

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6

FILED
FEB -3 PM 1:02
2020
REGIONAL HEADING CLERK
EPA REGION VI

IN THE MATTER OF

**Continental Carbon Company
Kay County, OK**

Respondent.

**CWA SECTION 311 CLASS II
CONSENT AGREEMENT
AND FINAL ORDER
UNDER 40 CFR § 22.13(b)**

Docket No. CWA-06-2019-4851

LEGAL AUTHORITY

1. This Consent Agreement is proposed and entered into under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 311(b)(6)(B)(i) of the Clean Water Act (“Act”), 33 U.S.C. § 1321(b)(6)(B)(i), as amended by the Oil Pollution Act of 1990, and under the authority provided by 40 CFR §§ 22.13(b) and 22.18(b)(2). The Administrator has delegated these authorities to the Regional Administrator of EPA, Region 6, Pursuant to the April 17, 2019 Region 6 Realignment: General Delegation Memo (General Delegation Memo), the Regional Administrator delegated these authorities to the successor Division Director or Office Director in accordance with the Region 6 2019 reorganization, to wit: the Enforcement Division of EPA, Region 6. The General Delegation Memo has, in turn, further redelegated these authorities to the comparable official subordinate to the Enforcement Division Director, to wit: the Branch Chief, Water Enforcement Branch in Region 6 (“Complainant”).

CONSENT AGREEMENT

SPCC Stipulations

The parties, in their own capacity or by their attorneys or other authorized

representatives, hereby stipulate:

2. Section 311(j)(1)(C) of the Act, 33 USC § 1321(j)(1)(C), provides that the President shall issue regulations "establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil from onshore or offshore vessels and from onshore and or offshore facilities, and to contain such discharges...."

3. Initially by Executive Order 11548 (July 20, 1970), 35 Fed. Reg. 11677 (July 22, 1970), and most recently by Section 2(b)(1) of Executive Order 12777 (October 18, 1991), 56 Fed. Reg. 54757 (October 22, 1991), the President delegated to EPA his Section 311(j)(1)(C) authority to issue the regulations referenced in the preceding Paragraph for non-transportation-related onshore facilities.

4. EPA promulgated the Spill Prevention Control & Countermeasure (SPCC) regulations pursuant to delegated statutory authorities, and pursuant to its authorities under the Clean Water Act, 33 U.S.C. § 1251 et seq., which established certain procedures, methods and other requirements upon each owner and operator of a non-transportation-related onshore or offshore facility, if such facility, due to its location, could reasonably be expected to discharge oil into or upon the navigable waters of the United States and their adjoining shorelines in such quantity as EPA has determined in 40 CFR § 110.3 may be harmful to the public health or welfare or the environment of the United States ("harmful quantity").

5. In promulgating 40 CFR § 110.3, which implements Section 311(b)(4) of the Act, 33 USC § 1321(b)(4), EPA has determined that discharges of harmful quantities include oil discharges that cause either (1) a violation of applicable water quality standards or (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 upon adjoining shorelines.

6. Respondent is a firm conducting business in the State of Oklahoma, with a place of business located at 1006 East Oakland Avenue, Ponca City, OK 74601, and 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 CFR § 112.2.

7. Respondent is the owner within the meaning of Section 311(a)(6) of the Act, 33 USC § 1321(a)(6), and 40 CFR § 112.2 of a carbon black plant, the Continental Carbon Company, located in Kay County, Oklahoma (“the facility”). The approximate coordinates of the facility are 36.666200° N and -97.071615° W. Drainage from the facility travels to an unnamed creek thence to the Arkansas River.

8. The facility has an aggregate above-ground storage capacity greater than 1320 gallons of oil in containers each with a shell capacity of at least 55 gallons. Facility capacity is approximately 3,125,450 gallons.

9. The Arkansas River is a navigable water of the United States within the meaning of 40 CFR § 112.2, and as defined in Section 502(7) of the Act, 33 U.S.C. §1362(7), and 40 CFR §110.1.

10. Respondent is engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using or consuming oil or oil products located at the facility.

11. The facility is a non-transportation-related facility within the meaning of 40 CFR § 112.2 Appendix A, ads incorporated by reference within 40 CFR § 112.2

12. 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 CFR § 112.2, Appendix B.

