

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219

BEFORE THE ADMINISTRATOR

In the Matter of:) COMPLAINT, CONSENT AGREEMENT
AND FINAL ORDER
DaMar Resources, Inc.)
Respondent) Docket No. CWA-07-2021-0028

COMPLAINT

Jurisdiction

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 311(b)(6) of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act (CWA), 33 U.S.C. § 1321(b)(6), and in accordance with 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. Complainant, the U.S. Environmental Protection Agency Region 7 (“EPA”) and Respondent, DaMar Resources, Inc. (“Respondent”), have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

3. This Complaint and Consent Agreement/Final Order serves as notice that EPA has reason to believe that Respondent has violated Sections 311(b)(3) and 311(j) of the CWA, 33 U.S.C. §§ 1321(b)(3) and 1321(j), and regulations promulgated thereunder.

Parties

4. The Respondent is DaMar Resources, Inc., a corporation engaged in the production, and storage of oil products, and is registered and authorized to conduct business in the state of Kansas.

5. The authority to take action under Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6), is vested in the Administrator of the EPA. The Administrator has delegated this authority to the Regional Administrator, EPA Region 7, who in turn has delegated it to the Director of the Enforcement and Compliance Assurance Division of EPA Region 7 (collectively referred to as the “Complainant”).

Statutory and Regulatory Framework

6. Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), prohibits the discharge of oil or hazardous substances into or upon the navigable waters of the United States or adjoining shorelines in such quantities that have been determined may be harmful to the public health or welfare or environment of the United States.

7. Section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1), and 40 C.F.R. § 112.2 define "oil" as "oil of any kind or in any form, including, but not limited to, petroleum [or] fuel oil... "

8. Section 311(b)(4) of the CWA, 33 U.S.C. § 1321(b)(4), authorizes EPA to promulgate a regulation to define what discharges of oil may be harmful to the public health or welfare or environment of the United States. 40 C.F.R. § 110.3 defines such discharges to include discharges of oil that violate applicable water quality standards or cause a film or a sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon the adjoining shorelines.

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

10. To implement Section 311(j)(1)(C), EPA promulgated regulations to prevent oil pollution at 40 C.F.R. Part 112 that set forth the requirements for the preparation and implementation of Spill Prevention Control and Countermeasure Plans ("SPCC Plans").

11. The requirements of 40 C.F.R. Part 112 apply to owners and operators of non-transportation-related onshore facilities with an aboveground storage capacity of 1,320 gallons or greater, engaged in gathering, storing, transferring, distributing, using or consuming oil or oil products, which due to their locations, could reasonably be expected to discharge oil in quantities that may be harmful into or upon the navigable waters of the United States or adjoining shorelines.

General Allegations

12. As a corporation, 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.

13. At all times relevant to this action, Respondent was the owner and/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 four oil production facilities, or leases, in Ellis and Rooks County, Kansas: known as

the “Dreiling C Lease,” the “Potter A Lease”, the “Reed Lease” and the “McRae Lease” (collectively, “Lease Facilities”) at the following approximate locations:

- a. Dreiling C: Section 21, Township 13 South, Range 7 West of Ellis County;
- b. Potter A: Section 20, Township 11 South, Range 16 West of Ellis County;
- c. Reed: Section 23, Township 7 South, Range 17 West of Rooks County; and
- d. McRae: Section 34, Township 12 South, Range 18 West in Ellis County.

14. The Dreiling C Lease facility includes production wells, flowlines, a storage tank battery consisting of two above ground storage tanks for oil, one other vessel used for oil/water separation and one produced water tank, and other oil filled equipment. The Dreiling Lease facility has an estimated aggregate above-ground storage capacity of 45,360 gallons of oil and produced water.

15. The Potter A Lease facility includes production wells, flowlines, and storage tanks. The Potter Lease facility has an estimated aggregate above-ground storage capacity of 53,934 gallons of oil and produced water.

16. The Reed Lease facility includes production wells, flowlines, and storage tanks. The Reed Lease facility has an estimated aggregate above-ground storage capacity of 34,130 gallons of oil and produced water.

17. The McRae Lease facility has an estimated aggregate above-ground storage capacity of 34,075 gallons of oil and produced water.

18. The Dreiling C Lease facility is adjacent to a tributary of the North Fork Big Creek that flows to the Smoky Hill River; the Potter Lease facility is adjacent to an unnamed tributary to the Saline River; the Reed Lease facility is near the South Fork of the Solomon River and the McRae Lease facility is near North Fork Big Creek a tributary of the Smoky Hill River. The North Fork of Big Creek, the unnamed tributary of the Saline River, the South Fork of the Solomon River and the Smoky Hill and Saline Rivers are each navigable waters of the United States within the meaning of 40 C.F.R. § 112.2 and Section 502(7) of the Act, 33 U.S.C. § 1362(7).

19. At all times relevant to this action, Respondent was engaged in the production and storage of oil or oil products located at the Facilities.

20. The Lease Facilities are “non-transportation-related” facilities within the meaning of 40 C.F.R. § 112 Appendix A, as incorporated by reference within 40 C.F.R. § 112.2.

