



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

FEB 12 2013

**VIA CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Jake Neihaus, CHMM, RPG  
Ergon Refining, Inc.  
P.O. Box 1639  
Jackson, Mississippi 39215

Re: Ergon Refining, Inc., Consent Agreement and Final Order  
Docket Number: CWA-04-2013-7002(b)

Dear Mr. Neihaus:

Enclosed is a copy of the fully executed Consent Agreement and Final Order (CAFO) as filed with the Regional Hearing Clerk (RHC) in the above referenced matter. The CAFO was effective upon filing with the RHC. The payment of the civil penalty is to be paid within thirty (30) calendar days of the effective date of the CAFO, in accordance with Paragraph 18 of the CAFO.

Also enclosed is a copy of a document titled "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings." This document puts Ergon Refining, Inc. on notice of its potential duty to disclose to the Securities and Exchange Commission any environmental actions taken by the EPA.

If you have any questions, please feel free to contact Roberto X. Busó, Assistant Regional Counsel, at (404) 562-8530.

Sincerely,

A handwritten signature in black ink, appearing to read "César Zapata for".

César Zapata, Chief  
RCRA and OPA Enforcement and Compliance Branch  
RCRA Division

Enclosures

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4**

IN THE MATTER OF	)	CWA SECTION 311 CLASS I
	)	CONSENT AGREEMENT AND
Ergon Refining, Inc.	)	FINAL ORDER
2611 Haining Road	)	UNDER 40 C.F.R. § 22.13(b)
Vicksburg, Mississippi 39180	)	
	)	
Respondent	)	Docket No. CWA-04-2013-7002(b)
<hr/>		

HEARING CLERK

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RECEIVED  
EPA REGION IV

**I. LEGAL AUTHORITY**

1. This Consent Agreement is proposed and entered into under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 311(b)(6)(B)(i) of the Clean Water Act (“CWA”), 33 U.S.C. § 1321(b)(6)(B)(i), as amended by the Oil Pollution Act of 1990, and under the authority provided by 40 C.F.R. §§ 22.13(b) and 22.18(b)(2). The Administrator has delegated these authorities to the Regional Administrator of the EPA, Region 4, who has in turn delegated these authorities through the Director, RCRA Division, to the Chief, RCRA and OPA Enforcement and Compliance Branch, RCRA Division (“Complainant”).

**II. CONSENT AGREEMENT**

2. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to settle this action. Accordingly, before any testimony has been taken upon the pleadings and without any admission of violation or adjudication of any issue of fact or law, and in accordance with 40 C.F.R. § 22.13(b), Complainant and Respondent have agreed to the execution of this Consent Agreement and Final Order (“CAFO”), and Respondent hereby agrees to comply with the terms of this CAFO. For purposes of this CAFO and settlement of this action, Respondent admits to the jurisdictional statements contained herein.

### III. STIPULATIONS

3. Respondent, Ergon Refining, Inc. is a corporation organized under the laws of the State of Mississippi. Respondent is a “person” within the meaning of Section 311(a)(7) of the CWA, 33 U.S.C. § 1321(a)(7).

4. Respondent is the “operator,” within the meaning of Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6), of a petroleum refining and asphalt production facility located at 2611 Haining Road, Vicksburg, Mississippi (the “Facility”). The Facility includes storage tanks with a total tank shell capacity of approximately 1.5 million barrels of “oil,” as that term is defined in Section 311(a)(1) of the CWA, 42 U.S.C. § 1321(a)(1).

5. The Facility is an “onshore facility” within the meaning of Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10).

6. Pursuant to 40 C.F.R. § 112.1, the Spill Prevention Control and Countermeasures (“SPCC”) regulations contained in 40 C.F.R. Part 112 apply to each owner and operator of a non-transportation-related onshore facility engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using or consuming oil or oil products, which, due to its location, could reasonably be expected to discharge oil into or upon the navigable waters of the United States and their adjoining shorelines in such quantity as may be harmful, as described in 40 C.F.R. § 110.3 (“harmful quantity”).

7. The Facility is located adjacent to the Yazoo River Diversion Canal. The Yazoo River Diversion Canal is a navigable water as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and 40 C.F.R. § 112.2 and is therefore subject to the jurisdiction of Section 311 of the CWA, 33 U.S.C. § 1321.

