

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219**

Received by
EPA Region 7
Hearing Clerk

BEFORE THE ADMINISTRATOR

In the Matter of:) COMPLAINT, CONSENT AGREEMENT
) AND FINAL ORDER
 John Carter, an individual, and)
 Carter Heating and Cooling, Inc.,) Docket No. CWA-07-2022-0011
 Respondents)
 d/b/a, Clearwater Piedmont Park Marina)

COMPLAINT

Jurisdiction

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 311(b)(6)(B)(i) of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act (“CWA”), 33 U.S.C. § 1321(b)(6)(B)(i), and in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits (“Consolidated Rules”), 40 C.F.R. Part 22.

2. Complainant, the U.S. Environmental Protection Agency Region 7 (“EPA”) and Respondents, John Carter an individual and Carter Heating and Plumbing, Inc. (d/b/a Clearwater Piedmont Park Marina), have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

3. This Complaint and Consent Agreement/Final Order serves as notice that EPA has reason to believe that Respondents have violated Sections 311(b)(3) and 311(j) of the CWA, 33 U.S.C. §§ 1321(b)(3) and 1321(j), and regulations promulgated thereunder.

Parties

4. The Respondents are John Carter, an individual and President of Carter Heating and Cooling, Inc., d/b/a Clearwater Piedmont Park Marina, a corporation that operates a marina at Clearwater Lake in Missouri, and that is registered and authorized to conduct business in the state of Missouri. Clearwater Marina is registered in Missouri as a “fictitious business” entity owned by Clearwater Heating and Cooling, Inc. On December 3, 2021, Clearwater Heating and Cooling, Inc. refiled articles of incorporation with the state of Missouri. Prior to this date, Clearwater Marina operated as business under the ownership, direction and control of

Respondent John Carter.

5. The authority to take action under Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6), is vested in the Administrator of the EPA. The Administrator has delegated this authority to the Regional Administrator, EPA Region 7, who in turn has delegated it to the Director of the Enforcement and Compliance Assurance Division of EPA Region 7 (collectively referred to as the “Complainant”).

Statutory and Regulatory Framework

6. 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.

7. 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... "

8. 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.

9. The National Oil and Hazardous Substances Pollution Contingency Plan (“NCP”) set forth at 40 C.F.R. Part 300, more commonly called the National Contingency Plan or NCP, is the federal government's blueprint for responding to both oil spills and hazardous substance releases. Section 311(d)(2) of the CWA, 33 U.S.C. § 1321(b)(4), requires the President to prepare a “schedule of dispersants, other chemicals, and other oil spill mitigating devices and substances, if any, that may be authorized for use on oil discharges...”

10. Section 40 C.F.R § 300.310 authorizes the use of chemicals in accordance with Subpart J of the NCP to restrain the spread of oil and mitigate its effects. Subpart J of NCP, 40 C.F.R. §§ 300.900-920 sets forth the requirements for preauthorization by EPA of such chemicals and/or authorization by as part of a response.

11. 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.”

12. 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”).

13. The requirements of 40 C.F.R. Part 112 apply to owners and operators of non-transportation-related onshore and offshore 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.

14. 40 C.F.R. 112.3 requires the owner or operator of an onshore or offshore facility subject that meets the criteria for SPCC to prepare in writing and implement a SPCC Plan in accordance with § 112.7 and any other applicable section of 40 C.F.R. Part 112.

15. 40 C.F.R. 112.3(g)(1) establishes the criteria for a “Tier I” qualified SPCC facility as one with less than 10,000 gallons of oil storage capacity, with no single storage greater than 5,000 gallons. Tier I qualified SPCC facilities must prepare and implement a SPCC plan as set forth at 40 C.F.R. 112.6(a), which states the facility may complete and self-certify an SPCC Plan template (in Appendix G to 40 CFR part 112) in lieu of a full SPCC Plan reviewed and certified by a Professional Engineer (“PE”).

16. The requirements of Tier I qualified SPCC oil storage facilities include, but are not limited to, the requirements to prepare and implement an SPCC plan that meets the requirements of 40 C.F.R. § 112.7. 40 C.F.R. 112.6(a)(3) allows for a Tier I facility to use a “template” SPCC plan, as set forth at 40 C.F.R. Part 112, Appendix G.

17. 40 C.F.R. § 112.6(a)(3) states that a facility that uses the template SPCC plan must also “in lieu of the requirements in § 112.7(b) where experience indicates a reasonable potential for equipment failure (such as loading or unloading equipment, tank overflow, rupture, or leakage, or any other equipment known to be a source of discharge), include in your Plan a prediction of the direction and total quantity of oil which could be discharged from the facility as a result of each type of major equipment failure.”

18. 40 C.F.R. § 112.7(c) requires general containment of oil storage tanks designed to be capable “of containing oil and must be constructed so that any discharge from a primary containment system, such as a tank, will not escape the containment system before cleanup occurs.”

