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**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 9**

75 Hawthorne Street
San Francisco, California 94105

In re the Matter of:)	Docket No.: CWA-09-2009-0002
)	
)	
General Petroleum Corporation)	CONSENT AGREEMENT AND
)	PROPOSED FINAL ORDER
1028 S. Seaside Avenue)	
Terminal Island, California, 90731)	
)	
Respondent.)	Proceedings Under Section 309(g)(2)(B) of the
)	Clean Water Act, as amended, 33 U.S.C. §
)	1319(g)(2)(B)

CONSENT AGREEMENT

Preliminary Statements

1. This is a class II civil administrative penalty proceeding under section 309(g) of the Clean Water Act (“CWA” or “the Act), 33 U.S.C. § 1319(g), and 40 C.F.R. Part 22, “Consolidated Rules of the Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits.”

CONSENT AGREEMENT AND
PROPOSED FINAL ORDER
DOCKET NO. CWA-09-2009-0002

2. The United States Environmental Protection Agency, Region 9 (“EPA” or “Complainant”) institutes this proceeding against General Petroleum Corporation (“Respondent”) for alleged violations of Sections 301(a) and 308(a) of the Act, 33 U.S.C. §§ 1311(a) and 1318(a).

Complainant and Respondent are hereinafter collectively referred to as “the Parties.”

3. This Consent Agreement and Final Order (“CA/FO”) simultaneously commences and concludes this penalty proceeding, as authorized by 40 C.F.R. § 22.13(b).

4. The Parties agree that settlement of this matter is consistent with the Act’s objectives, in the public interest, and the most appropriate means of resolving this matter.

NOW THEREFORE, before the taking of any testimony, without adjudication of any issue of fact or law, and upon consent and agreement of the parties to this Stipulation and Order, it is hereby AGREED, STIPULATED, and ORDERED:

General Provisions

5. EPA has jurisdiction over the subject matter of this action. The Consent Agreement contains the elements of a complaint required by 40 C.F.R. §§ 22.14(a)(1)-(3) and (8).

6. For purposes of this proceeding, Respondent admits the jurisdictional allegations herein, and agrees not to contest EPA’s jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of this CA/FO.

7. Respondent neither admits nor denies the factual allegations set forth herein.

8. Respondent agrees not to contest the terms and conditions set forth in this CA/FO in this or subsequent proceedings, and agrees not to appeal the Final Order set forth below.

9. Respondent explicitly waives its right to a hearing on any issue of fact or law set forth herein.

10. This CA/FO, inclusive of all exhibits and attachments, is the entire agreement between the parties to resolve EPA’s civil penalty claim against Respondent for the specific CWA

violations alleged herein. Full compliance with this CA/FO shall constitute full settlement only of Respondent's federal civil penalty liability for the CWA violations specifically alleged herein.

11. This CA/FO is not a permit and it does not constitute a waiver, suspension, or modification of the requirements of any federal, state, or local permit, statute, ordinance, regulation, or order, including but not limited to any CWA requirements, permits, or orders.

12. Respondent certifies by signing this CA/FO that, to the best of its knowledge, it is in compliance with the requirements of Sections 301, 308 and 402 of the Act, 33 U.S.C. §§ 1311, 1318 and 1342.

13. Except as set forth in Paragraphs 52 and 53, the Parties agree to bear their own costs and attorneys' fees.

14. This CA/FO shall in no way affect the right of EPA or the United States against any third party or the right of any third party against Respondent. This CA/FO does not create any right in or grant any cause of action to any third party.

15. This CA/FO shall apply to and be binding upon Respondent, successors, and assigns. Changes in ownership, including but not limited to any transfer of assets or real or personal property, shall not alter Respondent's obligations under this CA/FO.

16. This Consent Agreement may be executed and transmitted by facsimile, email or other electronic means, and in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one instrument. If any portion of this Consent Agreement is determined to be unenforceable by a competent court or tribunal, it is the Parties' intent that the remaining portions shall remain in full force and effect.

17. Each signatory to this CA/FO certifies he or she is fully authorized to enter into and bind the party for whom it is signing to the terms of the CA/FO.

Statutory and Regulatory Framework

18. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant from a point source by any person into a water of the United States unless it complies with the Act, including Section 402, 33 U.S.C. § 1342.

