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U.S. EPA REGION 8
HEARING CLERK

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

IN THE MATTER OF: Otero County, Colorado Respondent	Docket No. CWA-08-2024-0014 CONSENT AGREEMENT
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I. INTRODUCTION

1. This is an administrative penalty assessment proceeding pursuant to sections 22.13(b) and 22.18(b)(2) and (3) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits* (Consolidated Rules of Practice), as codified at 40 C.F.R. part 22.
2. The parties to this proceeding are Otero County, Colorado (Respondent) and the undersigned U.S. Environmental Protection Agency official (Complainant).
3. This matter pertains to the Swink Maintenance Facility at 111 North Swink Dr., Swink, Colorado (the Facility).
4. The parties, having agreed settlement of this action is in the public interest, consent to the entry of this consent agreement (Agreement) without adjudication of any issues of law or fact herein. Respondents agree to comply with the terms of this Agreement.

II. JURISDICTION

5. This Agreement is issued under the authority of section 311(b)(6) of the Clean Water Act (Act), 33 U.S.C. § 1321(b)(6). This is a Class I proceeding, as described in section 311(b)(6)(B)(i) of the Act, 33 U.S.C. § 1321(b)(6)(B)(i).
6. This proceeding is subject to the EPA's Consolidated Rules of Practice, under which this proceeding may be resolved by a final order from EPA Region 8's

Regional Judicial Officer or Regional Administrator ratifying this Agreement. The final order will simultaneously commence and conclude this proceeding. 40 C.F.R. § 22.13(b).

III. GOVERNING LAW

7. The objective of the Act is to restore and maintain the chemical, physical, and biological integrity of the nation's waters. 33 U.S.C. § 1251(a).

A. Spill Prevention Control and Countermeasure Regulations

8. In 1972, Congress directed the President to issue regulations (a) establishing procedures for preventing and containing discharges of oil from onshore facilities and (b) determining those quantities of oil the discharge of which may be harmful to the public health or welfare or the environment of the United States. 33 U.S.C. §§ 1321(j)(1)(C) and 1321(b)(4). The President subsequently delegated to the EPA the authority to issue these regulations.
9. In response to the directive and delegation referenced above, the EPA promulgated 40 C.F.R. part 112, subparts A through C. These regulations are referenced as the "Spill Prevention Control and Countermeasure Regulations" or "SPCC Regulations."
10. The SPCC Regulations apply to owners and operators of non-transportation-related onshore and offshore facilities engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing or consuming oil and oil products, which, due to their location, could reasonably be expected to discharge oil in quantities that may be harmful, as described in 40 C.F.R. § 110.3, into or upon the navigable waters of the United States or adjoining shorelines. 40 C.F.R. § 112.1.
11. Quantities of oil that may be harmful include discharges that: (a) violate applicable water quality standards, (b) cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines, or (c) cause a sludge or emulsion to be deposited beneath the surface of the water or upon the adjoining shorelines. 40 C.F.R. § 110.3.
12. The SPCC Regulations require regulated facilities to prepare and implement plans, known as SPCC Plans, to prevent discharges of oil in harmful quantities

into navigable waters and to adhere to certain practices to prevent and contain oil discharges.

B. Enforcement

13. Any person who fails or refuses to comply with any regulation issued under section 311(j) of the Act, 33 U.S.C. § 1321(j), including the SPCC Regulations and the Facility Response Regulations, may be assessed an administrative civil penalty by the EPA, according to section 311(b)(6)(A)(2) of the Act, 33 U.S.C. § 1321(b)(6)(A)(2). As adjusted for inflation pursuant to 40 C.F.R. part 19, the maximum class I penalty for violations occurring after November 2, 2015, where penalties are assessed on or after December 27, 2023, is \$23,048 per violation, with a maximum of \$57,617. (See section 311(b)(6)(B)(ii) of the Act, 33 U.S.C. § 1321(b)(6)(B)(i), and 88 Fed. Reg. 89309, 89312 (December 27, 2023).)

