



4. The requirements of 40 C.F.R. Part 112 apply to owners and operators of non-transportation-related onshore facilities engaged in drilling, producing, gathering, storing, processing, refining, 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.
5. Further, under 40 C.F.R. Part 112, owners or operators of onshore facilities that have an aboveground storage capacity of more than 1,320 gallons of oil, and due to their location could reasonably be expected to discharge oil in harmful quantities into or upon the navigable waters of the United States or adjoining shorelines, must prepare a Spill Prevention Control and Countermeasure Plan (SPCC Plan) in writing and in accordance with 40 C.F.R. § 112.7.
6. Respondent is a corporation organized under the laws of Kansas with a place of business located at 19760 Metcalf Avenue, Stilwell, Kansas 66085. Respondent is a person within the meaning of Sections 311(a)(7) and 502(5) of the CWA, 33 U.S.C. §§ 1321(a)(7) and 1362(5), and 40 CFR §112.2.
7. Respondent was at all relevant times the “owner or operator,” within the meaning of Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6) and 40 C.F.R. § 112.2, of the bulk oil plant located at Latitude 38.7688, Longitude -94.6542 in Stilwell, Kansas (“the Facility”).
8. The Facility is located approximately 250 feet from the Camp Branch of the Big Blue River.
9. The Facility has a storage capacity, which is not buried, of 1,320 gallons or more of oil in containers each with a shell capacity of at least 55 gallons.
10. The Camp Branch of the Big Blue River is a navigable water of the United States within the meaning of 40 C.F.R. § 112.2.
11. Respondent’s facility is an “onshore facility” within the meaning of Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10), and 40 C.F.R. § 112.2.
12. Respondent’s facility is a “non-transportation-related facility” as defined by Appendix A to 40 C.F.R. Part 112, as incorporated by reference within 40 C.F.R. § 112.2.
13. Respondent’s facility was engaged in the storage and distribution of diesel fuel and gasoline.

14. Diesel fuel and gasoline are forms of oil as defined by Section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1) and 40 C.F.R. § 112.2.

15. The Facility is therefore 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 (“an SPCC-regulated facility”).

16. Pursuant to the CWA and 40 C.F.R. § 112.1 Respondent, as the owner and operator of an SPCC-regulated facility, is subject to the SPCC regulations.

17. On July 21, 2009, the United States Environmental Protection Agency, by the Director of the Air and Waste Management Division of EPA, Region 7 (“Complainant” or “EPA”) issued an Administrative Complaint pursuant to Section 311(b)(6)(B)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(ii), Docket No. CWA-07-2009-0093. The Complaint alleged that Respondent was in violation of the SPCC regulations and proposed a civil penalty of \$53,744. Complainant particularly alleged and Respondent stipulates that:

- a) 40 C.F.R. § 112.3 requires that the owner or operator of an SPCC-regulated facility to prepare a written SPCC plan in accordance with 40 C.F.R. § 112.7 and any other applicable section of 40 C.F.R. Part 112.
- b) On March 4, 2008, EPA inspected the Facility and found that Respondent had failed to prepare such an SPCC plan for the Facility.
- c) On March 12, 2008, EPA sent Respondent a copy of a written inspection report that documented the findings of the March 4, 2008 inspection.
- d) On May 18, 2009, EPA again inspected the Facility and found that Respondent still had not prepared an SPCC plan for the Facility.
- e) During the March 4, 2008 inspection, it was observed that Respondent had no or inadequate secondary containment around the oil storage containers.
- f) Respondent’s failure to prepare such an SPCC plan for the Facility violated 40 C.F.R. § 112.3.

**Waiver of Rights**

18. The Respondent waives the right to a hearing under Section 311(b)(6)(B)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(ii), and to appeal a Final Order in this matter under Section 311(b)(6)(G)(ii) of the Act, 33 U.S.C. § 1321(b)(6)(G)(ii), and consents to the issuance of a Final Order without further adjudication.

**Penalty**

19. Respondent consents to the assessment of a civil penalty of \$30,000.

**Payment Terms**

Based on the forgoing, the parties, in their own capacity or by their attorneys or authorized representatives, hereby agree that:

20. Respondent shall pay a civil penalty of Thirty Thousand Dollars (\$30,000) within thirty (30) days of the entry of this Final Order. Payment shall be by cashier's or certified check made payable to the "Environmental Protection Agency – OSLTF-311" and remitted to:

U.S. EPA  
P.O. Box 979077  
St. Louis, Missouri 63197-9000.

21. The Respondent shall reference the Docket Number CWA-07-2009-0093 and **In the Matter of Stilwell Oil Company** on the check.

22. The Respondent shall submit copies of the check to the following persons:

Regional Hearing Clerk  
United States Environmental Protection Agency - Region 7  
901 North 5th Street  
Kansas City, Kansas 66101;

and

Demetra O. Salisbury  
Office of Regional Counsel  
United States Environmental Protection Agency - Region 7  
901 N. 5th Street  
Kansas City, Kansas 66101.

