



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

**1595 WYNKOOP STREET
DENVER, CO 80202-1129**

Phone 800-227-8917

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

2013 SEP 30 PM 2: 28

FILED
EPA REGION VIII
HEARING ROOM

DOCKET NO.: CWA-08-2013-0037

IN THE MATTER OF:)	
)	
)	
CORKLE OIL COMPANY, LLC.	)	ORDER GRANTING FILING
308 Grant Street	)	OF AN ELECTRONIC SIGNATURE
Walden, CO 80480	)	OF THE CONSENT AGREEMENT
	)	AGREEMENT AND
Respondent.	)	FINAL ORDER
)	

Pursuant to 40 C.F.R. §22.13(b) and 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.

This court will accept the electronic filing of the Respondent’s signature on the Consent Agreement in this matter at this time, however the Parties are to file the original signature page within fourteen days of issuance of this Order.

The Parties are hereby **ORDERED** to comply with all of the terms of this **Order**, effective immediately upon receipt by Parties of this **Order**.

SO ORDERED THIS 30th **Day of** September, 2013

Elyana R. Sutin
Regional Judicial Officer

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2013 SEP 30 PM 2:28

FILED
EPA REGION VIII
RECORDING CLERK

IN THE MATTER OF:	)	COMBINED COMPLAINT AND
	)	CONSENT AGREEMENT
Corkle Oil Company, LLC)	
308 Grant Street	)	Docket No. CWA-08-2013-0037
Walden, CO 80480)	
	)	Simultaneous Commencement and
	)	Conclusion of a Proceeding Pursuant to
Respondent	)	Section 311(b)(6) of the Clean Water Act
_____	)	and 40 C.F.R. § 22.13(b)

Complainant, United States Environmental Protection Agency, Region 8 (EPA), and Respondent, Corkle Oil Company, LLC, by their undersigned representatives, hereby consent and agree as follows:

I. STATUTORY AUTHORITY

1. This Combined Complaint and Consent Agreement (Agreement) is issued pursuant to section 311(b)(6) of the Clean Water Act (Act), 33 U.S.C. § 1321(b)(6), and 40 C.F.R. § 22.13(b). Section 311(b)(6) of the Act, 33 U.S.C. § 1321(b)(6), authorizes the Administrator of the United States Environmental Protection Agency (EPA) to assess civil penalties for violations of section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3), which authority has been properly delegated to the Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice, Region 8. 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. Part 22, governs such proceedings. 40 C.F.R. § 22.13(b) provides that a proceeding subject to the Consolidated Rules may be simultaneously commenced and concluded by the issuance of a consent agreement and final order pursuant to 40 C.F.R. § 22.18(b)(2) and (3).

II. PARTIES BOUND

2. This Agreement shall apply to and be binding upon Complainant and shall be binding upon the Respondent, its officers, directors, agents, successors, and assigns. Any change in the ownership or legal status of Respondent or the business organization, structure or status of Respondent, including, but not limited to, any transfer of assets or real or personal property, shall not alter its responsibilities under this Agreement.

III. STATEMENT OF PARTIES

3. Respondent stipulates to EPA's jurisdiction and venue over the matters contained in this Agreement; however, Respondent neither admits nor denies the specific factual allegations contained herein.

4. Respondent waives its right to a hearing before any tribunal to contest any issue of law or fact set forth in this Agreement, and waives its right to appeal the Final Order.

5. The signatories to this Agreement certify that they are authorized to execute and legally bind the parties they represent to this Agreement.

6. This Agreement contains all terms of the settlement agreed to by the parties.

7. Complainant and Respondent agree that settlement of this matter is in the public interest, and that execution of this Agreement and issuance of a final order without further litigation and without adjudication of any issue of fact or law is the most appropriate means of resolving this matter.

IV. STATUTORY AND REGULATORY FRAMEWORK

8. 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).

9. Section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3), in pertinent part, prohibits the discharge of any oil or hazardous substances into or upon the navigable waters of the United

States or their adjoining shorelines in such quantities as may be harmful as determined by the President.

10. The term "discharge" is defined in section 311(a)(2) of the Act, 33 U.S.C. § 1321(a)(2), to include, in pertinent part, "any spilling, leaking, pumping, pouring, emitting, emptying or dumping"

11. The term "oil" is defined in section 311(a)(1) of the Act, in pertinent part, as "oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge" 33 U.S.C. § 1321(a)(1).

