

)	Docket No. OPA-09-2017-0001
)	
IN THE MATTER OF:)	CWA SECTION 311 CLASS II
)	CONSENT AGREEMENT AND
Southern Counties Oil Co.,)	FINAL ORDER
a California Limited Partnership)	
dba SC Fuels)	
)	PURSUANT TO 40 C.F.R.
)	§§ 22.13 and 22.18
)	
Respondent.)	
)	
)	

A. PRELIMINARY STATEMENT

2. This Consent Agreement and Final Order issued pursuant to 40 C.F.R. §§ 22.13 and 22.18 (“CA/FO”) simultaneously commences and concludes this proceeding, wherein EPA alleges that Respondent violated Section 311(j)(1)(C) of the CWA, 33 U.S.C. § 1321(j)(1)(C), and its implementing regulations.

B. STATUTORY AND REGULATORY FRAMEWORK

3. Section 311(j)(1)(C) of the CWA, 33 U.S.C. § 1321(j)(1)(C), provides that the President shall issue regulations “establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil . . . from onshore facilities and offshore facilities, and to contain such discharges”

4. Initially by Executive Order 11548 (July 20, 1970), 35 Fed. Reg. 11,677 (Jul. 22, 1970), and most recently by Section 2(b)(1) of Executive Order 12777 (Oct. 18, 1991), 56 Fed. Reg. 54,757 (Oct. 22, 1991), the President delegated to EPA the authority under Section 311(j)(1)(C) of the CWA, 33 U.S.C. § 1321(j)(1)(C), to issue the regulations referred to in the preceding Paragraph for non-transportation-related onshore facilities.

5. EPA subsequently promulgated regulations codified at 40 C.F.R. Part 112, as amended by 67 Fed. Reg. 47,042 et seq. (Jul. 17, 2002) (“Oil Pollution Prevention Regulations”), pursuant to its delegated statutory authorities, and pursuant to its authorities under the CWA, 33 U.S.C. §§ 1251 et seq. The Oil Pollution Prevention Regulations establish certain procedures, methods and requirements, applicable to every owner and operator of a non-transportation related onshore facility, where the facility, due to its location, could reasonably be expected to discharge oil into or on navigable waters or their adjoining shorelines in such quantities as may be harmful to the public health or welfare or the environment of the United States. See 40 C.F.R. § 112.1(b).

6. In promulgating 40 C.F.R. § 110.3, which implements Section 311(b)(4) of the CWA, 33 U.S.C. § 1321(b)(4), EPA determined that an oil discharge is of a harmful quantity if it either “(a) violate[s] applicable water quality standards, or (b) cause[s] a film or sheen upon, or

discoloration of the surface of the water or adjoining shorelines, or a sludge or emulsion to be deposited beneath the surface of the water or on adjoining shorelines.”

C. GENERAL ALLEGATIONS

7. Respondent operates a facility, located at 2075 Alum Rock Ave., San Jose, California, (the “Facility”), as a distribution facility and bulk storage plant for petroleum based oil and fuel products. The Facility’s aggregate above-ground storage capacity is greater than 1,320 gallons of oil, with petroleum products stored in aboveground storage tanks (“ASTs”) ranging in size from 500 to 30,000 gallons.

8. The Facility is an onshore facility within the meaning of Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10) (“‘onshore facility’ means any facility . . . of any kind located in, on, or under, any land within the United States other than submerged land”), and 40 C.F.R. § 112.2.

9. Respondent is a limited partnership organized under the laws of California with a place of business located at 1800 West Katella, Suite 400, Orange, California. Respondent is a “person” within the meaning of Section 311(a)(7) of the CWA, 33 U.S.C. §§ 1321(a)(7) (“‘person’ includes an individual, firm, corporation, association, and a partnership”) and 40 C.F.R. § 112.2.

10. In 2011, Respondent purchased substantially all of the assets of an entity that was then-operating the Facility, Coast Oil Co., LLC, and then operated the Facility under a subsidiary named Coast Fuels, LLC. In 2014, Respondent dissolved Coast Fuels LLC, and operated the Facility under its current name.

11. Respondent is therefore an “owner or operator” of the Facility within the meaning of Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6) (“‘owner or operator’ means . . . any person owning or operating [an] onshore facility”), and 40 C.F.R. § 112.2.

12. The Facility is located approximately 500 feet from Lower Silver Creek. Lower Silver Creek feeds into Coyote Creek, a tributary of the San Francisco Bay, and a “navigable water” of the United States as defined in Section 502(7) of the CWA, 33. U.S.C. § 1362(7) and 40 C.F.R. § 110.1.