13. 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”).

14. Pursuant to Section 311(j)(1)(C) of the Act, E.O. 12777, and 40 CFR § 112.1 Respondent, as the owner of an SPCC-regulated facility, is subject to the SPCC regulations.

SPCC Allegations

Respondent admits the jurisdictional allegations set forth above and neither admits nor denies the violations alleged in paragraphs 16-18.

Count 1: Failure to prepare and implement an adequate SPCC plan that meets the requirements of 40 CFR § 112.7 and other applicable sections, as required in 40 CFR § 112.7 and other applicable sections, as required in 40 CFR § 112.3

15. Paragraphs 6 through 14 above are re-stipulated as though fully set forth herein.

16. 40 CFR § 112.3 requires that the owner or operator of an SPCC-regulated facility must prepare a SPCC plan in writing, and implement that plan in accordance with 40 CFR § 112.7 and any other applicable section of 40 CFR Part 112.

17. On July 25, 2018 EPA inspected the facility and found that Respondent had failed to develop and implement an SPCC plan adequately for the facility as follows:

- a. Respondent’s plan failed to include a complete and signed copy of the Certificate of the Applicability of the Substantial Harm Criteria in accordance with 40 CFR § 112.20(e).
- b. Respondent failed to discuss in the plan whether diked areas are sufficiently impervious to contain discharged oil as required at 40 CFR § 112.8(c)(2).
- c. Respondent failed to implement the testing or inspection of each aboveground container for integrity on a regular schedule and whenever material repairs occur.

Additionally, Respondent failed to indicate the appropriate qualifications for personnel performing tests and inspections in accordance with industry standards, failed to maintain documentation of the the frequency and type of testing and inspections, and facility failed to maintain records of all inspections and tests as required at 40 CFR § 112.8(c)(6).

18. Respondent's failure to fully implement an adequate SPCC plan for the facility violated 40 CFR § 112.3, and impacted its ability to prevent an oil spill.

FRP Stipulations

19. Paragraphs 6 through 14 above are re-stipulated as though fully set forth herein.

20. Section 311(j)(5)(A) of the Act, 33 U.S.C. § 1321(j)(5)(A), provides that the President shall issue regulations requiring each owner or operator of certain facilities to "submit to the President a plan for responding, to the maximum extent practicable, to a worst-case discharge, and to a substantial threat of such a discharge, of oil or a hazardous substance."

21. By Section 2(d)(1) of Executive Order 12777 (October 18, 1991), the President delegated to the Administrator of EPA the authorities under Section 311(j)(5)(A) of the Act.

22. The Administrator of EPA promulgated regulations, codified within Subparts A and D of 40 CFR Part 112 ("the [Facility Response Plan] FRP regulations"), implementing these delegated statutory authorities.

23. The facility has a total oil storage capacity of at least one (1) million U.S. gallons and the facility is located at a distance such that a discharge could cause injury to fish and wildlife and sensitive environments.

24. The facility is therefore a non-transportation related, offshore facility within the meaning of 40 CFR § 112.2 that, because of its location, could reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters or adjoining shorelines, within the meaning of Section 311(j)(5)(B)(iii) of the Act, 33 U.S.C. § 1321(j)(5)(B)(iii), and 40 CFR § 112.20(f)(1) (“an FRP-regulated facility”).

25. Therefore, Respondent, as the owner/operator of a FRP-regulated facility, is subject to the FRP regulations found at 40 CFR. § 112.20.

26. It is stipulated that pursuant to Section 311(j)(5) of the Act and 40 CFR § 112.20, the owner or operator of an FRP-regulated facility in operation on or before February 18, 1993, must no later than that date submit a Facility Response Plan (FRP) that satisfies the requirements of Section 311(j)(5). The facility began operation in 1954.

FRP Allegations

27. Paragraphs 6 through 14 and 20 through 26 above are re-stipulated as though fully set forth herein.

28. On July 25, 2018, EPA inspected the facility and found that Respondent had failed to properly develop and implement an FRP in accordance with 40 CFR § 112.20 as follows:

- a. Respondent failed to develop a Facility Response Plan in accordance with 40 CFR § 112.20.

