

US EPA ARCHIVE DOCUMENT

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX

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	)	
IN THE MATTER OF:	)	
	)	U.S. EPA Docket No.
	)	OPA-09-2016-0003
Paul Oil Company, Inc., a California	)	
Corporation	)	Clean Water Act Section 311
	)	Class II Consent Agreement and
511 S. 2nd Street	)	Final Order
Patterson, California 95363	)	
	)	
Respondent	)	Proceeding under 40 C.F.R. § 22.18
	)	
_____	)	

CONSENT AGREEMENT

A. PRELIMINARY STATEMENT

1. This is a Class II civil administrative penalty proceeding pursuant to Section 311(b)(6)(B)(ii) of the Clean Water Act (“CWA”), 33 U.S.C. § 1321(b)(6)(B)(ii), as amended by the Oil Pollution Act of 1990, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules”), 40 C.F.R. Part 22.

2. Pursuant to Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6), the Administrator of the United States Environmental Protection Agency (“EPA”) is authorized to assess administrative penalties against persons who violate Section 311 of the CWA, 33 U.S.C. § 1321. The Administrator has delegated this authority to the Regional Administrator of EPA Region 9, who in turn has delegated this authority to the Director of the Enforcement Division, hereinafter “Complainant.”

3. Respondent is Paul Oil Company, Inc., a California corporation (“Respondent”).

4. Pursuant to 40 C.F.R. § 22.13(a), this penalty proceeding commenced on April 7, 2016 by the filing of a complaint with the Regional Hearing Clerk (Docket No. OPA-09-2016-0003), wherein EPA alleged that Respondent violated Section 311(j)(1)(C) of the CWA, 33 U.S.C. § 1321(j)(1)(C), and its implementing regulations.

5. This Consent Agreement and Final Order issued pursuant to 40 C.F.R. § 22.18(b)(2) (“CA/FO”) concludes this penalty proceeding.

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:

B. STATUTORY AND REGULATORY FRAMEWORK

6. 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”

7. 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.

8. 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). The Oil Pollution Prevention Regulations include requirements for Spill Prevention, Countermeasure, and Control (“SPCC”) planning.

9. 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.”

10. Pursuant to CWA Section 311(b)(6)(A) and (B)(ii), 33 U.S.C. § 1321(b)(6)(A) and (B)(ii), and 40 C.F.R. § 19.4, EPA may assess a Class II civil administrative penalty of up to \$18,107 per day of violation, not to exceed \$226,338 in total, against a person who fails or refuses to comply with an applicable regulation under Section 311(j) of the CWA, 33 U.S.C. § 1321(j).

C. GENERAL ALLEGATIONS

11. Respondent Paul Oil Company, Inc. is a California corporation with a place of business at 524 North Sierra Avenue in Oakdale, California. Respondent owns and operates a bulk oil storage and distribution facility located at 511 South Second Street in Patterson, California (the “Facility”). The Facility’s aggregate above-ground storage capacity is greater

than 1,320 gallons of oil, with oil stored in aboveground storage tanks ranging in size up to 12,000 gallons and in several 55-gallon mobile drums.

12. 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.

13. 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.

14. Respondent is 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.

15. Drainage from the Facility runs through a storm drain that discharges into the San Joaquin River three miles to the northeast. The San Joaquin River is 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.

16. 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”).

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

18. On November 4, 2014, EPA conducted an inspection of the Facility to determine Respondent's compliance with the Oil Pollution Prevention Regulations and the requirements for SPCC planning.

D. ALLEGED VIOLATIONS

19. Paragraphs 1-18 above are incorporated herein by reference.

20. EPA alleges that, as of November 4, 2014, Respondent failed to comply with applicable SPCC requirements of the Oil Pollution Prevention Regulations, specifically by: (1) failing to prepare and implement an SPCC Plan, as required by 40 C.F.R. § 112.3; (2) failing to have management approval of an SPCC plan at a level of authority to commit the necessary resources to fully implement the plan, as required by 40 C.F.R. § 112.7; (3) failing to have an SPCC plan that addresses the type of oil in each fixed container and its storage capacity, as required by 40 C.F.R. § 112.7(a)(3)(i); (4) failing to have an SPCC plan that includes, where experience indicates a reasonable potential for equipment failure, a prediction of the direction, rate of flow, and total quantity of oil that could be discharged as a result of each type of major equipment failure, as required by 40 C.F.R. § 112.7(b); (5) failing to provide appropriate containment and/or diversionary structures or equipment to prevent a discharge in a harmful quantity, as required by 40 C.F.R. § 112.7(c); (6) failing to conduct inspections and tests in accordance with written procedures and keep a record of inspections and tests, as required by 40 C.F.R. § 112.7(e); (7) failing to conduct discharge prevention training, as required by 40 C.F.R. § 112.7(f); (8) failing to have an SPCC plan reviewed and certified by a licensed Professional Engineer, as required by 40 C.F.R. § 112.3(d); (9) failing to restrict drainage from diked areas by valves to prevent a discharge into the drainage system, as required by 40 C.F.R. § 112.8(b)(1); (10) failing to equip undiked areas with a potential for discharge with a diversion system to

