

Statutory and Regulatory Framework

6. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants from a point source into a “navigable water of the United States, as these terms are defined by Section 502 of the CWA, 33 U.S.C. § 1362, by any person except in compliance with, inter alia, a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

7. Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), prohibits the discharge of oil or hazardous substances into or upon the navigable waters of the United States or adjoining shorelines in such quantities that have been determined may be harmful to the public health or welfare or environment of the United States.

8. Section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1), and 40 C.F.R. § 112.2 define "oil" as "oil of any kind or in any form, including, but not limited to, petroleum [or] fuel oil... "

9. Section 311(b)(4) of the CWA, 33 U.S.C. § 1321(b)(4), authorizes EPA to promulgate a regulation to define what discharges of oil may be harmful to the public health or welfare or environment of the United States. 40 C.F.R. § 110.3 defines such discharges to include discharges of oil that violate applicable water quality standards or cause a film or a sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon the adjoining shorelines.

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

11. To implement Section 311(j)(1)(C), EPA promulgated regulations to prevent oil pollution at 40 C.F.R. Part 112 that set forth the requirements for the preparation and implementation of Spill Prevention Control and Countermeasure Plans (“SPCC Plans”).

12. The requirements of 40 C.F.R. Part 112 apply to owners and operators of non-transportation-related onshore facilities with an aboveground storage capacity of 1,320 gallons or greater, engaged in gathering, storing, transferring, distributing, using or consuming oil or oil products, which due to their locations, could reasonably be expected to discharge oil in quantities that may be harmful into or upon the navigable waters of the United States or adjoining shorelines.

General Allegations

13. As a corporation, 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.

14. At all times relevant to this action, Respondent was the owner and/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 three oil production facilities, or leases, in Russell and Ellis Counties of Kansas: known as the “Dumler Lease,” the “Braun Lease” and the “Gilbert Lease” (collectively, “Facilities”) at the following approximate locations:

- a. Dumler: Section 24, Township 14 South, Range 14 West of Russell County;
- b. Braun: Section 34, Township 13 South, Range 17 West of Ellis County; and
- c. Gilbert: Section 29, Township 11 South, Range 15 West of Russell County.

15. The Dumler Lease facility includes production wells, flowlines, a storage tank battery consisting of two above ground storage tanks for oil, one other vessel used for oil/water separation and one produced water tank, and other oil filled equipment. The Dumler Lease facility has an estimated aggregate above-ground storage capacity of 30,870 gallons of oil and produced water.

16. The Braun Lease facility includes production wells, flowlines, storage tank battery consisting of two above ground storage tanks for oil and one other above ground storage tanks used for oil/water separation, and other oil filled equipment. The Braun Lease facility has an estimated aggregate above-ground storage capacity of 25,620 gallons of oil and produced water.

17. The Gilbert Lease facility includes production wells, flowlines, a storage tank battery consisting of two above ground storage tanks for oil and one other above ground storage tank used for oil/water separation, produced water tanks, and other oil filled equipment. The Braun Lease facility has an estimated aggregate above-ground storage capacity of 25,620 gallons of oil and produced water.

18. The Braun Lease facility is adjacent to a tributary of the North Fork of Big Creek (300 feet) that flows to the Smoky Hill River; the Gilbert Lease facility is adjacent to an unnamed tributary to the Saline River (500 feet); and the Dumler Lease facility is adjacent to Fossil Creek (225 feet) that flows to the Smoky Hill River. The tributary of the North Fork of Big Creek, the unnamed tributary of the Saline River and Fossil Creek, and the Smoky Hill and Saline Rivers are each 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).

19. At all times relevant to this action, Respondent was engaged in storing, processing, using or consuming oil or oil products located at the Facilities.

20. The Dumler, Braun and Gilbert Lease facilities are “non-transportation-related” facilities within the meaning of 40 C.F.R. § 112 Appendix A, as incorporated by reference within 40 C.F.R. § 112.2.

21. The Dumler, Braun and Gilbert Lease facilities are “onshore” facilities 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.

22. The Dumler, Braun and Gilbert Lease facilities are non-transportation-related onshore facilities which, due to their 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 are, therefore, each “an SPCC-regulated facility.”

