



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

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

November 12, 2020
10:11 AM
Received by
EPA Region VIII
Hearing Clerk

DOCKET NO.: CWA-08-2021-0005

IN THE MATTER OF:)
)
TOP SHELF ENERGY, LLC) **FINAL ORDER**
)
)
)
)
RESPONDENT)

Pursuant to 40 C.F.R. § 22.13(b) and §§ 22.18(b)(2) and (3) of EPA’s Consolidated Rules of Practice, the Expedited Penalty Action and 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 Expedited Penalty Action and Consent Agreement, effective immediately upon filing this Expedited Penalty Action and Consent Agreement and Final Order.

SO ORDERED THIS 12TH DAY OF NOVEMBER, 2020.

**KATHERIN
HALL** Digitally signed by
KATHERIN HALL
Date: 2020.11.12
11:12:54 -07'00'

Katherin E. Hall
Regional Judicial Officer



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In the Matter of:

}
} EXPEDITED PENALTY ACTION
} AND CONSENT AGREEMENT

Top Shelf Energy, LLC

}
} Docket No.: CWA-08-2021-0005

On July 23, 2019, an authorized representative of the United States Environmental Protection Agency (EPA) conducted a drive-by in response to a complaint received by the EPA regarding lack of secondary containment and spillage at the load out at the facility located at 8116 61st St NW in Stanley, North Dakota. This facility, or part of this facility, is owned and/or operated by Top Shelf Energy LLC, (Respondent). The purpose of the drive-by was to determine compliance with the Spill Prevention Control and Countermeasure regulations promulgated at 40 C.F.R. Part 112, Subparts A-C, under Section 311(j) of the Clean Water Act (Act), 33 U.S.C. §1321(j). As a result, the EPA has found that Respondent, a “person” as defined in section 311(a)(7) of the Act, 33 U.S.C. § 1321(a)(7), violated the regulations as described in attached Spill Prevention Control and Countermeasure Inspection Findings, Alleged Violations, Proposed Penalty Form (Violations Form), which is hereby incorporated by reference.

Respondent and the undersigned EPA complainant enter into this Expedited Penalty Action and Consent Agreement (Consent Agreement) to settle Respondent’s federal civil penalty liability for the violations set forth in the Violations Form for a penalty payment of \$2,200.00. This Consent Agreement and any final order by an EPA Regional Judicial Officer ratifying this Consent Agreement (Final Order) will commence and conclude this action pursuant to Sections 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

Respondent certifies, subject to civil and criminal penalties for making a false statement to the United States Government, that the violations set forth in the Violations Form have been corrected.

Respondent consents to the assessment of a penalty in the amount specified above. The Respondent agrees that it shall, within 30 calendar days of the date of issuance of the Final Order, make payment in this amount by any of the methods provided on the website <https://www.epa.gov/financial/makepayment>, a printout of which is attached and entitled “Payment Instructions.” The payment shall also indicate it is payable to “Oil Spill Liability Trust Fund-311” and be identified with the docket number that appears on the Final Order. Within 24 hours of payment, the Respondent shall also send proof of payment to each of the following at the email addresses indicated below:

Darla Hohman, Environmental Scientist
Enforcement and Compliance Assistance Division (8ENF-RO-O)
Region 8, U.S. Environmental Protection Agency
Hohman.darla@epa.gov

and

Melissa Haniewicz, Regional Hearing Clerk
Region 8, U.S. Environmental Protection Agency
Haniewicz.melissa@epa.gov

The term “proof of payment” means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer and any other information required to demonstrate that payment has been made according to the EPA requirements.


Consistent with Section 162(f) of the Internal Revenue Code, 26 U.S.C. §162(f), Respondent will not deduct penalties paid under this Consent Agreement for federal tax purposes.

This Consent Agreement and the accompanying Final Order resolve only the federal civil penalty claims for the specific violations alleged in the Violations Form. In addition, this settlement is subject to all limitations on the scope of resolution and the reservation of rights set forth in 40 C.F.R. § 22.18(c). Further, the EPA reserves any rights and remedies available to it under the Act, the regulations promulgated thereunder, and any other federal laws or regulations, to enforce the provisions of this Consent Agreement and the Final Order following its filing with the Regional Hearing Clerk. The Final Order does not constitute a waiver, suspension or modification of the requirements of Section 311 of the CWA, 33 U.S.C. § 1321, or any regulations promulgated thereunder, and does not affect the right of the EPA or the United States to pursue any applicable injunctive or other equitable relief or criminal sanctions for any violation of law.

Respondent neither admits nor denies the allegations set forth in the Violations Form, but Respondent admits that the EPA has jurisdiction over this matter under Section 311(b)(6)(B)(i) of the Act, 33 U.S.C. § 1321(b)(6)(B)(i), and 40 C.F.R. Part 22. For the purposes of this proceeding, Respondent waives any right to contest the allegations in the Violations Form and its right to appeal the proposed Final Order that would ratify this Consent Agreement. Moreover, Respondent agrees to bear its own costs and attorney’s fees related to this Consent Agreement. Respondent and Complainant consent to service of this Consent Agreement and the Final Order by e-mail at the following valid e-mail addresses: livingston.peggy@epa.gov (for Complainant), and brandon@topshelfenergy.com (for Respondent).

The undersigned representative of Respondent certifies that he or she is fully authorized by Respondent to execute this Consent Agreement and to legally bind Respondent to it.

SIGNATURE BY RESPONDENT:

Signature  Date 9-11-20

Name and Title (print): Brandon Hall Vice President

Mailing Address: PO Box 930
Devils Lake, ND 58301

Email Address: brandon@topshelfenergy.com

Telephone: 701-662-6300

SIGNATURE BY EPA/COMPLAINANT:

Signature JANICE PEARSON Digitally signed by JANICE PEARSON
Date: 2020.10.30 08:12:54 -06'00' Date _____

Janice Pearson, Chief
RCRA and OPA Enforcement Branch
Region 8, U.S. Environmental Protection Agency
1595 Wynkoop Street
Denver, Colorado 80202
pearson.janice@epa.gov
303-312-6354

FINAL ORDER

Pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b) and (c), the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order.

Respondent is hereby ORDERED to comply with all the terms of this Consent Agreement, effective upon the date of signature of this Final Order.

Regional Judicial Officer

Date

CERTIFICATE OF SERVICE

The undersigned certifies that the attached **EXPEDITED PENALTY ACTION AND CONSENT AGREEMENT** and the **FINAL ORDER** in the matter of **TOP SHELF ENERGY, LLC; DOCKET NO.: CWA-08-2021-0005** was filed with the Regional Hearing Clerk on November 12, 2020.

Further, the undersigned certifies that a true and correct copy of the documents were emailed to, Peggy Livingston, Enforcement Attorney, and sent via certified receipt email on November 12, 2020, to:

Respondent

Brandon Hall
Top Shelf Energy
Brandon@topshelfenergy.com

EPA Financial Center

Jessica Chalifoux
U. S. Environmental Protection Agency
Cincinnati Finance Center
Chalifoux.Jessica@epa.gov

November 12, 2020

MELISSA
HANIEWICZ

Digitally signed by
MELISSA HANIEWICZ
Date: 2020.11.12
12:01:51 -07'00'

Melissa Haniewicz
Regional Hearing Clerk