

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

In the Matter of:

Ocean Petroleum, Inc.,

Respondent.

**CWA SECTION 311 CLASS I CONSENT
AGREEMENT AND FINAL ORDER
UNDER 40 C.F.R. § 22.13(b)**

Docket No. CWA-04-2020-0405(b)

CONSENT AGREEMENT

I. NATURE OF ACTION

1. This is an administrative penalty assessment proceeding brought under 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, (CWA or the Act) and Sections 22.13(b) and 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified at Title 40 of the Code of Federal Regulations (C.F.R.), Part 22.
2. This Consent Agreement and the attached Final Order shall collectively be referred to as the CAFO.
3. Having found that settlement is consistent with the provisions and objectives of the Act and applicable regulations, the Parties have agreed to settle this action pursuant to 40 C.F.R. § 22.18 and consent to the entry of this CAFO without adjudication of any issues of law or fact herein.

II. PARTIES

4. Complainant is the Chief of the Water Enforcement Branch, Enforcement and Compliance Assurance Division, United States Environmental Protection Agency (EPA), Region 4, who has been delegated the authority on behalf of the Administrator of the EPA to enter into this CAFO pursuant to 40 C.F.R. Part 22 and Section 311(b)(6) of the Act.

5. Respondent is Ocean Petroleum, Inc., a corporation doing business in the State of Georgia. This proceeding pertains to Respondent's facility located at 1025 Bay Street, Brunswick, Georgia 31520 (Facility).

III. GOVERNING LAW

6. Section 311(j)(1) of the CWA, 33 U.S.C. § 1321(j)(1), authorizes the President to issue regulations establishing procedures, methods, equipment, and other requirements to prevent and contain discharges of oil and hazardous substances from onshore facilities.
7. Pursuant to Section 311(j)(1) of the CWA, EPA, acting through its delegated authority under Executive Order No. 11,735, 38 Fed. Reg. 21,243 (Aug. 7, 1973), and Executive Order No. 12,777, 56 Fed. Reg. 54,757 (Oct. 22, 1991), the President has issued Oil Pollution Prevention regulations governing owners and operators of non-transportation-related onshore and offshore facilities. These regulations are found at 40 C.F.R. Part 112.
8. The Oil Pollution Prevention regulations apply to "any owner or operator of a non-transportation-related onshore or offshore facility engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using, or consuming oil and oil products, which, due to its location, could reasonably be expected to discharge oil in quantities that may be harmful, as described in 40 C.F.R. § 110.3, into or upon the navigable waters of the United States or adjoining shorelines. . . . that has oil in: (1) Any aboveground container; . . . or (3) Any container that is used for standby storage, for seasonal storage, or for temporary storage, or not otherwise 'permanently closed' as defined in 40 C.F.R. § 112.2." 40 C.F.R. § 112.1(b).
9. 40 C.F.R. § 112.3 requires the owner or operator of a facility subject to Part 112 to prepare and implement a written Spill Prevention, Control, and Countermeasure (SPCC) Plan in accordance with 40 C.F.R. § 112.7 and any other applicable section of 40 C.F.R. Part 112.
10. Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6), provides that any person who is the owner, operator, or person in charge of an onshore facility who fails or refuses to comply with any regulations issued under Subsection 311(j) of the CWA, 33 U.S.C. § 1321(j), may be assessed a Class I or Class II civil penalty.
11. Section 311(a)(7) of the CWA defines "person" to include an individual, firm, corporation, association, and a partnership. 33 U.S.C. § 1321(a)(7).
12. Section 311(a)(6) of the CWA defines "owner or operator," in the case of an onshore facility, to include "any person owning or operating such onshore facility..." 33 U.S.C. § 1321(a)(6); 40 C.F.R. § 112.2.
13. Section 311(a)(10) of the CWA defines "onshore facility" 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), 40 C.F.R. § 112.2.
14. A non-transportation-related onshore facility within the meaning of 40 C.F.R. § 112.1 is described in a Memorandum of Understanding (MOU) between the U.S. Secretary of Transportation and the EPA, incorporated in 40 C.F.R. Part 112, Appendix A. In relevant part, the MOU provides that the term "non-transportation-related facility" includes oil refining

facilities including all equipment and appurtenances related thereto as well as in-plant processing units, storage units, piping, drainage systems and waste treatment units used in the refining of oil, but excluding any terminal facility, unit or process integrally associated with the handling or transferring of oil in bulk to or from a vessel.