23. Pursuant to Section 311(j)(1)(C) of the Act, Executive Order 12777, and 40 C.F.R. § 112.1, Respondent, as the owner and/or operator of SPCC-regulated facilities, was subject to the SPCC regulations at all times relevant to this action.

24. On or about August 24, 2016, Respondent reported to the National Response Center (“NRC”) that a discharge of approximately 15 barrels of crude oil from the Gilbert Lease facility (“August 2016 spill”) had reached and caused the observable presence of oil and a sheen in the tributary to the Saline River.

25. On or about September 22, 2016, Respondent reported to the NRC that a discharge of approximately 150 barrels of crude oil from the Gilbert Lease facility (“September 2016 spill”), and reached and caused the observable presence of oil and a sheen in the adjacent tributary to the Saline River.

26. Following the August and September 2016 spills, representatives of the Kansas Corporation Commission (“KCC”) inspected and/or obtained information about the Gilbert lease facility and provided oversight to Respondent’s response to the spill. The information obtained by the KCC included photographs of sheen in the tributary and in two downstream ponds on the tributary, as well as sampling data that documented the presence of oil in these waters.

27. On March 21, 2019, a representative of EPA inspected the Facilities in order to determine compliance with the SPCC regulations of 40 C.F.R. Part 112 (“EPA’s Inspections”) and obtained information about each facility which was documented in separate inspection reports for each facility. Copies of these inspection reports were transmitted to Respondent by EPA on June 7, 2019.

28. On July 22, 2019, EPA issued the KCC an “open records” request for all information of past spills for the Facilities. The response from KCC provided documentation of a chronic pattern of oil spills and releases at each of the leases, including the August and September 2016 discharges from the Gilbert lease.

Alleged Violations

**Count 1:
Prohibited Discharge of Oil**

29. Complainant hereby incorporates the allegations contained in the paragraphs above, as if fully set forth herein.

30. Respondent's August 2016 and September 2016 discharges of oil from the Gilbert Lease facility caused a film or sheen upon the surface of the tributary of the Saline River and/or adjoining shorelines, and, therefore, was in a quantity that has been determined may be harmful under 40 C.F.R. § 110.3, which implements Section 311(b)(3) and (b)(4) of the Act, 33 U.S.C. § 1321(b)(3) and (b)(4).

31. Respondent's August 2016 and September 2016 discharges of oil from the Gilbert Lease facility into the tributary Saline River and/or adjoining shorelines violated Sections 301 and 311 (b)(3) of the Act, 33 U.S.C. §§ 1311 and 1321(b)(3).

32. In accordance with Sections 309(g) and 311(b)(6)(A)(ii) of the CWA, 33 U.S.C. §§ 1319(g) and 1321(b)(6)(A)(ii), EPA may assess a civil penalty to any owner or operator in charge of any onshore facility who violates Sections 301 and 311(b)(3) of CWA, 33 U.S.C. §§ 1311 and 1321(b)(3).

**Count 2:
Violations of SPCC Program**

33. Complainant hereby incorporates the allegations contained in the paragraphs above, as if fully set forth herein.

34. EPA's Inspections documented Respondent's failure to fully prepare and implement an SPCC Plan at the Facilities (as required by 40 C.F.R. 112.3), included but are not limited to the following:

- a. Respondent failed to include accurate information in the SPCC Plans' facility diagrams, including the locations of all tanks and containers, production and injection wellheads, test barrels, breakout tanks, portable containers, transfer areas, flowlines, and intra-facility gathering lines, in violation of 40 C.F.R. § 112.7(a)(3);
- b. Respondent failed to describe a procedure adequate for reporting a discharge, in violation of 40 C.F.R. § 112.7(a)(4);
- c. Respondent failed to list all scenarios of a reasonable potential for equipment failure, such as discharges from wellheads, breakout tanks, flowlines, or intra-facility gathering lines, and for discharges from transfers, failed to provide a prediction of the direction, rate of flow, and total quantity of oil, in violation of 40 C.F.R. § 112.7(b);

