

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

Docket No.: CWA-08-2010-0025

2010 SEP -1 PM 12:47

FILED
EPA REGION VIII
HEARING CLERK

IN THE MATTER OF)	COMPLAINT AND
)	SETTLEMENT AGREEMENT
Hermes Consolidated, Inc.)	(Proceeding to Assess Class II
d/b/a Wyoming Refining Company)	Civil Penalty Under Section 311
(Newcastle Refinery))	of the Clean Water Act)
1600 Broadway, Ste. 2300)	
Denver, CO 80202)	
Respondent.)	

Complainant, the United States Environmental Protection Agency, Region 8 (EPA) and Respondent, Hermes Consolidated, Inc., d/b/a Wyoming Refining Company (Newcastle Refinery), by their undersigned representatives, hereby consent and agree as follows:

A. PRELIMINARY MATTERS

1. This Complaint and Settlement Agreement (CASA) is issued to Respondent for violating section 311(j)(5), 33 U.S.C. §1321(j)(5) of the Clean Water Act (CWA or the Act) and the implementing regulations at 40 C.F.R. §§ 112.20 and 112.21.
2. The undersigned EPA, Region 8 officials have been properly delegated the authority to issue this CASA under the authority vested in the Administrator of EPA by section 311(b)(6)(B)(ii) of the Act, 33 U.S.C. §1321(b)(6)(B)(ii), as amended by the Oil Pollution Act of 1990, to bring an action for civil administrative penalties against a respondent who has violated, or is in violation of, a requirement or prohibition of the CWA or its implementing regulations.
3. This proceeding is governed by 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 ("Consolidated Rules") set forth at 40 C.F.R. part 22.

4. This CASA is 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 executed pursuant to 40 C.F.R. §22.18(b)(2) and (3) of the Consolidated Rules.

5. Respondent admits the jurisdictional allegations in this CASA and neither admits nor denies the specific factual allegations contained herein.

6. Respondent waives its rights to a hearing before any tribunal and to contest any issue of law or fact set forth in this CASA.

7. This CASA, upon incorporation into a final order, applies to and is binding upon EPA and upon Respondent, and Respondent's officers, directors, employees, agents, successors and assigns. Any change in ownership or corporate 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 agreement.

8. This CASA contains all terms of the settlement agreed to by the parties.

B. ALLEGED VIOLATION

9. Respondent 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).

10. Respondent is an "owner and operator" of the "non-transportation" "onshore facility" (hereinafter, the facility) as those terms are defined in 40 C.F.R. §112.2 and sections 311(a)(6) and (10), respectively, of the Act, 33 U.S.C. §§1321(a)(6) and (10), located at 740 West Main Street, Newcastle, Wyoming.

11. Section 311(j)(5) of the CWA, 33 U.S.C. § 1321(j)(5), and 40 C.F.R. §§ 112.20 and 112.21 provide that the owner or operator of a facility that could reasonably be expected to cause

substantial harm to the environment by discharging oil into or on the navigable waters or adjoining shorelines shall prepare, submit, and implement a Facility Response Plan (FRP).

12. Regulations provide that a facility can reasonably be expected to cause substantial harm to the environment if the facility has an oil storage capacity of over one million gallons and, among other things: has inadequate secondary containment to contain a complete loss of its largest capacity tank (40 C.F.R. § 112.20 (f)(1)(ii)(A)); is located such that a discharge from the facility could cause injury to fish, wildlife or sensitive environments (40 C.F.R. §112.20(f)(1)(ii)(B)); is located at a distance such that a discharge from the facility would shut down a public drinking water intake (40 C.F.R. §112.20(f)(1)(ii)(C)); or has discharged more than 10,000 gallons of oil into or on the navigable waters or adjoining shorelines within the prior five years (40 C.F.R. § 112.20(f)(1)(ii)(D)).

13. In accordance with 40 C.F.R. § 112.20(a), an owner or operator of any facility in operation on or before February 18, 1993, that satisfies the regulations in the preceding paragraph, was required to prepare and submit an FRP to EPA by August 30, 1994.

14. In August 1994, Respondent notified EPA that based upon its self-evaluation, the Newcastle facility was not a substantial harm facility and was not subject to the FRP requirements.

15. In October 2001, Respondent alleged that it did not need to meet the FRP requirements unless EPA Region 8's Regional Administrator, rather than EPA's designated delegate, determined under 40 C.F.R. § 112.20 (b) or (c) that it was subject to the FRP requirements.

16. In 2002, Respondent agreed to submit the FRP for the facility.

17. From 2003 to 2009, Complainant and Respondent exchanged communications regarding the completeness and adequacy of the FRP submissions during that time frame.

18. Respondent submitted a revised FRP on November 30, 2009, which was approved by EPA in a letter dated March 22, 2010.

19. At all times relevant to this CASA, Respondent's facility had an oil storage capacity greater than one million gallons.

20. The facility is located such that a discharge from the facility could cause injury to fish, wildlife or sensitive environments as determined by planning distance calculations specified in 40 C.F.R. Part 112, Appendix C, Attachment C-III, Calculation of the Planning Distance, § 1.6.

21. Based on information submitted by Respondent, the facility is subject to the FRP requirements and 40 C.F.R. §§ 112.20(a) and 112.21.

22. Respondent's failure to prepare, submit, and implement an adequate and complete FRP for the Newcastle facility until November 2009, constitutes a violation of Section 311(j)(5) of the CWA, 33 U.S.C. § 1321(j)(5) and 40 C.F.R. §§ 112.20 and 112.21.

