

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 7  
901 NORTH FIFTH STREET  
KANSAS CITY, KANSAS 66101

09 JAN -6 AM 8:15  
ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF

**Richard Soule  
Eureka, Kansas**

Respondent.

**CONSENT AGREEMENT  
AND FINAL ORDER**

Docket No. CWA-07-2008-0091

09 JAN -6 AM 8:15  
ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

The United States Environmental Protection Agency (EPA), Region 7 (Complainant) and Richard Soule (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 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 Subpart I of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation or Suspension of Permits (Administrative Proceedings Not Governed by Section 554 of the Administrative Procedures Act), 40 C.F.R. Part 22, Subpart I.

2. This Consent Agreement and Final Order serves as notice that the EPA has reason to believe that Respondent has violated Section 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, EPA Region 7 (Complainant).

4. The Respondent is Richard Soule, an individual, who resides at 822 E. River, Eureka, Kansas.

#### 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 for Oil Lease Facilities

8. Respondent is an individual 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.

#### Grundy A Lease

9. The EPA performed an inspection at the Grundy A lease oil production facility on September 20, 2006.

10. Respondent began operations at Grundy A lease in approximately 1983. At all times relevant to the proceedings, Respondent was 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 an onshore oil production facility located at: Grundy A lease, Greenwood County, Kansas, T27S, R11E, Sect. 7 that is within approximately 775 yards from Otter Creek.

11. The Grundy A lease 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. Otter 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 was engaged in storing, processing, using, or consuming oil or oil products located at the Grundy A lease facility.

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

15. The Grundy A lease 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 Grundy A lease 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 Grundy A lease, a SPCC-regulated facility, is subject to the SPCC regulations.

#### Dunne A Lease

18. Respondent began operations at Dunne A lease in approximately 1983. At all times relevant to the proceedings, Respondent was 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 an onshore oil production facility located at: Dunne A lease, Butler County, Kansas, T26S, R8E, Sect. 17, that is approximately 500 yards from Silver Creek.

19. The Dunne A lease 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.

20. Silver 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).

21. Respondent is engaged in storing, processing, using, or consuming oil or oil products located at the Dunne A lease facility.

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

23. The Dunne A lease 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.

24. The Dunne A lease 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").

25. 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.

#### Green A Lease

26. Respondent began operations at Green A lease in approximately 1983. At all times relevant to the proceedings, Respondent was 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 an onshore oil production facility located at: Green A lease, Greenwood County, Kansas, T23S, R9E, Sect. 11, that is within approximately 880 yards from the east branch of the Fall River.

27. The Green A lease 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.

28. The east branch of the Fall River 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).

29. Respondent is engaged in storing, processing, using, or consuming oil or oil products located at the Green A lease facility.

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

31. The Green A lease 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.

32. The Green A lease 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").

33. 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 Green A lease, a SPCC-regulated facility, is subject to the SPCC regulations.

#### Holmes Lease

34. Respondent began operations at Holmes lease in approximately 1983. At all times relevant to the proceedings, Respondent was 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 an onshore oil production facility located at: Holmes lease, Greenwood County, Kansas, T27S, R11E, Sect. 7, that is within approximately 500 yards from Plum Creek.

35. The Holmes lease 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.

36. Plum 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).

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

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

39. The Holmes lease 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.

40. The Holmes lease 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").

41. 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 Holmes lease, a SPCC-regulated facility, is subject

to the SPCC regulations.

#### McNown Lease

42. Respondent began operations at McNown lease in approximately 1983. At all times relevant to the proceedings, Respondent was 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 an onshore oil production facility located at: McNown lease, Chautauqua County, Kansas, T32S, R10E, Sect. 33, that is within approximately 1320 yards from Middle Caney Creek.

43. The McNown lease 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.

44. Middle Caney 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).

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

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

47. The McNown lease 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.

48. The McNown lease 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").

49. 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 McNown lease, a SPCC-regulated facility, is subject to the SPCC regulations.

#### Moon Lease

50. Respondent began operations at Moon lease in approximately 1983. At all times relevant to the proceedings, Respondent was 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 an onshore oil production facility located at: Moon lease, Greenwood County, Kansas, T26S, R9E, Sect. 23, that is within approximately 1320 yards from Spring Creek.

51. The Moon lease 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.

52. Spring 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).

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

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

55. The Moon lease 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.

56. The Moon lease 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").

57. 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 Moon lease, a SPCC-regulated facility, is subject to the SPCC regulations.

#### Vigle Lease

58. Respondent began operations at Vigle lease in approximately 1983. At all times relevant to the proceedings, Respondent was 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 an onshore oil production facility located at: Vigle lease, Greenwood County, Kansas, T24S, R12E, Sect. 27, that is within approximately 300 yards from Slate Creek.

59. The Vigle lease 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.

60. Slate 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).

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

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

63. The Vigle lease 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.

64. The Vigle lease 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").

65. 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 Vigle lease, a SPCC-regulated facility, is subject to the SPCC regulations.

#### Wiershing B Lease

66. Respondent began operations at Wiershing B lease in approximately 1983. Respondent was 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 an onshore oil production facility located at: Wiershing B lease, Greenwood County, Kansas, T26S, R9E, Sect. 23, that is within approximately 1760 yards from Burnt Creek.