13. The Facility is therefore a non-transportation-related onshore facility that, due to its location, could reasonably be expected to discharge oil to a navigable water of the United States or its adjoining shorelines in a harmful quantity (an “SPCC-regulated facility”).

14. Pursuant to the CWA, Executive Order 12777, and 40 C.F.R. § 112.1, Respondent, as the operator of an SPCC-regulated facility, is subject to the Oil Pollution Prevention Regulations.

D. ALLEGED VIOLATIONS

15. Paragraphs 1-14 above are incorporated herein by reference.

16. 40 C.F.R. § 112.3(d) requires that an SPCC Plan be reviewed by a professional engineer and certified as being prepared in accordance with good engineering practice, including consideration of applicable industry standards, and in accordance with the requirements of 40 C.F.R. Part 112.

17. Based on information gathered during and after a March 4, 2015 inspection, EPA found that when Respondent’s predecessor, Coast Fuels LLC, began operating the Facility, it failed to develop and implement a validly certified SPCC plan. Specifically, the SPCC plan that Respondent’s predecessor developed, dated May 2012, was not certified by a professional

engineer as being in accordance with the requirements of 40 C.F.R. Part 112 because the engineer's certification was made conditional upon installation of impervious bottoms in Tank Farms #2 and #3, which installation never occurred.

18. Respondent dissolved Coast Fuels LLC in 2014, and continued to operate the Facility under the same SPCC Plan, in violation of 40 C.F.R. § 112.3(d).

19. 40 C.F.R. § 112.7(a) requires an SPCC Plan to accurately describe a facility including the location of oil storage containers, and the contents thereof.

20. Information gathered during and after the March 4, 2015 inspection indicated that the Facility's SPCC plan that was dated May 2012 was not in accordance with 40 C.F.R. § 112.7(a). Specifically, the SPCC Plan failed to include a diagram showing the location and contents of each fixed oil storage container area and storage areas where mobile or portable containers were located as required by 40 C.F.R. § 112.7(a)(3). The inspector also noted that information about tank contents contained in the plan did not match on-site conditions. Furthermore, the SPCC Plan failed to indicate the type of oil in each fixed container, and an estimate of the potential number of mobile or portable containers with types of oil, and anticipated storage capacities as required by 40 C.F.R. § 112.7(a)(3)(i).

21. 40 C.F.R. § 112.7(c) requires that an operator's SPCC Plan provide for secondary containment that is sufficiently impervious to prevent spilled product from escaping containment before cleanup can occur.

22. Based on information gathered during and after the March 4, 2015 inspection, EPA determined that the Respondent's SPCC Plan failed to provide adequate secondary containment, including walls and floor that are capable of containing oil, such that any discharge from a primary containment system will not escape the secondary containment system before

cleanup occurs. At the time of inspection, EPA's inspector observed apparent cracks and gaps in the containment area walls. In addition, the floors in Containment Areas 2 and 3 were not lined with an impervious material, and the Facility's then-applicable SPCC Plan indicated they were not sufficiently impervious to contain spills.

23. 40 C.F.R. § 112.8(c)(6) requires the operator of a facility to test or inspect each aboveground container for integrity on a regular schedule, in accordance with industry standards and written procedures developed for the facility.

24. Based on information gathered during and after the March 4, 2015 inspection, EPA determined that the Respondent had failed to complete inspections and integrity testing within the timeframe prescribed by industry standards and by written procedures developed for the facility.

25. 40 C.F.R. § 112.8(c)(11) requires the owner or operator to take specific measures to prevent a discharge from mobile or portable oil storage containers.

26. Based on information gathered during and after the March 4, 2015 inspection, EPA determined that Respondent had failed to position mobile and portable oil storage containers in a manner designed to prevent a discharge from occurring.

E. CIVIL PENALTY

27. The Complainant proposes that the Respondent be assessed, and Respondent agrees to pay seventy-five thousand dollars (\$75,000) as the civil penalty for the violations alleged herein.

28. The proposed penalty was calculated in accordance with the CIVIL PENALTY POLICY FOR SECTION 311(B)(3) AND SECTION 311(J) OF THE CLEAN WATER ACT, dated August

1998, and was adjusted for inflation in accordance with the Debt Collection Improvement Act of 1993, see 40 C.F.R. § 19.4.

F. ADMISSIONS AND WAIVERS

29. For purposes of this proceeding, Respondent admits and agrees that EPA has jurisdiction and authority over the subject matter of the action commenced in this CA/FO and over Respondent. Respondent consents to and agrees not to contest EPA's jurisdiction and authority to enter into and issue this CA/FO to enforce its terms. Further, Respondent will not contest EPA's jurisdiction and authority to compel compliance with this CA/FO in any enforcement proceedings, either administrative or judicial, or to impose sanctions for violations of this CA/FO.