C. CIVIL PENALTY

23. As alleged in the preceding Paragraphs, and pursuant to section 311(b)(6)(B)(ii) of the Act, 33 U.S.C. §1321(b)(6)(B)(ii), and 40 C.F.R. §19.4, the Respondent is liable for civil penalties of up to \$16,000 per day for each day during which the violation continues, up to a maximum total of \$177,500 for all violations.

24. Based on the foregoing Allegations and pursuant to the authority of section 311(b)(6)(B)(ii) of the Act, 33 U.S.C. §1321(b)(6)(B)(ii), and 40 C.F.R. § 19.4, Complainant proposes the assessment of administrative penalties against the Respondent in the amount of one hundred fifty-seven thousand five hundred dollars (\$157,500).

25. Complainant proposes this penalty amount after considering the applicable statutory penalty factors in section 311(b)(8) of the Act, 33 U.S.C. §1321(b)(8): the seriousness of the violation, the economic benefit to the violator, if any, resulting from the violation, the degree of culpability involved, any other penalty for the same incident, any history of prior violations, the nature, extent, and degree of success of any efforts of the violator to minimize or mitigate the effects of the discharge, the economic impact of the penalty on the violator, and any other matters as justice may require.

26. Respondent consents to the issuance of a final order and consents for the purposes of settlement to the payment of the civil penalty in the amount of one hundred fifty-seven thousand five hundred dollars (\$157,500) in the manner described below in this paragraph:

a. **Payment is due within 30 calendar days from the date written on the Final Order**, issued by the Regional Judicial Officer, that adopts this Complaint and Settlement Agreement. 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 the 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.

b. The payment shall be made by remitting a cashier's or certified check, including the name and docket number of this case, referencing "Oil Spill Liability Trust Fund-311," for the amount, **payable to the "Environmental Protection Agency,"** to:

CHECK PAYMENTS: US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

OVERNIGHT MAIL:

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

Contact: Natalie Pearson
314-418-4087

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 “

ACH (also known as REX or remittance express):

Automated Clearinghouse (ACH) for receiving US currency
PNC Bank
808 17th Street, NW
Washington, DC 20074
Contact – Jesse White 301-887-6548
ABA = 051036706
Transaction Code 22 - checking
Environmental Protection Agency
Account 310006
CTX Format

ON LINE PAYMENT:

There is now an On Line Payment Option, available through the Dept. of Treasury.
This payment option can be accessed from the information below:
WWW.PAY.GOV

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

A copy of the check, or wire transfer, shall be sent simultaneously to:

Donna K. Inman (8ENF-UFO)
U.S. EPA Region 8
Technical Enforcement Program
1595 Wynkoop St.
Denver, CO 80202-1129

and

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

27. In addition, a handling charge of fifteen dollars (\$15) shall be assessed the 31st day from the date of the Final Order, and 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 (i.e., the 121st day from the date the final consent 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.

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

29. Payment of the penalty in this manner does not relieve Respondent of its obligations to comply with the requirements of the statute and regulations. Payment of the penalty in this manner shall constitute consent by Respondent to the assessment of the proposed penalty and a waiver of Respondent's right to a hearing on this matter.

D. PUBLIC NOTICE

30. Pursuant to Section 311(b)(6)(C) of the Act, 33 U.S.C. §1321(b)(6)(C), the Complainant is providing public notice and reasonable opportunity to comment on the proposed issuance of a final order assessing administrative penalties. If a hearing is held on this matter, members of the public

who submitted timely comments on this proceeding have the right under Section 311(b)(6)(C) of the Act to be heard and present evidence at the hearing.

E. TERMS AND CONDITIONS

31. Failure by Respondent to comply with any of the terms of this CASA shall constitute a breach of the CASA and may result in referral of the matter to the Department of Justice for enforcement of this agreement and for such other relief as may be appropriate.

32. Nothing in this CASA 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 Respondent's failure to perform pursuant to the terms of this CASA.

33. Each undersigned representative of the parties to this CASA certifies that he or she is fully authorized by the party represented to bind the parties to the terms and conditions of this CASA and to execute and legally bind that party to this CASA.

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

35. This CASA, 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 violations alleged in this CASA.

36. Each party shall bear its own costs and attorneys fees in connection with all issues associated with this CASA.

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8, Office of Enforcement, Compliance
and Environmental Justice, Complainant.**

Date: 31 August 2010

By: Sharon L Keucher
for Andrew M. Gaydosh
Assistant Regional Administrator
Office of Enforcement, Compliance and
Environmental Justice

Date: August 31, 2010

By: Brenda L Morris
Brenda L. Morris, Attorney
Legal Enforcement Program

**HERMES CONSOLIDATED, INC.,
d/b/a WYOMING REFINING COMPANY
(Newcastle Refinery), Respondent.**

Date: _____

By: _____
Bob Neufeld, Vice President
Environment and Governmental Relations
Hermes Consolidated, Inc.
d/b/a Wyoming Refining Company

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8, Office of Enforcement, Compliance
and Environmental Justice, Complainant.**

Date: _____

By: _____

Andrew M. Gaydosh
Assistant Regional Administrator
Office of Enforcement, Compliance and
Environmental Justice

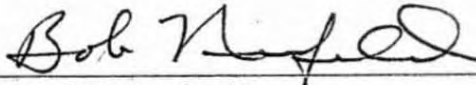
Date: _____

By: _____

Brenda L. Morris, Attorney
Legal Enforcement Program

**HERMES CONSOLIDATED, INC.,
d/b/a WYOMING REFINING COMPANY
(Newcastle Refinery), Respondent.**

Date: August 30, 2010 By: _____


Bob Neufeld, Vice President
Environment and Governmental Relations
Hermes Consolidated, Inc.
d/b/a Wyoming Refining Company