21. The Lease Facilities are “onshore” facilities 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 Lease Facilities are non-transportation-related onshore facilities which, due to their location, could reasonably be expected to discharge oil to a navigable water of the United States or its adjoining shorelines in a harmful quantity and are, therefore, each “an SPCC-regulated facility.”

23. Pursuant to Section 311(j)(1)(C) of the Act, Executive Order 12777, and 40 C.F.R. § 112.1, Respondent, as the owner and/or operator of SPCC-regulated facilities, was subject to the SPCC regulations at all times relevant to this action.

24. On or about January 21, 2020, Respondent reported to the National Response Center (“NRC”) that a discharge of crude oil from the Dreiling C Lease facility had reached the tributary North Fork Big Creek.

25. Following the spill, representatives of the Kansas Corporation Commission (“KCC”) inspected and/or obtained information about the Dreiling C lease facility and provided oversight to Respondent’s response to the spill.

26. On August 13, 2020, EPA issued a Request For Information to the Respondent seeking information regarding Respondents compliance with the SPCC regulations of 40 C.F.R. Part 112 (“EPA’s Inspections”) and obtained information about each facility which was documented in separate inspection reports for each facility.

27. On August 17, 2020, EPA conducted inspections of the Potter A, Reed, and McRae “Lease Facilities” to determine Respondents compliance with the SPCC regulations of 40 C.F.R. Part 112 (“EPA’s Inspections”) and obtained information about each facility which was documented in separate inspection reports for each facility. Copies of these inspection reports were transmitted to Respondent by EPA on November 20, 2020.

28. On March 2, 2020 EPA issued the KCC an “open records” request for all information of past spills for the Facilities. The response from KCC provided documentation of additional oil spills and releases at the leases, including the January 2020 discharge.

Alleged Violations

Count 1: Prohibited Discharge of Oil

29. Complainant hereby incorporates the allegations contained in the paragraphs above, as if fully set forth herein.

30. Respondent’s January 2020 discharge of oil from the Dreiling Lease facility caused a film or sheen upon the surface of the tributary of the North Fork Big Creek and/or

adjoining shorelines, and, therefore, was in a quantity that has been determined may be harmful under 40 C.F.R § 110.3, which implements Section 311(b)(3) and (b)(4) of the Act, 33 U.S.C. § 1321(b)(3) and (b)(4).

31. Respondent's January 2020 discharge of oil from the Dreiling Lease facility into the tributary of the North Fork Big Creek and/or adjoining shorelines violated 311 (b)(3) of the Act, 33 U.S.C. §1321(b)(3).

32. In accordance with Sections 309(g) and 311(b)(6)(A)(ii) of the CWA, 33 U.S.C. §§ 1319(g) and 1321(b)(6)(A)(ii), EPA may assess a civil penalty to any owner or operator in charge of any onshore facility who violates Sections 301 and 311(b)(3) of CWA, 33 U.S.C. §§ 1311 and 1321(b)(3).

**Count 2:
Violations of SPCC Program**

33. Complainant hereby incorporates the allegations contained in the paragraphs above, as if fully set forth herein.

34. EPA's Inspections documented Respondent's failures to fully prepare and implement SPCC Plans at the Lease Facilities (as required by 40 C.F.R. 112.3), included but are not limited to the following:

- a. Respondent failed to include accurate information in the SPCC Plans' facility diagrams, including the locations of all tanks and containers, production wellheads, portable containers, flowlines, and intra-facility gathering lines, in violation of 40 C.F.R. § 112.7(a)(3);
- b. Respondent failed to provide a prediction of the direction, rate of flow, and total quantity of oil, in violation of 40 C.F.R. § 112.7(b);
- c. Respondent failed to have adequate secondary containment and/or describe secondary containment in the Plans (for portable containers, production wellheads, transfer area at the tank batteries, above-ground flowlines and buried flowlines), in violation of 40 C.F.R. § 112.7(c), or to clearly explain in the Plans why secondary containment measures are not practicable for the buried flow lines in violation of 40 C.F.R. § 112.7(d);
- d. Respondent failed to document inspections and tests in accordance with written procedures in violation of 40 C.F.R. § 112.7(e);
- e. Respondent failed to conduct training of all oil-handling personnel and (2) discharge prevention briefings on an annual basis in violation of 40 C.F.R. § 112.7(f);
- f. Respondent failed to implement the inspection and monitoring program to detect equipment failures and document discharges in violation of 40 C.F.R. § 112.7(k);
- g. Respondent failed to prepare a written program of flowline maintenance, in violation of 40 C.F.R. § 112.9(d)(4), that addresses procedures to take corrective action based on regularly scheduled inspections, tests, or evidence of discharge,

and promptly remediate any accumulations of oil discharges.

35. In accordance with Section 311(b)(6)(A)(ii) of CWA, 33 U.S.C. § 1321(b)(6)(A)(ii), EPA may assess a civil penalty to any owner or operator in charge of any onshore facility who fails to comply with any regulation issued under Section 311(j) of CWA, 33 U.S.C. § 1321(j).

