

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 I penalty pursuant to Section 311(b)(6) of the Act, 33 U.S.C. § 1321(b)(6), is proposed to be assessed.

2.3. A concise statement of the factual bases for alleged violations of the Act and specific references to the statutory and regulatory provisions Respondent is alleged to have violated appear in Part III of this CAFO.

III. ALLEGATIONS

3.1. Section 311(b)(6)(B)(i) of the Act, 33 U.S.C. § 1321(b)(6)(B)(i), and 40 C.F.R. Part 19 authorize EPA to assess a civil penalty not to exceed \$37,500 against any owner, operator, or person in charge of an onshore facility who fails or refuses to comply with any regulation issued under Section 311(j) of the Act, 33 U.S.C. § 1321(j).

3.2. The Oil Pollution Prevention regulations that implement Section 311(j) of the Act, 40 C.F.R. Part 112, establish 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 facility location, could reasonably be expected to discharge oil in harmful quantities to navigable waters of the United States or adjoining shorelines.

3.3. "Harmful quantities" are defined in 40 C.F.R. § 110.3 to include oil discharges that cause: (1) a violation of applicable water quality standards; (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 adjoining shorelines.

3.4. “Navigable waters” are defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7) and 40 C.F.R. § 112.2.

3.5. 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 adjoining shorelines must have prepared and implemented a Spill Prevention, Control and Countermeasure (SPCC) Plan in accordance with 40 C.F.R. § 112.7.

3.6. Under 40 C.F.R. § 112.7, the SPCC Plan must 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 plan.

3.7. Respondent is a “person” within the meaning of Section 311(a)(7) of the Act, 33 U.S.C. § 1321(a)(7), and 40 C.F.R. § 112.2.

3.8. At the time of an EPA inspection conducted on April 5, 2011, Respondent was the “owner or operator” within the meaning of Section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6), of an oil storage and distribution facility located at 110 Highway 78 in Grand View, Idaho (Facility).

3.9. Diesel fuel is an “oil” within the meaning of Section 311(a)(1) of the Act, 33 U.S.C. § 1321(a)(1).

3.10. 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.

3.11. The Facility is “non-transportation-related” within the meaning of 40 C.F.R. § 112.2.

3.12. The Facility is a non-transportation facility that, due to location, could reasonably have been expected, at the time of inspection, to discharge oil from an above-ground container 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.

3.13. The Facility had, at the time of inspection, an above-ground storage capacity of 4,000 gallons of oil.

3.14. The Facility is located approximately 320 feet south of the Grand View Irrigation District canal, which eventually enters the Snake River, a “navigable water” within the meaning of 40 C.F.R. § 112.2.

3.15. Respondent, at the time of inspection, was engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using or consuming oil or oil products at the Facility, as described in 40 C.F.R. § 112.1(b).

3.16. The Facility began operating before August 16, 2002.

3.17. Under 40 C.F.R. § 112.3, the owner or operator of an SPCC-regulated facility that was in operation on or before August 16, 2002, must have prepared and implemented a written SPCC Plan that complies with 40 C.F.R. §§ 112.3 and 112.7.

3.18. On April 5, 2011, authorized EPA representatives inspected the Facility to determine compliance with Section 311(j) of the Act, and in particular with the requirements of 40 C.F.R. Part 112 related to SPCC Plans.

3.19. EPA alleges that Respondent:

3.19.1. Failed to have an adequate SPCC Plan as required by 40 C.F.R. § 112.3;

3.19.2. Failed to provide general secondary containment as required by 40 C.F.R. § 112.7(c);

3.19.3. Failed to provide records of inspections and tests as required by 40 C.F.R. § 112.7(e);

3.19.4. Failed to conduct and document the training of oil-handling personnel as required by 40 C.F.R. § 112.7(f);

3.19.5. Failed to fully fence the storage tank area and to secure drain valves as required by 40 C.F.R. § 112.7(g); and

3.19.6. Failed to implement adequate facility drainage and secondary containment around bulk storage containers as required by 40 C.F.R. §§ 112.8(b) and 112.8(c).

3.20. Respondent's failure to prepare and implement an adequate SPCC Plan in accordance with the requirements of 40 C.F.R. §§ 112.7 and 112.8 violated 40 C.F.R. § 112.3.

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 her 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 \$5,568. This penalty amount has been agreed upon in consideration of the statutory penalty factors identified in Section 311(b)(8) of the Act, 33 U.S.C. § 1321(b)(8).

4.7. Respondent agrees to pay the civil penalty cited in the foregoing paragraph within thirty (30) days of the effective date of the Final Order. Respondent shall be given prompt notice of the date when EPA executes the Final Order.

4.8. Payment under this CAFO shall be made by cashier's check or certified check, payable to "Environmental Protection Agency" bearing the notation "OSLTF-311." Payment sent by the U.S. Postal Service shall be addressed to:

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

Payment sent by express mail via a non-U.S. Postal Service carrier shall be addressed to:

U.S. Bank
Government Lockbox 979077
U.S. E.P.A. Fines and Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101

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

4.9. 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
1200 Sixth Avenue, Suite 900, ORC-158
Seattle, WA 98101

Maria Lopez
U.S. Environmental Protection Agency, Region 10
Idaho Operations Office
1435 North Orchard Street
Boise, ID 83706

4.10. If Respondent fails to pay the penalty assessed by this CAFO in full by the due date set forth in Paragraph 4.7, 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 Act, 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.

4.10.1. 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 from the effective date of the Final Order contained herein, at the rate established by the Secretary of the Treasury under 31 U.S.C.

§ 3717(a)(1).

4.10.2. Attorneys Fees, Collection Costs, Nonpayment Penalty. Pursuant to

Section 311(b)(6)(H) of the Act, 33 U.S.C. § 1321(b)(6)(H), 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 that are unpaid as of the beginning of such quarter.

4.11. 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.

4.12. Compliance with all terms and conditions of this CAFO shall result in full settlement and satisfaction of all penalty claims for violations alleged in Part III above.

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

DATED:

June 25, 2012

FOR RESPONDENT:



LINDA GUSTAVSON, Owner
Gus's Gas

DATED:

July 17, 2012

FOR COMPLAINANT:



EDWARD J. KOWALSKI, Director
Office of Compliance and Enforcement

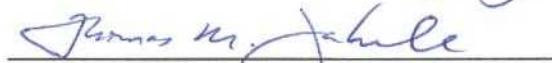
V. FINAL ORDER

5.1. The terms of the foregoing Consent Agreement are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement 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 relief 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 any regulations promulgated or permits issued thereunder.

5.3. This Final Order shall become effective upon filing.

SO ORDERED this 18th day of July, 2012.



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

CERTIFICATE OF SERVICE

RECEIVED

12 JUL 19 AM 6:48

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in **In the Matter of: Linda Gustavson, dba Gus's Gas, DOCKET NO.: CWA-10-2012-0148**, was filed, and served as follows, on the signature date below.

The undersigned certifies that a true and correct copy of the document was delivered to:

Endre M. Szalay, Esquire
Office of Regional Counsel
U.S. Environmental Protection Agency
1200 Sixth Avenue, ORC-158
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, to:

Linda Gustavson,
dba Gus's Gas
110 Highway 78
Grand View, Idaho 83624

Peter G. Barton, Esquire,
Givens Pursley, LLP
601 W. Bannock Street
P.O. Box 2720
Boise, Idaho 83701

7-19-12
Dated


Candace Smith
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 10