



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

1595 WYNKOOP STREET
DENVER, CO 80202-1129

Phone 800-227-8917

<http://www.epa.gov/region08>

2009 JUL -8 AM 9:00

DOCKET NO.: CWA-08-2009-0014

IN THE MATTER OF:)	
)	
HERMES CONSOLIDATED, INC.)	FINAL ORDER
d/b/a WYOMING REFINING CO.)	
(ELLSJET TERMINAL))	
)	
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 8th DAY OF July, 2009.

Elyana R. Sutin
Regional Judicial Officer

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

2009 MAY 29 AM 8:46

Docket No.: **CWA-08-2009-0014**

IN THE MATTER OF)	COMPLAINT AND
)	SETTLEMENT AGREEMENT
Hermes Consolidated, Inc.)	
d/b/a Wyoming Refining Company)	(Proceeding to Assess Class II
(EllsJet Terminal))	Civil Penalty Under Section 311
1600 Broadway, Ste. 2300)	of the Clean Water Act)
Denver, CO 80202)	
<u>Respondent.</u>)	

Complainant, the United States Environmental Protection Agency, Region 8 (EPA) and Respondent, Hermes Consolidated, Inc., d/b/a Wyoming Refining Company (EllsJet Terminal), by their undersigned representatives, hereby consent and agree as follows:

A. PRELIMINARY MATTERS

1. This Complaint and Settlement Agreement (CASA) is issued to Respondent for violating section 311(j)(5), 33 U.S.C. §1321(j)(5) of the Clean Water Act (CWA or the Act) and the implementing regulations at 40 C.F.R. §§ 112.20 and 112.21.

2. The undersigned EPA, Region 8 officials have been properly delegated the authority to issue this CASA under the authority vested in the Administrator of EPA by section 311(b)(6)(B)(ii) of the Act, 33 U.S.C. §1321(b)(6)(B)(ii), as amended by the Oil Pollution Act of 1990, 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.

4. This CASA 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 CASA and neither admits nor denies the specific factual allegations contained herein.
6. Respondent waives its rights to a hearing before any tribunal and to contest any issue of law or fact set forth in this CASA.
7. Complainant and Respondent agree that this CASA proposing to issue an order assessing a Class II civil penalty is subject to public notice of and reasonable opportunity to provide comment.
8. Complainant asserts that settlement of this matter is in the public interest and Complainant and Respondent agree that entry of this CASA 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.
9. This CASA, upon incorporation into a Final Order, applies to and is binding upon EPA and upon Respondent, and Respondent's officers, directors, employees, 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.
10. This CASA contains all terms of the settlement agreed to by the parties.

B. ALLEGED VIOLATIONS

1. Respondent is a "person" within the meaning of sections 311(a)(7) and 502(5) of the Act, 33 U.S.C. §§1321(a)(7) and 1362(5).

2. Respondent is an "owner and operator" of the "non-transportation" "onshore facility" (hereinafter, the facility) as those terms are defined in 40 C.F.R. §112.2 and sections 311(a)(6) and (10), respectively, 33 U.S.C. §§1321(a)(6) and (10) of the Act, within the meaning of sections 311(a)(6)(B) of the Act, 33 U.S.C. §§1321(a)(6)(B), located at 2945 Eglin St., Rapid City, South Dakota.

3. Section 311(j)(5) of the CWA, 33 U.S.C. § 1321(j)(5) and 40 C.F.R. §§ 112.20 and 112.21 provide that the owner or operator of a facility that could reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters or adjoining shorelines shall prepare, submit, and implement a Facility Response Plan (FRP).

4. Regulations provide that a facility can reasonably be expected to cause substantial harm to the environment if the facility has an oil storage capacity of over one million gallons and, among other things: has inadequate secondary containment to contain a complete loss of its largest capacity tank (40 C.F.R. § 112.20 (f)(1)(ii)(A)); is located such that a discharge from the facility could cause injury to fish, wildlife or sensitive environments (40 C.F.R. §112.20(f)(1)(ii)(B)); is located at a distance such that a discharge from the facility would shut down a public drinking water intake (40 C.F.R. §112.20(f)(1)(ii)(C)); or has discharged more than 10,000 gallons of oil into or on the navigable waters or adjoining shorelines within the prior five years (40 C.F.R. § 112.20(f)(1)(ii)(D)).

5. An owner or operator of any facility in operation on or before February 18, 1993, that satisfies the regulations in paragraph B.4, supra, was required to prepare and submit an FRP to EPA by August 30, 1994. (40 C.F.R. § 112.20(a).)
6. At all times relevant to this CASA, Respondent's EllsJet Terminal had an oil storage capacity greater than one million gallons.
7. Respondent's facility is located such that a discharge from the facility could cause injury to fish, wildlife or sensitive environments as determined by planning distance calculations specified in 40 C.F.R. Part 112, Appendix C, Attachment C-III, Calculation of the Planning Distance, § 1.6.
8. Based on information submitted by Respondent, the facility is subject to the FRP requirements and 40 C.F.R. §§ 112.20(a) and 112.21.
9. In August 1994, Respondent notified EPA that based upon its self-evaluation, the EllsJet facility was not a substantial harm facility and was not subject to the FRP requirements.
10. In October 2001, Respondent alleged that it did not need to meet the FRP requirements unless EPA Region 8's Regional Administrator, rather than EPA's designated delegate, determined under 40 C.F.R. § 112.20 (b) or (c) that it was subject to the FRP requirements.
11. In January 2002, Respondent agreed to submit the FRP for its EllsJet facility.
12. From 2002 to 2008, Complainant and Respondent exchanged communications regarding the completeness and adequacy of the FRP submissions during that time frame.
13. In a letter dated March 26, 2007, EPA notified Respondent that its FRP was conditionally approved subject to corrections of deficiencies within sixty days of receipt of EPA's notification.
14. In October 2008, EPA approved the FRP for Respondent's EllsJet facility.

