

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX

IN THE MATTER OF

**Baker Commodities, Inc.,
4020 Bandini Boulevard,
Vernon, California**

Respondent.

**CWA SECTION 311
CLASS II ADMINISTRATIVE PENALTY
CONSENT AGREEMENT
AND FINAL ORDER PURSUANT TO
40 C.F.R. §§ 22.13(b) and 22.18**

Docket No. CWA-09-2021-0007

CONSENT AGREEMENT

A. Preliminary Statement

1. This Consent Agreement and Final Order (“CA/FO”) is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Sections 311(b)(6)(A) and (B)(ii) of the Clean Water Act (“Act”), 33 U.S.C. § 1321(b)(6)(A), and (B)(ii), as amended by the Oil Pollution Act of 1990, and under the authority provided by 40 C.F.R. § 22.18(b)(2). The Administrator has delegated these authorities to the Regional Administrator of EPA Region IX, pursuant to Delegation 2-52 1200 TN 350 (January 18, 2017), who has in turn delegated them to the Director of the Enforcement Division (now the “Enforcement and Compliance Assurance Division”) (“Complainant”), pursuant to Delegation R9-2-52A (March 8, 2017).
2. Complainant initiates this proceeding against Baker Commodities, Inc. (“Respondent”) for alleged violations of Section 311(j) of the Act, 33 U.S.C. § 1321(j), and its implementing regulations, at Respondent’s facility located at 4020 Bandini Boulevard, Vernon, California, 90058 (the “Facility”). Complainant and Respondent are hereinafter collectively referred to as the “Parties.”
3. This 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.

B. Statutory and Regulatory Framework

5. Sections 311(j)(1)(C) and (5) of the Act, 33 U.S.C. §§ 1321(j)(1)(C) and (5), provide 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 to contain such discharges”
6. Initially by Executive Order 11548 (July 20, 1970), 35 Fed. Reg. 11,677 (July 22, 1970), and most recently by Section 2(b)(1) of Executive Order 12777 (October 18, 1991), 56 Fed. Reg. 54,757 (October 22, 1991), the President delegated to EPA the authorities under Sections 311(j)(1)(C) and (j)(5) of the Act, 33 U.S.C. §§ 1321(j)(1)(C) and (5), to issue regulations.
7. EPA subsequently promulgated regulations, codified at 40 C.F.R. Part 112 (the “Oil Pollution Prevention Regulations”), pursuant to its delegated statutory authorities and pursuant to its authorities under the Act, 33 U.S.C. § 1251 *et seq.*
8. The Oil Pollution Prevention Regulations establish certain procedures, methods, and requirements, applicable to an owner or operator of a non-transportation related onshore facility, which, due to its location, reasonably could be expected to discharge oil into or upon navigable waters and their adjoining shorelines in such quantities as EPA has determined in 40 C.F.R. Part 110 may be harmful to the public health or welfare or the environment of the United States. *See* 40 C.F.R. § 112.1(b).
9. “Oil” is defined in Section 311(a)(1) of the Act, 33 U.S.C. § 1321(a)(1), to include, in pertinent part, “oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge. . . .” Under the Act’s implementing regulations, at 40 C.F.R. § 112.2, oil is defined to include “oil of any kind or in any form, including, but not limited to: fats, oils, or greases of animal, fish, or marine mammal origin; vegetable oils, including oils from seeds, nuts, fruits, or kernels; and, other oils and greases. . . .”
10. “Onshore facility” is defined in Section 311(a)(10) of the Act, 33 U.S.C. § 1321(a)(10), as well as in the implementing regulations, 40 C.F.R. § 112.2, as “any facility (including, but not limited to, motor vehicles and rolling stock) of any kind located in, on, or under, any land within the United States other than submerged land.”
11. “Owner or operator” is defined in Section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6), in pertinent part, as well as in the implementing regulations, 40 C.F.R. § 112.2, as “in the case of an onshore facility, . . . any person owning or operating such onshore facility. . . .”