29. Respondent’s failure to properly develop and implement an FRP violates the requirements of Section 311(j)(5) of the Act and 40 CFR § 112.20.

Waiver of Rights

30. Respondent waives the right to a hearing under Section 311(b)(6)(B)(i) of

the Act, 33 U.S.C. § 1321(b)(6)(B)(i), and to appeal any Final Order in this matter under Section 311(b)(6)(G)(i) of the Act, 33 U.S.C. §1321(b)(6)(G)(i), and consents to the issuance of a Final Order without further adjudication.

Penalty

31. The Complainant proposes, and Respondent consents to, the assessment of a civil penalty of **\$70,041.00**.

Payment Terms

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

32. The Respondent shall submit this Consent Agreement and Final Order, with original signature to:

Energy Sector Compliance Section Chief
U. S. Environmental Protection Agency
Region 6 (6ECD-WE)
1201 Elm Street, Suite 500
Dallas, Texas 75270-2102

33. The Respondent shall pay to the United States a civil penalty in the amount of **\$70,041.00**, to settle the violations as alleged in the CAFO, in accordance with 40 C.F.R. 22.18(c). Payment must be made within thirty (30) days after the effective date of this CAFO, by means of a cashier's or certified check, or by electronic funds transfer (EFT).

- Penalty Payment: If you are paying by check, pay the check to "Environmental Protection Agency," noting on the check "**OSTLF-311**" and docket number **CWA-06-2019-4851**. If you use the U.S. Postal Service, address the payment to:

U.S. Environmental Protection Agency, Fines & Penalties

P.O. Box 979077, St. Louis, MO 63197-9000

- If you use a private delivery service, address the payment to:

U.S. Bank
Government Lockbox 979077, US EPA Fines & Penalties
1005 Convention Plaza, Mail Station SL-MO-C2GL
St. Louis, MO 63101

- The Respondent shall submit copies of the check (or, in the case of an EFT transfer, copies of the EFT confirmation) to the OPA Enforcement Coordinator, at the address above as well as:

Lorena Vaughn
Regional Hearing Clerk (6RC)
U.S. Environmental Protection Agency
Region 6
1201 Elm Street, Suite 500
Dallas, TX 75270-2102

34. 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

35. Complainant reserves the right, pursuant to 40 CFR § 22.45(c)(4)(iii), to withdraw the Consent Agreement and proposed Final Order within 15 days of receipt of a Commenter's petition requesting, pursuant 40 CFR § 22.45(c)(4)(iii), that the Regional Administrator set aside the Consent Agreement and proposed Final Order on the basis that material evidence was not considered.

36. The Final Order shall be binding upon Respondent and Respondent's officers, directors, agents, servants, employees, and successors or assigns.

37. The Final Order does not constitute a waiver, suspension or modification of the requirements of Section 311 of the Act, 33 USC §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. Payment of the penalty pursuant to this Consent Agreement resolves only Respondent's liability for federal civil penalties for the violations and facts stipulated to and alleged herein.


Continental Carbon Company

Date: 11/12/2019


Dennis Hetu
President

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 11-25-19


Cheryl T. Seager, Director
Enforcement and
Compliance Division

FINAL ORDER

Pursuant to Section 311(b)(6) of the Act, 33 USC §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 forgoing Consent Agreement is hereby approved and incorporated by reference into this Final Order, and the Stipulations by the parties and Allegations by the Complainant are adopted as Findings in this Final Order.

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

Date: 2-3-2020



Thomas Rucki
Regional Judicial Officer

CERTIFICATE OF SERVICE

I certify that the original and one copy of the foregoing "Consent Agreement and Final Order," issued pursuant to 40 C.F.R. 22.13(b), was filed on 2-3, 2020, with the Regional Hearing Clerk, U.S. EPA Region 6, 1201 Elm Street, Dallas, TX 75270-2102; and that on the same date a copy of the same was sent to the following, in the manner specified below:

Copy by certified mail,
return receipt requested:
7016 3010 0000 4985 2668

NAME: Mr. Dennis Hetu
ADDRESS: 1006 East Oakland Avenue
Ponca City, OK 74601



Misty Ward
OPA Enforcement Officer