12. The term "navigable waters" is defined in section 502(7) of the Act as "waters of the United States, including the territorial seas." 33 U.S.C. § 1362(7).

13. The term "navigable waters," as further defined in 40 C.F.R. § 110.1, "means the waters of the United States, including the territorial seas," and includes, *inter alia*: "(a) All waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters that are subject to the ebb and flow of the tide; (b) Interstate waters, including interstate wetlands; . . . ; (e) Tributaries of waters identified in paragraphs (a) through (d) of this section, including adjacent wetlands; and (f) Wetlands adjacent to waters identified in paragraphs (a) through (e) of this section"

14. In accordance with section 311(b)(4) of the Act, 33 U.S.C. § 1321(b)(4), the President, through a delegation to EPA, has determined, by regulation, those quantities of oil the discharge of which may be harmful to the public health or welfare or the environment of the United States. Exec. Order No. 11735, 38 Fed. Reg. 21243 (Aug. 3, 1973), and Executive Order 12777, 56 Fed. Reg. 54757 (October 22, 1991). 40 C.F.R. § 110.3 defines discharges of oil in such quantities as may be harmful to include discharges of oil that: "(a) Violate applicable water quality standards; or (b) Cause a film or sheen upon or discoloration of the surface of the water

or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.”

15. Pursuant to section 311(b)(6)(A) of the Act, 33 U.S.C. § 1321(b)(6)(A), any owner, operator, or person in charge of any vessel, onshore facility or offshore facility from which oil is discharged in violation of section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3), may be assessed a class I or class II civil penalty.

16. The term “owner or operator” is defined in section 311(a)(6) of the Act in pertinent part as “in the case of an onshore facility, . . . any person owning or operating such onshore facility” 33 U.S.C. § 1321(a)(6).

17. According to section 311(a)(7) of the Act, “‘person’ includes an individual, firm, corporation, association, and a partnership.” 33 U.S.C. § 1321(a)(7).

18. The term “onshore facility” is defined in section 311(a)(10) of the Act as “any facility (including, but not limited to, motor vehicles and rolling stock) of any kind located in, on, or under, any land within the United States other than submerged land.” 33 U.S.C. § 1321(a)(10).

V. GENERAL ALLEGATIONS

19. Respondent is and was at all relevant times a limited liability company organized under the laws of Colorado. Respondent’s office is located at 308 Grant Street, Walden, CO 80480. Respondent’s mailing address is P.O. Box 278, Walden, CO 80480.

20. The registered agent of Corkle Oil Company, LLC, is George P. Corkle. The address of Respondent’s registered agent, on file with the Colorado Secretary of State, is P.O. Box 278, Walden, CO 80480.

21. Respondent is and was at all times relevant to the Agreement a “person” within the meaning of section 311(a)(7) of the Act, 33 U.S.C. § 1321(a)(7).

22. At all relevant times, Respondent owned and operated the truck tractor and the tanker trailer involved in the release referenced in Paragraph 26 *infra*.

23. The tanker trailer and truck tractor referenced in Paragraph 22 were at all relevant times "onshore facilities" within the meaning of section 311(a)(10) of the Act, 33 U.S.C. § 1321(a)(10).

24. Hoop Creek and West Clear Creek are and were at all relevant times "navigable waters" within the meaning of 40 C.F.R. § 110.1, and section 502(7) of the Act, 33 U.S.C. § 1362(7).

VI. SPECIFIC ALLEGATIONS

25. On September 21, 2009, the truck tractor pulling the tanker trailer referenced in Paragraph 22 crashed and came to rest on its side on Colorado Highway 40, also known as Berthoud Pass. The tanker trailer was filled with approximately 8,200 gallons of unleaded gasoline.

26. The tanker trailer referenced in Paragraph 25 ruptured, releasing approximately 6,350 gallons of unleaded gasoline which flowed into the ravine that flows to the West Fork of Hoop Creek, a tributary to Hoop Creek, that flows to the West Fork of Clear Creek, which is used as a drinking water supply for Empire and Lawson and is designated as a Class 1 cold water fishery.

27. The Respondent's release of 6,350 gallons of unleaded gasoline referenced in Paragraph 26 impacted the West Fork of Hoop Creek violating applicable water quality standards for benzene for approximately three months until a diversion structure on the outfall of the storm water catch basin was installed.

