

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2011 OCT 17 AM 8:07

IN THE MATTER OF:) Docket No. CWA-08-2010-0024
)
Nova Energy, Inc.) **CONSENT AGREEMENT**
401 E. 1st Street, Suite 301)
Casper, WY 82601,)
)
Respondent.)

FILED
EPA REGION VIII
RECORDING CLERK

Complainant, United States Environmental Protection Agency, Region 8 (EPA), and Respondent, Nova Energy Inc. (Nova), by their undersigned representatives, hereby consent and agree as follows:

BACKGROUND

1. On August 31, 2010, EPA issued Nova an Administrative Complaint and Notice of Opportunity for Hearing (Complaint) pursuant to its authority under § 311(b)(6)(B) of the Clean Water Act (Act), as amended by the Oil Pollution Act of 1990. EPA alleged in the Complaint that Nova failed to prepare and implement an adequate Spill Prevention Control and Countermeasure (SPCC) plan at its Wood B-1 facility (facility) in violation of § 311(j) of the Act, 33 U.S.C. § 1321(j), and the oil pollution prevention regulations set forth at 40 C.F.R. Part 112. The Complaint proposed a civil penalty for the violations alleged therein.

2. Nova admits the jurisdictional allegations of the Complaint and neither admits nor denies the specific factual allegations of the Complaint.

3. Nova waives its right to a hearing before any tribunal, to contest any issue of law or fact set forth in the Complaint or this Consent Agreement.

4. Nova qualifies for a full ability-to-pay reduction based on a determination by EPA Region 8 Financial Analyst Daniela Golden following a thorough examination of Nova's

financial information consistent with *EPA's Policy on Civil Penalties, A Framework for Statute-Specific Approaches to Penalty Assessments*, and *Ability to Pay Case Law Outline*.

5. This Consent Agreement, upon incorporation into a final order, applies to and is binding upon EPA, and Nova, its successors, and assigns. Any change in ownership or corporate status of Nova, including, but not limited to, any transfer of assets or real or personal property, shall not alter Nova's responsibilities under this agreement. This Consent Agreement contains all terms of the settlement agreed to by the parties.

TERMS OF SETTLEMENT

CIVIL PENALTY

6. Nova consents and agrees to pay a civil penalty in the amount of **five hundred dollars (\$500)**, in the manner described below in this paragraph:

- a. Payment is due within thirty (30) calendar days from the date written on the final order, issued by the Regional Judicial Officer that adopts this Consent Agreement. If the due date falls on a weekend or legal federal holiday, then the due date becomes the next business day. The date the payment is made is considered to be the date processed by Mellon Bank described below. Payments received by 11:00 AM EST are processed on the same day, those received after 11:00 AM are processed on the next business day.
- b. The payment shall be made by remitting a cashier's or certified check, referencing the name and docket number of this case, and "Oil Spill Liability Trust Fund-311," for this amount, payable to "**Environmental Protection Agency**," to:

**US checks by regular
US postal service mail:**

US EPA Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

**Federal Express, Airborne,
or other commercial carrier:**

U.S. Bank

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

Wire transfers:

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"

On Line Payment:

WWW.PAY.GOV
Enter sfo 1.1 in the search field

Open form and complete required
fields.

Copies of the check or wire transfer shall be simultaneously sent to:

Cynthia Peterson
U.S. EPA Region 8 (8ENF-UFO)
1595 Wynkoop Street
Denver, CO 80202-1129

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

- c. In the event payment is not received by the specified due date, interest accrues from the date of the final order, not the payment 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 the payment is received in full (i.e., on the 1st late day, 30 days of interest accrues).
- d. In addition to the accrual of interest specified in subsection (c) of this Paragraph, a handling charge of fifteen dollars (\$15.00) shall be assessed on the 31st day from the date of the final order, and each subsequent 30-day period that the penalty, or any portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if the penalty payment is not received within

ninety (90) days of the due date (i.e., the 121st day from the date the final order is signed). Payments are first applied to outstanding handling charges, 6% penalty interest, and late interest. The remainder is then applied to the outstanding principal amount.

