Mobile or Portable Containers**

36. 40 C.F.R. § 112.8(c)(11) requires Respondent to provide secondary containment for mobile or portable oil storage containers.

37. The EPA inspection at the Poplar Bluff facility revealed that Respondent failed to position 55-gallon drums located inside the facility's warehouse to prevent a discharge and failed to provide secondary containment for five portable aboveground storage tanks. These failures to provide secondary containment are violations of 40 C.F.R. § 112.8(c)(11).

### **CONSENT AGREEMENT**

38. Respondent and the EPA agree to the terms of this CAFO and Respondent agrees to comply with the terms of the Final Order portion of this CAFO.

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

40. Respondent neither admits nor denies the factual allegations and legal conclusions asserted by the EPA in the Specific Allegations section set forth above.

41. 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 portion of this CAFO.

42. Respondent and Complainant agree to conciliate the matters set forth in this CAFO without the necessity of a formal hearing and agree to bear their own costs and attorney's fees incurred as a result of this action.

43. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this CAFO and to execute and legally bind Respondent to it.

44. 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.

45. This CAFO addresses all civil and administrative claims for the CWA violations alleged above. Complainant reserves the right to take any enforcement action with respect to any other violations of the CWA or any other applicable law.

46. Respondent further certifies by the signing of this CAFO that, to the best of its knowledge, Respondent's Facilities are in compliance with their respective SPCC Plans and all requirements of Section 311 of the CWA, 33 U.S.C. § 1321.

47. The effect of settlement described herein above is conditional upon the accuracy of the Respondent's representations to the EPA, as memorialized in Paragraph 46 above.

48. Respondent agrees that, in settlement of the claims alleged in this CAFO, Respondent shall pay a civil penalty of \$27,000 as set forth in the Penalty section below.

49. Respondent understands that its failure to timely pay any portion of the civil penalty described in the Penalty Section below may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest.

### **Penalty**

50. Respondent agrees to pay a civil penalty of Twenty-Seven Thousand dollars (\$27,000) pursuant to the authority of Section 311 of the CWA, 33 U.S.C. § 1321, to be paid in full no later than 30 days after the effective date of this CAFO.

51. Should the civil penalty not be paid as provided above, 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.

52. The payment of penalties must reference docket number CWA-07-2017-0342 and be remitted to:

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

53. Copies of the checks or verification of another payment method for the penalty payments remitted shall be mailed to:

Chris Muehlberger  
Attorney Advisor  
U.S. Environmental Protection Agency- Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219

and

Regional Hearing Clerk  
U.S. Environmental Protection Agency~ Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219.



54. 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.

#### **Parties Bound**

55. 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.

#### **General Provisions**

56. Notwithstanding any other provision of this CAFO, the EPA reserves the right to enforce the terms of the Final Order portion of this CAFO by initiating a judicial or administrative action pursuant to 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.


57. With respect to matters not addressed in this CAFO and Final Order, the EPA reserves the right to take any enforcement action pursuant to the CWA and its implementing regulations, or any other available legal authority, including without limitation, the right to seek injunctive relief, penalties and damages.

58. This executed Complaint and Consent Agreement and Final Order shall be filed with the Regional Hearing Clerk, U.S. Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219.

59. Respondent and Complainant shall bear their respective costs and attorneys' fees incurred as a result of this action.

**COMPLAINANT**  
**U.S. ENVIRONMENTAL PROTECTION AGENCY**

Date: 3/26/18

  
\_\_\_\_\_  
John Smith  
Deputy Director  
Air and Waste Management Division  
U.S. Environmental Protection Agency - Region 7

Date: 3.26.18

  
\_\_\_\_\_  
Chris Muehlberger  
Office of Regional Counsel

**RESPONDENT**  
**MFA Oil Company**

Date: 1/30/2018

  
\_\_\_\_\_  
Signature

James Greer  
\_\_\_\_\_  
Name

Vice President Supply & Government Affairs  
\_\_\_\_\_  
Title

**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.

*Karina Borrromeo*

\_\_\_\_\_  
Karina Borrromeo

*April 2, 2018*

\_\_\_\_\_  
Date

IN THE MATTER Of  
MFA Oil Company  
Docket No. CWA-07-2017-0342

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Order was sent this day in the following manner to the addressees:

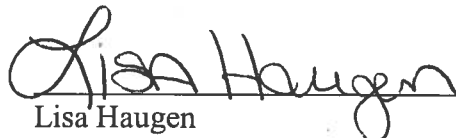
Copy emailed to Attorney for Complainant:

Muehlberger.christopher@epa.gov

Copy by First Class Mail to Respondent:

MFA Oil Company  
Janice Serpico, Registered Agent  
One Ray Young Drive  
Columbia, MO 65201

Dated: April 3, 2018

  
\_\_\_\_\_  
Lisa Haugen  
Hearing Clerk, Region 7