

U. S. ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219

Received by
EPA Region 7
Hearing Clerk

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)	
)	
)	Docket No. CWA-07-2022-0010
)	
JIM SNYDER, INC.)	
)	
Respondent,)	COMPLAINT AND
)	CONSENT AGREEMENT/
Proceedings under Section)	FINAL ORDER
311(b)(6)(B)(i) of the)	
Clean Water Act,)	
33 U.S.C. § 1321(b)(6)(B)(i))	
_____)	

COMPLAINT

Jurisdiction

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 311(b)(6)(B)(i) of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act (CWA), 33 U.S.C. § 1321(b)(6)(B)(i), 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 (the EPA), and Respondent, Jim Snyder, Inc., 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 act 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 Enforcement and Compliance Assurance Division of EPA, Region 7 (collectively referred to as the “Complainant”).

5. Respondent, Jim Snyder, Inc., is and was at all relevant times a corporation under the laws of, and authorized to conduct business in, the state of Kansas.

Statutory and Regulatory Framework

6. Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), prohibits the discharge of oil or hazardous substances into or upon the navigable waters of the United States or adjoining shorelines in such quantities that have been determined may be harmful to the public health or welfare or environment of the United States.

7. Section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1), and 40 C.F.R. § 112.2 define “oil” as “oil of any kind or in any form, including, but not limited to, petroleum [or] fuel oil”

8. Section 311(b)(4) of the CWA, 33 U.S.C. § 1321(b)(4), authorizes the EPA to promulgate a regulation to define what discharges of oil may be harmful to the public health or welfare or environment of the United States. 40 C.F.R. § 110.3 defines such discharges to include discharges of oil that violate applicable water quality standards or cause a film or a sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon the adjoining shorelines.

9. Section 311(j)(1)(C) of the CWA, 33 U.S.C. § 1321(j)(1)(C), 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.”

10. To implement Section 311(j)(1)(C), the EPA promulgated regulations to prevent oil pollution at 40 C.F.R. Part 112 that set forth the requirements for the preparation and implementation of Spill Prevention Control and Countermeasure Plans (SPCC Plans). The requirements of 40 C.F.R. Part 112 apply to owners and operators of non-transportation-related onshore facilities with an aboveground storage capacity of 1,320 gallons or greater, engaged in gathering, storing, transferring, distributing, using, or consuming oil or oil products which, due to their locations, 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.

The EPA’s Specific Allegations

11. 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.

12. At all times relevant to this action, Respondent was the owner and/or 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 Drumm Lease, an oil production facility located at Southeast Wright Road and Southeast 50th Street, Rosalia, Kansas 67132 (the “Facility”).

13. The Facility includes production wells, flowlines, separator units, crude oil tanks, and produced water tanks, and has an estimated aggregate above-ground storage capacity of 34,146 gallons of oil and produced water.

14. Discharges will flow from the Facility to De Haas Creek, which in turn flows to the North Branch Little Walnut River. Both De Haas Creek and the North Branch Little Walnut River are navigable waters of the United States within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7).

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

16. 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.

17. 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.

18. 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 and, therefore, is an SPCC-regulated facility pursuant to Section 311(j)(1)(C) of the Act, Executive Order 12777 and 40 C.F.R. § 112.1.

19. The previous owner of the Facility, Daystar Petroleum, Inc., prepared an SPCC plan for the Facility, which was certified on August 17, 2015 (the “SPCC Plan”).

20. Respondent has made no alterations to the SPCC Plan prepared by Daystar Petroleum, Inc.

21. On April 13, 2021, representatives of the EPA and of the Kansas Corporation Commission (KCC) inspected the Facility to determine its compliance with the SPCC regulations of 40 C.F.R. Part 112 and obtained information about the Facility which was documented in an inspection report. The EPA transmitted a copy of this inspection report to Respondent on June 7, 2021.

Count 1
Unauthorized Discharge

22. Section 311(b) of the CWA, 33 U.S.C. §1321, prohibits the discharge of oil in or onto “navigable waters of the United States.” Pursuant to 40 C.F.R. § 110.3, such discharges include discharges of oil that violate applicable water quality standards or cause a film or a sheen

upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon the adjoining shorelines.

23. During the April 13, 2021, EPA and KCC inspection, the inspectors observed a discharge of approximately 20 gallons of crude oil from a broken flow line that crossed over De Haas Creek.

24. Respondent's discharge of oil from the Facility into De Haas Creek was in a quantity that has been determined may be harmful under 40 C.F.R. § 110.3, which is a violation of Sections 311(b)(3) and (b)(4) of the Act, 33 U.S.C. §§ 1321(b)(3) and (b)(4).