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

24. Failure by the Respondent to pay the penalty assessed by the Final Order in full by its due date may subject Respondent to a civil action to collect the assessed penalty, plus interest, attorney's fees, costs, and an additional quarterly nonpayment penalty pursuant to Section 311(b)(6)(H) of the Act, 33 U.S.C. § 1321(b)(6)(H). In any such collection action, the validity, amount and appropriateness of the penalty agreed to herein shall not be subject to review.

#### General Provisions

25. The provisions of the Final Order shall be binding upon Respondent and Respondent's officers, directors, agents, servants, employees, and successors 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 and Final Order.

26. The Final Order does not constitute a waiver, suspension or modification of the requirements of Section 311 of the Act, 33 U.S.C. §1321, or any regulations promulgated thereunder, and does not affect the right of the Administrator or the United States to pursue any applicable injunctive or other equitable relief or criminal sanctions for any violation of law.

27. Payment of the penalty pursuant to this Consent Agreement resolves only Respondent's liability for federal civil penalties for the violations and facts alleged in the Administrative Complaint.

28. Respondent certifies by signing this Consent Agreement and Final Order that, to the best of its knowledge, it is presently in compliance with the CWA and all regulations promulgated thereunder.

29. The effect of the settlement described in Paragraph 27 above is conditioned upon the accuracy of the Respondent's representations to EPA, as memorialized in Paragraph 28 above.

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

31. Each party shall bear its own costs and attorneys' fees in the action resolved by this Consent Agreement and Final Order.

32. Each signatory of this Agreement certifies that he or she is fully authorized to enter into the terms of this Consent Agreement and Final Order.

33. This Consent Agreement and Final Order shall be effective upon entry of the Final Order by the Regional Judicial Officer for EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

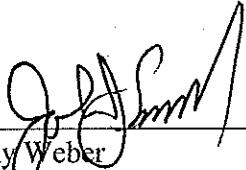
34. This executed Consent Agreement and Final Order shall be filed with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 7, 901 North 5<sup>th</sup> Street, Kansas City, Kansas, 66101.

Consent Agreement and Final Order  
Stilwell Oil Company  
CWA-07-2009-0093

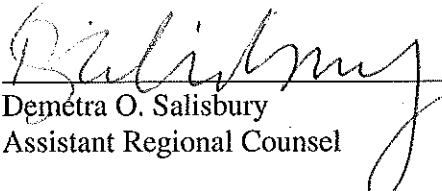
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COMPLAINANT:  
U.S. ENVIRONMENTAL PROTECTION AGENCY

11/11/10  
Date

  
\_\_\_\_\_  
Becky Weber  
Director  
Air and Waste Management Division

Jan. 11, 2010  
Date

  
\_\_\_\_\_  
Demetra O. Salisbury  
Assistant Regional Counsel

RESPONDENT:  
Stilwell Oil Company:

12-26-09  
Date

Name Robert Koehn

Title owner

Address 1960 Metcalf Box 9  
Stilwell  
Kans 66685

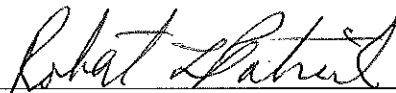


**FINAL ORDER**

Pursuant to Section 311(b)(6) of the Act, 33 U.S.C. § 1321(b)(6) and the delegated authority of the undersigned, and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits," codified at 40 CFR Part 22, the foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order.

The Respondent is ordered to comply with the terms of the Consent Agreement.

IT IS SO ORDERED.



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Robert Patrick  
Regional Judicial Officer

Date January 22, 2010

IN THE MATTER OF Stillwell Oil Company, Respondent  
Docket No. CWA-07-2009-0093

CERTIFICATE OF SERVICE

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

Copy hand delivered to  
Attorney for Complainant:

Chris Muehlberger  
Assistant Regional Counsel  
Region VII  
United States Environmental Protection Agency  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Ernest C. Ballweg  
Johnston, Ballweg & Tuley, LC  
Building 9, Suite 500  
9200 Indian Creek Parkway  
Overland Park, Kansas 66225

Copy by Facsimile and  
First Class Pouch Mail to:

The Honorable Susan L. Biro  
Chief Administrative Law Judge  
U. S. Environmental Protection Agency  
Office of Administrative Law Judges  
1200 Pennsylvania Avenue, NW  
Mail Code 1900L  
Washington, D. C. 20005

and

The Honorable Spencer T. Nissen  
Administrative Law Judge  
U. S. Environmental Protection Agency  
Office of Administrative Law Judges  
1200 Pennsylvania Avenue, NW  
Mail Code 1900L  
Washington, D. C. 20005

Dated: 1/25/10



Kathy Robinson  
Hearing Clerk, Region 7