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BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Coleman Oil Company, LLC,

Wenatchee, Washington,

Respondent.

DOCKET NO. CWA-10-2020-0003

CONSENT AGREEMENT

Proceedings Under Section 311(b)(6) of the
Clean Water Act, 33 U.S.C. § 1321(b)(6)

I. STATUTORY AUTHORITY

1.1. This Consent Agreement is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by Section 311(b)(6) of the Clean Water Act (CWA), 33 U.S.C. § 1321(b)(6).

1.2. Pursuant to CWA Section 311(b)(6)(A), EPA is authorized to assess a civil penalty against any owner, operator, or person in charge of an onshore facility from which oil or a hazardous substance is discharged in violation of CWA Section 311(b)(3), 33 U.S.C. § 1321(b)(3), and/or who fails or refuses to comply with any regulation issued under CWA Section 311(j), 33 U.S.C. § 1321(j).

1.3. CWA Section 311(b)(6)(B), 33 U.S.C. § 1321(b)(6)(B), authorizes the administrative assessment of Class II civil penalties in an amount not to exceed \$10,000 per day for each day during which the violation continues, up to a maximum penalty of \$125,000. Pursuant to the 2015 amendments to the Federal Civil Penalty Inflation Adjustment Act, 28 U.S.C. § 2461, and 40 C.F.R. Part 19, the administrative assessment of Class II civil penalties may not exceed \$18,943 per day for each day during which the violation continues, up to a maximum penalty of \$236,783. *See also* 84 Fed. Reg. 2056 (February 6, 2019) (2019 Civil Monetary Penalty Inflation Adjustment Rule).

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U.S. Environmental Protection Agency
1200 Sixth Avenue, Suite 155, 11-C07
Seattle, Washington 98101
(206) 553-1037

1.4. Pursuant to CWA Section 311(b)(6)(A) and (b)(6)(B), 33 U.S.C. § 1321(b)(6)(A) and (B), and in accordance with Section 22.18 of the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA issues, and Coleman Oil Company, LLC (Respondent) agrees to issuance of, the Final Order attached to this Consent Agreement.

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this Consent Agreement commences this proceeding, which will conclude when the Final Order becomes effective.

2.2. The Administrator has delegated the authority to sign consent agreements between EPA and the party against whom a penalty is proposed to be assessed pursuant to CWA Section 311(b)(6), 33 U.S.C. § 1321(b)(6), to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Director of the Enforcement and Compliance Assurance Division, EPA Region 10 (Complainant).

2.3. Part III of this Consent Agreement contains a concise statement of the factual and legal basis for the alleged violations of the CWA together with the specific provisions of the CWA and the implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

Statutory and Regulatory Framework

3.1. The objective of the CWA is “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” 33 U.S.C. § 1251(a).

3.2. The Clean Water Act prohibits the discharge of any pollutant, including oil, by any person, except as authorized by and in compliance with other sections of the Act. 33 U.S.C. § 1311(a).

3.3. The Clean Water Act further prohibits the discharge of oil into or upon the navigable waters of the United States and adjoining shorelines in such quantities as the President determines may be harmful to the public health or welfare or the environment of the United States. 33 U.S.C. § 1321(b)(3). The Act defines "discharge" to include "any spilling, leaking, pumping, pouring, emitting, emptying or dumping" 33 U.S.C. § 1321(a)(2). “Navigable waters” are defined as “the waters of the United States, including the territorial seas.” 33 U.S.C. § 1367(7).

3.4. Pursuant to 33 U.S.C. § 1321(b)(4), EPA has determined by regulation that the quantities of oil that may be harmful to the public health or welfare or the environment of the United States include discharges of oil that (1) violate applicable water quality standards; (2) cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines; or (3) cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines. 40 C.F.R. § 110.3.

3.5. Respondent is a corporation, and therefore a “person” under CWA Sections 311(a)(7) and 502(5), 33 U.S.C. §§ 1321(a)(7), 1362(5).

3.6. At all times relevant to this Consent Agreement, Respondent was the "owner or operator," within the meaning of 40 C.F.R. § 112.2 and Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6), of the Coleman Oil Company Wenatchee Bulk Plant (“Facility”). The Facility’s

street address is 3 East Chehalis Street, Wenatchee, Washington.

Discharges of Oil

3.7. On Friday, March 17, 2017, a large oil sheen was observed on the Columbia River near the junction of Chehalis and Worthen Streets in Wenatchee, Washington. The oil sheen was reported to be about 100-feet wide by 0.25 miles in length.

