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HEARINGS CLERK
EPA -- REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)
) DOCKET NO. CWA-10-2012-0057
)
)
SHORESIDE PETROLEUM, INC.,)
) **CONSENT AGREEMENT AND**
) **FINAL ORDER**
)
Respondent.)

I. STATUTORY AUTHORITY

1.1. This Consent Agreement and Final Order (“CAFO”) is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by section 309(g)(2)(B) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319(g)(2)(B).

1.2. The Administrator has delegated the authority to issue the Final Order contained in Part V of this CAFO to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Regional Judicial Officer in EPA Region 10.

1.3. Pursuant to CWA section 309(g)(1) and (g)(2)(B), 33 U.S.C. § 1319(g)(1) and (g)(2)(B), and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA issues, and Shoreside Petroleum, Inc. (“Respondent”) agrees to issuance of, the Final Order contained in Part V of this CAFO.

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. The Director of the Office of Compliance and Enforcement, EPA Region 10, has been delegated the authority to sign consent agreements between EPA and the party against whom a Class II penalty pursuant to CWA section 309(g), 33 U.S.C. § 1319(g), is proposed to be assessed.

2.3. Part III of this CAFO contains a concise statement of the factual and legal basis for the alleged violations of the CWA, together with the specific provisions of the CWA and implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

3.1. CWA section 301(a), 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person into waters of the United States except, *inter alia*, as authorized by a National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to CWA section 402, 33 U.S.C. § 1342. CWA section 502(12), 33 U.S.C. § 1362(12), defines the term “discharge of a pollutant” to include “any addition of any pollutant to navigable waters from any point source.”

3.2. CWA section 502(7), 33 U.S.C. § 1362(7) defines “navigable waters” as “the waters of the United States, including the territorial seas.” In turn, 40 C.F.R. § 122.2 defines “waters of the United States” to include: (i) all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which

are subject to the ebb and flow of the tide; (ii) all interstate waters; (iii) tributaries to such waters; and (iv) wetlands adjacent to such waters or their tributaries.

3.3. Respondent is the owner and operator of Cordova Bulk Facility ("Facility"), which is located at 100 Ocean Dock Road, Cordova, Alaska. The Facility is a bulk oil storage facility. The Facility stores and provides gasoline, jet fuel, diesel fuel and heating oil to a number of marine customers and shore-based distributors. The Facility consists of two separate tank farms with a total combined capacity of about 1.35 million gallons. Both tank farms are located within secondary containment walls.

3.4. Respondent is a corporation organized under the laws of Alaska and is a "person" within the meaning of CWA section 502(5), 33 U.S.C. § 1362(5).

3.5. Outfalls 001 and 002 are "point sources" within the meaning of CWA section 502(14), 33 U.S.C. § 1362(14).

3.6. Orca Inlet is an interstate water that is susceptible to use in interstate and foreign commerce. As such, Orca Inlet is a "navigable water" as defined in CWA section 502(7), 33 U.S.C. § 1362(7), and is a "waters of the United States" as defined in 40 C.F.R. § 122.2.

3.7. The Facility, which was under Respondent's control at all times relevant to this action, discharged wastewater containing pollutants from Outfalls 001 and 002 into Orca Inlet. By discharging pollutants from the Facility into waters of the United States, Respondent engaged in the "discharge of pollutants" from a point source within the meaning of CWA sections 301(a) and 502(12), 33 U.S.C. §§ 1311(a) and 1362(12).

3.8. During the times relevant to this action, Respondent was authorized to discharge pollutants from the Facility, pursuant to NPDES Permit AK0036994 ("Permit"). The Permit became effective on April 1, 2009 and will expire on March 31, 2014. The Permit authorizes discharges of pollutants from Outfalls 001 and 002 to the Orca Inlet. The Permit authorizes the

discharge of rainfall and snowmelt, which accumulate in the tank farms, are directed through an oil water separator, and then discharged through Outfalls 001 and 002. No other discharges are authorized by the Permit.

3.9. Section I.B. of the Permit requires Respondent to conduct monitoring and sampling of its discharges. Section III.B. of the Permit requires Respondent to summarize the monitoring results each month on the Discharge Monitoring Report (“DMR”) form (EPA No. 3320-1) or equivalent and to submit the DMRs quarterly to EPA.

3.10. During the period from April 2009 and May 2011, Respondent failed to sample the discharges and failed to submit the required DMRs. There were four months during this period when the facility did not have any discharges. The months without discharges were January, February, July, and December of 2010. In June 2011, the facility began conducting the required sampling.

3.11. Under CWA section 309(g)(1), 33 U.S.C. § 1319(g)(1), EPA may assess an administrative penalty when EPA finds that “any person ... has violated any permit condition or limitation ... in a permit issued” pursuant to CWA section 402, 33 U.S.C. § 1342. Consequently under CWA 309(g)(2)(B), 33 U.S.C. § 1319(g)(2)(B), Respondent is liable for the administrative assessment of civil penalties for violations at the Facility in an amount not to exceed \$16,000 per day for each violation that occurred after January 12, 2009, up to a maximum of \$177,500.