CONSENT AGREEMENT

36. Respondent and the EPA agree to the terms of this Consent Agreement/Final Order.

37. Respondent admits the jurisdictional allegations of this Complaint and Consent Agreement/Final Order and agrees not to contest the EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of this Consent Agreement/Final Order.

38. Respondent neither admits nor denies the factual allegations and legal conclusions asserted by the EPA in this Complaint and Consent Agreement/Final Order.

39. Respondent waives its right to contest any issue of fact or law set forth above, and their right to appeal this Consent Agreement/Final Order.

40. Respondent certifies by signing this Consent Agreement/Final Order that it has properly prepared and implemented its SPCC plans at its Lease Facilities, and is otherwise presently in compliance at these facilities with the CWA and all regulations promulgated thereunder.

41. Respondent and Complainant agree to conciliate the matters set forth in this Consent Agreement/Final Order without the necessity of a formal hearing and agree to bear their own costs and attorney's fees incurred as a result of this action.

42. Respondent consents to receiving the filed Consent Agreement and Final Order electronically at the following email address: clongpine@eaglecom.net.

43. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this Consent Agreement/Final Order and to execute and legally bind Respondent to it.

44. Respondent understands and agrees that this Consent Agreement/Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement/Final Order.

Penalty Payment

45. Respondent agrees that, in settlement of the claims alleged in this Consent Agreement/Final Order, Respondent shall pay a civil penalty of **THIRTY FIVE THOUSAND DOLLARS (\$35,000)**.

46. Respondent shall pay the penalty payment identified above by certified or cashier's check made payable to "Environmental Protection Agency – OSLTF-311" with a reference to the case name and docket number CWA-07-2021-0028, and remitted to:

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

or by alternate payment method described at <http://www.epa.gov/financial/makepayment>.

47. Respondent shall simultaneously email copies of the transmittal letter and each penalty installment payment check, as directed above, to the following:

Regional Hearing Clerk at: R7_Hearing_Clerk_Filings@epa.gov

Liz Huston, at: huston.liz@epa.gov

48. Respondent agrees that no portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Consent Agreement/Final Order shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

Effect of Settlement and Reservation of Rights

49. Respondent's payment of the entire civil penalty pursuant to this Consent Agreement/Final Order resolves all civil and administrative claims for violations of the CWA alleged in this Complaint and Consent Agreement/Final Order. Complainant reserves the right to take any enforcement action with respect to any other violations of the CWA or any other applicable law.

50. The effect of the settlement is conditioned upon the accuracy of the Respondent's representations to EPA, as memorialized above.

51. Nothing contained in this Consent Agreement/Final Order shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state and local environmental statutes and regulations and applicable permits.

52. Notwithstanding any other provision of this Consent Agreement/Final Order, the EPA reserves the right to enforce the terms of this Consent Agreement/Final Order by initiating a

judicial or administrative action pursuant to Section 311 of the CWA, 33 U.S.C. § 1321, and to seek penalties against Respondent or to seek any other remedy allowed by law.

53. With respect to matters not addressed in this Consent Agreement/Final Order, the EPA reserves the right to take any enforcement action pursuant to the CWA and its implementing regulations, or any other available legal authority, including without limitation, the right to seek injunctive relief, penalties and damages.

General Provisions

54. The Parties acknowledge that this Consent Agreement/Final Order is subject to the public notice and comment required pursuant to Section 311(b)(6)(C) of the CWA, 33 U.S.C. § 1321(b)(6)(C), and 40 C.F.R. § 22.45.

55. Pursuant to 40 C.F.R. § 22.31(b), this Consent Agreement/Final Order shall be effective after signature by the authorized regional official and upon filing with the Regional Hearing Clerk, U.S. Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219. All time periods herein shall be calculated therefrom in calendar days unless otherwise provided in this Consent Agreement/Final Order.

56. The headings in this Consent Agreement/Final Order are for convenience of reference only and shall not affect interpretation of this Consent Agreement/Final Order.

57. Respondent and Complainant agree that this Consent Agreement/Final Order may be signed in part and counterpart.

For the Complainant, United States Environmental Protection Agency Region 7:

Date

Wendy Lubbe
Acting Director
Enforcement and Compliance Assurance Division

Date

Elizabeth Huston
Senior Counsel
Office of Regional Counsel

For the Respondent, DaMar Resources, Inc.



Signature

March 9, 2022

Date

Daniel F. Schippers

Name

President

Title

FINAL ORDER

Pursuant to Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits, 40 C.F.R. Part 22, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

The Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.

Date

Karina Borromeo
Regional Judicial Officer

CERTIFICATE OF SERVICE

I certify a true and correct copy of the Complaint and Consent Agreement/Final Order was sent this day in the following manner to the addressees:

Copy emailed to Respondent:

clongpine@eaglecom.net Or dschippers@eaglecom.net

Copy emailed to representatives for Complainant:

Liz Huston
EPA Region 7 Office of Regional Counsel
huston.liz@epa.gov

Mark Aaron
EPA Region 7 Enforcement and Compliance Assurance Division
aaron.mark@epa.gov

Date _____