IV. ALLEGATIONS OF FACT AND LAW

The following allegations apply at all times relevant to this Agreement:

14. Respondent is a “person” for purposes of sections 311(a)(7) and 502(5) of the Act, 33 U.S.C. §§ 1321(a)(7) and 1362(5), and 40 C.F.R. § 112.2.
15. The Facility (see paragraph 3, above) consists of administrative offices and support to maintain and repair heavy construction equipment and vehicles.
16. At the Facility, the Respondents store oil.
17. The Facility has an aboveground oil storage capacity of more than 1,320 gallons.
18. The Facility meets the definition of “facility” in 40 C.F.R. § 112.2.
19. The Facility includes the aboveground oil storage tanks or containers:
- a. outside of the shop building:
 - i. one 5,875-gallon diesel tank with secondary containment;
 - ii. one 5,875-gallon gas tank with secondary containment;
 - iii. eleven five-gallon used oil pails (with tub container); and
 - iv. one 500-gallon used oil tank (with catch tub); and
 - b. inside of the shop building:

- i. three 250-gallon engine motor oil tanks (with catch tubs);
 - ii. thirteen 55-gallon hydraulic oil tanks (with common catch containers);
 - iii. one 55-gallon deicer (with catch container);
 - iv. one 55-gallon cleaning solvent tank (with common catch container); and
 - v. one 55-gallon used oil tank (with catch container).
- 20. The Facility is in the Arkansas River watershed.
- 21. In the event of an uncontained spill from the Facility, oil from either or both of the 5,875-gallon tanks referenced in paragraph 19, above, would flow approximately nine tenths of a mile into the Arkansas River.
- 22. The Arkansas River is a traditionally navigable water.
- 23. The Arkansas River is a “navigable water” as defined in section 502(7) of the Act, 33 U.S.C. § 1362(7).
- 24. Due to its location, the Facility could reasonably be expected to discharge oil and/or other pollutants to the Arkansas River and/or its adjoining shorelines in quantities that would (a) violate applicable water quality standards or (b) cause a film or sheen upon or discoloration of the surface of the navigable waters of the United States or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of such water or adjoining shorelines.
- 25. The Facility is an “onshore facility” as that term is defined in section 311(a)(10) of the Act, 33 U.S.C. § 1321(a)(10).
- 26. The Facility is a “non-transportation related” facility” as that term is defined in 40 C.F.R. § 112.2.
- 27. Respondent owns and operates the Facility.
- 28. Respondent is an “owner or operator” of the Facility as that term is defined in section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6).
- 29. The Facility is subject to the SPCC Regulations.
- 30. The SPCC plan for the Facility is required to meet the requirements of 40 C.F.R. part 112.

31. On June 16, 2022, an EPA inspector conducted an inspection of the Facility. Based on an SPCC plan for the Facility that was provided to the EPA during that inspection, on August 1, 2022, the EPA provided Respondent with an SPCC Field Inspection and Plan Review Checklist.
32. Respondent provided the EPA with revised SPCC plans on September 19, 2022, March 6, 2023, July 28, 2023, and October 12, 2023.

V. ALLEGED VIOLATIONS OF LAW

33. The following required elements of SPCC plans were not addressed adequately in one or more of the plans referenced in paragraph 32, above:
 - a. full approval of the plan by management at a level of authority to commit the necessary resources to fully implement the plan, as required by 40 C.F.R. § 112.7;
 - b. buried piping, as required by 40 C.F.R. § 112.7(a)(3) to be included in the facility diagram;
 - c. of countermeasures for discharge discovery, response and cleanup, as required by 40 C.F.R. § 112.7(a)(3)(iv);
 - d. methods of disposal of recovered materials in accordance with applicable legal requirements, as required by 40 C.F.R. § 112.7(a)(3)(v);
 - e. procedures for reporting a discharge including all elements required by 40 C.F.R. § 112.7(a)(4);
 - f. a prediction of the direction, rate of flow, and total quantity of oil that could be discharged from the facility as a result of each type of major equipment failure, as required by 40 C.F.R. § 112.7(b);
 - g. a record of inspections and tests, signed by the appropriate inspector or supervisor and kept for three years, as required by 40 C.F.R. § 112.7(e);
 - h. yearly briefings for oil-handling personnel, as required by 40 C.F.R. § 112.7(f);
 - i. valves for draining diked areas, as required by 40 C.F.R. § 112.8(b)(2);