VII. VIOLATION

Violation of Section 311(b)(3)

28. Paragraphs 1 through 27 of this Agreement are re-alleged and incorporated herein by reference.

29. The release of unleaded gasoline referenced in Paragraph 26 was at all relevant times a "discharge" within the meaning of section 311(a)(2) of the Act, 33 U.S.C. § 1321(a)(2).

30. The discharged unleaded gasoline referenced in Paragraph 26 was at all relevant times "oil" within the meaning of section 311(a)(1) of the Act, 33 U.S.C. § 1321(a)(1).

31. The oil that was discharged into the ravine that flowed to the West Fork of Hoop Creek referenced in Paragraph 27 was discharged in "quantities as may be harmful" within the meaning of section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3), and 40 C.F.R. § 110.3.

32. Section 311(b)(6)(B)(i) of the Act, 33 U.S.C. § 1321(b)(6)(B)(i), and 40 C.F.R. Part 19 authorize the assessment of a Class I civil penalty not to exceed \$16,000 per violation, up to a maximum civil penalty of \$37,500, for violations of section 311(b)(3) and 311(j)(1)(C), 33 U.S.C. § 1321(b)(3) and 33 U.S.C. § 1321(j)(1)(C) of the Act occurring after January 12, 2009.

VIII. PAYMENT OF CIVIL PENALTY

33. Respondent consents and agrees to pay a civil penalty in the amount of fifteen thousand five hundred and eighty seven (\$15,587) in **nine payments**, in the manner described below in this Paragraph.

a. The **first payment** of ONE THOUSAND FIVE HUNDRED EIGHTY SEVEN DOLLARS (\$1,587.00) is due within thirty (30) calendar days from the date written on the Final Order issued by the Regional Judicial Officer that incorporates this Agreement.

b. The **second payment** of ONE THOUSAND SEVEN HUNDRED FIFTY DOLLARS (\$1,750) is due on the first day of **December 2013**.

c. The **third payment** of ONE THOUSAND SEVEN HUNDRED FIFTY DOLLARS (\$1,750) is due on the first day of **March 2014**.

d. The **fourth payment** of ONE THOUSAND SEVEN HUNDRED FIFTY DOLLARS (\$1,750) is due on the first day of **June 2014**.

e. The **fifth payment** of ONE THOUSAND SEVEN HUNDRED FIFTY DOLLARS (\$1,750) is due on the first day of **September 2014**.

f. The **sixth payment** of ONE THOUSAND SEVEN HUNDRED FIFTY DOLLARS (\$1,750) is due on the first day of **December 2014**.

g. The **seventh payment** of ONE THOUSAND SEVEN HUNDRED FIFTY DOLLARS (\$1,750) is due on the first day of **March 2015**.

h. The **eighth payment** of ONE THOUSAND SEVEN HUNDRED FIFTY DOLLARS (\$1,750) is due on the first day of **June 2015**.

i. The **ninth and final payment** of ONE THOUSAND SEVEN HUNDRED FIFTY DOLLARS (\$1,750) is due on the first day of **September 2015**.

j. If the **due date** of any of the nine payments falls on a weekend or legal federal holiday, the due date is the next business day. Payments must be received by 11:00 a.m. Eastern Standard Time to be considered as received that day.

k. Payments shall be made by any of the methods set forth in Appendix 1 to this Agreement.

l. At the same time that each payment is made, notice that the payment has been made shall be provided to:

Donna Inman (8ENF-UFO)
Enforcement Scientist
U.S. EPA Region 8
1595 Wynkoop
Denver, CO 80202-1129

and Tina Artemis
Regional Hearing Clerk (8RC)
U.S. EPA Region 8
1595 Wynkoop
Denver, CO 80202-1129

If a payment is made by cashiers or certified check, the notice shall include a copy of the check. If a payment is made in any other manner, the notice shall include documentation demonstrating that the payment was made.

m. In the event a payment is not received by the specified due date, interest on the late payment shall accrue from the date of the Final Order, not the due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until payment in full is received (e.g., on the 1st late day for the first payment, 30 days of interest accrues).

n. In addition, a handling charge of fifteen dollars (\$15) shall be assessed on the 31st day from the date of the Final Order, and each subsequent 30-day period that the initial payment, or any portion thereof, remains unpaid, and a handling charge of fifteen dollars (\$15) shall be assessed on the 1st day after the due date of each subsequent payment, and each subsequent 30-day period that any such payment, or any portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 90 days of the due date (e.g., the 121st day from the date the Final Order is signed). Payments are first applied to handling charges, 6% penalty interest, late interest, and any balance is then applied to the outstanding principal amount. Further, Respondent shall be subject to the fees, costs, and nonpayment penalty set forth in section 311(b)(6)(H) of the Act, 33 U.S.C. § 1321(b)(6)(H).

