

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219

2015 MAY 18 AM 10:59
UNITED STATES
ENVIRONMENTAL PROTECTION
AGENCY-REGION 7

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)
)
Sapp Bros. Petroleum, Inc.) Docket No. CWA-07-2015-0053
)
Respondent) COMPLAINT AND
) CONSENT AGREEMENT/
Proceedings under Section 311(b)(6) of the) FINAL ORDER
Clean Water Act, 33 U.S.C. § 1321(b)(6))
_____)

COMPLAINT

Jurisdiction

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 311(b)(6) of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act (CWA), 33 U.S.C. § 1321(b)(6), as amended by the Oil Pollution Act of 1990, and 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.

2. Complainant, the United States Environmental Protection Agency, Region 7 (EPA) and Respondent, Sapp Bros. Petroleum, Inc., have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) and (3) of 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), 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

3. This Complaint and Consent Agreement/Final Order (CAFO) serves as notice that the EPA has reason to believe that Respondent has violated Section 311 of the CWA, 33 U.S.C. § 1321, and regulations promulgated thereunder.

Parties

4. The authority to take action under Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6), is vested in the Administrator of the EPA. The Administrator has delegated this authority to the Regional Administrator, EPA, Region 7, who in turn has delegated the authority under Section 311(b)(6) to the Director of the Air and Waste Management Division (collectively referred to as the Complainant).

5. Respondent, Sapp Bros. Petroleum, Inc., is and was at all relevant times a corporation under the laws of Nebraska and authorized to conduct business in the State of Iowa.

6. Respondent is a “person” as defined by Section 311(a)(7) of the CWA, 33 U.S.C. §1321(a)(7), and 40 C.F.R. § 112.2.

Statutory and Regulatory Framework

Spill Prevention Control and Countermeasures

7. Section 311(j) of the CWA, 33 U.S.C. § 1321(j), provides for the regulation of onshore facilities to prevent or contain discharges of oil. Section 311(j) of the CWA, 33 U.S.C. § 1321(j), provides in part that the President shall issue regulations “establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil and hazardous substances from vessels and from onshore facilities and offshore facilities, and to contain such discharges.”

8. To implement Section 311(j), 33 U.S.C. § 1321(j), the EPA promulgated regulations to prevent oil pollution. These regulations, codified at 40 C.F.R. Part 112, set forth the requirements for the preparation and implementation of a Spill Prevention Control and Countermeasure Plan (SPCC Plan).

9. More specifically, under the authority of Section 311(j) of the CWA, 33 U.S.C. § 1321(j), 40 C.F.R. Part 112 establishes procedures, methods and equipment and other requirements to prevent the discharge of oil from non-transportation-related onshore facilities into or upon the navigable waters of the United States or adjoining shorelines.

10. The requirements of 40 C.F.R. Part 112 apply to owners and operators of non-transportation-related onshore facilities engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using or consuming oil or oil products, which due to their location, could reasonably be expected to discharge oil in quantities that may be harmful into or upon the navigable waters of the United States or adjoining shorelines.

11. Further, under 40 C.F.R. Part 112, owners or operators of onshore facilities that have an aboveground storage capacity of more than 1,320 gallons of oil, and due to their location could reasonably be expected to discharge oil in harmful quantities into or upon the navigable waters of the United States or adjoining shorelines, must prepare a SPCC Plan in writing, certified by a licensed Professional Engineer, and in accordance with the requirements of 40 C.F.R. § 112.7.

EPA’s General Allegations

12. Respondent is and was at all times relevant to this action 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 a wholesale distributor of petroleum products located at 129 South Steuben Street, Sioux City, Iowa 51101 (the Facility).

13. The Facility is located approximately 215 feet from a storm drain that within approximately 1800 feet has a direct connection to Bacon Creek and thereafter to the Missouri River.

14. At all relevant times, Respondent's Facility included nine aboveground tanks for containment of lubricants, kerosene, diesel fuel and unleaded gasoline and additional portable containers containing various lubricants with an aggregate aboveground storage capacity of 1,320 gallons or more of oil, each of which has a shell capacity of at least 55 gallons.

15. Bacon Creek and the Missouri River are "navigable waters of the United States" as defined by 40 C.F.R. § 112.2 and Section 502(7) of the CWA, 33 U.S.C § 1362(7).

16. Respondent's Facility is an "onshore facility" within the meaning of 40 C.F.R. § 112.2 and Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10).