30. Except in an action to enforce this CA/FO, Respondent neither admits nor denies any allegations of fact or law set forth in Section D of this CA/FO and does not admit any liability arising out of the occurrences alleged in this CA/FO. Respondent hereby waives any rights Respondent may have to appeal the Final Order attached to this Consent Agreement and made part of the CA/FO. Respondent hereby consents to the terms of this CA/FO and the issuance of this CA/FO without adjudication.

G. PARTIES BOUND

31. This CA/FO shall apply to and be binding upon Respondent and its agents, successors, and assigns, and upon all persons acting under or for Respondent, until such time as the civil penalty required under Section E has been paid in accordance with Section I, and any delays in performance and/or stipulated penalties have been resolved. At such time as those matters are concluded, this CA/FO shall terminate and constitute full settlement of the violations alleged herein.

32. No change in ownership or corporate, partnership, or legal status relating to the Facility will in any way alter Respondent's obligations and responsibilities under this CA/FO.

33. Until termination of this CA/FO, Respondent shall give notice of this CA/FO to any successor in interest prior to transfer of Respondent's ownership or operation of the Facility and shall notify EPA at least seven (7) days prior to such transfer.

34. The undersigned representative of Respondent hereby certifies that he is fully authorized by Respondent to enter into this CA/FO, to execute and to legally bind Respondent to it.

H. CERTIFICATION OF COMPLIANCE

35. Respondent certifies by signing this CA/FO that, to the best of its knowledge, as of the Effective Date of this CA/FO, it is in compliance with the requirements of Section 311(j) of the Act, 33 U.S.C. § 1321(j), at the Facility.

36. The signatory for Respondent certifies under penalty of law that this certification of compliance is based upon true, accurate, and complete information, which the signatory can verify personally or regarding which the signatory has inquired of the person or persons directly responsible for gathering the information.

I. PAYMENT OF CIVIL PENALTY

37. Respondent hereby consents to the assessment of, and agrees to pay a civil penalty of SEVENTY-FIVE THOUSAND DOLLARS (\$75,000) in settlement of the violations set forth in this CA/FO. This CA/FO constitutes a settlement of all claims alleged in this CA/FO.

38. Respondent shall pay the civil penalty within thirty (30) days of the Effective Date of this CA/FO. The Effective Date of this CA/FO is the date that the Final Order is filed with the Regional Hearing Clerk after it is signed by the Regional Judicial Officer.

39. Respondent shall submit the payment due under this CA/FO in accordance with one of the options set forth below, and shall reference the Respondent's name and state that payment is being made pursuant to this CA/FO.

a. Payments

1. Check Payment. If paying by check, the Respondent shall submit a cashier's or certified check in the amount of \$75,000 payable to the "Treasurer, United States of America." The check shall specify in the notation section the docket number of this case. The cover letter transmitting each check should include Respondent's name, the case title, the docket number, and the amount of the penalty.

A check sent by regular U.S. Postal Service mail should be addressed to:

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

A check sent by overnight mail should be addressed to:

U.S. Environmental Protection Agency
Government Lockbox 979077
U.S. EPA Fines and Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
Contact: Craig Steffen (513-487-2091)

2. Electronic Transfer. Alternatively, payment may be made by electronic transfer. Respondent's name, the case title and the docket number shall be provided as part of the payment transmittal. An electronic payment shall be made as follows:

Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the following information:

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 (301-877-6548)
ABA = 051036706
Transaction Code 22 – checking
Environmental Protection Agency
Account 31006
CTX Format

b. Notification. A copy of each check, or notification that the payment has been made by one of the other methods listed above, including proof of the date payment was made, shall be sent with a transmittal letter, indicating Respondent's name, the case title, and docket number, to each of the following:

Janice Witul (ENF-3-2)
Enforcement Division

U.S. Environmental Protection Agency- Region 9
75 Hawthorne Street
San Francisco, CA 94105

and

Steve Armsey
Acting Regional Hearing Clerk (ORC-1)
U.S. EPA, Region IX
75 Hawthorne Street
San Francisco, CA 94105

40. In accordance with the Debt Collection Act of 1982 and U.S. Treasury directive (TFRM 6-8000), failure to send the penalty by the due date will result in imposition of interest from the effective date of this CA/FO at the current interest rate published by the U.S. Treasury, as described at 40 C.F.R. § 13.11. In addition, a twelve percent (12%) per annum penalty will be applied on any principal amount not paid within ninety (90) days of the due date.