General Allegations

19. As a person and corporation, Respondents are each 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.

20. At all times relevant to this action, Respondents were 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 a marina on Clearwater Lake, Missouri (“Facility”).

21. Clearwater Lake is a reservoir on the Black River, approximately six miles from Piedmont, Missouri. The U.S. Army Corps of Engineers (“USCOE”) uses Clearwater Lake for flood control in both the White and lower Mississippi River Basins. Clearwater Lake is a navigable water of the United States within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7).

22. As documented by Missouri Department of Natural Resources (“MoDNR”) and EPA’s inspections, the Facility includes docks, boat slips and 2,500-gallon gasoline tank suspended beneath a floating dock that is used to fuel boats. Fuel pumps located directly above the tank dispense fuel to watercraft. The tank and piping between the fuel dispensers and the tank, and the fuel dispensers (i.e., gas pumps) make up the entire fueling system. The transfer of fuel into to the gasoline tank is accomplished by temporary hose connected between a refueling truck located onshore and the fuel dock.

23. At all times relevant to this action, Respondents were engaged in storing, processing, using or consuming oil or oil products located at the Facility (in the 2,500-gallon gasoline tank).

24. The Facility is a “non-transportation-related” facility within the meaning of 40 C.F.R. § 112 Appendix A, as incorporated by reference within 40 C.F.R. § 112.2.

25. Due to the 2,500-gallon gasoline tank being suspended beneath a dock on the water, the Facility is an “offshore” facility within the meaning of Section 311(a)(11) of the Act, 33 U.S.C. § 1321(a)(11), and 40 C.F.R. § 112.2.

26. The Facility is a non-transportation-related offshore 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 and is, therefore, “an SPCC-regulated facility.”

27. 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 an SPCC-regulated facility, was subject to the SPCC regulations at all times relevant to this action.

28. The Facility, with oil storage of less than 10,000 gallons, with no storage container greater than 5,000 gallons, is a “Tier I qualified facility” as defined by 40 C.F.R. § 112.3(g) which allows an owner/operator to prepare a self-certified template SPCC plan, as described at 40 C.F.R. § 112.6(a).

29. On or about July 31, 2020, the Facility’s fueling contractor reported to the

National Response Center (“NRC”) a discharge of 400 gallons of unleaded gasoline while filling the fuel storage tanks at a boat dock fuel station, and the spill had reached Clearwater Lake. The report to the NRC stated dish soap was applied to the water and a contractor was on the scene.

30. Representatives of the MoDNR and the USCOE visited the Facility and documented the impact of the July 2020 spill (including photographs of gasoline sheen on the water), and Respondent’s cleanup response.

31. Dish soap is not preauthorized as a dispersant by EPA within Region 7 pursuant to 40 C.F.R 300, Subpart J (§ 300.910(a)). The EPA, the USACE, nor the MoDNR authorized Respondent to use dish soap as a dispersant in response to the July 2020 spill (See 40 C.F.R. §§ 300.910(c) and (d)).

32. Respondents’ unauthorized use of dish soap as a dispersant caused the discharged gasoline to disperse over a greater surface area of Clearwater Lake. The dispersed gasoline came into contact with numerous styrofoam floatation pontoons used to float the marina’s docks. The contact between the discharged gasoline and the styrofoam pontoons caused the styrofoam to partially dissolve into Clearwater Lake.

33. On August 31, 2020, a representative of EPA inspected the Facility in response to the July 2020 spill and NRC report to determine compliance with the SPCC regulations of 40 C.F.R. Part 112 (“EPA’s Inspection”). EPA’s inspection documented the following:

- a. As a Tier I facility, the Facility utilized the template SPCC plan found at 40 C.F.R. Appendix G. The Facility’s SPCC plan reviewed by EPA’s inspector was dated May 22, 2018;
- b. A Facility representative stated that Respondent had purchased the Facility in 1999, and the 2018 plan was the first SPCC plan for the Facility;
- c. A Facility representative stated that the July 2020 spill occurred during the refueling of the storage tank under the fuel dock, when the hose came free from the tank and gasoline was released directly into Clearwater Lake. When this occurred, both a facility representative and fuel service representative were present at the premises but both individuals were in the parking lot area and not supervising the refueling operation when the spill occurred;
- d. Respondent’s use of dish soap as a dispersant after the July 2020 spill was not approved by EPA;
- e. The Facility’s SPCC plan did not describe any foreseeable spill scenarios from the Facility’s fuel transfer operations, including refueling and dispensing operations, as required by 40 C.F.R. § 112.6(a)(3)(i); and
- f. The Facility’s SPCC plan did not describe any general containment measures for the foreseeable spill scenarios from the Facility’s fuel transfer operations, including refueling and dispensing operations, as required by 40 C.F.R. § 112.7(c).

34. On August 6, 2021, EPA issued Respondents a Request for Information pursuant to the authority of Section 308 of the CWA, 33 U.S.C. 1318, to further evaluate the Facility's compliance with the SPCC requirements of 40 C.F.R. Part 112. Respondents' response to the Request for Information was received by EPA on August 19, 2021 and documented continued violations of the SPCC program at the Facility (See Counts 1 and 3, below).