17. Respondent's Facility is a "non-transportation-related facility" as defined by Appendix A to 40 C.F.R. Part 112, as incorporated by reference within 40 C.F.R. § 112.2.

18. Respondent's Facility was engaged in the wholesale distributor of petroleum products, e.g., lubricants, kerosene, diesel fuel and unleaded gasoline.

19. Petroleum products, including lubricants, kerosene, diesel fuel and unleaded gasoline, are forms of oil as defined by 40 C.F.R. § 112.2 and Section 311(a)(1) of the CWA, 33 U.S.C. § 321(a)(1).

20. 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 (an SPCC-regulated facility).

21. Pursuant to the CWA and 40 C.F.R. § 112.1, Respondent, as the owner and operator of an SPCC-regulated facility, is subject to the SPCC regulations.

22. On May 17, 2013, the EPA performed an inspection of the Facility (Inspection) under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a). The purpose of the Inspection was to evaluate the Facility's compliance with the CWA, including its SPCC program.

23. During the Inspection, the EPA inspector obtained from Respondent a copy of a document entitled Spill Prevention Control & Countermeasure Plan for Sapp Bros Petroleum, Inc. (hereafter referred to as the SPCC Plan); the SPCC Plan indicates it is reporting conditions as of June 13, 2007.

24. A copy of EPA's SPCC Field Inspection and Plan Review Checklist Form was sent by mail to Respondent by letter dated February 26, 2014.

EPA's Specific Allegations

25. For each of the following Counts, Paragraphs 1 through 24 above are re-alleged and incorporated herein by reference.

**Count 1
Failure to Amend the SPCC Plan**

26. 40 C.F.R. § 112.5(a) requires that the owner or operator of an SPCC-regulated facility must amend the SPCC plan in accordance with 40 C.F.R. § 112.7 and any other applicable section of 40 C.F.R. Part 112, within six months after a change to the facility design, construction, operation or maintenance that materially affected its potential for discharge, including but not limited to decommissioning containers.

27. The EPA's review of Respondent's SPCC Plan found that Tank 4, which was identified in the 2007 SPCC Plan, had been removed from the Facility and the SPCC Plan had not be amended to reflect removal or decommissioning of that container, as required by § 112.5(a).

28. Respondent's failure to amend the SPCC plan for the Facility following removal of Tank 4 is a violation of 40 C.F.R. § 112.5(a), and as such, is a violation of Sections 311 of the CWA, 33 U.S.C. § 1321.

29. As alleged in the preceding paragraph, and pursuant to Section 311(b)(6)(B)(i) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(i), as adjusted pursuant to 40 C.F.R. § 19.4, Respondent is liable for civil penalties of up to \$16,000 per day for each day during which the violation continues, up to a maximum of \$37,500.

**Count 2
Failure to Implement the SPCC Plan**

30. 40 C.F.R. § 112.3 requires that the owner or operator of an SPCC-regulated facility that was in operation on or before August 16, 2002, must prepare, maintain and implement its SPCC plan, and must amend it, if necessary to comply with 40 C.F.R. Part 112, no later than November 20, 2011. The facility was in operation prior to Aug 16, 2002.

31. EPA's Inspection of Respondent's Facility and operations identified the following deficiencies regarding SPCC plan implementation, in violation of the requirements of 40 C.F.R. Part 112:

- a. the Facility had inadequate secondary containment for bulk storage containers and had not implemented the recommendation in the SPCC Plan at page 12, as required

by § 112.7(c), to install rollover curbs in the truck and drum storage building and at the office/storage building;

b. the Facility's containment system at the loading rack contained a significant amount of rainwater that effectively reduced the capacity of the containment system, in violation of the requirement at § 112.7(h)(1) to have adequate secondary containment capacity to hold at least the maximum capacity of the largest single compartment of a truck loading or unloading facility, and the SPCC Plan at pages 11 and 25;

c. the Facility had no restraints or valves on drainage from the diked storage areas to prevent a discharge into the drainage provided for the storage area, as required by § 112.8(b)(1)-(2) and the SPCC Plan at pages 24-27, 39 and 42, and there is an open pipe with no valve connecting the secondary containment areas between the loading rack and the bermed tank area;

d. the secondary containment at the Facility did not comply with the capacity requirements of § 112.8(c)(2) and additionally, there was a substantial amount of vegetation inside the containment area in violation of the SPCC Plan at pages 16 and 37;

e. the terminal connection at the transfer point was not marked as to origin while it was not in service, as required by § 112.8(d)(2); and

f. the Facility had no warning for all vehicles entering the facility to be sure that no vehicle will endanger aboveground piping or other oil transfer operations in the transfer area or at the loading/unloading rack, as required by § 112.8(d)(5) and the SPCC Plan at pages 24-27 and 45.