19. Section 402 of the Act, 33 U.S.C. § 1342, establishes the National Pollutant Discharge Elimination System (“NPDES”) program. Under Section 402 of the Act, 33 U.S.C. § 1342, EPA and states with EPA-approved NPDES programs are authorized to issue permits governing the discharge of pollutants from regulated sources.

20. Section 402(p) of the Act, 33 U.S.C. § 1342(p), and EPA’s implementing regulations at 40 C.F.R. § 122.26, require NPDES permit authorization for discharges of storm water associated with industrial activity. Facilities engaged in industrial activity, as defined by 40 C.F.R. § 122.26(b)(14), must obtain NPDES permit authorization if they discharge or propose to discharge storm water into waters of the United States.

21. Bulk fuel storage is an industrial activity classified under Standard Industrial Classification (SIC) Code 5171, and is therefore, pursuant to 40 C.F.R. § 122.26(b)(14)(viii), an industrial activity subject to the discharge and permitting requirements under Section 402 of the Act, 33 U.S.C. § 1342.

22. Section 308(a) of the Act, 33 U.S.C. § 1318(a), and its implementing regulations, authorize EPA to, inter alia, require the owner or operator of any point source to establish records, make reports, or submit other reasonably required information, including individual and general NPDES permit applications.

23. Pursuant to Section 308(a) of the Act, 33 U.S.C. § 1318(a), and 40 C.F.R. § 122.21, any person who discharges or proposes to discharge storm water associated with industrial activity must submit an application for an NPDES permit 180 days prior to commencing industrial activity.

24. The State of California has an EPA-approved NPDES program, and issues permits, including storm water permits, through its State Water Resources Control Board (“State Board”) and nine Regional Water Quality Control Boards (“Regional Boards”). On April 17, 1997, the State Board adopted General Permit No. CAS000001/Water Quality Order No. 97-03-DWQ (“General Permit”), the current statewide NPDES permit for storm water discharges associated with industrial activity.

25. All facility operators seeking coverage under the General Permit must submit a *Notice of Intent to Comply with the Terms of the General Permit for Storm Water Discharges Associated with Industrial Activity* (“NOI”) to the State Board fourteen (14) days prior to commencing industrial operations.

26. The General Permit requires facility operators to develop and implement a storm water pollution prevention plan (“SWPPP”) prior to commencing industrial operations. (General Permit, Order Section A(1)(a), p. 11). The SWPPP includes obligations to identify sources of industrial storm water pollution and to identify site-specific best management practices (“BMPs”).

27. The General Permit requires facility operators to reduce or prevent pollutants associated with industrial activity in their storm water discharges and authorized non-storm water discharges by implementing best available technology economically achievable (“BAT”) for toxic and non-conventional pollutants and best conventional pollutant control technology (“BCT”) for conventional pollutants. Development and implementation of a SWPPP that complies with the General Permit and that includes BMPs that achieve BAT/BCT constitutes compliance with this requirement. (General Permit, Order Provision B(3), p. 4.)

General Allegations

28. Respondent is a California corporation, and a “person” under Section 502(5) of the Act, 33 U.S.C. § 1362(5).

29. Respondent operates a dockside refueling and petroleum storage facility (the “Facility”) on approximately 1.25 acres of land located at 1028 South Seaside Avenue at the Port of Los Angeles in California. The Facility has been in operation since at least 1946. Respondent is primarily engaged in bulk fuel storage at the Facility, an industrial activity classified under SIC Code 5171.

30. Data from the Torrance Municipal Airport Weather Monitoring Station (“Weather Monitoring Station”), approximately six miles from the Facility, indicate there were at least 59 days with 0.1 inches or more of rainfall at the Facility (of which 26 days included at least one 24-hour rainfall event in excess of 0.5 inches) from October 1, 2004 to December 4, 2007. Rainfall events exceeding 0.1 inches generally generate surface water runoff from portions of the Facility.

31. Storm water runoff from portions of the Facility collects and flows to on-site storm drains that discharge to the Fish Harbor area of the greater Los Angeles Harbor.

32. On May 17, 2007, staff from EPA Region 9 inspected the Facility to evaluate Respondent’s compliance with the General Permit and found Respondent had not submitted an NOI to the State Board or otherwise sought or received NPDES permit coverage for discharges from the Facility. EPA inspectors also found waste oil storage in uncovered areas of the Facility that lacked adequate secondary containment to prevent and minimize pollutants from contacting storm water. EPA inspectors also observed an oily sheen on the water’s surface in Fish Harbor on the open water side of the Facility’s containment booms.