- j. for oil storage containers, using compatible material and construction, as required by 40 C.F.R. § 112.8(c)(1);
 - k. procedure for managing rainwater or snowmelt, as required by 40 C.F.R. § 112.8(c)(3);
 - l. integrity testing and inspections and oil management, as required by 40 C.F.R. § 112.8(c)(6) and (10);
 - m. testing liquid overfill testing devices, as required by 40 C.F.R. § 112.8(c)(8)(v);
 - n. capping or blank-flanging terminal connections, as required by 40 C.F.R. § 112.8(d)(2);
 - o. pipe supports, as required by 40 C.F.R. § 112.8(d)(3); and
 - p. signature on substantial harm certification, as required by 40 C.F.R. § 112.20(e).
34. The Respondents' failures to comply with the SPCC regulations as described in paragraph 33, above, are violations of 40 C.F.R. §§ 112.3, 112.7, and 112.9.

VI. TERMS OF CONSENT AGREEMENT

35. For the purpose of this proceeding, Respondent:
- a. admits the facts set forth in paragraph 3 of this Agreement;
 - b. admits the jurisdictional allegations in section II of this Agreement;
 - c. neither admits nor denies the factual allegations in sections IV and V of this Agreement;
 - d. consents to the assessment of a civil penalty as stated below;
 - e. acknowledges this Agreement constitutes an enforcement action for purposes of considering Respondents' compliance history in any subsequent enforcement action; and
 - f. waives any right to contest the allegations in this Agreement and to appeal any final order approving this Agreement.

36. As indicated above, section 311(b)(6) of the Act, 33 U.S.C. § 1321(b)(6), establishes the civil administrative penalty amounts the EPA may assess in this type of proceeding.
37. Having considered the seriousness of the violations cited in the Alleged Violations of Law, above, the economic benefit to Respondent, if any, resulting from the violations, the degree of culpability involved, any other penalty for the same violations, any history of prior violations, the economic impact of the penalty on Respondent, and any other matters as justice may require, in accordance with section 311(b)(8) of the Act, 33 U.S.C. § 1321(b)(8), the Complainant has determined the Assessed Penalty in paragraph 38, below, is appropriate to settle this matter.
38. Respondent agrees to:
- a. pay a civil penalty in the amount of **\$1,800** (Assessed Penalty) within 30 days after the date the final order ratifying this Agreement is filed with the Regional Hearing Clerk (Filing Date);
 - b. pay the Assessed Penalty and any interest, fees, and other charges due using any method provided on the EPA website <https://www.epa.gov/financial/makepayment> (and for additional instructions see: <https://www.epa.gov/financial/additional-instructions-making-payments-epa>);
39. When making a payment, Respondent shall:
- a. identify every payment with Respondent's name and the docket number that appears on the final order ratifying this Agreement;
 - b. indicate each and every payment is payable to "Treasurer, United States of America" and identify each and every payment with "Oil Spill Liability Trust Fund-311" and "Oil Spill Liability Trust Fund – 311" or "OSLTF – 311."
 - c. concurrently or within 24 hours after payment, email proof of payment to each of the following:

Dennis Jaramillo, Environmental Scientist
U.S. Environmental Protection Agency, Region 8

Via electronic mail to: jaramillo.dennis@epa.gov
[Complainant designates this individual for service of proof of payment]

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 8
Via electronic mail to: R8_Hearing_Clerk@epa.gov.
[Include underscore between “R8” and “Hearing” and between “Hearing” and “Clerk”]

U.S. Environmental Protection Agency
Cincinnati Finance Center
Via electronic mail to: CINWD_AcctsReceivable@epa.gov
[Include underscore between “CINWD” and “AcctsReceivable”]

“Proof of payment” means, as applicable, a copy of the check, confirmation of credit card or debit card payment, or confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate payment has been made according to EPA requirements, in the amount due, and identified with the docket number that appears on the final order ratifying this Agreement and Respondent’s name.