32. Respondent's failure to implement an adequate SPCC plan for the Facility on or before November 10, 2011, through at least April 1, 2015, is a violation of 40 C.F.R. § 112.3, and as such, is a violation of Sections 311 of the CWA, 33 U.S.C. § 1321.

33. As alleged in the preceding paragraph, and pursuant to Section 311(b)(6)(B)(i) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(i), as adjusted pursuant to 40 C.F.R. § 19.4, Respondent is liable for civil penalties of up to \$16,000 per day for each day during which the violation continues, up to a maximum of \$37,500.

Count 3

Failure to Conduct Inspections of the SPCC Regulated Facility

34. 40 C.F.R. § 112.7(e) requires that the owner or operator of an SPCC-regulated facility must conduct inspections and tests required by 40 C.F.R. Part 112 in accordance with written procedures that are developed for the facility. The written procedures and a record of the inspection and tests, signed by the inspector, must be kept with the SPCC Plan for a period of three years. Facility's SPCC Plan, including pages 36-37 and the inspection and report forms appended to the Plan, address the inspection and testing requirements of Part 112. Inspections and tests required by 40 C.F.R. Part 112 include, but are not limited to:

a. pursuant to § 112.7(h)(3), prior to filling and departures of any tank or tank truck from a loading/unloading rack, closely inspect for discharges the lowermost drain and all outlets of such vehicles, and if necessary, ensure that they are tightened, adjusted, or replaced to prevent liquid discharge while in transit;

b. pursuant to § 112.8(c)(3)(ii) and (iv), with regard to bulk storage containers, inspect the retained rainwater to ensure that its presence will not cause a discharge as described in § 112.1(b), and keep adequate records of all “events” for example, any records required under [NPDES] permits;

c. pursuant to § 112.8(c)(6), test or inspect each above ground container for integrity, in accordance with industry standards, on a regular schedule and whenever a material repair is made;

d. pursuant to § 112.8(c)(8)(v), regular testing of liquid level sensing devices to ensure proper operation; and

e. pursuant to § 112.8(d)(4), regular inspections of above ground valves, piping and appurtenances.

35. The EPA’s Inspection of Respondent’s Facility and operations found that the Facility had no records of any inspections or tests for its SPCC-regulated facility, as required by 40 C.F.R. Part 112, and the SPCC Plan.

36. Respondent’s failure to conduct inspections and tests at its SPCC-regulated Facility and/or keep records of such inspections and tests from at least November 10, 2011, through at least May 17, 2013, is a violation of 40 C.F.R. § 112.7(e), and as such, is a violation of Sections 311 of the CWA, 33 U.S.C. § 1321.

37. As alleged in the preceding paragraph, and pursuant to Section 311(b)(6)(B)(i) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(i), as adjusted pursuant to 40 C.F.R. § 19.4, Respondent is liable for civil penalties of up to \$16,000 per day for each day during which the violation continues, up to a maximum of \$37,500.

Count 4

Failure to Conduct Employee Training Regarding SPCC Plan

38. 40 C.F.R. § 112.7(f)(1) requires that the owner or operator of an SPCC-regulated facility must at a minimum, train its oil-handling personnel in the operation and maintenance of equipment to prevent discharges; discharge procedure protocols; applicable pollution control laws, rules and regulations; general facility operations; and the contents of the facility SPCC Plan.

39. 40 C.F.R. § 112.7(f)(3) requires that discharge prevention briefings for oil-handling personnel must be scheduled and conducted at least once a year to assure adequate understanding of the SPCC Plan for the facility. Such briefings must highlight and describe known discharges as described in 40 C.F.R. § 112.1(b) or failures, malfunctioning components, and any recently developed precautionary measures.

40. The Facility’s SPPC Plan, including page 38 and appendices to the Plan, address the training and briefing requirements of § 112.7(f) for the Facility.

41. The May 2013 EPA Inspection referenced above, revealed that Respondent had failed to train its oil-handling personnel as required by 40 C.F.R. § 112.7(f)(1) and (3).