12. “Person includes an individual, firm, corporation, association, and a partnership.” 33 U.S.C. § 1321(a)(7); 40 C.F.R. § 112.2.
13. 40 C.F.R. § 112.2 provides that “non-transportation-related” facilities are defined in the “Memorandum of Understanding between the Secretary of Transportation and the Administrator of the Environmental Protection Agency (November 24, 1971).”
14. “Navigable waters” are defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 112.2.
15. In promulgating 40 C.F.R. § 110.3, which implements Section 311(b)(4) of the Act, 33 U.S.C. § 1321(b)(4), EPA determined that an oil discharge is of a harmful quality 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.”
16. Under 40 C.F.R. § 112.1(b), owners or operators of onshore facilities that, due to their location, could reasonably be expected to discharge harmful quantities of oil (as defined in 40 C.F.R. § 110.3) into the waters of the United States must prepare and fully implement a Spill Prevention Control and Countermeasure Plan (“SPCC Plan”) for each facility in accordance with 40 C.F.R. § 112.3.
17. A facility that could, because of its location, reasonably be expected to cause substantial harm to the environment by discharging oil into or on navigable waters or adjoining shorelines must also prepare a Facility Response Plan (“FRP”) in accordance with 40 C.F.R. § 112.20. EPA has determined through regulatory rulemaking that a facility with total oil storage capacity greater than or equal to one million gallons, and which is located at a distance (as calculated using the appropriate formula provided in Appendix C to 40 C.F.R. Part 112 or a comparable formula) such that a discharge from the facility could cause injury to fish and wildlife and sensitive environments, can reasonably be expected to cause substantial harm to the environment in the event of a spill. 40 C.F.R. § 112.20(f)(1)(ii)(B).

C. General Allegations

18. Baker Commodities, Inc. is a corporation registered to conduct business in California. 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), and 40 C.F.R. § 112.2.

19. Respondent is the “owner or operator” within the meaning of Section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6), and 40 C.F.R. § 112.2, of the Facility, which provides animal rendering and grease removal services.
20. The Facility is “non-transportation-related” within the meaning of 40 C.F.R. § 112.2.
21. The Facility is an “onshore facility” within the meaning of Section 311(a)(10) of the Act, 33 U.S.C. § 1321(a)(10), and 40 C.F.R. § 112.2.
22. The Facility has several above-ground oil storage tanks with an aggregate maximum above-ground oil storage capacity of approximately 2,170,260 gallons.
23. The Facility is located less than 0.5 miles from the Los Angeles River. The Los Angeles River flows approximately 17 miles from the City of Commerce to Long Beach Harbor, where it discharges into the Pacific Ocean. The Los Angeles River, Long Beach Harbor, and the Pacific Ocean are each “navigable waters” of the United States as defined in Section 502(7) of the Act, U.S.C. § 1362(7), and 40 C.F.R. § 112.2.
24. The Facility is a non-transportation-related facility that, due to its location, could reasonably have been expected, at the time of inspection on January 30, 2020, to discharge oil from an above-ground container to a navigable water of the United States or its adjoining shorelines in a harmful quantity (an “SPCC-regulated facility”).
25. Pursuant to the Act, 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 at 40 C.F.R. Part 112.
26. The Golden Shore Marine Reserve is located approximately 17 miles downstream of the Facility near the confluence of the Los Angeles River and Long Beach Harbor.
27. The Golden Shore Marine Reserve is classified as a “Category A” or “Extremely Sensitive” site according to the Los Angeles/Long Beach Area Contingency Plan, meaning it contains one or more of the following: wetlands, estuaries and lagoons with emergent vegetation, sheltered tidal flat, habitats for rare, threatened or endangered species, or sites of significant concentrations of vulnerable and sensitive species.
28. On January 30, 2020, EPA Region IX inspected the Facility to evaluate compliance with the requirements of the Oil Pollution Prevention Regulations codified at 40 CFR Part 112.