40. Interest, Charges, and Penalties on Late Payments. Pursuant to 33 U.S.C. § 1321(b)(6)(H), 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to timely pay any portion of the full amount of the Assessed Penalty per this Agreement, EPA is authorized to recover, in addition to the amount of the unpaid Assessed Penalty, the following amounts.
- a. Interest. Interest begins to accrue from the Filing Date. If the Assessed Penalty is paid in full within 30 days after the Filing Date, interest accrued is waived. If the Assessed Penalty is not paid in full within 30 days after the Filing Date, interest will continue to accrue until any unpaid portion of the Assessed Penalty as well as any interest, penalties, and other charges are paid in full. To protect the interests of the United States the rate of interest is set at the IRS standard underpayment rate.
 - b. Handling Charges. The United States’ enforcement expenses including, but not limited to, attorneys’ fees and costs of collection proceedings.

c. Late Payment Penalty. A 20% quarterly non-payment penalty.

41. Late Penalty Actions. In addition to the amounts described in paragraph 40, above, if Respondent fails to timely pay any portion of the Assessed Penalty, interest, or other charges and penalties per this Agreement, the EPA may take additional actions. The actions EPA may take include, but are not limited to, the following.

- a. refer the debt to a credit reporting agency or a collection agency, per 40 C.F.R. §§ 13.13 and 13.14.
- b. collect the debt by administrative offset (i.e., the withholding of money payable by the United States government to, or held by the United States for, a person to satisfy the debt the person owes the United States government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, as under 40 C.F.R. part 13, subparts C and H.
- c. suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondents from doing business with the EPA or engaging in programs the EPA sponsors or funds, per 40 C.F.R. § 13.17.
- d. request that the Attorney General bring a civil action in an appropriate district court to recover the full remaining balance of the Assessed Penalty, in addition to interest and the amounts described above, per 33 U.S.C. § 1321(b)(6)(H). In any such action, the validity, amount, and appropriateness of the Assessed Penalty shall not be subject to review.

VII. EFFECT OF CONSENT AGREEMENT

42. This Agreement applies to Respondent and its officers, directors, employees, agents, trustees, authorized representatives, successors, and assigns. Respondent must give written notice and a copy of this Agreement to any successors-in-interest prior to any transfer of any interest in the Facility occurring prior to payment in full of the penalty referenced above. Any transfer of assets or real or personal property, shall not alter Respondents' responsibilities under this Agreement.

43. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this Agreement resolves only Respondents' liability for federal civil penalties for the violations specifically alleged above.
44. Nothing in this Agreement shall relieve Respondent of the duty to comply with all applicable provisions of the Act, any regulation, order, or permit issued pursuant to the Act, and any other federal, state, or local laws, nor shall it restrict 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.
45. Nothing herein shall be construed to limit the power of EPA to pursue injunctive or other equitable relief, or criminal sanctions for any violations of law or 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.
46. If and to the extent EPA finds, after signing this Agreement, that any information provided by Respondent was materially false or inaccurate at the time such information was provided to EPA, EPA reserves any and all of its legal and equitable rights.
47. The undersigned representative of Respondent certifies he or she has authority to bind Respondent to this Agreement.
48. Except as qualified by paragraph 40, above, each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.

VIII. SERVICE OF FINAL ORDER

49. The contact information for the individuals authorized to receive service for each party are:

For Complainant:

Margaret J. (Peggy) Livingston
Senior Enforcement Attorney
Office of Regional Counsel, U.S. EPA Region 8
1595 Wynkoop St.
Denver, CO 80202
303-312-6858
Livingston.peggy@epa.gov

For Respondent:

Darren Garcia
Road & Bridge Supervisor/Facilities Manager
111 North Swink Dr.
P.O. Box 341
Swink CO 81050
DGarcia@otero.gov

50. The parties consent to service of the final order approving this Agreement at the email addresses in paragraph 49, above.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 8

Date: _____

By: _____
Sridhar Susarla, Manager
RCRA and OPA Enforcement Branch
Complainant

OTERO COUNTY, COLORADO Respondent

Date: 9/06/2024

By: *Darren Garcia*
Darren Garcia
Road & Bridge Supervisor