15. Section 311(a)(1) of the CWA defines “oil” as “oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil.” 33 U.S.C. § 1321(a)(1), 40 C.F.R. § 112.2.
16. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines “navigable waters” as “the waters of the United States, including the territorial seas.” 33 U.S.C. § 1362(7).
17. Title 40 C.F.R. § 110.3 describes discharges of oil in such quantities that may be harmful to include discharges of oil that: (1) violate applicable water quality standards or (2) cause a film or a 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 the adjoining shorelines.

IV. FINDINGS OF FACT

18. Respondent is a corporation organized under the laws of Georgia.
19. Respondent is the owner or operator of an oil storage facility located at 1025 Bay Street, Brunswick, Georgia 31520 (Facility).
20. The Respondent is engaged in drilling, producing, gathering, storing, processing, transferring, distributing, using, or consuming oil or oil products located at the Facility.
21. The Facility includes storage tanks with a total tank shell capacity of approximately 11,000 barrels of “diesel, gasoline, motor oil, and hydraulic oil.”
22. 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.
23. Drainage from the Facility travels down gradient for approximately 100 feet before entering Oglethorpe Bay, which flows into the East River. The East River then flows into the Atlantic Ocean.
24. On October 27, 2015, an inspection was conducted by EPA at the Respondent’s Facility to determine compliance with SPCC regulations.
 - a) At the time of the EPA inspection, there was no written SPCC Plan for the facility.
 - b) At the time of the EPA inspection, there were holes, cracks, or voids in diked containment walls.
 - c) At the time of the EPA inspection, bulk storage containers were not tested nor inspected for integrity in accordance with industry standards.

- d) At the time of the EPA inspection, records of inspections and tests were not maintained.
- e) At the time of the EPA inspection, effluent treatment systems (i.e., oil-water separators) were not frequently inspected to detect upsets that could cause a discharge.
- f) At the time of the EPA inspection, mobile/portable containers were not provided with sized secondary containment.
- g) At the time of the EPA inspection, pipe terminal connections were not marked to origin, nor capped or blank-flanged when not in service.
- h) At the time of the EPA inspection, aboveground piping, valves, joints, pipe supports, etc., were not inspected regularly.
- i) At the time of the EPA inspection, warning devices for vehicles were not present to prevent damage to aboveground piping and other oil transfer operations.

V. ALLEGED VIOLATIONS

- 25. Respondent is a “person” within the meaning of Section 311(a)(7) of the Clean Water Act (CWA), 33 U.S.C. § 1321(a)(7).
- 26. Respondent is an “owner or operator” of the Facility as that term is defined in Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6) and 40 C.F.R. § 112.2.
- 27. The Facility is an “onshore facility” within the meaning of Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10) and 40 C.F.R. § 112.2.
- 28. 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.
- 29. The East River is a “navigable water of the United States,” as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and 40 C.F.R. § 110.1 and is subject to the jurisdiction of Section 311 of the CWA.
- 30. Diesel, gasoline, motor oil, and hydraulic oil is “oil” within the meaning of Section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1), and 40 C.F.R. § 110.1.
- 31. Due to its location, the Facility could reasonably be expected to discharge oil and/or other pollutants to East River and/or their adjoining shorelines in quantities that would (a) violate applicable water quality standards or (b) cause a film or sheen upon or discoloration of the surface of the navigable waters of the United States or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of such water or adjoining shorelines.