- d. Respondent failed to have adequate secondary containment and/or describe secondary containment in the Plans (both general and sized containment; including for portable containers, production wellheads, transfer area at the tank batteries, above-ground flowlines and buried flowlines), in violation of 40 C.F.R. § 112.7(c), or to clearly explain in the Plan why secondary containment measures are not practicable, in violation of 40 C.F.R. § 112.7(d);
- e. Respondent failed to include an adequate oil spill contingency plan, as required by 40 C.F.R. §§ 112.7(d)(1) and 112.9(d)(3)(i), following the provisions of 40 C.F.R. Part 109, including failure to provide information specific to the Facilities for the components required by 40 C.F.R. §§ 109.5(b)(2)-(3), 109.5(c)(1)-(3), 109.5(d)(1), and 109(d)(5); and
- f. Respondent failed to prepare and implement a written program of flowline maintenance, in violation of 40 C.F.R. § 112.9(d)(4), that addresses procedures to ensure compatibility, visually inspect and test flowlines and any associated appurtenances on a periodic and regular schedule, take corrective action based on regularly scheduled inspections, tests, or evidence of discharge, and promptly remediate any accumulations of oil discharges.

35. 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).

CONSENT AGREEMENT

36. Respondent and the EPA agree to the terms of this Consent Agreement/Final Order.

37. Respondent admits the jurisdictional allegations of this Complaint and Consent Agreement/Final Order and agrees not to contest the EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of this Consent Agreement/Final Order.

38. Respondent neither admits nor denies the factual allegations and legal conclusions asserted by the EPA in this Complaint and Consent Agreement/Final Order.

39. Respondent waives its right to contest any issue of fact or law set forth above, and their right to appeal this Consent Agreement/Final Order.

40. Respondent certifies by signing this Consent Agreement/Final Order that, other than the schedules for required upgrades to general and sized secondary containment currently addressed by the October 2020 Order (Docket No. CWA-07-2021-0004), it has properly prepared and implemented its SPCC plans for the Dumler, Braun and Gilbert Lease facilities, and to the best of its knowledge, it is otherwise presently in compliance at these facilities, and with the October 2020 Order, the CWA and all regulations promulgated thereunder.

41. Respondent and Complainant agree to conciliate the matters set forth in this Consent Agreement/Final Order without the necessity of a formal hearing and agree to bear their own costs and attorney's fees incurred as a result of this action.

42. Respondent consents to receiving the filed Consent Agreement and Final Order electronically at the following email address: [REDACTED]

43. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this Consent Agreement/Final Order and to execute and legally bind Respondent to it.

44. Respondent understands and agrees that this Consent Agreement/Final Order 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 Consent Agreement/Final Order.

Penalty Payment

45. Respondent agrees that, in settlement of the claims alleged in this Consent Agreement/Final Order, Respondent shall pay a civil penalty of **Fifty Thousand Dollars (\$50,000)** to be paid in four quarterly installments each of \$12,625, that include both principal and interest, as set forth in Attachment A to this Consent Agreement/Final Order.

46. Respondent shall pay each penalty payment identified above by certified or cashier's check made payable to "Environmental Protection Agency – OSLTF-311" with a reference to the case name and docket number CWA-07-2021-0005, and remitted to:

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

or by alternate payment method described at <http://www.epa.gov/financial/makepayment>.

47. Respondent shall simultaneously email copies of the transmittal letter and each penalty installment payment check, as directed above, to the following:

Regional Hearing Clerk at: R7_Hearing_Clerk_Filings@epa.gov

Howard Bunch, at: bunch.howard@epa.gov

48. Respondent agrees that no portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Consent Agreement/Final Order shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

49. Interest on any late payment will be assessed at the annual interest rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. The interest will be assessed on any overdue amount from the due date through the date of payment. Respondent understands that failure to pay any portion of the mitigated civil penalty or stipulated penalties on the proper due dates may result in the commencement of a civil action in Federal District Court to collect the remaining balance of said penalty, along with applicable interest thereon at the applicable statutory rate, and applicable fees and penalties.

