



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

2010 SEP 30 AM 11:13

1595 WYNKOOP STREET

DENVER, CO 80202-1129

Phone 800-227-8917

http://www.epa.gov/region08

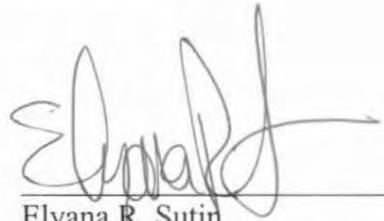
FILED
EPA REGION VIII
HEARING CLERK

DOCKET NO.: CWA-08-2010--0039

IN THE MATTER OF:)	
)	
TELLURIDE RESORT & SPA LLC.)	FINAL ORDER
Telluride, CO)	
)	
RESPONDENT)	

Pursuant to 40 C.F.R. §22.18, of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order. The Respondent is hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondent of this Consent Agreement and Final Order.

SO ORDERED THIS 30th DAY OF September, 2010.



Elyana R. Sutin
Regional Judicial Officer

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

Docket No.: CWA-08-2010-0039

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FILED
EPA REGION VIII
HEARING CLERK

IN THE MATTER OF)

Telluride Resort & Spa, LLC)
Telluride, CO)
Respondent)

**COMPLAINT AND
CONSENT AGREEMENT**

(Proceeding to Assess Class I
Civil Penalty Under §§ 309 and 311
of the Clean Water Act)

_____)
The United States Environmental Protection Agency, Region 8 (EPA or
Complainant), and Telluride Resort & Spa, LLC (Respondent) by its undersigned representatives,
hereby consent and agree as follows:

A. **PRELIMINARY MATTERS**

1. This Complaint and Consent Agreement (CCA) is issued to Respondent for violating §§ 301(a) and 311(b)(3) of the Clean Water Act (CWA or the Act), 33 U.S.C. §§ 1311(a) and 1321(b)(3).
2. The undersigned EPA, Region 8 officials have been properly delegated the authority to issue this CCA under the authority vested in the Administrator of EPA by §§ 309(g)(2)(A) and 311(b)(6)(B)(i) of the Act, 33 U.S.C. §§ 1319(g)(2)(A) and 1321(b)(6)(B)(i) to bring an action for civil administrative penalties against a respondent who has violated, or is in violation of, a requirement or prohibition of the CWA or its implementing regulations.
3. This proceeding is governed by the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules) set forth at 40 C.F.R. Part 22.

IN THE MATTER OF TELLURIDE RESORT AND SPA, LLC
Combined Complaint and Consent Agreement

4. This CCA is entered into by the parties for the purpose of simultaneously commencing and concluding this matter, as authorized by 40 C.F.R. § 22.13(b), and executed pursuant to 40 C.F.R. § 22.18(b)(2) and (3) of the Consolidated Rules.

5. Respondent admits the jurisdictional allegations in this CCA and neither admits nor denies the specific factual allegations contained herein.

6. Respondent waives its rights to a hearing before any tribunal to contest any issue of law or fact set forth in this CCA.

7. Complainant asserts that settlement of this matter is in the public interest, and Complainant and Respondent agree that entry of this CCA and Final Order without further litigation and without adjudication of any issue of fact or law, is the most appropriate means of resolving this matter.

8. This CCA, upon incorporation into the Final Order, applies to and is binding upon EPA and upon Respondent and upon Respondent's officers, directors, agents, successors and assigns. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this agreement.

9. This CCA contains all terms of the settlement agreed to by the parties.

B. ALLEGED VIOLATIONS

1. Diesel Oil Discharge

a. Respondent is a limited liability corporation organized under the laws of the State of Delaware and authorized to do business in the State of Colorado.

IN THE MATTER OF TELLURIDE RESORT AND SPA, LLC
Combined Complaint and Consent Agreement

- b. At all times pertinent to this CCA, Respondent was a "person" within the meaning of § 311(a)(7) of the Act, 33 U.S.C. § 1321(a)(7).
- c. Section 311(b)(3) of the Act prohibits the discharge of oil 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.
- d. For purposes of §§ 311(b)(3) and (b)(4) of the Act, 33 U.S.C. § 1321(b)(3) and (b)(4), discharges of oil into or upon the navigable waters of the United States in such quantities that have been determined may be harmful to the public health or welfare or environment of the United States are defined in 40 C.F.R. § 110.3 to include discharges of oil that (1) violate applicable water quality standards -- OR -- (2) 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.
- e. The Respondent owned and operated a 2000 gallon oil storage tank for the purpose of holding diesel fuel for its emergency generator.
- f. Diesel fuel is an oil within the meaning of "oil" as defined at § 311(a)(1) of the Act, 33 U.S.C. § 1321(a)(1).
- g. At all times pertinent to this CCA, Respondent was an "owner or operator" of an "onshore facility" within the meaning of §§ 311(a)(6) and (10) of the Act, 33 U.S.C. §§ 1321(a)(6) and (10).
- h. On or about April 1, 2008, Respondent discharged diesel totaling approximately 31 barrels (1300 gallons) of oil as defined in § 311(a)(1) of the Act, 33 U.S.C. § 1321(a)(1), and 40 C.F.R.