33. On November 9, 2007, EPA issued Respondent a Findings of Violation and Order for Compliance, EPA Docket No. CWA 309(a)-08-002 (the “Order”), which required Respondent to obtain General Permit coverage and bring the Facility into compliance with the General Permit by, inter alia, implementing additional BMPs and developing a SWPPP.

34. On January 7, 2008, Respondent provided EPA with information indicting the on-site drains storm drains that discharged to Fish Harbor had been sealed.

Findings of Violation

Discharges Without an NPDES Permit

35. The facts stated in paragraphs 1 through 34 are re-alleged and incorporated herein.

36. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant from a point source by any person into a water of the United States unless it complies with the Act, including Section 402, 33 U.S.C. § 1342.

37. On or around November 21, 2007, Respondent submitted an NOI to the State Board seeking coverage under the General Permit for the Facility. On December 4, 2007, the State Board granted Respondent coverage under the General Permit and assigned Waste Discharge Identification (“WDID”) Number 419I021320 for the Facility. Prior to December 4, 2007, discharges from Respondent’s industrial activities at the Facility were not authorized by the General Permit or an individual NPDES permit.

38. Respondent is a “person” under Section 502(5) of the Act, 33 U.S.C. § 1362(5).

39. Respondent’s operations at its Facility fall within the class of industrial activity classified under SIC Code 5171 (“bulk fuel storage”), and is therefore an “industrial activity” for purposes of Section 402(p) of the Act, 33 U.S.C. § 1342(p), and 40 C.F.R. § 122.26(b).

40. Storm water runoff from the Facility allegedly contains “pollutants,” including industrial waste, as defined by Section 502(6) of the Act, 33 U.S.C. § 1362(6).

41. The storm drains at the Facility that discharge to Fish Harbor, the Los Angeles Harbor, and Pacific Ocean, are “point sources” as defined by Section 502(14) of the Act, 33 U.S.C. § 1362(14).

42. Storm water runoff from the Facility that discharges to Fish Harbor, the Los Angeles Harbor, and the Pacific Ocean, is a “storm water discharge associated with industrial activity” as defined by 40 C.F.R. § 122.26(b)(14).

43. Fish Harbor, the Los Angeles Harbor, and the Pacific Ocean are “waters of the United States” as that term is defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7), and EPA’s implementing regulations at 40 C.F.R. § 122.2.

44. Between October 1, 2004, and December 4, 2007, there were at least 59 days of recorded rainfall at the local weather monitoring station, of which 26 days included at least one 24-hour rainfall event in excess of 0.5 inches. Upon information and belief, each of the 59 rainfall events generated storm water associated with industrial activity at the Facility that allegedly discharged into and added pollutants to Fish Harbor, Los Angeles Harbor, and the Pacific Ocean.

45. Each storm water discharge from the Facility between October 1, 2004 and December 4, 2007, was an unauthorized discharge to waters of the United States and, together, the discharges constitute no fewer than 59 days of violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

Failure to Submit an NOI for General Permit Coverage

46. The facts stated in paragraphs 1 through 45 are re-alleged and incorporated herein.

47. Section 308(a) of the Act, 33 U.S.C. § 1318(a), and 40 C.F.R. § 122.21, require dischargers of storm water associated with industrial activity to submit an application for an NPDES permit prior to commencing industrial activity.

48. Respondent’s failure to submit an NOI for coverage under the General Permit for industrial activities at the Facility constitutes a violation of Section 308(a) of the Act, 33 U.S.C. § 1308(a), and 40 C.F.R. § 122.21.

Penalty

49. Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), authorizes the administrative assessment of civil penalties in an amount not to exceed \$10,000 per day for each day during which the violation continues, up to a maximum penalty of \$125,000. Pursuant to the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and 40 C.F.R. Part 19, the administrative assessment of civil penalties may not exceed \$16,000 per day for each day during

which the violation continues, up to a maximum penalty of \$177,500. *See also* 73 Fed. Reg. 75340 (December 11, 2008) (2008 Penalty Inflation Rule).

50. Respondent consents to the assessment of and agrees to pay a civil penalty of Seventy-Four Thousand, Four Hundred and Seventy-Three Dollars (\$74,473). The penalty was calculated based on the nature, circumstances, extent and gravity of the violations, Respondent's ability to pay, its prior history of violations, its degree of culpability, and any economic benefit or savings accruing to Respondent as a result of the violations.

