

1.3. “Navigable waters” are defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7) and 40 C.F.R. § 110.1.

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

1.5. Under the authority of Section 311(j)(1) of the Act, 33 U.S.C. § 1321(j)(1), 40 C.F.R. Part 112, the Oil Pollution Prevention regulations establish procedures, methods and requirements for preventing the discharge of oil. These requirements apply to owners or operators of non-transportation-related facilities engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing or consuming oil or oil products that, due to their location, could reasonably be expected to discharge oil in harmful quantities (as defined in 40 C.F.R. Part 110) to navigable waters of the United States or adjoining shorelines.

1.6. Under 40 C.F.R. § 112.3, the owner or operator of an onshore facility that became operational on or before August 16, 2002, that due to its location, could reasonably be expected to discharge oil in harmful quantities into or upon the navigable waters of the United States and their adjoining shorelines shall have prepared and implemented a Spill Prevention Control and Countermeasure (“SPCC”) Plan in accordance with 40 C.F.R. § 112.7.

1.7. 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.

1.8. Under 40 C.F.R. § 112.7, the SPCC Plan shall be prepared “in accordance with good engineering practices” and have the full approval of management with authority to commit the necessary resources to implement the SPCC Plan.

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.45(b), issuance of this CAFO commences this proceeding, which will conclude when the Final Order contained in Part V of this CAFO becomes effective.

2.2. A concise statement of the factual basis for⁴ alleging violations of the Act, together with specific references to the provisions of the Act and implementing regulations Respondent is alleged to have violated, appears in Part III of this CAFO.

III. ALLEGATIONS

3.1. Respondent is a corporation organized under the laws of Idaho with a place of business located at 129 West Avenue D, Jerome, Idaho (the “Facility”). 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.

3.2. Respondent is the “owner or 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 a facility used for gathering, storing, processing, transferring or distributing oil or oil products, located at 129 West Avenue D, Jerome, Idaho.

3.3. The Facility has an aggregate above-ground storage capacity greater than 1,320 gallons of oil in containers each with a shell capacity of at least 55 gallons.

3.4. Respondent's Facility is located approximately 25 meters from an irrigation canal that flows into the Snake River, which are both waters of the United States.

3.5. Respondent is engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using or consuming oil or oil products located at the Facility.

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

3.7. 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.

3.8. 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 and is, therefore, subject to the SPCC regulations at 40 C.F.R. Part 112

3.9. Respondent began operating the Facility before August 17, 2002.

3.10. 40 C.F.R. § 112.3 requires that the owner or operator of an SPCC-regulated facility shall have prepared and implemented a written SPCC Plan that complies with 40 C.F.R. §§ 112.3 and 112.7.

3.11. On June 26, 2007, authorized EPA representatives inspected the Facility to determine compliance with 311(j) of the Act, and in particular the requirements of 40 C.F.R. Part 112 related to SPCC Plans.

3.12. EPA determined upon review of Respondent's SPCC Plan for the Facility that the Plan did not comply with the following regulatory requirements. Specifically, Respondent:

- (a) failed to address security measures for the Facility in the Plan as required by 40 C.F.R. § 112.7(e)(9) (2002);
- (b) failed to provide adequate secondary containment for the loading/unloading rack as required by 40 C.F.R. § 112.7(e)(4) (2002);
- (c) failed to address Facility drainage valves in the Plan as required by 40 C.F.R. § 112.7(e)(1) (2002);
- (d) failed to address compatibility of its aboveground storage tanks ("ASTs") with materials stored in the Plan as required by 40 C.F.R. § 112.7(e)(2) (2002);
- (e) failed to provide adequate secondary containment for its ASTs as required by 40 C.F.R. § 112.8(e)(2) (2002);
- (f) failed to provide adequate high liquid level alarms, high liquid level pump cutoffs or a liquid level detection systems at the truck loading/unloading areas as required by 40 C.F.R. § 112.7(e)(2) (2002); and
- (g) failed to provide adequate secondary containment for mobile and portable containers as required by 40 C.F.R. § 112.7(e)(2) (2002).

3.13. Respondent's failure to prepare an adequate SPCC Plan for the Facility in accordance with the requirements of 40 C.F.R. § 112.7 (2002) violated 40 C.F.R. § 112.3 (2002).

