

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX

In the matter of:)	U.S. EPA Docket No.
)	CWA-09-2024-0083
)	
Aloha Petroleum LLC)	
60 Hobron Lane)	CWA SECTION 311
Kahului, Maui, Hawaii)	CLASS II ADMINISTRATIVE PENALTY
)	CONSENT AGREEMENT AND
)	FINAL ORDER PURSUANT TO
Respondent.)	40 C.F.R. §§ 22.13(b) and 22.18
)	
_____)	

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 Section 311(b)(6)(A) and (B)(ii) of the Clean Water Act (“CWA” or “Act”), 33 U.S.C. § 1321(b)(6)(A), (b)(6)(B)(ii), as amended by the Oil Pollution Act of 1990, and under the authority provided by Section 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 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 2-52A 1200 TN 350 (January 18, 2017), who has in turn delegated them to the EPA Region IX Director of the Enforcement Division (now the “Enforcement & Compliance Assurance Division”) (“Complainant”), pursuant to Delegation R9 2-52A (March 8, 2017).
2. Complainant initiates this proceeding Aloha Petroleum LLC (“Respondent”) for alleged violations of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3). 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) and 22.18(b)(2) and (3).
4. The Parties agree that settlement of this matter is consistent with the CWA's objectives, in the public interest, and the most appropriate means of resolving this matter.

B. Statutory and Regulatory Framework

5. Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), prohibits “[t]he discharge of oil or hazardous substances into or upon the navigable waters of the United States [and] adjoining shorelines... in such quantities as may be harmful....”
6. “Discharge” is defined in Section 311(a)(2) of the CWA, 33 U.S.C. § 1321(a)(2), to include, in pertinent part, “any spilling, leaking, pumping, pouring, emitting, emptying, or dumping....”
7. “Oil” is defined in Section 311(a)(1) of the CWA, 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....”
8. “Navigable waters” are defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7).
9. Section 311(j)(1)(C) and 311(j)(5) of the CWA, 33 U.S.C. § 1321(j)(1)(C) and (j)(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”
10. Initially by Executive Order 11548 (July 20, 1970), 35 Fed. Reg. 11677 (July 22, 1970), and most recently by Section 2(b)(1) of Executive Order 12777 (October 18, 1991), 56 Fed. Reg. 54757 (October 22, 1991), the President delegated to EPA the authorities under Section 311(j)(1)(C) and (j)(5) of the CWA, 33 U.S.C. § 1321(j)(1)(C) and (j)(5), to issue regulations.
11. EPA subsequently promulgated regulations, codified at 40 C.F.R. Part 112 (the “Oil Pollution Prevention Regulations”), pursuant to these delegated statutory authorities and pursuant to its authorities under the CWA, 33 U.S.C. § 1251 *et seq.*
12. The Oil Pollution Prevention Regulations establish certain procedures, methods, and requirements, which except as provided in 40 C.F.R. § 112.1(b), apply to an owner or operator of a non-transportation-related onshore facility, which, due to its location, could reasonably be expected to discharge oil in quantities that may be harmful, as described in 40 C.F.R. Part 110, into or upon the navigable waters of the United States or adjoining shorelines. *See* 40 C.F.R. § 112.1(b).
13. “Owner or operator” is defined in Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6), as “in the case of an onshore facility, . . . any person owning or operating such onshore facility,” as well as in the implementing regulations, 40 C.F.R. § 112.2.
14. “Person” is defined in Section 311(a)(7) of the CWA, 33 U.S.C. § 1321(a)(7), as “an individual, firm, corporation, association, and a partnership,” as well as in the implementing regulations, 40 C.F.R. § 112.2.

