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

BEFORE THE ADMINISTRATOR

)	
IN THE MATTER OF)	
)	CONSENT AGREEMENT
Davis Energy, Inc.)	AND
925 Pacific Avenue)	FINAL ORDER
Lexington, Nebraska 68850)	
)	Docket No. CWA-07-2014-0030
)	
Respondent.)	
_____)	

The U.S. Environmental Protection Agency, Region 7 (“EPA” or “Complainant”), and Davis Energy, Inc. (Respondent) have agreed to a settlement of this action before filing a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b), 22.18(b)(2), and 22.18(b)(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), 22.18(b)(2), and 22.18(b)(3).

A. Introduction

Jurisdiction

1. This is an administrative action for the assessment of Class I civil penalty instituted pursuant to Section 311(b)(6) of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act (CWA or the Act), 33 U.S.C. § 1321(b)(6), and in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, (Administrative Proceedings Not Governed by Section 554 of the Administrative Procedures Act), 40 C.F.R. Part 22, Subpart I.

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

Parties

3. The Respondent is Davis Energy, Inc., located at 925 Pacific Avenue, Lexington, Nebraska 68850 (the facility).

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 it to the Director of the Air and Waste Management Division of EPA, Region 7 (“Complainant” or “EPA”).

Statutory and Regulatory Framework

5. Section 311(j)(1)(C) of the Act, 33 U.S.C. § 1321(j)(1)(C), provides that the President shall issue regulations “establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil . . . from onshore . . . facilities, and to contain such discharges”

6. EPA subsequently promulgated the Spill Prevention Control and Countermeasure (SPCC) regulations pursuant to these delegated statutory authorities, and pursuant to its authorities under the CWA, 33 U.S.C. § 1251 *et seq.*, which established certain procedures, methods and requirements upon each owner and operator of a non-transportation-related onshore facility if such facility, due to its location, could reasonably be expected to discharge oil into or upon the navigable waters of the United States and their adjoining shorelines in such quantity as EPA has determined in 40 C.F.R. § 110.3 may be harmful to the public health or welfare or the environment of the United States (“harmful quantity”).

7. In promulgating 40 C.F.R. § 110.3, which implements Section 311(b)(4) of the Act, 33 U.S.C. § 1321(b)(4), EPA has determined that discharges of harmful quantities include oil discharges that cause either (1) a violation of applicable water quality standards, or (2) a film, sheen upon, or discoloration of the surface of the water or adjoining shorelines, or (3) a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

Factual Background

8. Respondent is a corporation organized under the laws of Nebraska. Respondent is a person within the meaning of Sections 311(a)(7) and 502(5) of the Act, 33 U.S.C. §§ 1321(a)(7) and 1362(5), and 40 C.F.R. § 112.2.

9. Respondent is the owner/operator within the meaning of Section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6), and 40 C.F.R. § 112.2, of Davis Energy, Inc., 925 Pacific Avenue, Lexington, Nebraska 68850.

10. The facility has an estimated aggregate above-ground storage of 84,000 gallons of oil.

11. Respondent's facility is located near a storm drain which discharges into Dawson's Ditch (#4) which flows into Spring Creek. Dawson's Ditch and/or Spring Creek are navigable waters of the United States within the meaning of 40 C.F.R. § 112.2 and Section 502(7) of the Act, 33 U.S.C. § 1362(7).

12. Respondent is engaged in storing, processing, using or consuming oil or oil products located at the facility.

13. The facility is a non-transportation-related facility within the meaning of 40 C.F.R. § 112 Appendix A, as incorporated by reference within 40 C.F.R. § 112.2.

14. The facility is an onshore facility within the meaning of Section 311(a)(10) of the Act, 33 U.S.C. § 1321(a)(10), and 40 C.F.R. § 112.2.

15. The facility is 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").

16. Pursuant to Section 311(j)(1)(C) of the Act, E.O. 12777, and 40 C.F.R. § 112.1 Respondent, as the owner and/or operator of an SPCC-regulated facility, is subject to the SPCC regulations.

17. On or about September 26, 2012, EPA conducted an inspection of Respondent's facility. At the time of EPA's inspection, Respondent did not have an SPCC plan or records of implementation of the SPCC program, as required by 40 C.F.R. Part 112.

18. A copy of EPA's inspection report documenting EPA's findings of violations of the SPCC regulations was mailed to Respondent in February 2013. In August 2013, EPA contacted Respondent and was informed that Respondent had still not prepared an SPCC plan for the facility, and had failed to implement other SPCC requirements of 40 C.F.R. 40 C.F.R. Part 112 at the facility.

Alleged Violations

19. Complainant hereby incorporates the allegations contained in Paragraphs 1 through 18 above, as if fully set forth herein.