retain oil in the facility, as required by 40 C.F.R. § 112.8(b)(4); (11) failing to use containers for oil storage that have material and construction that are compatible with the material stored and conditions of storage, as required by 40 C.F.R. § 112.8(c)(1); (12) failing to construct bulk storage tank installations to have a secondary means of containment for the entire capacity of the largest single container and sufficient freeboard to contain precipitation, as required by 40 C.F.R. § 112.8(c)(2); (13) failing to promptly correct visible discharges which result in a loss of oil from a container and promptly remove any accumulations of oil in diked areas, as required by 40 C.F.R. § 112.8(c)(10); and (14) failing to provide secondary containment for mobile or portable containers, as required by 40 C.F.R. § 112.8(c)(11).

E. CIVIL ADMINISTRATIVE PENALTY

21. The Complainant proposes that the Respondent be assessed, and Respondent agrees to pay SIXTY-TWO THOUSAND FIVE HUNDRED DOLLARS (\$62,500) as the civil administrative penalty for the violations alleged herein.

22. 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, and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (“2015 Act”), *see* 28 U.S.C. § 2461, note.

F. ADMISSIONS AND WAIVERS

23. In accordance with 40 C.F.R. § 22.18(b), for the purpose of this proceeding, Respondent:

- a. admits the jurisdictional allegations described in Section II of the complaint;

- b. neither admits nor denies specific factual allegations contained in Section II of the complaint;
- c. consents to the assessment of the civil administrative penalty set forth in Section E above;
- d. waives any right to contest the allegations set forth in this CA/FO; and
- e. waives its right to appeal this proposed Final Order.

G. PARTIES BOUND

24. 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.

25. 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.

26. 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.

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

H. CERTIFICATION OF COMPLIANCE

28. 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.

29. 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

30. Respondent hereby consents to the assessment of, and agrees to pay a civil penalty of SIXTY-TWO THOUSAND FIVE HUNDRED DOLLARS (\$62,500) in settlement of the violations set forth in this CA/FO. The penalty was calculated based on the nature, circumstances, extent and gravity of the violations, Respondent's prior history of violations, its degree of culpability, and any economic benefit or savings accruing to Respondent as a result of the violations. This CA/FO constitutes a settlement of all claims alleged in this CA/FO.

31. 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.

32. 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 \$62,500 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
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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:

Connor Adams (ENF-3-2)
Enforcement Division
U.S. EPA, Region IX
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

33. 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.

34. 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 six percent (6%) per annum penalty will be applied on any principal amount not paid within ninety (90) days of the due date, pursuant to 40 C.F.R. § 13.13(c).

35. Pursuant to CWA Section 311(b)(6)(H), 33 U.S.C. § 1321(b)(6)(H), if Respondent fails to pay the assessed penalty on time, the EPA may request the U.S. Department of Justice to bring a civil action to recover the overdue amount, plus interest at currently prevailing rates from the Effective Date of this CA/FO. In such an action, the validity, amount, or appropriateness of the assessed penalty shall not be subject to review. In addition to any assessed penalty and interest, Respondent shall pay attorney fees, costs for collection proceedings, and a quarterly nonpayment penalty, which shall equal 20% of the aggregate amount of Respondent's penalties and nonpayment penalties that are unpaid as of the beginning of such quarter, for each quarter during which such failure to pay persists.

J. RESERVATION OF RIGHTS

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

37. 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.

38. 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.

39. 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.

40. 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.

K. MISCELLANEOUS

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

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

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

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

L. EFFECTIVE DATE

45. In accordance with 40 C.F.R. § 22.18(b)(3), 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.

M. PUBLIC NOTICE

46. Pursuant to CWA Section 311(b)(6)(C), 33 U.S.C. § 1321(b)(6)(C), and 40 C.F.R. § 22.45(b), this Consent Agreement is subject to public notice and comment prior to issuance of the proposed Final Order. Complainant reserves the right to withhold or withdraw consent to this Consent Agreement if public comments disclose relevant and material information that was not considered by Complainant in entering into this Consent Agreement. Respondent may withdraw from this Consent Agreement only upon receipt of written notice from the EPA that it no longer supports entry of this Consent Agreement.

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IT IS SO AGREED,

For Respondent Paul Oil Company, Inc., a California corporation

//s//

Date: February 1, 2018

Name: Mark Paul

Title: President

For Complainant U.S. Environmental Protection Agency:

//s//

Date: February 7, 2018

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.

It is Hereby Ordered that this Consent Agreement and Final Order (EPA Docket No. SPCC-09-2016-0003) be entered and that Respondent shall pay a civil penalty in the amount of \$62,500 in accordance with the terms of this Consent Agreement and Final Order.

Date: _____

Steven L. Jawgiel
Regional Judicial Officer
U.S. EPA, Region IX