15. "Onshore facility" is defined in Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10), 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," as well as in the implementing regulations, 40 C.F.R. § 112.2.
16. "Non-transportation related." 40 C.F.R. § 112.2 provides that "non-transportation-related" is defined in the "Memorandum of Understanding between the Secretary of Transportation and the Administrator of the Environmental Protection Agency, dated November 24, 1971."
17. In accordance with Section 311(b)(4) of the CWA, 33 U.S.C. § 1321(b)(4), the President, through a delegation to EPA, has determined, by regulation, the quantities of oil that may be harmful to the public health or welfare or the environment of the United States. Executive Order No. 11735, 38 Fed. Reg. 21243 (August 3, 1973). Discharges of oil in such quantities as may be harmful include discharges of oil that "[c]ause a film or 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 adjoining shorelines." 40 C.F.R. § 110.3. *See also* Executive Order 12777, 56 Fed. Reg. 54757 (October 22, 1991).
18. 40 C.F.R. § 112.3 requires an owner or operator or an onshore or offshore facility subject to the Oil Pollution Prevention Regulations to prepare in writing and implement a Spill Prevention Control and Countermeasure ("SPCC") Plan, in accordance with 40 C.F.R. § 112.7 and any other applicable section of 40 C.F.R. part 112.
19. 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 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).
20. Pursuant to Section 311(b)(6)(A) of the CWA, 33 U.S.C. § 1321(b)(6)(A), an owner, operator, or person in charge of any vessel, onshore facility, or offshore facility from which oil is discharged in violation of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), may be assessed a class I or class II civil penalty.

C. General Allegations

21. Respondent is a limited liability company (LLC) registered in Hawaii with a business address of 1001 Bishop Street, Suite 1300, Honolulu, Hawaii 96813. Respondent is a

“person” within the meaning of Sections 311(a)(7) and 502(5) of the CWA, 33 U.S.C. §§ 1321(a)(7) and 1362(5).

22. Respondent was and still is the “owner or operator” of an onshore bulk storage / distribution facility for oil at 60 Hobron Lane, Kahului, Maui, Hawaii ("Facility") within the meaning of Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6), and 40 C.F.R. § 112.2.
23. The Facility is "non-transportation-related" within the meaning of 40 C.F.R. § 112.2.
24. The Facility is an "onshore facility" within the meaning of Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10), and 40 C.F.R. § 112.2.
25. The Facility stores "oil" within the meaning of Section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1), and 40 C.F.R. § 112.2.
26. The Facility has several above-ground oil storage tanks with an aggregate maximum above-ground oil storage capacity of approximately 2,772,566 gallons. Primary containment for the oil stored at the Facility is provided by bulk storage aboveground storage tanks, with storage capacity of 1,265,850 gallons for Tank #8, 1,265,850 gallons for Tank #9, and 228,411 gallons for Tank #4, among other tanks.
27. The Facility is located approximately 250 feet from Kahului Harbor, which is connected directly to the Pacific Ocean, with surface flow and area storm drains that discharge to Kahului Harbor. Kahului Harbor 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. § 112.2.
28. The Facility is a non-transportation-related facility that, due to its location, could reasonably be expected, at the time of inspection on February 9, 2023, to discharge oil from an aboveground container to a navigable water of the United States or its adjoining shorelines in a harmful quantity (an "SPCC-regulated facility").
29. Pursuant to the CWA, Executive Order 12777, and 40 C.F.R. § 112.2, Respondent, as an owner or operator of a SPCC-regulated facility, is subject to the Oil Pollution Prevention Regulations at 40 C.F.R. Part 112.
30. Because the Facility could cause "substantial harm" within the meaning of 40 C.F.R. § 112.20(f)(ii), the Facility is additionally subject to the specific regulations for an FRP set forth in 40 C.F.R. § 112.20.
31. On February 9, 2023, EPA Region 9 inspected the Facility to evaluate compliance with the requirements of Section 311 of the CWA, 33 U.S.C. 1321, and with the SPCC and FRP requirements of the Oil Pollution Prevention Regulations, codified at 40 C.F.R. Part 112.