3.8. On Saturday, March 18, Washington State Department of Ecology (“Ecology”) responders observed a continuous oil sheen originating approximately 50 feet from shore with the oil sheen plume spreading to approximately 20 feet wide and extending approximately one mile down the Columbia River.

3.9. On Tuesday, March 21, Ecology’s laboratory testing results from river samples of oil sheen indicated the oil sheen was biodiesel.

3.10. On Wednesday, March 22, Respondent allowed Ecology to take samples from pipelines on the Facility that served onsite aboveground oil storage tanks and the distribution truck loading rack. Samples analyzed by the Ecology laboratory indicated a match between the river sample results and the oil obtained from Respondent’s Facility. Additional sampling results and investigation indicated that Respondent’s biodiesel (R99 renewable biodiesel in Facility Tank 14) was the oil product migrating to and entering the Columbia River.

3.11. Subsequent testing and buried piping excavations by Respondent confirmed that buried piping failures at the Facility resulted in the discharges of oil. Respondent decommissioned and removed the leaking buried piping and associated aboveground oil storage tanks that served as the original equipment-related source of the discharges of oil. Respondent thereafter attempted to stem additional discharges and employed remedial measures, pursuant to an October 2017 agreed order with Ecology.

3.12. Respondent conducted a post-sheen discovery evaluation of the Facility storage

tank inventory and determined that Tank 14 had a loss of approximately 4,543 gallons of R99 renewable biodiesel.

3.13. Respondent's remedial actions, including on-river sheen observations and associated oil product containment and recovery, are ongoing. As of June 30, 2019, Respondent reported it has recovered 2,439.76 gallons of R99 renewable biodiesel from the environment; 214.10 gallons from the Columbia River, 241.66 gallons from monitoring wells, sumps, and oil-water separators, and 1,984 gallons in R99-contaminated soil. As of July 17, 2019, Respondent's last reported observation of oil sheen on the Columbia River inside the oil product containment system occurred on June 1, 2019.

3.14. The discharges of oil (i.e., R99 renewable biodiesel) identified in Paragraphs 3.7 through 3.13 constituted a "discharge" of "oil" within the meaning of Section 311(a)(1), (2), 33 U.S.C. § 1321(a)(1), (2).

3.15. The discharges of oil identified in Paragraph 3.7 through 3.13 caused a film, sheen upon, or discoloration of the surface of the water or adjoining shorelines, and therefore constituted a harmful quantity of oil within the meaning of 40 C.F.R. § 110.3, which implements Section 311(b)(4) of the Act, 33 U.S.C. § 1321(b)(4).

3.16. The discharges of oil identified in Paragraph 3.7 through 3.13 flowed into the Columbia River, which is a "waters of the United States," and is subject to the jurisdiction of the CWA. 33 U.S.C. § 1362(7).

Violations

3.17. Respondent's discharges of oil from the Facility into or upon waters of the United States and adjoining shorelines in a quantity that may be harmful, as determined by 40 C.F.R. § 110.3, violated Section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3).

IV. TERMS OF SETTLEMENT

4.1. Respondent admits the jurisdictional allegations of this Consent Agreement.

4.2. Respondent neither admits nor denies the specific factual allegations contained in this Consent Agreement.

4.3. As required by CWA Section 311(b)(8), 33 U.S.C. § 1321(b)(8), EPA has taken into account the seriousness of the alleged violations; Respondent's economic benefit of noncompliance; 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. After considering all of these factors, EPA has determined that an appropriate penalty to settle this action is \$159,000.

4.4. Respondent consents to the assessment of the civil penalty set forth in Paragraph 4.3 and agrees to pay the total civil penalty within 30 days of the effective date of the Final Order.

4.5. Payment under this Consent Agreement and the Final Order may be paid by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at: <http://www2.epa.gov/financial/makepayment>. Payments made by a cashier's check

or certified check must be payable to the order of “Treasurer, United States of America” and delivered to the following address:

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

Respondent must note on the check the title and docket number of this action.

4.6. Respondent must serve photocopies of the check, or proof of other payment method described in Paragraph 4.5, on the Regional Hearing Clerk and EPA Region 10

Compliance Officer at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, Mail Stop 11-C07
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101
young.teresa@epa.gov

Rick Cool
U.S. Environmental Protection Agency
Region 10, Mail Stop 20-C04
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101
cool.richard@epa.gov

4.7. If Respondent fails to pay the penalty assessed by this Consent Agreement and the Final Order in full by its due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. Such failure may also subject Respondent to a civil action to collect the assessed penalty under the CWA, together with interest, fees, costs, and additional penalties described below. In any collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

a. Interest. Pursuant to CWA Section 311(b)(6)(H), 33 U.S.C.