D. Alleged Violations

29. Paragraphs 1 through 28, above, are incorporated herein by this reference as if they were set forth here in their entirety.
30. Respondent failed to comply with applicable SPCC requirements of the Oil Pollution Prevention Regulations, specifically by failing to: (1) have the full approval of management at a level of authority to commit the necessary resources to fully implement the SPCC Plan, as required by 40 C.F.R. § 112.7; (2) provide sufficient secondary containment at the rail-car loading/unloading rack, as required by 40 C.F.R. § 112.7, because the secondary containment was not sufficiently impervious as required by 40 C.F.R. § 112.7(c), and was not adequately sized to account for at least the maximum capacity of any single compartment of a tank car or tank truck loaded or unloaded at the Facility, as required by 40 C.F.R. § 112.7(h)(1); (3) abide by the applicable industry standards for integrity testing of bulk storage containers and the qualifications for personnel performing tests and inspections, and carry out tank integrity testing, as required by 40 C.F.R. §§ 112.8 and 112.12(c)(6); (4) include the portable totes located in the northwest area of the Facility in the facility diagram of the SPCC Plan, as required by 40 C.F.R. § 112.7(a)(3); (5) address in the SPCC Plan whether there are at least two “lift” pumps available for the facility drainage system and whether or not at least one pump is permanently installed, and the facility drainage systems are engineered to prevent a discharge as described in 40 C.F.R. § 112.1(b) in the case of equipment failure or human error, as required by 40 C.F.R. §§ 112.8(b)(5) and 112.12(b)(5); (6) clean up and remove spilled oil and grease throughout the Facility, as required by 40 C.F.R. §§ 112.8(c)(10) and 112.12(c)(10); (7) amend and recertify the SPCC Plan to identify which tanks and vessels have been taken out-of-service, and permanently closed, as required by 40 C.F.R. § 112.5; and (8) ensure piping terminal connections at transfer points are marked as to origin and capped or blank-flanged when not in service or in standby service for an extended time, as required by 40 C.F.R. §§ 112.8 and 112.12(d)(2).
31. In addition, Respondent failed to develop and implement an FRP as required by 40 C.F.R. § 112.20.
32. On information and belief, Respondent violated certain of these requirements for at least five years preceding Complainant's inspection.

E. Civil Penalty

33. Section 311(b)(6)(B)(ii) of the Act, 33 U.S.C. § 1321(b)(6)(B)(ii), authorizes the administrative assessment of civil penalties in an amount not to exceed \$10,000 per

violation 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, Adjustment of Civil Penalties for Inflation, the administrative assessment of civil penalties may not exceed \$19,277 per day for each day during which the violation continues, up to a maximum Class II civil penalty of \$240,960. *See also* Civil Monetary Penalty Inflation Adjustment, 85 Fed. Reg. 1753 (January 13, 2020).

34. Respondent consents to the assessment of and agrees to pay a civil penalty of ONE HUNDRED SEVENTY-FIVE THOUSAND DOLLARS (\$175,000) as the civil penalty for the violations alleged herein. 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.

F. Parties Bound

35. This CA/FO shall apply to and be binding upon Respondent, successors and assigns, until such time as the civil penalty required under Section E has been resolved. At such time as those matters are concluded, this CA/FO shall terminate and constitute full and complete settlement of the violations alleged herein.
36. No change in ownership or legal status relating to the Facility will in any way alter Respondent's obligations and responsibilities under this CA/FO.
37. Until termination of this CA/FO, Respondent shall give notice of this CA/FO to any successor in interest prior to transfer of ownership or operation of the Facility and shall notify EPA within seven (7) days prior to such transfer.
38. The undersigned representative of Respondent hereby certifies that he or she is fully authorized by Respondent to enter into and execute this CA/FO, and to legally bind Respondent to it.
39. 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.

G. Payment of Civil Penalty

40. Respondent shall submit payment of the ONE HUNDRED SEVENTY-FIVE THOUSAND DOLLARS (\$175,000) within thirty (30) days of the Effective Date as specified in Paragraphs 41 and 42 of this CA/FO.
41. All payments shall indicate the name of the Facility, Respondent's name and address and the EPA docket number of this action. Payment shall be made by corporate, certified or cashier's check payable to "United States Environmental Protection Agency" and sent as follows:

Regular Mail:

U.S. Environmental Protection Agency
P.O. Box 979077
St. Louis, MO 63197-9000

Overnight Mail:

U.S. Environmental Protection Agency
Government Lock Box 979077
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

Alternatively, payment may be made by electronic transfer as provided below:

Wire Transfers:

Wire transfers must be sent 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
Beneficiary = US Environmental Protection Agency

ACH (also known as REX or remittance express):

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ACH payments to EPA can be made through the US Treasury using the following information:

US Treasury REX/Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006
Environmental Protection Agency
CTX Format Transaction Code 22-checking

Physical Location of US Treasury Facility
5700 Rivertech Court
Riverdale, MD 201737

Remittance Express (REX): 1-866-234-5681

On-Line Payment:

This payment option can be accessed from the information below:

www.pay.gov
Enter "sfol.1" in the search field
Open form and complete required fields

If clarification regarding a particular method of payment remittance is needed, contact Craig Steffen at 513-487-2091 or steffen.craig@epa.gov.