D. Alleged Violations

COUNT I

(Failure Provide Appropriate Containment to Prevent a Discharge)

32. Paragraphs 1 through 31, above, are incorporated herein by this reference as if they were set forth here in their entirety.
33. 40 C.F.R. § 112.7(c) requires owners and operators of a facility to provide appropriate containment and/or diversionary structures or equipment to prevent a discharge. It requires that the entire containment system, including walls and floor, must be capable of containing oil and must be constructed so that any discharge from a primary containment system, such as a tank, will not escape the containment system before cleanup occurs.
34. Respondent failed to provide appropriate general secondary containment, in violation of 40 C.F.R. § 112.7(c), because the secondary containment system was not sufficiently impervious and/or capable of preventing oil from escaping the containment system before cleanup could occur. The liner was shredded, ripped, or otherwise compromised in multiple locations within the Facility's tank farm secondary facility.

COUNT II

(Bulk Storage Installations: Failure to Provide Sufficient Secondary Containment)

35. Paragraphs 1 through 31, above, are incorporated herein by this reference as if they were set forth here in their entirety.
36. 40 C.F.R. § 112.8(c)(2) of the Oil Pollution Prevention Regulations requires owners and operators of an onshore facility to construct bulk storage tank installations to provide a secondary means of containment for the entire capacity of the largest single container and sufficient freeboard to contain precipitation. It requires ensuring that diked areas are sufficiently impervious to contain discharged oil.
37. Respondent violated 40 C.F.R. § 112.8(c)(2) by failure to maintain all bulk storage tank installations to provide a sufficiently impervious means of secondary containment capable of accounting for the entire capacity of the largest single container and sufficient freeboard to contain precipitation.

COUNT III

(Bulk Storage Installations: Failure to Comply with Industry Standards for Integrity Testing)

38. Paragraphs 1 through 31, above, are incorporated herein by this reference as if they were set forth here in their entirety.

39. 40 C.F.R. § 112.8(c)(6) requires the owner or operator of onshore facilities to test or inspect each aboveground container for integrity on a regular schedule and whenever making material repairs, in accordance with industry standards. It requires that owners and operators must determine, in accordance with industry standards, the appropriate qualifications for personnel performing tests and inspections, and the frequency and type of testing and inspections, which take into account container size, configuration, and design.
40. Respondent violated 40 C.F.R. § 112.8(c)(6) by failing to comply with the applicable industry standards for integrity testing of the additive bulk storage containers and the qualifications for personnel performing tests and inspections.

E. Civil Penalty

41. Section 311(b)(6)(B)(ii) of the CWA, 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 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 Monetary Penalties for Inflation, the administrative assessment of civil penalties may not exceed \$22,324 per day for each day during which the violation continues, up to a maximum Class II civil penalty of \$279,036. *See also* Civil Monetary Penalty Inflation Adjustment, 88 Fed. Reg. 988 (Jan. 6, 2023).
42. Respondent consents to the assessment of and agrees to pay a civil penalty of ONE-HUNDRED THREE THOUSAND AND THREE HUNDRED SEVENTY-SEVEN DOLLARS (\$103,377) in full settlement of the federal civil penalty claims set forth in this CA/FO. The penalty was calculated based on the nature, circumstances, extent, and gravity of the alleged 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

43. This CA/FO shall apply to and be binding upon Respondent, its 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.
44. Respondent's signatory to this CA/FO certifies that they are fully authorized to enter into and bind Respondent to the terms of the CA/FO.

G. Payment of Civil Penalty

45. Respondent agrees to pay a civil penalty in the amount of ONE-HUNDRED THREE THOUSAND AND THREE HUNDRED SEVENTY-SEVEN DOLLARS (\$103,377) ("Assessed

Penalty") within thirty (30) days after the date the Final Order ratifying this is filed with the Regional Hearing Clerk ("Filing Date").

46. Respondent shall pay the Assessed Penalty and any interest, fees, and other charges due using any method, or combination of appropriate methods, as provided on the EPA website: <https://www.epa.gov/financial/makepayment>. For additional instructions see: <https://www.epa.gov/financial/additional-instructions-making-payments-epa>.