41. The penalties specified in this CA/FO shall represent civil penalties assessed by EPA and shall not be deducted by Respondent or any other person or entity for federal, state, or local taxation purposes.

J. DELAY IN PERFORMANCE / STIPULATED PENALTIES

42. In the event Respondent fails to meet any requirement set forth in this CA/FO, Respondent shall pay stipulated penalties as set forth below. Compliance by Respondent shall include completion of any activity under this CA/FO in a manner acceptable to EPA and within the time specified in and approved under this CA/FO.

43. For failure to submit a payment to EPA by the time required in this CA/FO: FIVE HUNDRED DOLLARS (\$500) per day for the first to the fifteenth day of delay, ONE THOUSAND DOLLARS (\$1,000) per day for the sixteenth to the thirtieth day of delay, and THREE THOUSAND DOLLARS (\$3,000) per day for each day of delay thereafter.

44. Stipulated penalties shall begin to accrue on the day after performance is due, and shall continue to accrue through the final day until performance is complete. Respondent shall pay stipulated penalties within fifteen (15) days of receipt of a written demand by Complainant for such penalties. Payment of stipulated penalties shall be made in accordance with the unpaid balance at the end of the fifteen-day period at the current rate published by the United States Treasury, as described at 40 C.F.R. § 13.11. Complainant reserves the right to take any additional action, including but not limited to, imposition of civil penalties to enforce compliance with this CA/FO.

45. The payment of stipulated penalties specified in this Section shall not be deducted by Respondent or any other person or entity for federal, state, or local taxation purposes.

46. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this CA/FO.

K. RESERVATION OF RIGHTS

47. Except as addressed in this CA/FO, EPA expressly reserves all rights and defenses that it may have.

48. Except as addressed by this CA/FO, EPA hereby reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, including any right EPA may have to require that Respondent perform tasks in addition to those required by this CA/FO. EPA further reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, which may pertain to Respondent's failure to comply with any of the requirements of this CA/FO, including, without limitation, the assessment of penalties under Section 311(b) of the CWA, 33 U.S.C. § 1321(b). This CA/FO shall not be construed as a

covenant not to sue, a release, waiver or limitation of any rights, remedies, powers, or authorities, civil or criminal, which EPA has under the CWA, or any other statutory, regulatory, or common law enforcement authority of the United States, except as otherwise set forth herein.

49. Compliance by Respondent with the terms of this CA/FO shall not relieve Respondent of its obligations to comply with any applicable local, state or federal laws and regulations.

50. The entry of this CA/FO and Respondent's consent to comply shall not limit or otherwise preclude EPA from taking, nor limit or otherwise preclude Respondent from asserting rights and defenses in, additional enforcement actions should EPA determine that such actions are warranted except as they relate to Respondent's liability for federal civil penalties for the specific alleged violations and facts as set forth in Section D of this CA/FO. Full payment of the penalty proposed herein shall resolve Respondent's liability for federal civil penalties for the violations and facts alleged herein.

51. Except in an action to enforce this CA/FO, Respondent expressly reserves all rights to assert that neither this CA/FO nor anything in this CA/FO shall be admissible in any proceeding as evidence of an admission by, or to prove the liability of Respondent for the allegations stated herein.

L. MISCELLANEOUS

52. This CA/FO may be amended or modified only by written agreement executed by both EPA and Respondent.

53. The headings in this CA/FO are for convenience of reference only and shall not affect interpretation of this CA/FO.

54. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in this proceeding.

55. EPA and Respondent consent to entry of this CA/FO without further notice.

M. EFFECTIVE DATE

56. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.13(b), this CA/FO shall be effective on the date that the Final Order contained in this CA/FO, having been approved and issued by the Regional Judicial Officer, is filed with the Regional Hearing Clerk.

N. 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 the 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.

IT IS SO AGREED,

For Respondent Southern Counties Oil Co., a California Limited Partnership

_____/s/_____
Name: _____

Date: 9/23/2016

Title: _____

For Complainant U.S. Environmental Protection Agency:

/s/

Date: 9/28/2016

Kathleen Johnson
Director, Enforcement Division
U.S. Environmental Protection Agency Region 9
75 Hawthorne Street
San Francisco, CA 94105

FINAL ORDER

Pursuant to Section 311(b)(6) of the Clean Water Act, 33 U.S.C. §1321(b)(6) and the delegated authority of the undersigned, and in accordance with the “Consolidated Rule of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits,” codified at 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order.

Respondents are ordered to comply with the terms of the Consent Agreement.

Date: _____

Steven Jawgiel
Regional Judicial Officer
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, CA 94105