8. Respondent is engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using, or consuming oil or oil products located at the Facility.

9. The Facility has an aggregate above ground storage capacity greater than 1,320 gallons of oil in containers, each with a capacity of at least 55 gallons and therefore, does not qualify for the exemption under 40 C.F.R. § 112.1(d)(2).

10. The Facility is a non-transportation-related facility within the meaning of 40 C.F.R. § 112.2, as described in 40 C.F.R. Part 112, Appendix A.

11. The Facility is therefore 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 is, as such, an SPCC-regulated facility.

12. Pursuant to 40 C.F.R. § 112.3, the owner or operator of an SPCC-regulated facility must prepare in writing and implement an SPCC plan in accordance with 40 C.F.R. § 112.7 and any other applicable sections of 40 C.F.R. Part 112.

#### **IV. ALLEGATIONS**

Complainant alleges, and Respondent neither admits nor denies, that:

13. On January 13, 2010, an inspection was conducted by the EPA at Respondent's Facility to determine compliance with SPCC regulations. The EPA alleges that the following violations of the SPCC regulations were identified at the time of the inspection:

- a. 40 C.F.R. § 112.7: This regulation requires that an SPCC Plan follow the sequence of the rule or include a detailed cross-reference of requirements in the SPCC Plan with the SPCC rules. However, Respondent's SPCC Plan did not follow the sequence of the rule or include a detailed cross-reference of the requirements in the plan as required by 40 C.F.R. § 112.7.
- b. 40 C.F.R. § 112.7(b): This regulation requires that, where experience indicates a reasonable potential for equipment failure, an SPCC Plan must predict the direction, rate of flow, and total quantity of oil which could be discharged from the facility as a result of each type of major equipment failure. However, Respondent's SPCC Plan did not include a prediction of the rate of flow for the total quantity of oil that could be discharged from each type of major equipment failure.
- c. 40 C.F.R. § 112.7(c): This regulation, and 40 C.F.R. § 112.7(a)(1), requires an SPCC Plan to discuss containment methods for oil filled operational equipment at a facility. However, Respondent's SPCC Plan did not discuss containment methods for oil filled piping at its facility.

- d. 40 C.F.R. § 112.7(g): This regulation requires an SPCC Plan to discuss security mechanisms for its facility. Specifically, an SPCC Plan must describe how a facility secures and controls access to the oil handling, processing and storage areas; secures master flow and drain valves; prevents unauthorized access to starter controls on oil pumps; secures out-of-service and loading/unloading connections of oil pipelines; and must discuss the appropriateness of security lighting to both prevent acts of vandalism and assist in the discovery of oil discharges. However, Respondent's SPCC Plan did not include an adequate discussion of security mechanisms.
- e. 40 C.F.R. § 112.7(h)(1): This regulation requires that a facility design any containment system to hold at least the maximum capacity of any single compartment of a tank car or tank truck loaded or unloaded at the facility. Additionally, 40 C.F.R. § 112.7(a)(1), requires an SPCC Plan to discuss the design of its containment system to demonstrate satisfaction of the containment capacity requirements. However, Respondent's SPCC Plan did not include a discussion of the design of its containment system for its tank car and tanker truck loading/unloading rack areas and the facility had not provided adequate secondary containment for its tank car loading/unloading rack areas.
- f. 40 C.F.R. § 112.7(i): This regulation, in connection with 40 C.F.R. § 112.7(a)(1), requires an SPCC Plan to discuss the evaluation of field constructed aboveground containers which have undergone a repair, alteration, reconstruction, or a change in service that might affect the risk of a discharge or failure due to brittle fracture or catastrophe, or has discharged oil or failed due to brittle fracture failure or other catastrophe. However, Respondent's SPCC Plan did not include a discussion of the evaluation of field constructed aboveground containers.
- g. 40 C.F.R. § 112.7(j): This regulation requires an SPCC Plan to include a complete discussion of conformance with the applicable requirements and other effective discharge prevention and containment procedures listed in 40 C.F.R. Part 112 or any applicable more stringent State rules, regulations, and guidelines. However, Respondent's SPCC Plan did not include a discussion of more stringent State rules, regulations, and guidelines.
- h. 40 C.F.R. § 112.8(c)(1): This regulation, and 40 C.F.R. § 112.7(a)(1), requires an SPCC Plan to discuss how containers for the storage of oil are compatible with the material stored and conditions of storage such as pressure and temperature. However, Respondent's SPCC Plan did not discuss how the containers used are compatible with the material stored or conditions of storage.
- i. 40 C.F.R. § 112.8(c)(2): This regulation requires an SPCC Plan to discuss how diked areas are sufficiently impervious to contain discharged oil. However, Respondent's SPCC Plan failed to discuss how the diked areas are sufficiently impervious to discharged oil.
- j. 40 C.F.R. § 112.8(c)(6): This regulation, and 40 C.F.R. § 112.7(a)(1), requires that an SPCC Plan discuss inspection and testing procedures, as well as maintenance of records of inspections and tests, for bulk storage containers as required within the regulations. An SPCC plan must specify, in accordance with industry standards, the appropriate qualifications for personnel performing tests and inspections, the frequency and type of