51. Payment of the civil penalty shall be made within thirty (30) days of the effective date of the CA/FO. The date by which payment must be received by the United States shall be the "due date" for the payment. Respondent shall make the payment in accordance with any of the acceptable methods of payment listed in Exhibit A, "EPA Region 9 Collection Information," which is incorporated by reference as part of this CA/FO. Concurrent with payment of the penalty, Respondent shall provide written notice of payment, referencing the title and docket number of this case and attaching a photocopy of the penalty payment, via mail to:

Steve Armsey Regional Hearing Clerk U.S. EPA Region 9 (ORC-1) 75 Hawthorne Street San Francisco, California 94105	and	Rick Sakow CWA Compliance Office U.S. EPA Region 9 (WTR-7) 75 Hawthorne Street San Francisco, California 94105
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52. If the penalty is not paid when due, interest shall accrue on any overdue amount from the first date after the due date through the date of payment, at the interest rate established by the Secretary of the Treasury under 31 U.S.C. § 3717. In addition, a late payment handling charge of fifteen dollars (\$15.00) will be assessed for each thirty (30) day period (or any portion thereof) following the due date during which time the balance remains unpaid. Payment of any interest and late handling charges shall be made in accordance with paragraph 51 above.

53. Failure by Respondent to pay the full penalty when due entitles EPA and the United States to bring a civil action to recover the amount assessed. In such an action, Respondent shall pay (in addition to any assessed penalty, interest, and monthly handling charges) attorney fees, cost for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Pursuant to Section 309(g)(9) of the Act, 33 U.S.C. § 1319(g)(9), the quarterly nonpayment penalty shall equal twenty percent (20%) of the aggregate amount of Respondent's penalties and nonpayment penalties that are unpaid as of the beginning of that quarter.

54. The civil penalty and any interest, late handling fees, or late penalty payments provided for in the CA/FO shall not be deducted from Respondent's or any affiliated entity's taxes.

55. EPA has consulted with the State of California pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g), and 40 C.F.R. § 22.38, in regards to this matter.

Effective and Termination Dates

56. This CA/FO shall take effect on the date the Final Order is filed with the Regional Hearing Clerk, and shall terminate when Respondent has fully complied with its terms.

Public Notice

57. EPA's consent to this Consent Agreement is subject to the requirements of Section 309(g)(4) of the Act, 33 U.S.C. § 1319(g)(4), and 40 C.F.R. § 22.45(b), that EPA provide public notice of and a reasonable opportunity for comment on the Consent Agreement and proposed Final Order. EPA reserves the right to withdraw the Consent Agreement and proposed Final Order in response to public comments that petition EPA to set aside the Consent Agreement and proposed Final Order on the basis that material evidence was not considered. 40 C.F.R. § 22.45(c)(4). In such case, Respondent's obligations under this document shall terminate, and EPA may pursue any and all enforcement options as provided by law. If no comment is received during the comment period regarding the Consent Agreement, EPA shall file the Final Order.

CONSENTING PARTIES:

For Respondent General Petroleum Corporation:

BY: _____
Sean Kha
Vice President, Finance

DATE: _____

For Complainant U.S. Environmental Protection Agency, Region 9:

BY: _____
Alexis Strauss, Director
Water Division

DATE: _____

ATTACHMENT A

EPA REGION 9 COLLECTION INFORMATION:

ELECTRONIC FUNDS 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 “

CHECK PAYMENTS

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. 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: 314-418-4087

CERTIFICATE OF SERVICE

In the Matter of General Petroleum Corporation,
EPA Docket No. CWA-09-2009-0002

I hereby certify that the original of the foregoing Consent Agreement and Proposed Final Order was filed with the Regional Hearing Clerk, Region 9, and that a copy was sent, certified mail, return receipt requested, to:

Shanda M. Beltran, Esq.
Allen Matkins Leck Gamble Mallory & Natsis LLP
1900 Main Street, 5th Floor
Irvine, CA 92614 -7321
(949) 553-1313 - Main
(949) 553-8354 - Facsimile
(949) 851-5451 - Direct
sbeltran@allenmatkins.com

Date

Steve Armsey
Regional Hearing Clerk
U.S. EPA, Region 9