Effect of Settlement and Reservation of Rights

50. Respondent's payment of the entire civil penalty pursuant to this Consent Agreement/Final Order resolves all civil and administrative claims for violations of the CWA alleged in this Complaint and Consent Agreement/Final Order. Complainant reserves the right to take any enforcement action with respect to any other violations of the CWA or any other applicable law.

51. The effect of the settlement in Paragraph 50, above, is conditioned upon the accuracy of the Respondent's representations to EPA, as memorialized in Paragraph 40 above.

52. Nothing contained in this Consent Agreement/Final Order shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state and local environmental statutes and regulations and applicable permits.

53. Notwithstanding any other provision of this Consent Agreement/Final Order, the EPA reserves the right to enforce the terms of this Consent Agreement/Final Order by initiating a judicial or administrative action pursuant to 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.

54. With respect to matters not addressed in this Consent Agreement/Final Order, the EPA reserves the right to take any enforcement action pursuant to the CWA and its implementing regulations, or any other available legal authority, including without limitation, the right to seek injunctive relief, penalties and damages.

General Provisions

55. The Parties acknowledge that this Consent Agreement/Final Order is subject to the public notice and comment required pursuant to Section 311(b)(6)(C) of the CWA, 33 U.S.C. § 1321(b)(6)(C), and 40 C.F.R. § 22.45.

56. Pursuant to 40 C.F.R. § 22.31(b), this Consent Agreement/Final Order shall be effective after signature by the authorized regional official and upon filing with the Regional

Hearing Clerk, U.S. Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219. All time periods herein shall be calculated therefrom in calendar days unless otherwise provided in this Consent Agreement/Final Order.

57. The headings in this Consent Agreement/Final Order are for convenience of reference only and shall not affect interpretation of this Consent Agreement/Final Order.

58. Respondent and Complainant agree that this Consent Agreement/Final Order may be signed in part and counterpart.

For the Complainant, United States Environmental Protection Agency Region 7:

Date

David Cozad
Director
Enforcement and Compliance Assurance Division

Date

Howard Bunch
Office of Regional Counsel

For the Respondent, R.P. Nixon Operations, Inc:

Signature  Date 11/17/2020

Name Dan A Nixon

Title President

FINAL ORDER

Pursuant to Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits, 40 C.F.R. Part 22, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

The Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.

Date

Karina Borromeo
Regional Judicial Officer

Attachment A:

Installment Payment Schedule
For R.P. Nixon Operations, Inc.

							Equalized
	Payment Due					Calculated	Installment
	Date (days after	Penalty	Principal	Remaining	Accrued	Principal	Payment
	Effective Date)	Balance	Payment	Principal	Interest	and Interest	Due
Payment 1	30 days after	\$50,000.00	\$12,500.00	\$37,500.00	\$0.00	\$12,500.00	\$12,625.00
Payment 2	120 days after	\$37,500.00	\$12,500.00	\$25,000.00	\$250.00	\$12,750.00	\$12,625.00
Payment 3	240 days after	\$25,000.00	\$12,500.00	\$12,500.00	\$166.67	\$12,666.67	\$12,625.00
Payment 4	360 days after	\$12,500.00	\$12,500.00	\$0.00	\$83.33	\$12,583.33	\$12,625.00
TOTALS		\$0.00	\$50,000.00	\$0.00	\$500.00	\$50,500.00	\$50,500.00

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 2020, the rate is 2% per annum. Upon the 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 by EPA, failure by Respondent to timely pay may result in a demand for payment of the entire outstanding balance, plus any applicable penalties, fees and interest. Unless excused, failure by Respondent 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 49 of the Consent Agreement/Final Order. 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.

CERTIFICATE OF SERVICE

I certify a true and correct copy of the Complaint and Consent Agreement/Final Order was sent this day in the following manner to the addressees:

Copy emailed to Respondent:

Dan Nixon, President
R.P. Nixon Operations, Inc.
[REDACTED]

Copy emailed to representatives for Complainant:

Howard Bunch
EPA Region 7 Office of Regional Counsel
bunch.howard@epa.gov

Mark Aaron
EPA Region 7 Enforcement and Compliance Assurance Division
aaron.mark@epa.gov

Date