IV. CONSENT AGREEMENT

- 4.1. Respondent admits the jurisdictional allegations contained in Part III of this CAFO.
- 4.2. Respondent neither admits nor denies the specific factual allegations contained in Part III of this CAFO.
- 4.3. Respondent expressly waives any rights to contest the allegations and to appeal the Final Order contained herein.
- 4.4. The provisions of this CAFO shall bind Respondent and its agents, servants, employees, successors, and assigns.
- 4.5. Except as provided in Paragraph 4.11, below, each party shall bear its own costs in bringing or defending this action.
- 4.6. Pursuant to Section 311(b) of the Act, 33 U.S.C. § 1321(b), EPA has determined and Respondent agrees that an appropriate penalty to settle this action is THIRTY TWO THOUSAND SIX HUNDRED EIGHTY DOLLARS (\$32,680). This penalty amount has been agreed upon in consideration of statutory penalty factors identified in Section 311(b)(6) of the Act, 33 U.S.C. §1321(b)(6), and in consideration of the Supplemental Environmental Project (“SEP”) described in Paragraphs 4.12-4.13 and the attached Appendix.
- 4.7. Respondent consents to the issuance of the attached Final Order and to payment of the civil penalty cited in the foregoing paragraph within 30 days of the effective date of the Final Order.

4.8. Payment under this CAFO shall be made by cashier's check or certified check, payable to "Environmental Protection Agency," and bearing the notation "OSLTF – 311." 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
P.O. Box 979077
St. Louis, Missouri 63197-9000

Respondent shall note on each check the title and docket number as they appear in the caption of this CAFO.

4.9. Respondent shall serve photocopies of the check described above on the Regional Hearing Clerk and EPA at the following two addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
1200 Sixth Avenue, Suite 900
Mail Stop ORC – 158
Seattle, Washington 98101

Kim Ogle
U.S. Environmental Protection Agency
1200 Sixth Avenue, Suite 900
Mailstop OCE-133
Seattle, Washington 98101-3140.

4.10. Should Respondent fail to pay the penalty assessed by paragraph 4.6 of this CAFO in full by its due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. Should such a failure to pay occur, Respondent may be subject to a civil action to collect the assessed penalty under the CWA. In any collection action, the validity, amount, and appropriateness of the penalty set out in paragraph 4.6 shall not be subject to review.

4.11. Should Respondent fail to pay any portion of the penalty assessed by this CAFO in full by its due date, Respondent shall also be responsible for payment of the following amounts:

- (a) Interest. Pursuant to Section 311(b)(6)(H) of the Act, 33 U.S.C. § 1321(b)(6)(H), any unpaid portion of the assessed penalty shall bear interest at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the Final Order contained herein, provided, however, that no interest shall be payable on any portion of the assessed penalty that is paid within 30 days of the effective date of the Final Order contained herein.
- (b) Attorneys Fees, Collection Costs, Nonpayment Penalty. Pursuant to Section 311(b)(6)(H) of the Act, 33 U.S.C. § 1321(b)(6)(H), should Respondent fail to pay on a timely basis the amount of the penalty assessed by the Final Order contained herein, Respondent shall pay (in addition to any assessed penalty and interest), attorneys fees and costs for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to twenty percent (20%) of the aggregate amount of Respondent's penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.

4.12. Respondent shall implement an SEP in accordance with all provisions described in the Appendix to this CAFO, which is attached hereto and incorporated into this CAFO by

reference. Respondent agrees that the SEP is intended to reduce the effects of possible future oil spills, and shall be completed no later than 90 days after the effective date of the Final Order.

4.13. The SEP, which is described in more detail in the Appendix, is in two parts:

(a) Respondent shall purchase and make available for pickup in Caldwell or Twin Falls two oil spill containment equipment trailers. One is to be made available to Magic Valley Regional Response Team in Twin Falls, Idaho and one to Idaho Falls Regional Response Team in Idaho Falls, Idaho.

(b) Respondent shall have purchased and installed remote tank level monitoring equipment at Respondent's Caldwell (2309 Franklin Road, Caldwell, Idaho) and Dodson (220 Eastland Drive South, Twin Falls, Idaho) facilities.