20. At the time of the September 2012 inspection, and thereafter, Respondent had failed to fully prepare and implement an SPCC Plan, as required by 40 C.F.R. 112.3, as follows:

- (i) Respondent failed to have a SPCC Plan, in violation of 40 C.F.R. 112.3.
- (ii) Respondent failed to have appropriate containment and/or diversionary structures or equipment to prevent a discharge as described in §112.1(b), in violation of 40

C.F.R. 112.7(c).

- (iii) Respondent failed to conduct monthly or periodic inspections or tests of the outsides of above ground storage tanks, support foundations, or diked areas for the accumulation of oil, in violation of 40 C.F.R. 112.7(e);
- (iv) Respondent failed to conduct personnel training on discharge prevention procedures, in violation of 40 C.F.R. 112.7(f)(1) and (f)(3);
- (v) Respondent failed to provide sufficient secondary containment for the loading/unloading rack, in violation of 40 C.F.R. 112.7(h);
- (vi) Respondent failed to provide adequate secondary containment for storage tanks in the tank farm, the storage tanks and portable containers located within the warehouse, or for the dyed diesel tank, waste oil tank and 55-gallon containers located outdoors at the facility, in violation of 40 C.F.R. 112.8(c)(2);
- (vii) Respondent failed to retain or control drainage of rainwater that is discharged to the storm drain, failed to inspect retained rainwater prior to its discharge, and it failed to keep records of drainage to the storm drain, in violation of 40 C.F.R. 112.8(c)(3);
- (viii) Respondent failed to perform integrity testing of the facility's bulk storage tanks, in violation with 40 C.F.R. 112.8(c)(6);
- (ix) Respondent failed to regularly test liquid level sensing devices on the storage tanks, in violation of 40 C.F.R. 112.8(c)(8)(v);
- (x) Respondent failed to store/position various portable containers and totes stored inside the Davis Energy warehouse to prevent a discharge, in violation of 40 C.F.R. 112.8(c)(11);
- (xi) Respondent failed to mark as to origin, piping terminal connections at the transfer area and failed to cap or blank-flange such piping connections, when not in service or in standby service, in violation of 40 C.F.R. 112.8(d)(2).
- (xii) Respondent failed to inspect aboveground valves, piping and appurtenances to assess their general operational condition, in violation of 40 C.F.R. 112.8(d)(4); and
- (xiii) Respondent failed to complete a Certification of the Applicability of the Substantial Harm Criteria, in violation of 40 C.F.R. 112.20(e).

21. Respondent's failure to prepare and implement an SPCC plan for the facility in accordance with the requirements of 40 C.F.R. Part 112, as described in Paragraph 20, violated 40 C.F.R. § 112.3.

22. In accordance with Section 311(b)(6)(A)(ii) of CWA, 33 U.S.C. § 1321(b)(6)(A)(ii), EPA may assess a civil penalty to any owner or operator in charge of any onshore facility who fails to comply with any regulation issued under Section 311(j) of CWA, 33 U.S.C. § 1321(j).

B. CONSENT AGREEMENT

1. Respondent and EPA agree to the terms of this CAFO and Respondent has read the

Consent Agreement, finds it reasonable, consents to its issuance and will comply with the terms of the Final Order.

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

3. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this CAFO.

4. 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 accompanying this Consent Agreement.

5. Respondent certifies by signing this CAFO that it has prepared a SPCC plan for the facility, and has contracted to have concrete work performed and completed to address containment and drainage issues at the facility no later than June 1, 2014, and to the best of its knowledge, when this work is completed, Respondent's facility will be in compliance with the CWA and all regulations promulgated thereunder.

6. Nothing in this Consent Agreement shall be construed as a release from any other action under any law and/or regulation administered by EPA. Nothing contained in 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.

7. Failure to pay the assessed penalty may result in the referral of this matter to the United States Department of Justice for collection. If payment is not received on or before the due date, 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. A late payment handling charge will be imposed after thirty (30) days and an additional charge for each subsequent thirty (30) day period will be assessed. Additionally, as provided by 31 U.S.C. § 3717(e)(2), a six percent (6%) per annum penalty (late charge) may be assessed on any amount not paid within ninety (90) days of the due date.

8. Each party shall bear its own costs and attorneys' fees in the action resolved by this CAFO.

9. Each signatory of this Agreement certifies that he or she is fully authorized to enter into the terms of this CAFO.

10. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of a mitigated civil penalty in the amount of Twenty Four Thousand Dollars (\$24,000.00) as specified in Paragraph 1 of the Final Order, plus applicable interest, to

be paid in installments in accordance with the schedule and terms provided in Attachment A to this CAFO. Payment of this civil penalty shall resolve all civil and administrative claims for all violations of the CWA specifically alleged in Paragraphs A.20 to A.22 of this document, through the Effective Date of the Final Order, below.

