

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2011 SEP 26 PM 2:13

In the Matter of:

McIntosh Oil Company

Respondent.

FILED
EPA REGION VIII
HEARING CLERK

EXPEDITED CONSENT AGREEMENT

DOCKET NO.: CWA-08-2011-0034

1. Pursuant to 40 C.F.R. § 22.13(b). Complainant, United States Environmental Protection Agency(EPA), Region 8, and Respondent, McIntosh Oil Company, by their undersigned representatives, hereby settle the civil cause of action arising out of violations of the Spill Prevention Control and Countermeasure (SPCC) Plan regulations, and agree as follows:
2. The Clean Water Act (the Act), as amended, 33 U.S.C. § 1321(b)(6), authorizes the Administrator of EPA to assess administrative penalties against any person who violates the oil pollution prevention (SPCC) regulations, promulgated at 40 C.F.R. Part 112 under Section 311(j) of the Clean Water Act, 33 U.S.C. § 1321(j). This authority has been properly delegated to the undersigned EPA official.
3. Respondent owns and/or operates McIntosh Oil Company located at 123 W North Street, Powell, WY.
4. McIntosh Oil Company is located within the Shoshone River drainage and discharges of harmful quantities of oil from the equipment of the McIntosh Oil Company could reasonably be expected to reach navigable waters of the United States or adjoining shorelines via Lateral C (V) Canal.
5. McIntosh Oil Company has a total storage capacity of approximately 65,300 gallons of oil and is subject to the SPCC regulations.

6. Respondent admits its facility is subject to the SPCC regulations.
7. Respondent prepared an SPCC plan dated June 2006, covering the facility.
8. The EPA has reviewed the SPCC plan during a June 2010 inspection and determined that the plan does not meet the requirements set forth under 40 C.F.R. § 112. The deficiencies in the SPCC Plan are set forth in the attached list, Attachment 1, incorporated herein by reference.
9. Respondent failed to prepare and implement an adequate, written SPCC Plan for its McIntosh Oil Company in accordance with 40 C.F.R. § 112. Respondent's failure to prepare and implement an adequate, written SPCC Plan for its McIntosh Oil Company constitutes a violation of Section 311(j)(1)(C) of the Act.
10. Respondent admits that it failed to prepare and implement an adequate written SPCC Plan for McIntosh Oil Company in accordance with 40 C.F.R. § 112.7 and 112.8.
11. Respondent agrees to correct the cited violations of 40 C.F.R. § 112 on the attached list within thirty (30) days unless an extension for achieving compliance is granted by EPA at its discretion.
12. Respondent agrees to submit a revised copy of the SPCC Plan for McIntosh Oil Company to EPA for its review and approval.
13. Respondent admits that EPA has jurisdiction in this proceeding.
14. Respondent waives its right to a hearing before any civil tribunal, to contest any issue of law or fact set forth in this agreement.
15. This agreement, upon incorporation into a final order, applies to and is binding upon EPA and upon Respondent and Respondent's heirs, successors and assigns. Any change in ownership or corporate status of Respondent, including but not limited to any transfer of

assets or real or personal property, shall not alter Respondent's responsibilities under this agreement.

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

17. Respondent consents and agrees to the assessment of a civil penalty of \$ 1,875.00, for violations of Section 311(j) of the Act, which, shall be paid no later than thirty (30) days after the effective date of the Final Order by means of a cashier's or certified check, or by wire transfer. If paying by check, the Respondent shall submit a cashier's or certified check, payable to "Environmental Protection Agency," and bearing the notations "OSLTF – 311" and the title and docket number of this case. If the Respondent sends payment by the U.S. Postal Service, the payment shall be addressed to:

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

If the Respondent sends payment by overnight mail, the payment should be sent to:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101
Contact: Natalie Pearson
314-418-4087

Wire transfers should be directed to:

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."

18. The Respondent shall submit copies of the check (or, in the case of a wire transfer, copies of the confirmation) to the following persons:

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


and

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

19. Respondent will revise, implement, and maintain an SPCC plan in accordance with 40 C.F.R. § 112.
20. Respondent further agrees and consents that if Respondent fails to pay the penalty amount as required by this Consent Agreement once incorporated into the Final Order, or fails to make the corrective measures to obtain compliance, this Consent Agreement is null and void, and EPA may pursue any applicable enforcement options.
21. The undersigned representative of Respondent certifies that he/she is fully authorized to enter into the terms and conditions for this Consent Agreement and to bind Respondent to the terms and conditions of this Consent Agreement.
22. The parties agree to submit this Consent Agreement to the Regional Judicial Officer, with a request that it be incorporated into a final order.
23. Each party shall bear its own costs and attorneys fees in connection with this matter.

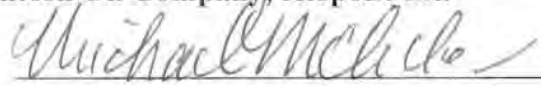
24. This Consent Agreement, upon incorporation into a final order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete and full civil settlement of the specific violations described in this Consent Agreement.

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

By : 
Sandra A. Stavnes, Director
Technical Enforcement Program
Office of Enforcement, Compliance and
Environmental Justice

Date: 9/22/11

McIntosh Oil Company, Respondent.

By : 
Name: Michael McIntosh
Title: Vice-Pres.

Date: 9-16-11

LIST OF SPCC VIOLATIONS

Failure to prepare and/or implement a facility SPCC Plan in accordance with 40 C.F.R. §§ 112.7 and 112.8 in violation of 40 C.F.R. § 112.3.

McIntosh Oil Company's SPCC Plan has the following deficiencies:

No inspection records kept for 3 years required by 40 C.F.R. § 112.7(e).

No personnel briefings conducted as required by 40 C.F.R. § 112.7(f)(3).

Technical implementation violations noted during the inspection of McIntosh Oil for which no verification of corrective actions has been received are:

No sized secondary containment for loading/unloading rack in violation of 40 C.F.R. § 112.7(h)(1).

No and inadequate secondary containment for bulk storage containers in violation of 40 C.F.R. § 112.8(c)(2). Containment is not sufficiently impervious and some tanks have no secondary containment.

Visible discharges and accumulations of oil not removed as required by 40 C.F.R. § 112.8(c)(10).

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **EXPEDITED CONSENT AGREEMENT AND FINAL ORDER** in the matter of **McINTOSH OIL COMPANY**; **DOCKET NO.: CWA-08-2011-0034**, was filed with the Regional Hearing Clerk on September 26, 2011.


Further, the undersigned certifies that a true and correct copy of the document was delivered to Brenda L. 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 26, 2011, to:

Dane McIntosh, Registered Agent
McIntosh Oil Company
Post Office Box 1218
Powell, WY 82435

And emailed to:

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

September 26, 2011


Tina Artemis
Paralegal/Regional Hearing Clerk