32. The Facility is therefore a non-transportation-related onshore facility which, due to its location, could reasonably be expected to discharge a harmful quantity of oil to a navigable water of the United States or its adjoining shorelines in a harmful quantity and, therefore, is an SPCC-regulated facility.
33. Because 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, it does not qualify for the exemption under 40 C.F.R. § 112.1(d)(2).
34. Respondent failed to prepare an adequate SPCC Plan (“Plan”) in accordance with 40 C.F.R. §§ 112.7, 112.8, and any other applicable sections of 40 C.F.R. Part 112, as required by 40 C.F.R. § 112.3(a).
35. Additionally, Respondent failed to implement the Facility’s Plan in accordance with 40 C.F.R. §§ 112.7 and 112.8, and any other applicable sections of 40 C.F.R. § 112, as required by 40 C.F.R. § 112.3(a). Specifically, the Respondent failed to implement the following requirements:
 - a) Respondent failed to ensure diked areas are sufficient to contain discharged oil as required by 40 C.F.R. § 112.8(c)(2).
 - b) Respondent failed to test or inspect bulk storage containers for integrity in accordance with industry standards as required by 40 C.F.R. § 112.8(c)(6).
 - c) Respondent failed to maintain records of inspections and tests as required by 40 C.F.R. §§ 112.8(c)(6) and 112.7(e).
 - d) Respondent failed to frequently observe effluent treatment systems to detect upsets that could cause a discharge as required by 40 C.F.R. § 112.8(c)(9).
 - e) Respondent failed to provide sized secondary containment for mobile/portable containers as required by 40 C.F.R. § 112.8(c)(11).
 - f) Respondent failed to mark pipe terminal connections to origin or cap or blank-flange terminals when not in service as required by 40 C.F.R. § 112.8(d)(2).
 - g) Respondent failed to inspect aboveground piping, valves, joints, pipe supports, etc., regularly as required by 40 C.F.R. § 112.8(d)(4).
 - h) Respondent failed to provide warning to vehicles entering the facility to prevent damage to aboveground piping or other oil transfer operations as required by 40 C.F.R. 112.8(d)(5).
36. The EPA therefore alleges that Respondent violated the regulatory requirements cited in Paragraphs 34 and 35 above, and is therefore in violation of 40 C.F.R. § 112.3.

VI. STIPULATIONS

37. The issuance of this CAFO simultaneously commences and concludes this proceeding. 40 C.F.R. § 22.13(b).

38. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:

- (a) admits that EPA has jurisdiction over the subject matter alleged in this CAFO;
- (b) neither admits nor denies the factual allegations set forth in Section IV (Findings of Facts) of this CAFO;
- (c) consents to the assessment of a civil penalty as stated below;
- (d) consents to the conditions specified in this CAFO;
- (e) waives any right to contest the allegations set forth in Section V (Alleged Violations) of this CAFO; and
- (f) waives its rights to appeal the Final Order accompanying this CAFO.

39. For the purpose of this proceeding, Respondent:

- (a) agrees that this CAFO states a claim upon which relief may be granted against Respondent;
- (b) acknowledges that this CAFO constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions;
- (c) waives any rights it may possess at law or in equity to challenge the authority of EPA to bring a civil action in a United States District Court to compel compliance with the CAFO, and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action;
- (d) by executing this CAFO, certifies to the best of its knowledge that Respondent is currently in compliance with all relevant requirements of the Act and its implementing regulations, and that all violations alleged herein, which are neither admitted nor denied, have been corrected;
- (e) waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during any discussions with, or to be served with and reply to, any memorandum or communication addressed to EPA officials where the purpose of such discussion, memorandum, or communication is to persuade such official to accept and issue this CAFO; and
- (f) agrees to comply with the terms of this CAFO.