4.14. Respondent's deadline to perform the SEP and SEP completion report shall be excused or extended if such performance is prevented or delayed solely by events which constitute a Force Majeure event. A Force Majeure event is defined as any event arising from causes beyond the reasonable control of Respondent, including its employees, agents, consultants, and contractors, which could not be overcome by due diligence and which delays or prevents the performance of the SEP within the specified time period. A Force Majeure event does not include, inter alia, increased costs of performance, changed economic circumstances, changed labor relations, normal precipitation or climate events, changed circumstances arising out of the sale, lease, or other transfer or conveyance of title or ownership or possession of a site, or failure to obtain federal, state, or local permits.

4.15. The cost to Respondent of implementing the SEP shall be not less than NINETY THOUSAND SIX HUNDRED DOLLARS (\$90,600) in accordance with the specifications set forth in the SEP Letter Agreement in the Appendix. Respondent shall include documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report.

4.16. Respondent hereby certifies that, as of the date of this Consent Agreement, Respondent is not required to perform or develop the SEP by any federal, state, or local law or regulation; nor is Respondent required to perform or develop the SEP by any other agreement, under a grant, or as injunctive relief in any other case. Respondent further certifies that it has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP. For Federal Income Tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

4.17. Respondent shall submit a SEP Completion Report to EPA no later than 30 days after completion of the SEPS specified in paragraph 4.12. The SEPs Completion Report shall contain the following information:

- (a) A detailed description of the SEP as implemented;
- (b) Itemized costs, documented by copies of purchase orders and receipts or canceled checks;
- (c) Certification that the SEP has been fully implemented pursuant to the provisions of this CAFO;
- (d) A description of any operating problems encountered and the solutions thereto; and

(e) A description of the environmental and public health benefits resulting from implementation of the SEP (with a quantification of the benefits and pollutant reductions, if feasible).

4.18. Respondent agrees that failure to submit the SEP Completion Report required by Paragraph 4.17, shall be deemed a violation of this CAFO and Respondent shall become liable for stipulated penalties pursuant to this CAFO.

4.19. Unless otherwise instructed in writing by EPA, Respondent shall submit all notices and reports required by this CAFO by first class mail to:

Kim Ogle
U.S. Environmental Protection Agency
1200 Sixth Avenue, Suite 900
Mailstop OCE-133
Seattle, Washington 98101-3140

4.20. Respondent agrees that EPA may inspect Respondent's non-privileged records related to the SEP at any reasonable time in order to confirm that the SEP is being undertaken in conformity with the representations made herein.

4.21. Respondent shall maintain legible copies of documentation of the underlying data for documents or reports submitted to EPA pursuant to this CAFO until the SEP Completion Report is accepted pursuant to Paragraph 4.22, below, and Respondent shall provide the documentation of any such underlying data to EPA within 15 days of a written request for such information. In all documents or reports including, without limitation, the SEP Completion Report submitted to EPA pursuant to this CAFO, Respondent shall, by a corporate officer, sign

and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

4.22. Within 45 days of receipt of the SEP Completion Report described in Paragraph 4.17, above, EPA may do one of the following: (a) accept the Report; (b) reject the Report, notify the Respondent in writing of deficiencies in the Report, and grant Respondent an additional 30 days in which to correct any deficiencies; or (c) reject the Report and seek stipulated penalties in accordance with Paragraph 4.24, below. If EPA does not act within 45 days after receiving the SEP Completion Report, then the Report will be deemed accepted, and the SEP will be considered satisfactorily completed.

4.23. In the event the SEP is not completed as contemplated by this CAFO and this failure was not caused solely by events which constitute a Force Majeure as defined by Paragraph 4.14, above, then stipulated penalties shall be due and payable by Respondent to EPA in accordance with Paragraph 4.24, below. Schedules herein may be extended based upon mutual written agreement of the parties.