IN THE MATTER OF TELLURIDE RESORT AND SPA, LLC
Combined Complaint and Consent Agreement

§ 110.1, from its facility into the Town of Mountain Village Storm Sewer; Wetland 73D Site C (wetland mitigation project that was a result of a prior U.S. EPA enforcement action); Hole 18 Pond on a golf course that is also part of aforementioned wetland mitigation project; Gorrano Creek; Prospect Creek. The water bodies and waterways referenced above are tributaries of the San Miguel River.

i. The water bodies and waterways referenced in paragraph B.1.h., above, are “navigable waters” and “waters of the United States” within the meaning of § 502(7) of the Act, 33 U.S.C. § 1362(7) and 40 C.F.R. § 110.1.

j. Respondent's discharge of oil from its facility caused (1) a sheen upon or discoloration of the surface of the water bodies and waterways referenced in paragraph B.1.h., above, and a sludge or emulsion to be deposited beneath those water bodies and waterways and their adjoining shorelines, and, therefore, was in a quantity that has been determined may be harmful under 40 C.F.R § 110.3, which implements §§ 311(b)(3) and (b)(4) of the Act, 33 U.S.C. §§ 1321(b)(3) and (b)(4).

k. Therefore, pursuant to § 311(b)(6)(B)(i) of the Act and 40 C.F.R. § 19, the Respondent is liable for civil penalties of up to \$11,000 per violation, or a maximum of \$32,500.

2. Unauthorized Discharge of Pollutant

a. Respondent is a limited liability corporation organized under the laws of the State of Delaware and authorized to do business in the State of Colorado.

b. At all times pertinent to this CCA, Respondent was a "person" within the meaning of §502(5) of the Act, 33 U.S.C. §1362(5).

IN THE MATTER OF TELLURIDE RESORT AND SPA, LLC
Combined Complaint and Consent Agreement

- c. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits any person from discharging any pollutant to navigable waters.
- d. After the diesel oil spill or release mentioned above, Respondent discharged Microblaze solution, a dispersant, surfactant and bioremediation agent, into Wetland 73D Site C (wetland mitigation project that was a result of a prior U.S. EPA enforcement action); Hole 18 Pond on golf course that is also part of aforementioned wetland mitigation project; Gorrano Creek; and Prospect Creek.
- e. Microblaze is a liquid formulation of several microbiological strains, surfactants, and nutrients.
- f. Microblaze is a “pollutant” as that term is defined in § 502(6) of the CWA, 33 U.S.C. § 1362(6).
- g. No EPA On-Site Coordinator authorized or directed Respondent to use Microblaze at the facility.
- h. On April 10, 2008 and separately on April 22, 2008, Respondent discharged Microblaze from the facility into waters of the United States, without having obtained approval from an EPA On-Site Coordinator. These two discharges of a pollutant without approval constitute two violations.
- i. Any person who violates § 301 of the Act, 33 U.S.C. § 1311, may be assessed a Class I administrative penalty by the EPA, according to § 309(g)(2)(A) of the Act, 33 U.S.C. § 1319(g)(2)(A). As adjusted for inflation pursuant to 40 C.F.R § 19.4, this penalty is up to \$11,000 per violation, with a maximum of \$32,500.

IN THE MATTER OF TELLURIDE RESORT AND SPA, LLC
Combined Complaint and Consent Agreement

C. CIVIL PENALTY FOR DIESEL OIL SPILL

1. As alleged in Section B.1. of this CCA, and pursuant to § 311(b)(6)(B)(i) of the Act, 33 U.S.C. § 1321(b)(6)(B)(i), and 40 C.F.R. § 19.4, the Respondent is liable for civil penalties of up to \$11,000 for each violation, up to a maximum total of \$32,500 for all violations.

2. Based on the foregoing Allegations and pursuant to the authority of § 311(b)(6)(B)(i) of the Act, 33 U.S.C. § 1321(b)(6)(B)(i), and 40 C.F.R. § 19.4, Complainant proposes the assessment of administrative penalties against the Respondent for the diesel oil spill of eleven thousand dollars (\$11,000).