11. The effect of the settlement described in Paragraph B.10 above is conditioned upon the accuracy of the Respondent's representations to EPA, as memorialized in Paragraph B.5 above.

12. Notwithstanding any other provision of this CAFO, EPA reserves the right to enforce the terms of the Final Order portion of this CAFO by initiating a judicial or administrative action under Section 311 of the CWA, 33 U.S.C. § 1321, and to seek penalties against Respondent or to seek any other remedy allowed by law.

13. Complainant reserves the right to take enforcement action against Respondent for any future violations of the CWA and its implementing regulations and to enforce the terms and conditions of this CAFO.

14. This CAFO shall be effective upon entry of the Final Order by the Regional Judicial Officer for EPA Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

15. This executed CAFO shall be filed with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 7, 11201 Renner Boulevard, Lenexa, Kansas, 66219.

C. FINAL ORDER

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

1. Respondent shall pay a civil penalty of Twenty Four Thousand Dollars (\$24,000), plus applicable interest, in accordance with the installment schedule set forth in Attachment A to this CAFO. Payment shall be by cashier's or certified check made payable to the "Environmental Protection Agency – OSLTF-311" and remitted to:

U.S. EPA
P.O. Box 979077
St. Louis, Missouri 63197-9000.

2. The Respondent shall reference the Docket Number CWA-07-2014-0030 and **In the Matter of Davis Energy, Inc.** on the check. A copy of each check shall also be mailed to:

Regional Hearing Clerk
United States Environmental Protection Agency
Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

and

Howard Bunch
Office of Regional Counsel
United States Environmental Protection Agency
Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

3. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this CAFO shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

4. This Final Order portion of this CAFO shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this CAFO.

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

COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY

5/19/14
Date

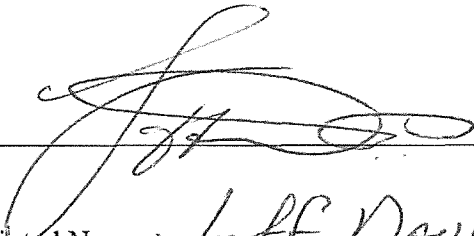
John D. Smith for BW
Becky Weber
Director
Air and Waste Management Division

5/14/14
Date

HB
Howard Bunch
Sr. Assistant Regional Counsel
Office of Regional Counsel

RESPONDENT:
Davis Energy, Inc.

4-30-14
Date


Printed Name Jeff DAVIS

Title Owner

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

Karina Borromeo

Karina Borromeo
Regional Judicial Officer

Date 5-22-14

ATTACHMENT A

Schedule

Payment	<u>Due Date</u>	<u>Amount Due Due</u>	<u>Int.</u>	<u>Principal</u>	<u>Outstanding Balance</u>
Payment	06/01/2014	6,000.00	0.00	6,000.00	18,000.00
Payment	09/01/2014	3,026.30	45.00	2,981.30	15,018.70
Payment	12/01/2014	3,026.30	37.55	2,988.75	12,029.95
Payment	03/01/2015	3,026.30	30.07	2,996.23	9,033.72
Payment	06/01/2015	3,026.30	22.58	3,003.72	6,030.00
Payment	09/01/2015	3,026.30	15.08	3,011.22	3,018.78
Payment	12/01/2015	3,026.30	7.52	3,018.78	0.00

Terms

Interest will be set at the effective rate for debts to the United States as of the effective date of the Consent Agreement and Final Order (CAFO). For the calendar year 2014, the rate is 1% per annum. Upon the June 1, 2014 due date of the first installment, interest shall begin to accrue on the remaining penalty balance. Interest will not be compounded and interest will be calculated based on a 360-day year. At any time, Respondent may make advance payment of the remaining penalty balance and interest due, after obtaining a payoff figure and date from EPA. Unless excused, failure to timely pay any portion of the mitigated civil penalty may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties, late payment handling charges, and accumulated interest, as stated in Paragraph 7 of the Consent Agreement. In computing time, if a due date falls on a Saturday, Sunday, or Federal Holiday, the due date shall be the next day that is not a Saturday, Sunday, or Federal Holiday.

IN THE MATTER Of Davis Energy, Inc., Respondent
Docket No. CWA-07-2014-0030

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Order was sent this day in the following manner to the addressees:

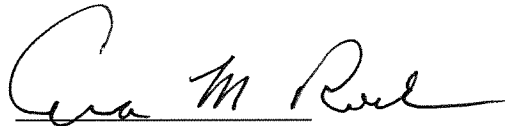

Copy emailed to Attorney for Complainant:

bunch.howard@epa.gov

Copy by First Class Mail to Respondent:

Davis Energy, Inc.
Jeff Davis
925 Pacific Avenue
Lexington, Nebraska 68850

Dated: May 27, 2014


Kathy Robinson
 Hearing Clerk, Region 7