47. When making a payment, Respondent shall:

a. Identify every payment with Respondent's name and the docket number of this Agreement, CWA-09-2024-0083

b. Concurrently with any payment or within 24 hours of any payment, Respondent shall serve proof of such payment to the following person(s):

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

and

Peter Reich
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency Region 9
Reich.Peter@epa.gov

and

U.S. Environmental Protection Agency
Cincinnati Finance Center
Via electronic mail to:
CINWD_AcctsReceivable@epa.gov

"Proof of payment" means, as applicable, a copy of the check, confirmation of credit card or debit card payment, or confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with the appropriate docket number and Respondent's name.

48. Interest, Charges, and Penalties on Late Payments. Pursuant to 33 U.S.C. § 1321(b)(6)(H), 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to timely pay any portion of the Assessed Penalty per this Agreement, the entire unpaid balance of the

Assessed Penalty and all accrued interest shall become immediately due and owing, and EPA is authorized to recover the following amounts.

- a. Interest. Interest begins to accrue from the Filing Date. If the Assessed Penalty is paid within thirty (30) days, interest accrued is waived. If the Assessed Penalty is not paid in full within thirty (30) days, interest will continue to accrue until the unpaid portion of the Assessed Penalty as well as any interest, penalties, and other charges are paid in full. Interest will be assessed at prevailing rates, per 33 U.S.C. § 1321(b)(6)(H). The rate of interest is the IRS standard underpayment rate.
- b. Handling Charges. The United States' enforcement expenses including, but not limited to, attorneys' fees and costs of collection proceedings.
- c. Late Payment Penalty. A twenty percent (20%) quarterly non-payment penalty.

49. Late Penalty Actions. In addition to the amounts described in the prior Paragraph, if Respondent fails to timely pay any portion of the Assessed Penalty, interest, or other charges and penalties per this Agreement, EPA may take additional actions. Such actions EPA may take include, but are not limited to, the following.

- a. Refer the debt to a credit reporting agency or a collection agency, per 40 C.F.R. §§ 13.13 and 13.14.
- b. Collect the debt by administrative offset (i.e., the withholding of money payable by the United States government to, or held by the United States government for, a person to satisfy the debt the person owes the United States government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, per 40 C.F.R. Part 13, Subparts C and H.
- c. Suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds, per 40 C.F.R. § 13.17.
- d. Request that the Attorney General bring a civil action in the appropriate district court to recover the full remaining balance of the Assessed Penalty, in addition to interest and the amounts described above, per 33 U.S.C. § 1321(b)(6)(H). In any such action, the validity, amount, and appropriateness of the Assessed Penalty shall not be subject to review.

50. Allocation of Payments. Pursuant to 31 C.F.R. § 901.9(f) and 40 C.F.R. § 13.11(d), a partial payment of debt will be applied first to outstanding handling charges, second to late penalty charges, third to accrued interest, and last to the principal that is the outstanding Assessed Penalty amount.

51. Tax Treatment of Penalties. Penalties, interest, and other charges paid pursuant to this Agreement shall not be deductible for purposes of federal taxes.

H. Admissions and Waivers of Rights

52. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding in Docket No. CWA-09-2024-0083, 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 any right to contest the allegations contained in Section C and D of the CA/FO; and (v) waives the right to appeal the proposed final order contained in this CA/FO.

I. Reservation of Rights

53. This CA/FO, inclusive of all exhibits and attachments, is the entire agreement between the Parties to resolve EPA's civil penalty claims against Respondent for the specific CWA violations alleged herein. In accordance with 40 C.F.R. § 22.18(c), full compliance with this CA/FO shall only resolve Respondent's liability for federal civil penalties for the violations specifically alleged herein and does not in any case affect the right of the EPA to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

54. This CA/FO does not constitute a waiver, suspension, or modification of the requirements of Section 311 of the CWA, 33 U.S.C. § 1321, or any regulations promulgated thereunder, and does not affect the right of the Administrator or the United States to pursue any applicable injunctive or other equitable relief or criminal sanctions for any violation of law. Payment of the penalty pursuant to this CA/FO resolves only Respondent's civil liability for the violations and facts alleged in this CA/FO.

