

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

1595 WYNKOOP STREET
DENVER, CO 80202-1129
Phone 800-227-8917
<http://www.epa.gov/region08>

2016 AUG 26 PM 2:14

FILED
EPA REGION VIII
HEARING CLERK

DOCKET NO.: RCRA-08-2016-0007

IN THE MATTER OF:

Harvey Ost Oilfield Services, LLC
Frazer, MT

RESPONDENT

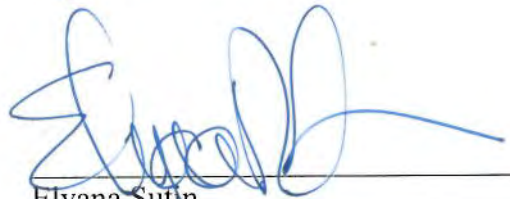
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FINAL ORDER

Pursuant to 40 C.F.R. §22.13(b) and 22.18(b)(2)(3), of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order.

The Respondent is hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon filing this Consent Agreement and Final Order.

SO ORDERED THIS 25th DAY OF August, 2016.



Elyana Sutin
Regional Judicial Officer

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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Docket No. RCRA-08-2016-0007

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HEARING CLERK

IN THE MATTER OF:)

Harvey Ost Oilfield Services, LLC)
Frazier, MT)

Respondent)

) **COMBINED COMPLAINT AND**
) **CONSENT AGREEMENT**
)
)

Complainant, United States Environmental Protection Agency Region 8 (EPA or Complainant), and Respondent, Harvey Ost Oilfield Services, LLC (Respondent), by their undersigned representatives, hereby consent and agree as follows.

I. PRELIMINARY STATEMENT

1. This Combined Complaint and Consent Agreement (Consent Agreement) entered into by the parties for the purpose of simultaneously commencing and concluding this matter, as authorized by 40 C.F.R. § 22.13(b), and pursuant to 40 C.F.R. § 22.18(b)(2) and (3).
2. The EPA has jurisdiction over this matter pursuant to section 3008 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928.
3. For the purposes of this Consent Agreement only, Respondent admits the jurisdictional allegations contained herein and neither admits nor denies the EPA's specific factual allegations or legal conclusions contained herein.
4. Respondent waives its rights to a hearing before any tribunal to contest any issue of law or fact set forth in this Consent Agreement, including in any proceeding to enforce this Consent Agreement.
5. Complainant has concluded that settlement of this matter is in the public interest.
6. Complainant and Respondent agree that entry of the Consent Agreement and its incorporation into a final order without litigation and without adjudication of any issue of fact or law will avoid prolonged and potentially complicated litigation between the parties.

7. Upon incorporation into a final order by the EPA Regional Judicial Officer (Final Order), this Consent Agreement applies to and is binding upon Complainant and upon Respondent, and Respondent's officers, directors, agents, successors and assigns. Any change in ownership of, or corporate organization, structure or status of Respondent including, but not limited to, any transfer of assets, or real or personal property shall not alter Respondent's responsibilities under this Consent Agreement, unless the EPA, Respondent, and the transferee agree in writing to allow the transferee to assume such responsibilities.
8. Respondent shall notify the EPA at the address specified below thirty (30) days prior to any transfer described in or contemplated under the paragraph immediately above.
9. This Consent Agreement contains all civil penalty settlement terms agreed to by the parties.

II. EPA's ALLEGATIONS

10. Pursuant to section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), the EPA has notified the Assiniboine and Sioux Tribes in the Fort Peck Reservation that it is issuing this combined complaint and consent agreement.
11. Respondent is a "person" as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).
12. Respondent owns and operates a facility located at 2396 Frazer Road North, Frazer, Montana 59225 (Facility), which is used to maintain and service oil trucks and to store equipment and chemicals for oilfield maintenance. The Facility is a "facility" as defined at 40 C.F.R. § 260.10. The Facility mailing address is P.O. Box 1509 Malta, Montana 59538, c/o Dennis Ost.
13. On or about July 28, 2015, an EPA representative conducted a RCRA Compliance Evaluation Inspection (CEI) at the Facility.
14. Respondent was a non-notifier of hazardous waste at the time of the July 28, 2015 CEI. The Facility is assigned the EPA Facility Identification Number MTR000208785 as a conditionally exempt small quantity generator of hazardous waste, pursuant to 40 C.F.R. § 261.5(a).

III. DESCRIPTION OF VIOLATIONS

15. Pursuant to 40 C.F.R. § 279.20, a used oil generator is any person, by site, whose act or process produces used oil or whose act first causes used oil to become subject to regulation.
16. Pursuant to 40 C.F.R. § 279.22(a), used oil generators shall not store used oil in units other than tanks, containers, or units subject to regulation under parts 264 or 265 of this chapter.
17. Respondent's storage of used oil in the open trenches in the service bay, at the Facility, is a violation of 40 C.F.R. § 279.22(a).
18. Pursuant to 40 C.F.R. § 279.22(c), a used oil generator must label or clearly mark containers and aboveground tanks used to store used oil with the words "Used Oil."
19. Respondent's storage of used oil in unlabeled containers or tanks is a violation of 40 C.F.R. § 279.22(c).
20. Pursuant to 40 C.F.R. § 279.22(d), upon detection of a release of used oil to the environment, a generator must stop the release, contain the released used oil, clean up and manage properly the released used oil and other materials and if necessary, repair or replace any leaking used oil storage containers or tanks prior to returning them to service.
21. Respondent's failure to respond to released used oil to soils including, but not limited to, the release of oil accumulated in the Facility shop floor trenches through a hole cut in the back of the maintenance shop of the Facility is a violation of 40 C.F.R. § 279.22(d).