3. Complainant proposes this penalty amount after considering the applicable statutory penalty factors in § 311(b)(8) of the Act, 33 U.S.C. § 1321(b)(8): the seriousness of the violation, the economic benefit to the violator, if any, resulting from the violation, the degree of culpability involved, any other penalty for the same incident, any history of prior violations, the nature, extent, and degree of success of any efforts of the violator to minimize or mitigate the effects of the discharge, the economic impact of the penalty on the violator, and any other matters as justice may require.

4. Respondent consents to the issuance of the Final Order and consents for the purposes of settlement to the payment of the civil penalty of eleven thousand dollars (\$11,000) in the manner described below for the diesel oil spill or release:

a. **Payment is due within thirty (30) calendar days from the date written on the Final Order**, issued by the Regional Judicial Officer (RJO) that adopts this CCA. If the due date falls on a weekend or legal federal holiday, then the due date becomes the next business day. The date the payment is made is considered to be the date processed by the Bank

IN THE MATTER OF TELLURIDE RESORT AND SPA, LLC
Combined Complaint and Consent Agreement

described below. Payments received by 11:00 AM. EDT are processed on the same day, those received after

11:00 AM are processed on the next business day.

b. The payment in paragraph C.4., supra, shall be made by remitting a cashier's or certified check, including the name and docket number of this case, referencing "**Oil Spill Liability Trust Fund-311**," for the amount, **payable to the "Environmental Protection Agency,"** to:

Check Payments:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

Overnight Mail:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101
Contact: Natalie Pearson
314-418-4087

Wire Transfers:

Wire transfers should be directed to the Federal Reserve Bank of New York:

ABA = 021030004
Account = 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"

ACH (also known as REX or remittance express)

Automated Clearinghouse (ACH) for receiving US currency

IN THE MATTER OF TELLURIDE RESORT AND SPA, LLC
Combined Complaint and Consent Agreement

PNC Bank
808 17th Street, NW
Washington, DC 20074
Contact – Jesse White 301-887-6548

ABA = 051036706
Transaction Code 22 - checking
Environmental Protection Agency
Account 310006
CTX Format

On Line Payment:

www.pay.gov
Enter sfo 1.1 in the search field.
Open form and complete required fields.

A copy of the check or record of payment if sent by other means shall be sent

simultaneously to:

Jane Nakad
U.S. EPA
Robert S. Kerr Environmental Research Center
919 Kerr Research Drive
Ada, OK 74820

and

Tina Artemis
Regional Hearing Clerk (8RC)
U.S. EPA Region 8
1595 Wynkoop
Denver, CO 80202-1129

c. Payment of the penalty in this manner does not relieve Respondent of its obligations to comply with the requirements of the Act and the implementing regulations. Payment of the penalty in this manner shall constitute consent by Respondent to the assessment of the proposed penalty and a waiver of Respondent's right to a hearing on this matter.

IN THE MATTER OF TELLURIDE RESORT AND SPA, LLC
Combined Complaint and Consent Agreement

D. CIVIL PENALTY FOR UNAUTHORIZED DISCHARGE OF POLLUTANT

1. As alleged in Section B.2. of this CCA, and pursuant to § 309(g)(2)(A) of the Act, 33 U.S.C. § 1319(g)(2)(A), and 40 C.F.R. § 19.4, the Respondent is liable for civil penalties of up to \$11,000 for each violation, up to a maximum total of \$32,500 for all violations.

2. Based on the foregoing Allegations and pursuant to the authority of § 309(g)(2)(A) of the Act, 33 U.S.C. § 1319(g)(2)(A), and 40 C.F.R. § 19.4, Complainant proposes the assessment of administrative penalties against the Respondent for the two discharges of a pollutant, Microblaze, without authorization, of eight thousand five hundred dollars (\$8,500) for each violation for a civil penalty of seventeen thousand dollars (\$17,000).

3. Complainant proposes this penalty amount after considering the applicable statutory penalty factors in § 309(g)(3) of the Act, 33 U.S.C. § 1319(g)(3): the nature, circumstances, extent and gravity of the violations, and with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violations, and such other matters as justice may require.

4. Respondent consents to the issuance of the Final Order and consents for the purposes of settlement to the payment of the civil penalty of seventeen thousand dollars (\$17,000) for the discharge of dispersant, Microblaze, without authorization, in the manner described below:

a. **Payment is due within 30 calendar days from the date written on the Final Order**, issued by the Regional Judicial Officer adopting this CCA. If the due date for the payment falls on a weekend or legal federal holiday, then the due date is the next business day. Payment must be received by 11:00 AM Eastern Daylight Time to be considered received that day.