Count 2

Failure to Fully Prepare and Implement an SPCC Plan

25. 40 C.F.R. § 112.3 requires Respondent to fully prepare and implement an SPCC Plan. When implementing the SPCC Plan, Respondent is required to perform routine checks and maintenance on all SPCC regulated facilities to maintain compliance with the CWA.

26. The EPA's inspection documented Respondent's failure to fully prepare and implement an SPCC Plan at the Facility (as required by 40 C.F.R. 112.3), which included the following:

- a. Respondent failed to "complete a review and evaluation of the SPCC Plan at least once every five years" in violation of 40 C.F.R. § 112.5(b);
- b. Respondent's SPCC plan does not "have the full approval of management at a level of authority to commit the necessary resources to fully implement the Plan" in violation of 40 C.F.R. § 112.7;
- c. Respondent failed to keep records of periodic inspections and tests, in violation of 40 C.F.R. § 112.7(e);
- d. Respondent failed to "train [its] oil-handling personnel in the 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" and to conduct annual discharge prevention briefings for oil-handling personnel at least annually in violation of 40 C.F.R. §§ 112.7(f)(1) and (f)(3);
- e. Respondent failed to list all the most likely scenarios of a reasonable potential for equipment failure, such as discharges from wellheads, breakout tanks, flowlines, or intra-facility gathering lines, and for discharges from transfers, and failed to provide a prediction of the direction, rate of flow, and total quantity of oil, in violation of 40 C.F.R. § 112.7(b);

f. Respondent failed to provide “appropriate containment and/or diversionary structures or equipment to prevent a discharge as described in 40 C.F.R. § 112.1(b),” and/or “to address the typical failure mode, and the most likely quantity of oil that would be discharged” in that typical failure, in violation of 40 C.F.R. § 112.7(c);

g. Respondent failed to maintain the earthen berm used for secondary containment, so failed to have adequate secondary containment in violation of 40 C.F.R. § 112.9(c)(2); and

h. Respondent failed to implement a written program of flowline maintenance, in violation of 40 C.F.R. § 112.9(d)(4), that addresses procedures to ensure compatibility, visually inspect and test flowlines and any associated appurtenances on a periodic and regular schedule, take corrective action based on regularly scheduled inspections, tests, or evidence of discharge, and promptly remediate any accumulations of oil discharges.

27. Respondent’s failure to fully prepare and implement an SPCC Plan is a violation of 40 C.F.R. § 112.7 and 40 C.F.R. § 112.3.

CONSENT AGREEMENT

28. 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.

29. 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.

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

31. 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.

32. Respondent and Complainant agree to resolve 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.

33. 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.

34. 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.

35. 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.

36. Respondent and the EPA agree that, although a civil penalty in settlement of the claims alleged in this CAFO is appropriate, Respondent has demonstrated an inability to pay a penalty and so shall pay a civil penalty of \$0.

37. Respondent consents to receiving the filed CAFO electronically at the following address: *jsnyder8800@yahoo.com*.

38. Respondent certifies by the signing of this CAFO that it is in compliance with all requirements of Section 311 of the CWA.

39. The effect of settlement is conditional upon the accuracy of the Respondent's representations to the EPA, as memorialized in paragraph 38 above, of this CAFO.

Penalty

40. Respondent substantiated a claim of adverse economic impact and the EPA agrees that Respondent is unable to pay a civil penalty, so pursuant to the authority of Section 311(b)(8) of the CWA, 33 U.S.C. § 1321(b)(8), Respondent shall pay a civil penalty of zero dollars (\$0).

Parties Bound

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.

General Provisions

42. 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.

43. 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.

44. 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.

45. 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: _____

Wendy Lubbe
Acting Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency Region 7

Date: _____

Natasha Goss
Office of Regional Counsel

RESPONDENT
Jim Snyder, Inc.

Date: 2-10-22

Linda Snyder
Signature

Linda Snyder
Name

Manager
Title

FINAL ORDER

Pursuant to Section 311(b) of the CWA, 33 U.S.C. § 1321(b), 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 Borromeo

Date

CERTIFICATE OF SERVICE

I certify a true and correct copy of this Complaint and Consent Agreement/Final Order was sent this day in the following manner to the addressees:

Copy emailed to Respondent:

Linda Snyder, Registered Agent
Jim Snyder, Inc.
jsnyder8800@yahoo.com

Copy emailed to representatives of the EPA:

Natasha Goss
EPA Region 7 Office of Regional Counsel
goss.natasha@epa.gov

Mark Aaron
EPA Region 7 Enforcement and Compliance Assurance Division
aaron.mark@epa.gov

Date: _____

Signature