4.24. In the event that Respondent fails to substantially comply with any of the terms or provisions of this CAFO relating to the performance of the SEP described in the preceding paragraphs and in the Appendix, and/or to the extent that the actual expenditures for the SEP do

not equal or exceed the cost of the SEP described in this CAFO, Respondent shall be liable for stipulated penalties according to the provisions set forth below:

- (a) In all cases, if Respondent spent less than the amount set forth in Paragraph 4.15, Respondent shall pay a stipulated penalty equal to the difference between the amount of total eligible SEP costs incurred by Respondent and the amount set forth in Paragraph 4.15;
- (b) If Respondent has completed the SEP, but the SEP is not satisfactory, Respondent shall pay FIVE THOUSAND DOLLARS (\$5,000) in addition to the penalty required under subparagraph (a), above;
- (c) If the SEP is not completed in accordance with the completion date specified in Paragraph 4.12, or if Respondent does not submit a SEP Completion Report by the deadline specified in Paragraph 4.17, Respondent shall pay stipulated penalties as follows:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$100.00	1 st through 14 th day
\$200.00	15 th through 30 th day
\$500.00	31 st day and beyond

- (d) In no event shall the total stipulated penalties exceed SIXTY SIX THOUSAND DOLLARS (\$66,000).

4.25. The determinations of whether the SEP has been satisfactorily completed and whether Respondent has made a good faith, timely effort to implement the SEP shall be in the

sole discretion of EPA. A determination that the SEP has been satisfactorily completed shall not be unreasonably withheld. EPA's determination shall be based on a comparison of the requirements contained in this CAFO (including the attached Appendix) and the actions performed by Respondent regarding the satisfactory completion of the SEP.

4.26. Stipulated penalties under Paragraph 4.24, shall begin to accrue on the day after performance is due, and shall continue to accrue through the final day of satisfactory completion of the activity, subject to the maximum set forth in Paragraph 4.24(d).

4.27. Respondent shall pay stipulated penalties within 15 days of receipt of a written demand by EPA for such penalties. Payment shall be in accordance with the provisions of Paragraph 4.8, above. Interest and late charges shall be paid as stated in Paragraph 4.11.

4.28. Except as provided in Paragraph 4.30, nothing in this CAFO shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this agreement or of the statutes and regulations upon which this agreement is based, or for Respondent's violation of any applicable provision of law.

4.29. Any public statement, oral or written, in print, film, or other media, made by Respondent making reference to the SEP shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for alleged violations of the Clean Water Act."

4.30. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state, or local law, nor shall it be construed to be a ruling on, or

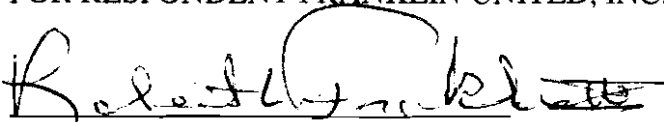
determination of, any issue related to any federal, state, or local permit, nor shall it be construed to constitute EPA approval of the equipment or technology provided or installed by Respondent in connection with the SEP under the terms of this CAFO.

4.31. Respondent represents that it is duly authorized to execute this CAFO and that the party signing this CAFO on its behalf is duly authorized to bind Respondent to the terms of this CAFO. This CAFO may be executed in multiple counterparts, each of which shall be deemed to have the same force and effect as an original. A facsimile signature shall be treated as an original.

4.32. Compliance with all the terms and conditions of this CAFO shall result in full settlement and satisfaction of all claims for penalties alleged in Section III above.

STIPULATED AND AGREED:

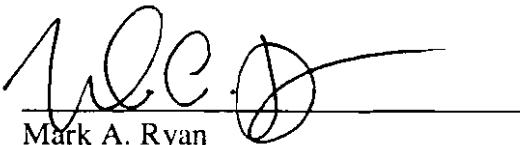
FOR RESPONDENT FRANKLIN UNITED, INC.



Robert L. Franklin III
President
Franklin United Inc.

Dated: 12/11/08

FOR COMPLAINANT



Mark A. Ryan
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 10

Dated: December 1, 2008

V: FINAL ORDER

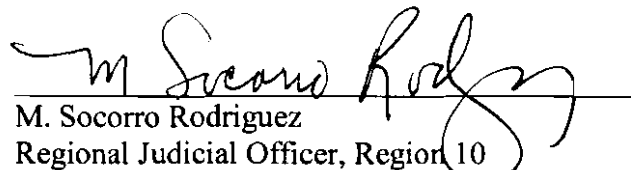
5.1. The terms of the foregoing Consent Agreement are hereby ratified and incorporated by reference into this Final Order. Respondent is hereby ordered to comply with the terms of settlement contained in the Consent Agreement.