IV. CIVIL PENALTY

22. Pursuant to sections 3008(a)(3) and 3008(g) of the Act, 42 U.S.C. §§ 6928(a)(3) and (g), and after consideration of the facts of this case as they relate to the factors set forth in section 3008(a)(3) of the Act, the EPA has determined that a civil penalty of twenty two thousand, and seventy dollars (\$22,070.00) is appropriate to settle this matter.
23. Respondent consents and agrees to pay a civil penalty in the amount of twenty two thousand and seventy dollars (\$22,070.00) in the manner described below.

24. Payment of the principal amount shall be made in three installments over two years following the Final Order. The first installment payment of \$7,357.67 is due within thirty (30) calendar days of Respondent's receipt of the Final Order issued by the EPA Regional Judicial Officer adopting this Consent Agreement. If the due date for payment falls on a weekend or legal federal holiday, the due date is the next business day. Payment must be received by 11:00 a.m. Eastern Time to be considered received that day. The subsequent installment payments of \$7,357.67 are due one and two years from the date of the Final Order issued by the EPA Regional Judicial Officer.

25. Payments shall be made by one of the following methods:

Payment by cashier's or certified check. A cashier's or certified check, including the name and docket number of this case, be in the amount stated above, payable to "Treasurer, United States of America," mailed to:

Regular Mail

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

Overnight Mail

U.S. EPA Fines and Penalties
Government Lockbox 979077
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

Payment by Wire Transfer: Wire transfers should be directed to the Federal Reserve Bank of New York with the following information:

ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of Fedwire message should read "D 68010727 Environmental Protection Agency"

Payment Online: This option is available through the Department of Treasury, at www.pay.gov.

Enter sfo 1.1 in the search field. Open the form and complete the required fields.

26. At the time of payment, a copy of the check or record of payment if made by other means shall be sent to:

Linda Jacobson
RCRA Enforcement Program
8ENF-RC
U.S. EPA Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

and

Regional Hearing Clerk (8RC)
U.S. EPA Region 8
1595 Wynkoop St.
Denver, CO 80202-1129

27. In the event payment is not received by the due date, interest accrues from the date of the Final Order, not the due date (on the first late day, 30 days of interest will have accrued), at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until payment in full is received.

28. In addition, a handling charge of fifteen dollars (\$15) shall be assessed the 31st day from the due date of any payment, and for each subsequent thirty-day period that the debt, or any portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 90 days of the due date. Payments are first applied to outstanding handling charges, 6% penalty interest, and late interest. The remainder is then applied to the outstanding principal amount.

29. Respondent agrees that the civil penalty never shall be claimed as a federal or other tax deduction or credit.

V. OTHER TERMS AND CONDITIONS

30. Failure by Respondent to comply with any of the terms of this Consent Agreement shall constitute a

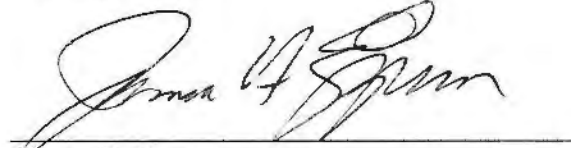
breach of this Consent Agreement and may result in referral of the matter to the Department of Justice for enforcement of this Consent Agreement and for such other relief as may be appropriate.

31. Nothing in this Consent Agreement shall be construed as a waiver by Complainant of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondent's failure to perform pursuant to the terms of this Consent Agreement.
32. Each undersigned representative of the parties to this Consent Agreement certifies that he or she is fully authorized by the party represented to bind the parties to the terms and conditions of this Consent Agreement and to execute and legally bind that party to this Consent Agreement.
33. This Consent Agreement, upon incorporation into a final order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete, full, and final settlement of the civil penalty owed for violations alleged in this Consent Agreement.
34. This Consent Agreement resolves Respondent's liability for civil penalties under sections 3008(a)(3) and 3008(g) of the Act, 42 U.S.C. §§ 6928(a)(3) and (g), for the violations alleged herein.
35. Each party shall bear its own costs and attorney's fees in connection with all issues associated with this Consent Agreement.

Signature Page In the Matter of Harvey Ost Oilfield Services, LLC in Frazier, MT

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8
Complainant.

Date: 8/2/16



James H. Eppers
Supervisory Attorney
Legal Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

Date: 8/11/16



Aaron Urdiales
Acting Director
RCRA/CERCLA Technical Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

Harvey Ost Oilfield Services, LLC
Respondent.

Date: July 19, 2016



Mr. Dennis Ost

Title: owner, H.O.O.F.S. LLC.

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **COMBINED COMPLAINT AND CONSENT AGREEMENT and FINAL ORDER** in the matter of **HARVEY OST OILFIELD SERVICES, LLC.; DOCKET NO.: RCRA-08-2016-0007** was filed with the Regional Hearing Clerk on August 26, 2016

Further, the undersigned certifies that a true and correct copy of the documents were emailed to, Laurianne Jackson, Enforcement Attorney. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt on August 26, 2016, to:

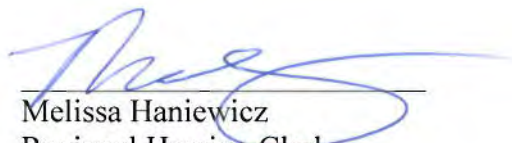
Respondent

Harvey Ost Oilfield Services, LLC.
PO Box 1509
Malta, Montana 59538

And emailed to:

Jessica Farmer
U. S. Environmental Protection Agency
Cincinnati Finance Center
26 W. Martin Luther King Drive (MS-0002)
Cincinnati, Ohio 45268

August 26, 2016


Melissa Haniewicz
Regional Hearing Clerk