testing and inspections, which take into account container size, configuration and design. However, Respondent's SPCC Plan failed to adequately discuss inspection and testing procedures for bulk storage containers.

- k. 40 C.F.R. § 112.8(c)(7): This regulation, and 40 C.F.R. § 112.7(a)(1), requires that an SPCC Plan discuss how a facility controls leakage through defective internal heating coils. However, Respondent's SPCC Plan failed to consider the potential for leakage through defective internal heating coils.
- l. 40 C.F.R. § 112.8(c)(8): This regulation, and 40 C.F.R. § 112.7(a)(1), requires that an SPCC Plan discuss liquid level sensing devices for all bulk storage containers. However, Respondent's SPCC Plan failed to discuss discharge liquid level sensing devices for all bulk storage containers.

14. The EPA therefore alleges that Respondent violated the regulatory requirements cited in Paragraphs 13.a. through 13.l. above, and is therefore in violation of 40 C.F.R. § 112.3.

#### **V. WAIVER OF RIGHTS**

15. Solely for the purpose of this CAFO, Respondent waives the right to contest the allegations contained herein, to a hearing under Section 311(b)(6)(B)(i) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(i), and to appeal any Final Order in this matter under Section 311(b)(6)(G)(i) of the CWA, 33 U.S.C. § 1321(b)(6)(G)(i), and consents to the issuance of a Final Order without further adjudication.

#### **VI. PENALTY**

16. Respondent consents to the payment of a civil penalty of Eight Thousand Six Hundred Dollars (\$8,600).

17. By executing this CAFO, Respondent certifies that it has addressed the violations alleged in paragraphs 13.a through 13.l, and, on that basis, certifies that all violations alleged herein have been corrected.

#### **VII. PAYMENT TERMS**

Based on the foregoing, the parties, in their own capacity or by their attorney or authorized representatives, hereby agree that:

18. No later than thirty (30) days after the effective date of the Final Order, Respondent shall

pay the penalty by means of a corporate cashier's or certified check, by electronic funds transfer ("EFT"), or on-line. If paying by check, Respondent shall submit a corporate cashier's or certified check, payable to "Environmental Protection Agency." The check shall bear the notation "OSLTF – 311," along with the title and docket number of this case.

If Respondent sends payment by the U.S. Postal Service, the payment shall be sent to:

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

If Respondent sends payment by an overnight commercial delivery service such as DHL, FedEx or UPS, the payment shall be sent to:

U.S. Bank  
Government Lockbox 979077  
**U.S. EPA Fines & Penalties**  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, Missouri 63101  
314-418-1028

If Respondent sends payment by wire transfer, the wire transfer 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, New York 10045  
Field Tag 4200 of the Fedwire message should read  
"D 68010727 Environmental Protection Agency"

Respondent may also elect the On Line Payment Option, available through the Department of Treasury. This payment option can be accessed at [www.pay.gov](http://www.pay.gov). Enter "sfo 1.1" in the search field and then open the form and complete the required fields.