IN THE MATTER OF TELLURIDE RESORT AND SPA, LLC
Combined Complaint and Consent Agreement

- b. Payment shall be made by one of the following methods:

Payment by cashier's or certified check:

A cashier's or certified check, including the name and docket number of this case, for this amount, payable to "**Treasurer, United States of America**," to:

Regular Mail:

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

Overnight Mail:

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

Wire Transfer:

Wire transfers should be directed to the Federal Reserve Bank of New York with the following information:

ABA = 021030004
Account = 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"

On Line Payment:

This option is available through the Department of Treasury.

www.pay.gov

Enter sfo 1.1 in the search field

Open form and complete the required fields.

IN THE MATTER OF TELLURIDE RESORT AND SPA, LLC
Combined Complaint and Consent Agreement

c. **A copy of the check or record of payment if sent by other means shall sent simultaneously to:**

Jane Nakad
U.S. EPA
Robert S. Kerr Environmental Research Center
919 Kerr Research Drive
Ada, OK 74820

And

Tina Artemis
Regional Hearing Clerk (8RC)
U.S. EPA Region 8
1595 Wynkoop St.
Denver, CO 80202-1129

d. In the event payment is not received by the specified due date, interest accrues from the date of the final order, not the due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until payment in full is received (i.e., on the first late day, 30 days of interest will have accrued).

e. In addition, a handling charge of Fifteen Dollars (\$15) shall be assessed the 31st day from the due date of any payment, and for each subsequent 30-day period that the debt, or any portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 90 days of the due date. Payments are first applied to outstanding handling charges, 6% penalty interest, and late interest. The remainder is then applied to the outstanding principal amount.

f. Respondent agrees that the penalty shall never be claimed as a federal or other tax deduction or credit.

IN THE MATTER OF TELLURIDE RESORT AND SPA, LLC
Combined Complaint and Consent Agreement

E. TERMS AND CONDITIONS

1. Failure by Respondent to comply with any of the terms of this CCA shall constitute a breach of the CCA and may result in referral of the matter to the Department of Justice for enforcement of this agreement and for such other relief as may be appropriate.
2. Nothing in this CCA shall be construed as a waiver by EPA or any other federal entity of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondent's failure to perform pursuant to the terms of this CCA.
3. Each undersigned representative of the parties to this CCA certifies that he or she is fully authorized by the party represented to bind the parties to the terms and conditions of this CCA and to execute and legally bind that party to this CCA.
4. The parties agree to submit this CCA to the Regional Judicial Officer, with a request that it be incorporated into the Final Order.
5. This CCA, upon incorporation into the Final Order by the RJO, and full satisfaction by the parties shall be a complete, full, and final settlement of the violations alleged in this CCA.

IN THE MATTER OF TELLURIDE RESORT AND SPA, LLC
Combined Complaint and Consent Agreement

6. Each party shall bear its own costs and attorneys fees in connection with all issues associated with this CCA.

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8, Office of Enforcement, Compliance
and Environmental Justice, Complainant.**

Date: 9/30/2010



Philip Strobel, Acting Director
Technical Enforcement Program
Office of Enforcement, Compliance and
Environmental Justice
U.S. EPA, Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

Date: Sept 30, 2010



Michael Risner, Director
David Rochlin, Supervisory Enforcement Attorney
Legal Enforcement Program
Office of Enforcement, Compliance and
Environmental Justice
U.S. EPA, Region 8
1595 Wynkoop Street
Denver, CO 80202-2466

**Telluride Resort and Spa, LLC
Respondent.**

Date: 9/29/10



Authorized Representative for Respondent

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **COMPLAINT, CONSENT AGREEMENT/FINAL ORDER** in the matter of **TELLURIDE RESORT & SPA, LLC.;** **DOCKET NO.: CWA-08-2010-0039** was filed with the Regional Hearing Clerk on September 30, 2010.


Further, the undersigned certifies that a true and correct copy of the documents were delivered to, Marc Weiner, Senior Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt requested on September 30, 2010, to:

Adam M. Meek, Esq.
Brown, Udell, Pomerantz & Delrahim, Ltd.
430 Park Avenue, Suite 3A
Highland Park, IL 60035

E-mailed to:

Elizabeth Whitsel
U. S. Environmental Protection Agency
Cincinnati Finance Center
26 W. Martin Luther King Drive (MS-0002)
Cincinnati, Ohio 45268

September 30, 2010


Tina Artemis
Paralegal/Regional Hearing Clerk

