

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2011 NOV 18 AM 9:04

FILED
EPA REGION VIII
HEARING CLERK

IN THE MATTER OF:)
)
Pierce Oil Company, Inc.) Docket No. CWA-08-2010-0020
332 West Railroad Avenue)
Price, UT 84501)
)
Respondent.)

CONSENT AGREEMENT

Complainant, United States Environmental Protection Agency, Region 8 (EPA), and Respondent, Pierce Oil Company, Inc. (Pierce Oil), by their undersigned representatives, hereby consent and agree as follows:

BACKGROUND

1. On July 26, 2010, EPA issued Pierce Oil an Administrative Complaint and Notice of Opportunity for Hearing (Complaint) pursuant to its authority under § 311(b)(6)(B) of the Clean Water Act (Act), as amended by the Oil Pollution Act of 1990. EPA alleged in the Complaint that Pierce Oil failed to prepare and implement an adequate Spill Prevention Control and Countermeasure (SPCC) plan at its bulk distributor facility located in Price, Utah, in violation of § 311(j) of the Act, 33 U.S.C. § 1321(j), and the oil pollution prevention regulations set forth at 40 C.F.R. Part 112. The Complaint proposed a civil penalty for the violations alleged therein.

2. Pierce Oil admits the jurisdictional allegations of the Complaint and neither admits nor denies the specific factual allegations of the Complaint.

3. Pierce Oil waives its right to a hearing before any tribunal, to contest any issue of law or fact set forth in the Complaint or this Consent Agreement.

4. This Consent Agreement, upon incorporation into a final order, applies to and is binding upon EPA, and Pierce Oil, its successors, and assigns. Any change in ownership or corporate status of Pierce Oil, including, but not limited to, any transfer of assets or real or personal property, shall not alter Pierce Oil's responsibilities under this agreement. This Consent Agreement contains all terms of the settlement agreed to by the parties.

TERMS OF SETTLEMENT

CIVIL PENALTY

5. Pierce Oil consents and agrees to pay a civil penalty in the amount of **twenty thousand nine hundred dollars (\$20,900)**, in the manner described below in this paragraph:

- a. Pierce Oil shall pay the first payment of **ten thousand four hundred fifty dollars (\$10,450)** within thirty (30) calendar days from the date written on the final order, issued by the Regional Judicial Officer that adopts this Consent Agreement.
- b. Pierce Oil shall pay the second and final payment of **ten thousand four hundred fifty dollars (\$10,450)** on or before May 31, 2012.
- c. If the due date falls on a weekend or legal federal holiday, then the due date becomes the next business day. The date the payment is made is considered to be the date processed by Mellon Bank described below. Payments received by 11:00 AM EST are processed on the same day, those received after 11:00 AM are processed on the next business day.
- d. The payments shall be made by remitting a cashier's or certified check, referencing the name and docket number of this case, and "Oil Spill Liability Trust Fund-311," for this amount, payable to "**Environmental Protection Agency**," to:

**US checks by regular
US postal service mail:**

US EPA Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

**Federal Express, Airborne,
or other commercial carrier:**

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

Wire transfers:

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

On Line Payment:

WWW.PAY.GOV
Enter sfo 1.1 in the search field

Open form and complete required
fields.

Copies of the check or wire transfer shall be simultaneously sent to:

Cynthia Peterson
U.S. EPA Region 8 (8ENF-UFO)
1595 Wynkoop Street
Denver, CO 80202-1129

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

- e. In the event payment is not received by the specified due date, interest accrues from the date of the final order, not the payment due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until the payment is received in full (i.e., on the 1st late day, 30 days of interest accrues).
- f. In addition to the accrual of interest specified in subsection (e) of this Paragraph, a handling charge of fifteen dollars (\$15.00) shall be assessed on the 31st day from the date of the final order, and each subsequent 30-day period that the penalty, or any portion thereof, remains unpaid. In

addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if the penalty payment is not received within ninety (90) days of the due date (i.e., the 121st day from the date the final order is signed). Payments are first applied to outstanding handling charges, 6% penalty interest, and late interest. The remainder is then applied to the outstanding principal amount.

g. Pierce Oil agrees that the penalty shall never be claimed as a federal or other tax deduction or credit.