15. Respondent's failure to prepare, submit, and implement an adequate and complete FRP for the EllsJet facility until October 2008, constitutes violations of Section 311(j)(5) of the CWA, 33 U.S.C. § 1321(j)(5) and 40 C.F.R. §§ 112.20 and 112.21.

C. CIVIL PENALTY

1. As alleged in the preceding Paragraphs, and pursuant to section 311(b)(6)(B)(ii) of the Act, 33 U.S.C. §1321(b)(6)(B)(ii), and 40 C.F.R. §19.4, the Respondent is liable for civil penalties of up to \$11,000 per day for each day during which the violation continues, up to a maximum total of \$157,500 for all violations.

2. Based on the foregoing Allegations and pursuant to the authority of section 311(b)(6)(B)(ii) of the Act, 33 U.S.C. §1321(b)(6)(B)(ii), and 40 C.F.R. § 19.4, Complainant proposes the assessment of administrative penalties against the Respondent in the amount of one hundred fifty-seven thousand five hundred dollars (\$157,500).

3. Complainant proposes this penalty amount after considering the applicable statutory penalty factors in section 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 a Final Order and consents for the purposes of settlement to the payment of the civil penalty in the amount of one hundred fifty-seven thousand

five hundred dollars (\$157,500) in the manner described below in this paragraph:

a. **Payment is due within 30 calendar days from the date written on the Final Order**, issued by the Regional Judicial Officer, that adopts this Complaint and Settlement Agreement. 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 described below. Payments received by 11:00 AM. EST are processed on the same day, those received after 11:00 AM are processed on the next business day.

b. The payment 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

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
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:

There is now an On Line Payment Option, available through the Dept. of Treasury.
This payment option can be accessed from the information below:

WWW.PAY.GOV

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

A copy of the check, or wire transfer, shall be sent simultaneously to:

Donna K. Inman (8ENF-UFO)	and	Tina Artemis
U.S. EPA Region 8		Regional Hearing Clerk (8RC)
Technical Enforcement Program		U.S. EPA Region 8
1595 Wynkoop St.		1595 Wynkoop
Denver, CO 80202-1129		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 statute and 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.

D. TERMS AND CONDITIONS

1. Failure by Respondent to comply with any of the terms of this CASA shall constitute a breach of the CASA 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 CASA shall be construed as a waiver by the 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 CASA.
3. Each undersigned representative of the parties to this CASA certifies that he or she is fully authorized by the party represented to bind the parties to the terms and conditions of this CASA and to execute and legally bind that party to this CASA.
4. The parties agree to submit this CASA to the Regional Judicial Officer, with a request that it be incorporated into a Final Order.
5. This CASA, upon incorporation into a Final Order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete, full and final settlement of the violations alleged in this CASA.
6. Each party shall bear its own costs and attorneys fees in connection with all issues associated with this CASA.

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

Date: 05/28/09

Eddie A Sierra

~~Andrew M. Gaydos~~, ~~EDOLGA SIERRA~~
ACTING Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

Date: 05/28/09

Brenda Morris

Brenda Morris, Enforcement Attorney
U.S. EPA, Region 8

**HERMES CONSOLIDATED, INC.,
d/b/a WYOMING REFINING COMPANY
(EllsJet Terminal), Respondent.**

Date: April 27, 2009

By: Bob Neufeld
(Signatory)

Bob NEUFELD
(Type or print name of signatory)

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **COMPLAINT, CONSENT AGREEMENT/FINAL ORDER** in the matter **HERMES CONSOLIDATED, INC. d/b/a WYOMING REFINING CO. (EllsJet Terminal); DOCKET NO.: CWA-08-2009-0014**. The Complaint and Settlement Agreement was filed with the Regional Hearing Clerk on May 29, 2009. The **FINAL ORDER** was filed on July 8, 2009.

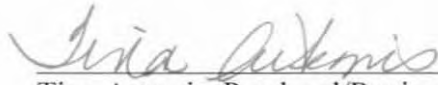
Further, the undersigned certifies that a true and correct copy of the documents were delivered to Brenda Morris, Senior Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt requested on July 8, 2009, to:

Bob Neufeld, Vice President
Environment and Government Relations
Wyoming Refining Company
1600 Broadway, Suite 2300
Denver, CO 80202

E-mailed to:

Michelle Angel
U. S. Environmental Protection Agency
Cincinnati Finance Center

July 8, 2009



Tina Artemis, Paralegal/Regional Hearing Clerk