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. As required by CWA section 309(g)(3), 33 U.S.C. § 1319(g)(3), EPA has taken into account the nature, circumstances, extent, and gravity of the alleged violations as well as Respondent's economic benefit of noncompliance, ability to pay, and other relevant factors. After considering all of these factors, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$70,000.

4.4. Respondent agrees to pay the total civil penalty set forth in Paragraph 4.3 within thirty (30) days of the effective date of the Final Order.

4.5. Payment under this CAFO must be made by cashier's check or certified check payable to the order of "Treasurer, United States of America" and delivered via United States mail to the following address:

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

Respondent must note on the check the title and docket number of this action.

4.6. Respondent must deliver via United States mail a photocopy of the check described in Paragraph 4.5 to the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-158
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101

Office of Compliance and Enforcement
Attn: Chae Park
U.S. Environmental Protection Agency
Region 10, Mail Stop OCE-133
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101

4.7. If Respondent fails to pay the penalty assessed by this CAFO in full by the due date set forth in Paragraph 4.4, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. Such failure may also subject Respondent to a civil action to collect the assessed penalty under the CWA, together with interest, fees, costs, and additional penalties described below. In any collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

4.7.1. Interest. Pursuant to CWA section 309(g)(9), 33 U.S.C. 1319(g)(9), any unpaid portion of the assessed penalty shall bear interest at a rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the Final Order set forth in Part V, provided however, that no interest shall be payable on any portion of the assessed penalty that is paid within thirty (30) days of the effective date of the Final Order.

4.7.2. Attorneys Fees, Collection Costs, Nonpayment Penalty. Pursuant to CWA section 309(g)(9), 33 U.S.C. § 1319(g)(9), if Respondent fails to pay on a timely basis the penalty set forth in Paragraph 4.3, 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.

4.8. The penalty described in Paragraph 4.3, including any additional costs incurred under Paragraph 4.7, above, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.9. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this CAFO and to bind Respondent to this document.

4.10. Except as described in Subparagraph 4.7.2, above, each party shall bear its own fees and costs in bringing or defending this action.

4.11. Respondent expressly waives any right to contest the allegations and waives any right to appeal the Final Order set forth in Part V.

4.12. The provisions of this CAFO shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.13. The above provisions are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

2/02/2012

FOR SHORESIDE PETROLEUM, INC.:

Signature: 


Print Name: Kurt R. Lindsey

Title: President

DATED:

2/17/2012

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY:


EDWARD J. KOWALSKI

Director
Office of Compliance and Enforcement

V. FINAL ORDER

5.1. The terms of the foregoing Parts I-IV are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

5.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to the CWA for the violations alleged in Part III. 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 CWA and regulations promulgated or permits issued thereunder.

5.3. In accordance with CWA section 309(g)(1), 33 U.S.C. § 1319(g)(1), and 40 C.F.R. § 22.38(b), the Alaska Department of Environmental Conservation has been given the opportunity to consult with EPA regarding the assessment of the administrative civil penalty against Respondent.

5.4. Pursuant to CWA section 309(g)(4)(A), 33 U.S.C. § 1319(g)(4)(A), and 40 C.F.R. § 22.45(b), EPA has issued public notice of and provided reasonable opportunity to comment on its intent to assess an administrative penalty against Respondent. More than 40 days have elapsed since issuance of this public notice and EPA has received no petition to set aside the Consent Agreement contained herein.

5.5. This Final Order shall become effective upon filing.

SO ORDERED this 5th day of April, 2012.



THOMAS M. JAHNKE
Regional Judicial Officer
U.S. Environmental Protection Agency, Region 10

CERTIFICATE OF SERVICE

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EPA -- REGION 10

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER IN THE MATTER OF: SHORESIDE PETROLEUM, INC., Docket Number: CWA-10-2012-0057** was filed with the Regional Hearing Clerk on April 5, 2012.

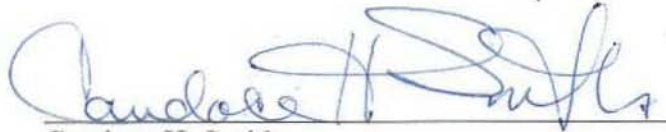
On April 5, 2012, the undersigned certifies that a true and correct copy of the document was delivered to:

R. David Allnutt, Esquire
U.S. Environmental Protection Agency
Region 10,
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

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 April 5, 2012 to:

Stephen Hutchings, Esquire
Birch Horton Bittner and Cherot
1127 West 7th Avenue
Anchorage, Alaska 99501

DATED this 5th day of April, 2012.



Candace H. Smith
Regional Hearing Clerk
EPA Region 10