o. If any of the nine civil penalty payments required by this Paragraph 33 (Subparagraphs a through i) are not paid within the time specified, EPA, in its sole, unreviewable discretion, may elect to accelerate any remaining payments, such that the remaining payment(s) will be due within thirty (30) calendar days of Respondent's receipt of notice of such acceleration from EPA. The provisions of Subparagraphs j through p of this Paragraph 33 shall apply to such accelerated payment.

p. Respondent agrees that the penalty shall never be claimed as a federal or other tax deduction or credit.

34. The civil penalty set forth in Paragraph 33 of this Agreement was determined by Complainant after taking into account all factors identified in section 311(b)(8) of the Act, 33 U.S.C. § 1321(b)(8), i.e., the seriousness of the violation or violations, 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.

IX. OTHER TERMS AND CONDITIONS

35. Failure by Respondent to comply with any of the terms of this Agreement shall constitute a breach of this Agreement and may result in referral of the matter to the United States Department of Justice for enforcement of this Agreement and for such other relief as may be appropriate.

36. Nothing in this Agreement shall be construed as a waiver by Complainant 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 Agreement.

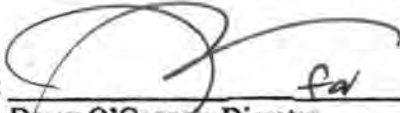
37. This Agreement, upon incorporation into a final order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete, full and final settlement of the civil penalty owed for violations alleged in this Agreement.

38. This Agreement resolves Respondent's liability for Federal civil penalties under section 311(b)(6) of the Act, 33 U.S.C. § 1321(b)(6) for the alleged violations contained in this Agreement. This Agreement shall not in any case affect Complainant's right to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law whether or not alleged in this Agreement. This Agreement shall not affect Respondent's right to assert any defense in any action by Complainant to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

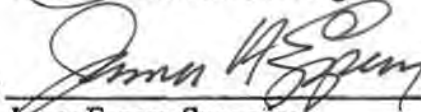
39. Each party shall bear its own costs and attorneys fees in connection with all issues associated with this Agreement.

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

Date: _____


By: 
Darcy O'Connor, Director
Technical Enforcement Program

Date: _____

By: 
James Eppers, Supervisor
Legal Enforcement Program

CORKLE OIL COMPANY, LLC
Respondent

Date: 9/11/13

By: 
George Corkle, President

Combined Complaint and Consent Agreement - Appendix 1

The following are acceptable payment methods for the civil penalty required to be paid pursuant to the Agreement.

1. If payment is being made by cashier's or certified check, submit the check, including the name, docket number, and the notation, "Oil Spill Liability Trust Fund-311," payable to **"Environmental Protection Agency"** :

Regular Mail:

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

Federal Express, Airborne, or other commercial carrier:

US Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

Contact: Natalie Pearson
314-418-4087

2. Wire Transfers:

Wire transfers 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 = 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. ACH (also known as REX or remittance express):

ACH payments must indicate the name and docket number of this case and be paid in accordance with the following information:

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

4. 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" (without the quotation marks) in the "Search Public Forms" field.

Click on the first link to open the form, complete required fields, and then click on "Submit Data" button at bottom of form.

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **ORDER GRANTING AN ELECTRONIC FILING OF THE SIGNATURE ON THE CONSENT AGREEMENT AND FINAL ORDER** in the matter of **CORKLE OIL COMPANY LLC.; DOCKET NO.: CWA-08-2013-0037**, was filed with the Regional Hearing Clerk on September 30, 2013.

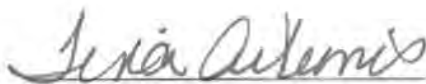
Further, the undersigned certifies that a true and correct copy of the document was delivered to Brenda Morris, Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned documents were placed in the United States mail on September 30, 2013, to:

Contiguglia/Fazzone, P.C.
837 Sherman Street, Suite 2D
Denver, CO 80203

And emailed to:

Kim White
U. S. Environmental Protection Agency
Cincinnati Finance Center
26 W. Martin Luther King Drive (MS-0002)
Cincinnati, Ohio 45268

September 30, 2013


Tina Artemis
Paralegal/Regional Hearing Clerk