6. Respondent may pay the full penalty amount any time prior to May 31, 2012.

without incurring a pre-payment penalty.

7. EPA reserves the right to call due the entire amount of \$20,900, or the outstanding balance thereof, within thirty days of receipt of notice in the event that any of the above payments are late or missed.

COMPLIANCE ORDER

8. Within thirty (30) days of receiving the Consent Agreement and Final Order, Pierce Oil shall revise the Pierce Oil Company SPCC Addendum for Pierce Oil Company Facility A, dated August 29, 2011, as follows:

- Include in the plan language stating that records of annual inspections, as well as monthly inspections, shall be maintained for three years;
- Show on the facility diagram the drum and tote storage areas in the warehouses;
- Include the estimated number of mobile or portable containers, the types of oil and anticipated storage capacities in Table 7 as required by 40 C.F.R.

112.7(a)(3)(i). "Variable" is not adequate.

9. Pierce Oil shall submit a final SPCC Plan Addendum certified by a professional engineer in accordance with 40 C.F.R. § 112.5(d) to EPA to verify compliance with this section within 60 days of receiving the Consent Agreement and Final Order to:

Cynthia Peterson (8ENF-UFO)
U.S. EPA Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

GENERAL PROVISIONS

10. Nothing in this Consent Agreement shall relieve Pierce Oil of the duty to comply with the Act and its implementing regulations.

11. Failure by Pierce Oil to comply with any of the terms of the Consent Agreement shall constitute a breach of the agreement and may result in referral of the matter to the Department of Justice for enforcement of the Consent Agreement and for such other relief as may be appropriate in federal district court.

12. Nothing in the Consent Agreement shall be construed as a waiver by the EPA or any other federal entity of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Pierce Oil's failure to perform pursuant to the terms of the Consent Agreement.

13. The undersigned representative of Pierce Oil certifies that he is fully authorized to enter into and bind Pierce Oil to the terms and conditions of this Consent Agreement.


14. The parties agree to submit this Consent Agreement to the Regional Judicial Officer, with a request that it be incorporated into a final order.

15. Each party shall bear its own costs and attorney fees in connection with this matter.

16. The Consent Agreement, upon incorporation into a final order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete and full civil settlement of the violations alleged in the Complaint.

**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8.**
Complainant.

Date: NOV 17 2011

By: 
Acting REU Director
Legal Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

Date: 11/17/11

By: 
Sandra A. Stavnes, Director
UIC-FIFRA-OPA Technical Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

PIERCE OIL COMPANY, INC.
Respondent.

Date: 11-10-11

By: 
Ellis L. Pierce, President

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT/FINAL ORDER** in the matter of **PIERCE OIL CO. INC., DOCKET NO.: CWA-08-2010-0020** was filed with the Regional Hearing Clerk on November 18, 2011.

Further, the undersigned certifies that a true and correct copy of the documents were delivered to, Amy Swanson, Senior Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt requested on November 18, 2011, to:

Gerald H. Kinghorn
Parsons, Kinghorn, Harris, P. C.
111 E. Broadway, Suite 1100
Salt Lake City, UT 84111
ghk@pkhlawyers.com

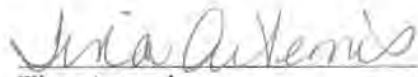
E-mailed to:

Honorable Elyana R. Sutin, Regional Judicial Officer
U. S. Environmental Protection Agency
1595 Wynkoop Street
Denver, CO 80202

And

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

November 18, 2011


Tina Artemis
Paralegal/Regional Hearing Clerk