5.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to the Clean Water Act for the particular violations alleged in Part III, above. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall 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. This CAFO does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of the Act and regulations and permits issued thereunder.

5.3. Pursuant to Section 311(b)(6)(C) of the Act, 33 U.S.C. § 1321(b)(6)(C), EPA has published public notice of its intent to assess an administrative penalty against Respondent and to invite public comment in accordance with 40 C.F.R. § 22.45. More than forty (40) days have elapsed since the issuance of this public notice, and EPA has received no petition to set aside the Consent Agreement contained herein.

5.4. This Final Order shall become effective upon filing.

SO ORDERED this 26th day of February 2009.


M. Socorro Rodriguez
Regional Judicial Officer, Region 10
U.S. Environmental Protection Agency

Appendix to
In the Matter of Franklin United, Inc.
EPA Docket No. CWA-10-2009-0004
Supplemental Environmental Project (“SEP”)
Letter Agreement

A. Trailers

Oil Containment Equipment Trailer Specs: Total Projected Cost \$22,600 each

Trailer: estimated cost \$8,000

- 24' long, 8" wide enclosed trailer with rear ramp, one side door.
- Tandem axle with electric brakes and minimum “D” load rated tires.
- Minimum payload capacity 6,665 lbs.
- GVWR 9,800 lbs.

Boom: total estimated cost \$13,000 (deflection and containment boom must be different colors, e.g., yellow and orange)

- 600' Deflection Boom: estimated cost \$6,000
 - foam float
 - 50' lengths
 - 6" skirt - total height no less than 12"
 - minimum 22 oz PVC coated fabric
 - minimum 5/16" galvanized chain ballast
 - ASTM F962 connectors
- 400' Containment Boom: estimated cost \$7,000
 - Foam float
 - 50' lengths
 - 11" or 12" skirt – total height no less than 20"
 - minimum 22 oz PVC coated fabric
 - minimum 3/8" galvanized chain ballast
 - ASTM F962 connectors

Absorbent: total estimated cost \$1,250

- Oil Absorbent Pads: \$370
 - 400 count: 15" x 20"
 - Polypropylene pads
- Oil Absorbent Mat: \$330

- 2 - 30lb. rolls
- Skimming Sweep: \$230
 - 4 count
 - 50' length x 17" width
- Oil Absorbent Boom: \$320
 - 5" diameter x 20' length
 - 6 count

Overpack Drums: \$350

- 95 gallon poly overpack drum (2)

B. Remote Monitoring Equipment

Remote Monitoring Specs: total project costs for the Caldwell and Dodson sites are at least \$45,400.

The monitoring equipment, to be purchased from WorldTelemetry, Inc. shall, at a minimum, achieve the following goals

- Real-time monitor and record inventory data in the above-ground petroleum storage tanks at the sites
- Send audible and other alarms (e.g., via facsimile, email or pager) to Franklin United's Headquarters and other appropriate locations in the event of an overflow of any monitored tank.

All Franklin United Employees responsible for monitoring the system shall take all necessary training in the proper use of the equipment.

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in **In the Matter of: Franklin United, Inc., DOCKET NO.: CWA-10-2009-0004** was filed with the Regional Hearing Clerk on February 27, 2009.

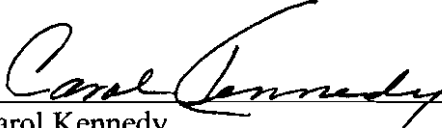
On February 27, 2009 the undersigned certifies that a true and correct copy of the document was delivered to:

Mark Ryan, Esquire
US Environmental Protection Agency
Idaho Operations Office
1435 North Orchard Street
Boise, ID 83706

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt on February 27, 2009, to:

Robert L. Franklin, III
President, Franklin United Inc.
P.O. Box 5159
Twin Falls, ID 83303-5159

DATED this 5th day of February 2009.



Carol Kennedy
Regional Hearing Clerk
EPA Region 10