§ 1321(b)(6)(H), any unpaid portion of the assessed penalty shall bear interest at a rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the Final Order provided, however, that no interest shall be payable on

any portion of the assessed penalty that is paid within 30 days of the effective date of the Final Order.

b. Attorneys Fees, Collection Costs, Nonpayment Penalty. Pursuant to CWA Section 311(b)(6)(H) of the CWA, 33 U.S.C. § 1321(b)(6)(H), if Respondent fails to pay on a timely basis the penalty set forth in Paragraph 4.3, Respondent shall pay (in addition to any assessed penalty and interest) attorneys fees and costs for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to 20% of the aggregate amount of Respondent's penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.

4.8. The penalty described in Paragraph 4.3, including any additional costs incurred under Paragraph 4.7 above, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.9. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this Consent Agreement and to bind Respondent to this document.

4.10. The undersigned representative of Respondent also certifies that, as of the date of Respondent's signature of this Consent Agreement, Respondent has corrected the violation alleged in Part III above. This Consent Agreement in no way limits EPA's authority under the CWA to assess a civil penalty and pursue injunctive relief in response to any discharge of oil from the Facility to waters of the United States subsequent to the discharges of oil that occurred within the time period alleged in Paragraphs 3.7 through 3.13.

4.11. Except as described in Subparagraph 4.7.b, above, each party shall bear its own costs in bringing or defending this action.

4.12. Respondent expressly waives any right to contest the allegations and waives any right to appeal the Final Order.


4.13. The provisions of this Consent Agreement and the Final Order shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.14. The above provisions are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

10-14-2019

FOR RESPONDENT:


Robert S. Coleman, Jr., Manager
Coleman Oil Company, LLC.

DATED:

11/15/2019

FOR COMPLAINANT:


EDWARD J. KOWALSKI, Director
Enforcement and Compliance Assurance
Division
EPA Region 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Coleman Oil Company, LLC,

Wenatchee, Washington,

Respondent.

DOCKET NO. CWA-10-2020-003

FINAL ORDER

Proceedings Under Section 311(b)(6) of the
Clean Water Act, 33 U.S.C. § 1321(b)(6)

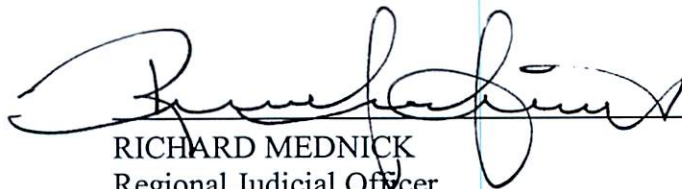
1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of the U.S. Environmental Protection Agency (EPA) Region 10, who has in turn delegated this authority to the Regional Judicial Officer in EPA Region 10.

2. The terms of the foregoing Consent Agreement are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

3. The Consent Agreement and this Final Order constitute a settlement by EPA of all claims for civil penalties pursuant to the Clean Water Act (CWA) for the violations alleged in Part III of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(a), nothing in this Final Order shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of the CWA and regulations promulgated or permits issued thereunder.

4. This Final Order shall become effective upon filing.

SO ORDERED this 19th day of November, 2019.



RICHARD MEDNICK
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 10

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in **In the Matter of: Coleman Oil Co., DOCKET NO.: CWA-10-2020-003** was served on the addressees in the following manner on the date specified below:

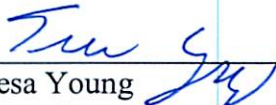
The undersigned certifies that a true and correct copy of the document was delivered to:

J. Matthew Moore
Office of Regional Counsel
U.S. Environmental Protection Agency
Region 10, Mail Stop 11-C07
1200 Sixth Avenue, Suite 155
Seattle, WA 98101
206-553-6266
Moore.johnm@epa.gov

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt to:

Connie Sue Martin
Schwabe, Williamson & Wyatt
U.S. Bank Centre
1420 Fifth Ave.
Suite 3400
Seattle, WA 98101

DATED this 22 day of November, 2019.



Teresa Young
Regional Hearing Clerk
EPA Region 10