19. Respondent shall submit copies of the check (or, in the case of a wire transfer or on-line payment, a copy of the wire transfer or on-line confirmation) to the following people:

Patricia Bullock  
Regional Hearing Clerk  
U.S. EPA, Region 4  
Atlanta Federal Center  
61 Forsyth Street, SW  
Atlanta, Georgia 30303-8960

and to:

Larry Lamberth, Chief  
South Enforcement and Compliance Section  
RCRA and OPA Enforcement and Compliance Branch  
RCRA Division  
U.S. EPA, Region 4  
Atlanta Federal Center  
61 Forsyth Street, SW  
Atlanta, Georgia 30303-8960

20. Penalties paid pursuant to this CAFO are not deductible for federal purposes under 26 U.S.C. § 162(f).

21. Respondent's failure to pay the penalty assessed by the Final Order in full by its due date may subject Respondent to a civil action to collect the assessed penalty, plus interest, attorney's fees, costs and an additional quarterly nonpayment penalty pursuant to Section 311(b)(6)(H) of the CWA, 33 U.S.C. § 1321(b)(6)(H). In any such collection action, the validity, amount and appropriateness of the penalty agreed to herein shall not be subject to review.

### **VIII. GENERAL PROVISIONS**

22. The Final Order shall be binding upon Respondent and Respondent's officers, directors, agents, and successors or assigns.

23. The Final Order does not constitute a waiver, suspension or modification of the requirements of Section 311 of the CWA, 33 U.S.C. § 1321, or any regulations promulgated thereunder,

and does not affect the right of the Administrator or the United States to pursue any applicable injunctive or other equitable relief or criminal sanctions for any violation of law. Payment of the penalty pursuant to this CAFO resolves only Respondent's liability for federal civil penalties for the alleged violations and facts stipulated to and alleged herein. Except as otherwise set forth herein, compliance with this CAFO shall resolve the allegations of violations contained herein.

24. The undersigned representative of Respondent hereby certifies that he or she is fully authorized to enter into and execute this Consent Agreement and to legally bind Respondent to the terms and conditions of this Consent Agreement and the attached Final Order.

25. A copy of any documents that Respondent files in this action shall be sent to the following attorney who represents the EPA in this matter and who is authorized to receive service for the EPA in the proceeding:

Roberto Busó  
Assistant Regional Counsel  
Office of Environmental Accountability  
U.S. Environmental Protection Agency, Region 4  
Atlanta Federal Center  
61 Forsyth Street, SW  
Atlanta, Georgia 30303-8960  
404-562-8530  
[buso.roberto@epa.gov](mailto:buso.roberto@epa.gov)

26. A copy of any documents that Complainant files in this action shall be sent to the following individual who represents Respondent in this matter and who is to receive service for Respondent in this proceeding:

Jake Neihaus  
Sr. Environmental Scientist  
Ergon Refining, Inc.  
P.O. Box 1639  
Jackson, Mississippi 39215

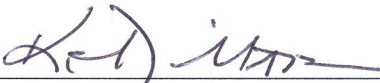
**IX. EFFECTIVE DATE**

27. This Consent Agreement and Final Order is effective when the Final Order is filed with the Regional Hearing Clerk.

**CONSENTED AND AGREED TO:**


By: ERGON REFINING, INC.

Date: 4/29/13

  
\_\_\_\_\_  
Ken Dillard  
Vice President of Refining

By: U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 2/6/13

 for  
\_\_\_\_\_  
César A. Zapata, Chief  
RCRA and OPA Enforcement and Compliance Branch  
RCRA Division

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4**

IN THE MATTER OF	)	CWA SECTION 311 CLASS I
	)	CONSENT AGREEMENT AND
Ergon Refining, Inc.	)	FINAL ORDER
2611 Haining Road	)	UNDER 40 C.F.R. § 22.13(b)
Vicksburg, Mississippi 39180	)	
	)	
Respondent	)	Docket No. CWA-04-2013-7002(b)
_____	)	

**FINAL ORDER**

The foregoing Consent Agreement is hereby approved, ratified and incorporated by reference into this Final Order in accordance with 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 Respondent is hereby ORDERED to comply with all of the terms of the foregoing Consent Agreement effective immediately upon filing of this Consent Agreement and Final Order with the Regional Hearing Clerk. This Order disposes of this matter pursuant to 40 C.F.R. §§ 22.18 and 22.31.

**BEING AGREED, IT IS SO ORDERED** this 12 day of February, 2013.

BY: Susan B. Schub  
Susan Schub  
Regional Judicial Officer