- e. Nova agrees that the penalty shall never be claimed as a federal or other tax deduction or credit.

COMPLIANCE ORDER

7. Within thirty (30) days of receiving the Consent Agreement and Final Order, Nova agrees to submit for EPA review and approval draft SPCC plans for the Wood B-1, Davis Federal 24-33 and DL Cook Fed. 1-35 facilities. Nova shall submit final SPCC plans for these facilities to EPA within 30 days of receiving and addressing EPA's comments, and properly implement the SPCC plans thereafter.

8. Within 30 days of receiving the Consent Agreement and Final Order, Nova shall submit to EPA documentation (such as photographs or invoices) verifying that the contaminated soils at the Wood B-1 facility have been properly remediated on site or removed and disposed of.

- 9. All reports and plans to EPA required by this Order shall be given to:

Cynthia Peterson (8ENF-UFO)
U.S. EPA Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

STIPULATED PENALTIES

10. Nova shall be liable to EPA for stipulated penalties in the amount of \$50 per day for noncompliance with the compliance requirements set forth in Paragraphs 7 and 8 above. All stipulated penalties shall begin to accrue on the first day that performance is delinquent or a

violation of this Consent Agreement occurs, and continue to accrue through the final day of correction of the violation.

11. Stipulated penalties shall become owing upon written demand by the EPA and are due on or before the 15th (fifteenth) of the month following the month the written demand is received. Nova shall, as directed by EPA, pay stipulated penalties owing to EPA in accordance with Paragraph 6 above.

12. EPA may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due under this Consent Agreement.

GENERAL PROVISIONS

13. Nothing in this Consent Agreement shall relieve Nova of the duty to comply with the Act and its implementing regulations.

14. Failure by Nova to comply with any of the terms of the Consent Agreement shall constitute a breach of the agreement and may result in referral of the matter to the Department of Justice for enforcement of the Consent Agreement and for such other relief as may be appropriate in federal district court.

15. Nothing in the Consent Agreement shall be construed as a waiver by the EPA 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 Nova's failure to perform pursuant to the terms of the Consent Agreement.

16. The undersigned representative of Nova certifies that he is fully authorized to enter into and bind Nova to the terms and conditions of this Consent Agreement.

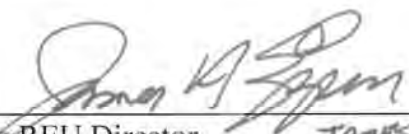
17. The parties agree to submit this Consent Agreement to the Regional Judicial Officer, with a request that it be incorporated into a final order.

18. Each party shall bear its own costs and attorney fees in connection with this matter.


19. The 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 violations alleged in the Complaint.

**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8,
Complainant.**

Date: OCT 12 2011

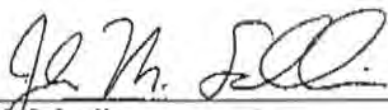
By: 
Acting REU Director *JAMES H. EGGERS*
Legal Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

Date: 10/13/11

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

NOVA ENERGY, INC.
Respondent.

Date: 10/12/2011

By: 
John M. Scherlin,
Share-holder and Acting President

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT/FINAL ORDER** in the matter of **NOVA ENERGY, INC.; DOCKET NO.: CWA-08-2010-0024** was filed with the Regional Hearing Clerk on October 17, 2011.

Further, the undersigned certifies that a true and correct copy of the documents were delivered Amy Swanson, Senior Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned document was placed in the United States mail certified/return receipt requested on October 17, 2011, to:


John Scherlin
Nova Energy, Inc.
400 E. 1st Street, Suite 301
Casper, WY 82601
scherlin@bresnan.net

e-mailed to:

Honorable Elyana R. Sutin, Regional Judicial Officer
U. S. Environmental Protection Agency, Region 8
1595 Wynkoop Street (8RC)
Denver, CO 80202-1129
Sutin.elyana@epa.gov

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

October 17, 2011


Tina Artemis
Paralegal/Regional Hearing Clerk