40. In accordance with 40 C.F.R. § 22.5, the individuals named in the certificate of service are authorized to receive service related to this proceeding and the parties agree to receive service by

electronic means at the following valid email addresses: goodwin.john@epa.gov and stephen.smith@epa.gov for the EPA and ashley@oceanpetroleum.net for the Respondent.

VII. TERMS OF PAYMENT

41. Respondent consents to the payment of a civil penalty, which was calculated in accordance with the Act, in the amount of **\$24,600.00**, which is to be paid within thirty (30) calendar days of the Effective Date of this CAFO.
42. Payment(s) shall be made by cashier's check, certified check, by electronic funds transfer (EFT), or by Automated Clearing House (ACH) (also known as REX or remittance express). If paying by check, the check shall be payable to: "Environmental Protection Agency." The check shall bear the notation "OSLTF – 311", and the Facility name and docket number for this matter shall be referenced on the face of the check. If Respondent sends payment by the U.S. Postal Service, the payment shall be addressed to:

United States Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

If Respondent sends payment by non-U.S. Postal express mail delivery, the payment shall be sent to:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines & Penalties
1005 Convention Plaza
Mail Station: SL-MO-C2-GL
St. Louis, Missouri 63101
Contact Number: (314) 425-1819

If paying by EFT, Respondent shall transfer the payment to:

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

If paying by ACH, Respondent shall remit payment to:

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, Maryland 20737
Contact: Craig Steffen, (513) 487-2091
REX (Remittance Express): 1-866-234-5681

43. Respondent shall send proof of payment, within 24 hours of payment of the civil penalty, to:

- (a) Regional Hearing Clerk
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960
R4_Regional_Hearing_Clerk@epa.gov

and

- (b) John C. Goodwin
Water Enforcement Branch
Enforcement and Compliance Assurance Division
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960
goodwin.john@epa.gov

44. “Proof of payment” means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with the Facility name and “Docket No. CWA-04-2020-0405(b).

45. Pursuant to 33 U.S.C. § 1321(b)(6)(H), if Respondent fails to timely pay any portion of the penalty assessed under this CAFO, EPA may recover in addition to the unpaid amount of the penalty assessed the following amounts on any portion overdue:

- (a) Interest. Interest will begin to accrue on the civil penalty from the Effective Date of this CAFO. If the civil penalty is paid within 30 days of the Effective Date of this CAFO, Interest is waived. However, if the civil penalty is not paid in full within 30 days of the Effective Date of this CAFO, Interest will continue to accrue on any unpaid portion until the unpaid portion of the civil penalty and accrued Interest are paid. Interest will be assessed currently prevailing rates.
- (b) Non-Payment Penalty. A 20 percent quarterly nonpayment penalty pursuant to 33 U.S.C. § 1321(b)(6)(H).
- (c) Attorneys’ Fees and Costs of Collection. The United States’ attorneys’ fees and costs of collection.

46. In addition to what is stated in the prior Paragraph, if Respondent fails to timely pay any portion of the penalty assessed under this CAFO, EPA may:

- (a) refer the debt to a credit reporting agency or a collection agency, 40 C.F.R. §§ 13.13, and 13.14;
- (b) collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, 40 C.F.R. Part 13, Subparts C and H;
- (c) suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds, 40 C.F.R. § 13.17; and/or
- (d) request that the Attorney General bring a civil action in the appropriate district court to recover the amount assessed, in addition to the amounts described above, pursuant to 33 U.S.C. § 1321(b)(6)(H). In any such judicial action, the validity, amount, and appropriateness of the penalty and of this CAFO shall not be subject to review.

47. Penalties paid pursuant to this CAFO shall not be deductible for purposes of federal taxes.

VIII. EFFECT OF CAFO

48. In accordance with 40 C.F.R. § 22.18(c), Respondent's full compliance with this CAFO shall only resolve Respondent's liability for federal civil penalties for the violations and facts specifically alleged above.