42. Respondent's failure to provide discharge prevention briefings for oil-handling personnel from at least November 10, 2011, through May 17, 2013, is a violation of 40 C.F.R. § 112.7(f)(1) and (3), and as such, is a violation of Sections 311 of the CWA, 33 U.S.C. § 1321.

43. As alleged in the preceding paragraph, and pursuant to Section 311(b)(6)(B)(i) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(i), as adjusted pursuant to 40 C.F.R. § 19.4, Respondent is liable for civil penalties of up to \$16,000 per day for each day during which the violation continues, up to a maximum of \$37,500.

Penalty

44. Based on the forgoing allegations, and pursuant to the authority of Section 311(b)(6)(B)(i) of the CWA, 33 U.S.C. § 1319(b)(6)(B)(i), as adjusted pursuant to 40 C.F.R. § 19.4, the Complainant has determined that an appropriate administrative penalty for Counts 1 through 4 is \$26,217.

CONSENT AGREEMENT

45. Respondent and EPA agree to the terms of this CAFO and Respondent consents for the purposes of settlement to the payment of the civil administrative penalties set forth in the foregoing Paragraph.

46. Respondent admits the jurisdictional allegations of this CAFO and agrees not to contest the EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order portion of this CAFO.

47. Respondent neither admits nor denies the factual allegations and legal conclusions asserted by the EPA in the Factual Background and Findings of Violation sections set forth above.

48. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above, and its right to appeal the Final Order portion of this CAFO.

49. Respondent and Complainant agree to conciliate the matters set forth in this CAFO without the necessity of a formal hearing and agree to bear their own costs and attorney's fees incurred as a result of this action.

50. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this CAFO and to execute and legally bind Respondent to it.

51. Nothing contained in the Final Order portion of this CAFO shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state and local environmental statutes and regulations and applicable permits.

52. This CAFO addresses all civil and administrative claims for the CWA violations alleged above. Complainant reserves the right to take any enforcement action with respect to any other violations of the CWA or any other applicable law.

53. Respondent certifies by the signing of this CAFO that to the best of its knowledge, Respondent's Facility is in compliance with all requirements of Section 311 of the CWA, 33 U.S.C. § 1321.

54. The effect of settlement described in Paragraph 52 above is conditional upon the accuracy of the Respondent's representations to the EPA, as memorialized in Paragraph 53 above, of this CAFO.

55. Respondent understands that its failure to timely pay any portion of the civil penalty described in Paragraph 1 of the Final Order below or any portion of a stipulated penalty as stated in Paragraph 44 above may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall accrue thereon at the applicable statutory rate on the unpaid balance until such civil or stipulated penalty and any accrued interest are paid in full. A late payment handling charge of \$15 will be imposed after thirty (30) days and an additional \$15 will be charge for each subsequent thirty (30) day period. Additionally, as provided by 31 U.S.C. §§ 3717(e)(2), a penalty (late charge) may be assessed on any amount not paid within ninety (90) days of the due date.

56. Respondent consent that the civil penalty payment made pursuant to this CAFO will not be deducted for purposes of federal taxes.

FINAL ORDER

Pursuant to the authority of Section 311(b)(6)(B)(i) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(i), and according to terms of this CAFO, IT IS HEREBY ORDERED THAT:

1. Respondent shall pay a civil penalty of Twenty-Six Thousand, Two Hundred Seventeen Dollars (\$26,217) pursuant to the authority of Section 311(b)(6)(B)(i) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(i), to be paid in full no later than 30 days after the effective date of this CAFO. The payment of penalties must reference docket number "CWA-07-2015-0053 - OSLTF" and be remitted using one of the payment methods specified in Appendix A to this Order.

2. A copy of the check or verification of another payment method for the penalty payment remitted as directed by Paragraph 1 above, shall be mailed to:

Patricia Gillispie Miller
Senior Counsel
U.S. Environmental Protection Agency – Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

and to

Kathy Robinson
Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

3. Should the civil penalty not be paid as provided above, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. The interest will be assessed on the overdue amount from the due date through the date of payment. Failure to pay the civil penalty when due may result in the commencement of a civil action in Federal District Court to collect said penalty, together with costs and interest thereon.