Alleged Violations

Count 1:

Operation of Facility without required SPCC Plan

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

36. EPA's Inspection and Respondents' response to EPA's Request for Information document that prior to May 22, 2018, Respondent owned and operated the Facility without a SPCC Plan, in violation of 40 C.F.R. § 112.3.

37. 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 offshore facility who fails to comply with any regulation issued under Section 311(j) of CWA, 33 U.S.C. § 1321(j).

Count 2:

Prohibited Discharge of Oil

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

39. Respondents' July 2020 discharge of oil (gasoline) from the Facility caused a film or sheen upon the surface of Clearwater Lake 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).

40. Respondents' July 2020 discharge of oil from the Facility into Clearwater Lake and/or adjoining shorelines violated Section 311 (b)(3) of the Act, 33 U.S.C. § 1321(b)(3).

41. In accordance with Section 311(b)(6)(A)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(A)(ii), EPA may assess a civil penalty to any person who violates Section 311(b)(3) of CWA, 33 U.S.C. § 1321(b)(3).

**Count 3:
Violations of SPCC Program**

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

43. EPA's Inspection and Respondents' response to EPA's Request for Information document that Respondents failed to properly prepare and implement an SPCC Plan at the Facility (as required by 40 C.F.R. § 112.3), including but not limited to the following:

- a. Respondents' SPCC plan failed to list all scenarios of a reasonable potential for equipment failure (fuel transfer operations), and failed to provide a prediction of the direction, rate of flow, and total quantity of discharges of oil from such failures, in violation of 40 C.F.R. § 112.6(a)(3)(i); and
- b. Respondents' SPCC plan failed to describe, and the Facility failed to possess, adequate general containment measures to address spills from likely scenarios for equipment failure (fuel transfer operations), in violation of 40 C.F.R. §§ 112.6(a)(3)(i), and 112.7(c).

44. 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 offshore facility who fails to comply with any regulation issued under Section 311(j) of CWA, 33 U.S.C. § 1321(j).

CONSENT AGREEMENT

45. Respondents and the EPA agree to the terms of this Consent Agreement/Final Order.

46. Respondents admit 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.

47. Respondents neither admit nor deny the factual allegations and legal conclusions asserted by the EPA in this Complaint and Consent Agreement/Final Order.

48. Respondents waive their rights to contest any issue of fact or law set forth above, and their right to appeal this Consent Agreement/Final Order.

49. Respondents have revised and updated the Facility SPCC plan and have contacted a spill response organization to arrange for the purchase of additional response equipment. Respondents certify by signing this Consent Agreement/Final Order that they are presently in compliance at the Facility with the CWA and all regulations promulgated thereunder.

50. Respondents 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.

51. Respondents consent to receiving the filed Consent Agreement and Final Order electronically at the following email address: dcarter75@windstream.net.

52. The undersigned representative of Respondents 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.

53. Respondents understands and agrees that this Consent Agreement/Final Order shall apply to and be binding upon Respondents and Respondents' agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms or other persons or entities acting for Respondents with respect to matters included herein comply with the terms of this Consent Agreement/Final Order.

Penalty Payment

54. Respondents agree that, in settlement of the claims alleged in this Consent Agreement/Final Order, Respondents shall pay a civil penalty of **Eleven Thousand, Two Hundred and Forty Dollars (\$11,240)** within thirty (30) days of the Effective Date of this Consent Agreement/Final Order.

55. Respondents shall pay the 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-07-2022-0011, 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>.

56. Respondents shall simultaneously email copies of the transmittal letter and the penalty payment check/documentation, as directed above, to the following:

Regional Hearing Clerk at: R7_Hearing_Clerk_Filings@epa.gov

Howard Bunch at: bunch.howard@epa.gov

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

58. 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. Respondents understand 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

59. Respondents' 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.

60. The effect of the settlement in Paragraph 59, above, is conditioned upon the accuracy of the Respondents' representation of current compliance with the CWA, as memorialized in Paragraph 49 above.

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

62. 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.

63. 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

64. 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.

65. 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.

66. 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.

67. Respondents 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:

Wendy Lubbe
Acting Director
Enforcement and Compliance Assurance Division

Howard Bunch
Office of Regional Counsel

For Respondents John Carter and Carter and Heating and Cooling, Inc., d/b/a, Clearwater Piedmont Park Marina:

John Carter:

John B. Carter 12-16-21
Signature Date

John A. Carter
Name

Carter Heating and Cooling, Inc.:

John A. Carter 12-16-21
Signature Date

John A. Carter
Name

Prop.
Title

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 Respondents are 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

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 Respondents:

John Carter
Carter Hearing and Cooling, Inc., dba Clearwater Piedmont Park Marina
4372 Wayne Route B
Piedmont, Missouri 63957
dcarter@windstream.net

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