49. Full payment of the civil penalty, as provided in Section VII (Terms of Payment), shall not in any case 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. 40 C.F.R. § 22.18(c),

50. Nothing in this CAFO shall relieve Respondent of the duty to comply with all applicable provisions of the Act and other federal, state, or local laws or statutes, nor shall it restrict EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit, except as expressly provided herein.

51. Nothing herein shall be construed to limit the power of EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment as provided under the Act.

52. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except upon the written agreement of both Parties, and approval of the Regional Judicial Officer.

53. The provisions of this CAFO shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns.
54. Any change in the legal status of the Respondent, or change in ownership, partnership, corporate or legal status relating to the Facility, will not in any way alter Respondent's obligations and responsibilities under this CAFO.
55. By signing this Consent Agreement, Respondent acknowledges that this CAFO will be available to the public and agrees that this CAFO does not contain any confidential business information or personally identifiable information.
56. By signing this Consent Agreement, the Complainant and the undersigned representative of Respondent each certify that he or she is fully authorized to execute and enter into the terms and conditions of this CAFO and has the legal capacity to bind the party he or she represents to this CAFO.
57. By signing this Consent Agreement, both Parties agree that each party's obligations under this CAFO constitute sufficient consideration for the other party's obligations.
58. By signing this Consent Agreement, Respondent certifies that the information it has supplied concerning this matter was at the time of submission, and continues to be, true, accurate, and complete for each such submission, response, and statement. Respondent acknowledges that there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.
59. EPA also reserves the right to revoke this CAFO and settlement penalty if and to the extent that EPA finds, after signing this CAFO, that any information provided by Respondent was materially false or inaccurate at the time such information was provided to EPA. If such false or inaccurate material was provided, EPA reserves the right to assess and collect any and all civil penalties for any violation described herein. EPA shall give Respondent notice of its intent to revoke, which shall not be effective until received by Respondent in writing.
60. Unless specifically stated otherwise in this CAFO, each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.
61. It is the intent of the parties that the provisions of this CAFO are severable. If any provision or authority of this CAFO or the application of this CAFO to any party or circumstances is held by any judicial or administrative authority to be invalid or unenforceable, the application of such provisions to other parties or circumstances and the remainder of the CAFO shall remain in force and shall not be affected thereby.

IX. EFFECTIVE DATE

62. This CAFO shall become effective after execution of the Final Order by the Regional Judicial Officer, on the date of filing with the Hearing Clerk.

The foregoing Consent Agreement In the Matter of Ocean Petroleum, Inc., Docket No. CWA-04-2020-0405(b), is Hereby Stipulated, Agreed, and Approved for Entry.

FOR COMPLAINANT:

Mary Jo Bragan, Chief
Water Enforcement Branch
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 4

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

In the Matter of:

Ocean Petroleum, Inc.,

Respondent.

Docket No. CWA-04-2020-0405(b)

FINAL ORDER

The Regional Judicial Officer is authorized to ratify this Consent Agreement which memorializes a settlement between Complainant and Respondent. 40 C.F.R. §§ 22.4(b) and 22.18(b)(3). The foregoing Consent Agreement is, therefore, 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 Final Order disposes of this matter pursuant to 40 C.F.R. §§ 22.18 and 22.31.

BEING AGREED, IT IS SO ORDERED.

Tanya Floyd
Regional Judicial Officer

CERTIFICATE OF SERVICE

I certify that the foregoing “Consent Agreement” and “Final Order,” in the Matter of Ocean Petroleum, Inc., Docket No. CWA-04-2020-0405(b), were filed and copies of the same were emailed to the parties as indicated below.

Via email to all parties:

To Respondent:

Ashley Davis
President, Ocean Petroleum, Inc.
1025 Bay Street
Brunswick, Georgia 31520
ashley@oceanpetroleum.net

To EPA:

John C. Goodwin
Drinking Water and Wastewater Section
Enforcement and Compliance Assurance Division
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303
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Atlanta, Georgia 30303-8960