55. 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.

J. Miscellaneous

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

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

58. This 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.
59. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in this proceeding.
60. EPA and Respondent consent to entry of this CA/FO without further notice.
61. By signing this CA/FO, Respondent acknowledges that this CA/FO will be available to the public and agrees that this CA/FO does not contain any confidential business information or personally identifiable information.
62. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, EPA is required to send to the Internal Revenue Service ("IRS") annually, a completed IRS Form 1098-F ("Fines, Penalties, and Other Amounts") with respect to any court order and settlement agreement (including administrative settlements), that require a payor to pay an aggregate amount that EPA reasonably believes will be equal to, or in excess of, \$50,000 for the payor's violation of any law or the investigation or inquiry into the payor's potential violation of any law, including amounts paid for "restitution or remediation of property" or to come "into compliance with a law." EPA is further required to furnish a written statement, which provides the same information provided to the IRS, to each payor (i.e., a copy of IRS Form 1098-F). Failure to comply with providing IRS Form W-9 or Tax Identification Number ("TIN"), as described below, may subject Respondent to a penalty, per 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and 26 C.F.R. § 301.6723-1. In order to provide EPA with sufficient information to enable it to fulfill these obligations, EPA herein requires, and Respondent herein agrees, that:
- a. Respondent shall complete an IRS Form W-9 ("Request for Taxpayer Identification Number and Certification"), which is available at <https://www.irs.gov/pub/irs-pdf/fw9.pdf>;
 - b. Respondent shall therein certify that its completed IRS Form W-9 includes Respondent's correct TIN or that Respondent has applied and is waiting for issuance of a TIN;
 - c. Respondent shall email its completed Form W-9 to EPA's Cincinnati Finance Center at sherrer.dana@epa.gov, within 30 days after the Final Order ratifying this CA/FO is filed, and EPA recommends encrypting IRS Form W-9 email correspondence; and
 - d. In the event that Respondent has certified in its completed IRS Form W-9 that it has applied for a TIN and that TIN has not been issued to Respondent within 30 days after the Effective Date, then Respondent, using the same email address identified in the preceding sub-paragraph, shall further:

- i. notify EPA's Cincinnati Finance Center of this fact, via email, within 30 days after the Effective Date of this CA/FO per paragraph 40; and
- ii. provide EPA's Cincinnati Finance Center with Respondent's TIN, via email, within five (5) days of Respondent's issuance and receipt of the TIN.

K. Effective and Termination Dates

63. 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").

64. This CA/FO shall terminate when Respondent has fully complied with its terms.

L. Public Notice

65. Pursuant to Section 311(b)(6)(C)(i) of the CWA, 33 U.S.C. § 1321(b)(6)(C)(i) and 40 C.F.R. § 22.45(b), this CA/FO is subject to public notice and comment prior to issuance of the proposed Final Order.

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

IT IS SO AGREED.

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

/s/ 8/28/2024

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

For Respondent Aloha Petroleum LLC

/s/

Kari Falls, Vice President

7/31/2024

Date: _____

FINAL ORDER

It Is Hereby Ordered that this Consent Agreement and Final Order (EPA Docket No. CWA-09-2024-0083) be entered and that Respondent shall pay a civil penalty in the amount of ONE-HUNDRED THREE-THOUSAND AND THREE-HUNDRED SEVENTY-SEVEN DOLLARS (\$103,377) in accordance with the terms of this Consent Agreement and Final Order.

Beatrice Wong
Regional Judicial Officer
U.S. Environmental Protection Agency, Region 9