

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7

901 NORTH FIFTH STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF

Lincoln Regional Center
State of Nebraska
Lincoln, Nebraska

Respondent.

CONSENT AGREEMENT
AND FINAL ORDER

Docket No. CWA-07-2008-0092

The United States Environmental Protection Agency (EPA) Region 7 (Complainant) and State of Nebraska (Respondent) have agreed to a settlement of this action, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

Stipulations

Jurisdiction

1. This is an administrative action for the assessment of Class II 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 or the Act), 33 U.S.C. § 1321(b)(6), as amended by the Oil Pollution Act of 1990, and in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits, 40 C.F.R. Part 22.

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

Parties

3. The authority to take action under Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6), to assess a civil penalty for failure to comply with any regulation issued under Section 311(j) of the CWA, 33 U.S.C. § 1321(j), 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 Air and Waste Management Division of EPA, Region 7 (Complainant).

4. The Respondent is the State of Nebraska. The Respondent owns a state mental health facility with a bulk oil storage facility located at 800 West Prospector Place, Lincoln Nebraska 68522.

Statutory and Regulatory Framework

5. Section 311(j)(1)(C) of the Act, 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 to contain such discharges"

6. 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 his Section 311(j)(1)(C) authority to issue the regulations referenced in the preceding Paragraph for non-transportation-related onshore facilities.

7. EPA subsequently promulgated the Spill Prevention Control and Countermeasure Plan (SPCC) regulations pursuant to these delegated statutory authorities, and pursuant to its authorities under the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, which established certain procedures, methods and requirements upon each owner and operator of a non-transportation-related onshore facility if such facility, due to its location, could reasonably be expected to discharge oil into or upon the navigable waters of the United States and their adjoining shorelines in such quantity as EPA has determined in 40 C.F.R. § 110.3 may be harmful to the public health or welfare or the environment of the United States ("harmful quantity").

Factual Background

8. Respondent is a State and thus 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 CFR § 112.2.

9. Respondent is the owner/operator within the meaning of Section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6), and 40 CFR § 112.2, of a mental health facility with a bulk oil storage facility located at 800 West Prospector Place, Lincoln, Nebraska ("the facility"). The oil storage tanks were installed in the late 1940s-early 1950s. The facility is located approximately 1650 feet from the Haines Branch tributary that leads to Salt Creek.

10. On or about September 28, 2006, the EPA conducted an inspection at the facility.

11. The facility has an aggregate above-ground storage capacity greater than 1320 gallons of oil in containers each with a shell capacity of at least 55 gallons.

12. The Haines Branch of Salt Creek is a navigable water 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).

13. Respondent is engaged in storing, processing, using or consuming oil or oil products located at the facility.

14. The facility is a non-transportation-related facility within the meaning of 40 CFR § 112 Appendix A, as incorporated by reference within 40 CFR § 112.2.

15. 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 CFR § 112.2.

16. The facility is therefore a non-transportation-related onshore facility which, 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 Section 311(j)(1)(C) of the Act, E.O. 12777, and 40 C.F.R. § 112.1 Respondent, as the owner and/or operator of an SPCC-regulated facility, is subject to the SPCC regulations.

Findings of Violation

18. 40 CFR § 112.3 requires that the owner or operator of an SPCC-regulated facility must prepare and implement an SPCC plan that is in accordance with the requirements of 40 CFR § 112.7 and any other applicable section of the SPCC regulations.

19. At the time of the September 2006 inspection, Respondent had failed to prepare and implement an SPCC Plan.

20. Respondent's failure to prepare and implement an SPCC plan for the facility in accordance with the requirements of 40 CFR Part 112, as described in Paragraph 21, violated 40 CFR § 112.3.

CONSENT AGREEMENT

1. Respondent and EPA agree to the terms of this Consent Agreement and Final Order and Respondent agrees to comply with the terms of the Final Order portion of this Consent Agreement and Final Order.

2. Respondent admits the jurisdictional allegations of this Consent Agreement and Final Order and agrees not to contest the EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order portion of this Consent Agreement and Final Order set forth below.

3. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this Consent Agreement and Final Order.

4. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above, and its right to appeal the proposed Final Order portion of the Consent Agreement and Final Order.

5. Respondent and Complainant agree to conciliate the matters set forth in this Consent Agreement and Final Order without the necessity of a formal hearing and to bear their respective costs and attorney's fees.

6. This Consent Agreement and Final Order addresses all civil administrative claims for the CWA violations identified above. Complainant reserves the right to take any enforcement action with respect to any other violations of the CWA or any violations of law.

7. Nothing contained in the Final Order portion of this Consent Agreement and 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.

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

9. Respondent agrees that, in settlement of the claims alleged in this Consent Agreement and Final Order, the Respondent shall pay a penalty of \$18,000.00.

FINAL ORDER

A. Payment Procedures

Pursuant to the authority of Section 311 of the CWA, 33 U.S.C. § 1321, and according to the terms of this Consent Agreement and Final Order, IT IS HEREBY ORDERED THAT:

1. Respondent shall pay a civil penalty of Eighteen Thousand Dollars (\$18,000.00).

2. Payment of the penalty shall be due upon the effective date of the Final Order and paid by a Nebraska Treasurer's Office State Treasury Warrant or Electronic Funds Transfer Wire payment made payable to the "Environmental Protection Agency" with a reference or notation to: Docket CWA-07-2008-0092/Oil Spill Liability Trust Fund – 311. Please remit the payment to:

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

Wire transfers should be directed to the Federal Reserve Bank of New York:

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

Copies of the payment shall be mailed to:

Regional Hearing Clerk
U.S. EPA, Region 7
901 North 5th Street
Kansas City, Kansas 66101

and

James D. Stevens
Assistant Regional Counsel
U.S. EPA, Region 7
901 North 5th Street
Kansas City, Kansas 66101.

B. Parties Bound

3. This Final Order portion of this Consent Agreement and 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 and Final Order.

C. General Provisions

4. Notwithstanding any other provision of this Consent Agreement and Final Order, EPA reserves the right to enforce the terms of the Final Order portion of this Consent Agreement and Final Order by initiating a judicial or administrative action under 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.

5. Complainant reserves the right to take enforcement action against Respondent for any future violations of the CWA and its implementing regulations and to enforce the terms and conditions of this Consent Agreement and Final Order.

6. Respondent and Complainant shall bear their respective costs and attorney's fees.

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

8. This Order shall be entered and become effective only after the conclusion of the period of 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. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY

2/23/09
Date

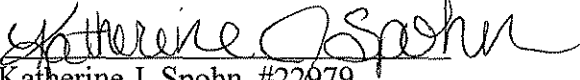
Rebecca Weber
Rebecca Weber
Director
Air and Waste Management Division

2/2/09
Date

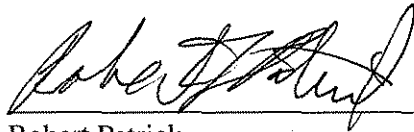
James D. Stevens
James D. Stevens
Assistant Regional Counsel

RESPONDENT:
Lincoln Regional Center, State of Nebraska

Date: 1/26/08

By: 
Katherine J. Spohn, #22979
Assistant Attorney General
2115 State Capitol Building
P.O. Box 98920
Lincoln, Nebraska 68509-8920
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Tel: (402) 471-2682

IT IS SO ORDERED. This Final Order shall become effective immediately.



Robert Patrick
Regional Judicial Officer

Date June 12, 2009

IN THE MATTER OF Lincoln Regional Center State of Nebraska, Respondent
Docket No. CWA-07-2008-0092

CERTIFICATE OF SERVICE

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


Copy hand delivered to
Attorney for Complainant:

James D. Stevens
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Katherine J. Spohn
Assistant Attorney General
Chief, Agriculture, Environment & Natural Resources Section
Office of the Attorney General
2115 State Capitol Building
Lincoln, Nebraska 68509-8920

Dated: 6/15/09


Kathy Robinson
Hearing Clerk, Region 7