4. Respondent and Complainant shall pay their own costs and attorneys' fees incurred as a result of this action.

5. EPA reserves the right to enforce the terms of this Final Order by initiating a judicial or administrative action pursuant to Section 311 of the CWA, 33 U.S.C. § 1321.

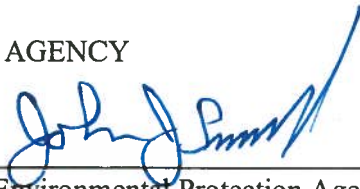
6. With respect to matters not addressed in this Final Order, EPA reserves the right to take any enforcement action pursuant to the CWA, or any other available legal authority, including without limitation, the right to seek injunctive relief, monetary penalties and for punitive damages.

7. This executed Complaint and Consent Agreement/Final Order shall be filed with the Regional Hearing Clerk, U.S. Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219.

8. The headings in this CAFO are for convenience of reference only and shall not affect interpretation of this CAFO.

FOR THE COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY

5/14/15
Date



U.S. Environmental Protection Agency
Region 7



Patricia Gillispie Miller
Senior Counsel
U.S. Environmental Protection Agency
Region 7

FOR THE RESPONDENT:
SAPP BROS. PETROLEUM, INC.

April 10, 2015
Date


Signature

Allen J. Marsh
Name (Print)

CEO
Title

IT IS SO ORDERED. This Final Order shall become effective immediately.

5-14-15
Date


Regional Judicial Officer

CERTIFICATE OF SERVICE

I certify that on the date below I hand delivered the original and one true copy of this Complaint and Consent Agreement/Final Order to the Regional Hearing Clerk, United States Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219. I further certify that on the date below I sent a true and correct copy of the original Complaint and Consent Agreement/Final Order by certified mail, return receipt requested, to:

Sapp Bros. Petroleum, Inc.
Attn: Tyler Marsh
9915 South 148th Street
Omaha, NE 68138

5/18/15
Date

Brenda F. Terrell
Name

Appendix A
Penalty Payment Information for Consent Agreement and Final Order

Complete information regarding making payments to the US EPA may be found at:
<http://www.epa.gov/financial/makepayment>

For your convenience, the following is a summary of the acceptable payment methods for the civil penalty required to be paid pursuant to the Consent Agreement and Final Order:

1. **Cashier's or Certified Check:** If payment is being made by cashier's or certified check, submit the check, including the name and docket number of this case, payable to "Treasurer, United States of America," to:

US Postal Service:

U.S. Environmental Protection Agency
Fines and Penalties
PO Box 979077
St. Louis, MO 63197-9000

Common Carriers (Fedex, DHL, UPS):

U.S. Environmental Protection Agency
Government Lockbox 979077
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101

2. **Wire Transfer:** If payment is being made by wire transfer, the wire transfer must indicate the name and docket number of this case and be sent directly to the Federal Reserve Bank in New York City with the following information:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 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

3. **Automated Clearing House (ACH) or Remittance Express (REX):** If using ACH or REX, payments must indicate the name and docket number of the case and can be made through the US Treasury using the following information:

US Treasury REX/Cashlink ACH Receiver

ABA: 051036706

Account Number: 310006, Environmental Protection Agency

CTX Format

Transaction Code 22 – checking

Physical location of US Treasury Facility:

5700 Rivertech Court

Riverdale, MD 20737

US Treasury Contact Information:

John Schmid: 202-874-7026

Remittance Express (REX): 1-866-234-5681

4. **On-line Payment:** On-Line Payment is available through the Department of Treasury, and can be accessed using the information below:

www.pay.gov

Enter “sfo 1.1” (without quotation marks) in the SEARCH PUBLIC FORMS field.

You should see the following information as your search result:

*Form Number: **SFO Form Number 1.1***

Use this form to pay civil penalties, FOIA request, Superfund, Citations, Compliance Orders, and other miscellaneous payments.

Click the link to open the form, complete the required fields, then click SUBMIT DATA button at the bottom of the form.

Payment Tips

To ensure proper credit please include the following information on your payment:

- Company/remitter's name (as it appears on EPA document)
- Complete address, including city, state, zip
- Remitter's point of contact person and phone number
- EPA document number (case, contract, grant, purchase order, etc.)—NOT the remitter's number
- EPA contact name and phone number, if available
- Reason for payment

Note: It is important to direct payment to the appropriate EPA finance center to ensure your remittance is credited to the proper account. Each finance center has its own unique agency location code, and each U.S. depository has a unique bank routing number.