42. **Notification.** Within thirty (30) days after the due date of the payment, 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 via electronic mail with a transmittal letter, indicating Respondent's name, the case title, and docket number, to each of the following:

Regional Hearing Clerk
U.S. Environmental Protection Agency Region 9
R9HearingClerk@epa.gov

and to:

Peter Reich
Enforcement and Compliance Assurance Division

U.S. Environmental Protection Agency Region 9
reich.peter@epa.gov

43. If payment is not received by the due date, interest on any overdue amount will accrue from the Effective Date of this CA/FO at the current rate published by the United States 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. Payment of any interest shall be made in accordance with Paragraphs 41 and 42 above.
44. Respondent's failure to make the payment in full within the time provided in Paragraph 41 may subject Respondent to a civil action to collect the assessed penalties, plus interest, attorneys' fees, costs and additional quarterly nonpayment penalties pursuant to Section 311(b)(6)(H) of the Act, 33 U.S.C. § 1321(b)(6)(H). In any such collection action, the validity, amount and appropriateness of the penalty and of this CA/FO shall not be subject to review.
45. 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 other person or entity's federal, state, or local taxes.

H. Admissions and Waivers of Rights

46. 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).
47. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding, Respondent: (i) admits that EPA has jurisdiction over the subject matter of this CA/FO and over Respondent; (ii) neither admits nor denies the specific factual allegations contained in the CA/FO; (iii) consents to any and all conditions specified in this CA/FO and to the assessment of the civil administrative penalty under Section E of this CA/FO; (iv) waives, for the purpose of this proceeding in Docket No. CWA-09-2021-0007, any right to contest the allegations contained in Section C of the CA/FO; and (v) waives the right to appeal the proposed final order contained in this CA/FO.

I. Reservation of Rights

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

49. 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 Act, or any other statutory, regulatory, or common law enforcement authority of the United States, except as otherwise set forth herein.
50. 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.
51. 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.
52. 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.

J. Miscellaneous

53. This CA/FO may be amended or modified only by written agreement executed by both EPA and Respondent.
54. The headings in this CA/FO are for convenience of reference only and shall not affect interpretation of this CA/FO.
55. The CA/FO 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 CA/FO 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.

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

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

K. Effective Date

58. Pursuant to 40 C.F.R. § 22.45(b), this CA/FO shall be issued only after a 30-day public notice and comment period is concluded. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.13(b), this CA/FO shall take effect on the date 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 ("Effective Date").

L. Public Notice

59. Pursuant to Section 311(b)(6)(C)(i) of the Act, 33 U.S.C. § 1321(b)(6)(C)(i), 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.

60. The petition and consent-withdrawal provisions of 40 C.F.R. § 22.45(c)(4) shall apply.

IT IS SO AGREED.

*In the Matter of Baker Commodities, Inc.
Vernon, California*

For Respondent Baker Commodities, Inc.:

_____/s/_____
Jeffrey S. Wilson, Vice President
General Counsel

Date: _____ 10/29/2020 _____

*In the Matter of Baker Commodities, Inc.
Vernon, California*

For Complainant U.S. Environmental Protection Agency Region IX:

_____/s/_____12/02/2020_____

Amy C. Miller-Bowen, Director
Enforcement and Compliance Assurance Division

*In the Matter of Baker Commodities, Inc.
Vernon, California*

FINAL ORDER

It Is Hereby Ordered that this Consent Agreement and Final Order *in the matter of Baker Commodities, Inc.* (EPA Docket No. CWA-09-2021-0007) be entered and that Respondent shall pay a civil penalty in the amount of ***ONE HUNDRED SEVENTY-FIVE THOUSAND DOLLARS (\$175,000)*** in accordance with the terms of this Consent Agreement and Final Order

Steven L. Jawgiel
Regional Judicial Officer
U.S. Environmental Protection Agency, Region IX