67. The Wiershing B lease 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.

68. Burnt 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).

69. Respondent is engaged in storing, processing, using, or consuming oil or oil products located at the Wiershing B lease facility.

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

71. The Wiershing B lease 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.

72. The Wiershing B lease 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").

73. 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 Wiershing B lease, a SPCC-regulated facility, is subject to the SPCC regulations.

#### Grundy B Lease

74. Respondent began operations at Grundy B lease in approximately 1983. At all times relevant to the proceedings, Respondent was 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 an onshore oil production facility located at: Grundy B lease, Greenwood County, Kansas, T27S, R11E, Sect. 7, that is within approximately 1320 yards from Otter Creek.

75. The Grundy B lease 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.

76. The Otter 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).

77. Respondent is engaged in storing, processing, using, or consuming oil or oil products located at the Grundy B lease facility.

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

79. The Grundy B lease 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.

80. The Grundy B lease 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").

81. 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 Grundy B lease, a SPCC-regulated facility, is subject to the SPCC regulations.

#### Findings of Violation

##### COUNT 1 - Grundy A Lease

82. The allegations made in paragraph 8 and paragraphs 9 through 17 are herein incorporated by reference and re-alleged.

83. Respondent did not prepare a SPCC plan for the facility.

84. 40 CFR § 112.3 requires that the owner or operator of an SPCC-regulated facility must prepare an SPCC plan that is in accordance with the requirements of 40 CFR § 112.7 and any other applicable section of the SPCC regulations.

85. Respondent's failure to prepare an SPCC plan for the Grundy A lease facility in accordance with the requirements of 40 CFR Part 112, as described in Paragraph 84, violated 40 CFR § 112.3.

#### COUNT 2 - Dunne A Lease

86. The allegations made in paragraph 8 and paragraphs 18 through 25 are herein incorporated by reference and re-alleged.

87. Respondent did not prepare a SPCC plan for the facility.

88. 40 CFR § 112.3 requires that the owner or operator of an SPCC-regulated facility must prepare an SPCC plan that is in accordance with the requirements of 40 CFR § 112.7 and any other applicable section of the SPCC regulations.

89. Respondent's failure to prepare an SPCC plan for the Dunne A lease facility in accordance with the requirements of 40 CFR Part 112, as described in Paragraph 88, violated 40 CFR § 112.3.

#### COUNT 3 - Green A Lease

90. The allegations made in paragraph 8 and paragraphs 26 through 33 are herein incorporated by reference and re-alleged.

91. Respondent did not prepare a SPCC plan for the facility.

92. 40 CFR § 112.3 requires that the owner or operator of an SPCC-regulated facility must prepare an SPCC plan that is in accordance with the requirements of 40 CFR § 112.7 and any other applicable section of the SPCC regulations.

93. Respondent's failure to prepare an SPCC plan for the Green A lease facility in accordance with the requirements of 40 CFR Part 112, as described in Paragraph 92 violated 40 CFR § 112.3.

**COUNT 4 - Holmes Lease**

94. The allegations made in paragraph 8 and paragraphs 34 through 41 are herein incorporated by reference and re-alleged.

95. Respondent did not prepare a SPCC plan for the facility.

96. 40 CFR § 112.3 requires that the owner or operator of an SPCC-regulated facility must prepare an SPCC plan that is in accordance with the requirements of 40 CFR § 112.7 and any other applicable section of the SPCC regulations.

97. Respondent's failure to prepare an SPCC plan for the Holmes lease facility in accordance with the requirements of 40 CFR Part 112, as described in Paragraph 96, violated 40 CFR § 112.3.

**COUNT 5 - McNown Lease**

98. The allegations made in paragraph 8 and paragraphs 42 through 49 are herein incorporated by reference and re-alleged.

99. Respondent did not prepare a SPCC plan for the facility.

100. 40 CFR § 112.3 requires that the owner or operator of an SPCC-regulated facility must prepare an SPCC plan that is in accordance with the requirements of 40 CFR § 112.7 and any other applicable section of the SPCC regulations.

101. Respondent's failure to prepare an SPCC plan for the McNown lease facility in accordance with the requirements of 40 CFR Part 112, as described in Paragraph 100, violated 40 CFR § 112.3.

**COUNT 6 - Moon Lease**

102. The allegations made in paragraph 8 and paragraphs 50 through 57 are herein incorporated by reference and re-alleged.

103. Respondent did not prepare a SPCC plan for the facility.

104. 40 CFR § 112.3 requires that the owner or operator of an SPCC-regulated facility must prepare an SPCC plan that is in accordance with the requirements of 40 CFR § 112.7 and any other applicable section of the SPCC regulations.

105. Respondent's failure to prepare an SPCC plan for the Moon lease facility in accordance with the requirements of 40 CFR Part 112, as described in Paragraph 104, violated 40 CFR § 112.3.

**COUNT 7 - Vigle Lease**

106. The allegations made in paragraph 8 and paragraphs 58 through 65 are herein incorporated by reference and re-alleged.

107. Respondent did not prepare a SPCC plan for the facility.

108. 40 CFR § 112.3 requires that the owner or operator of an SPCC-regulated facility must prepare an SPCC plan that is in accordance with the requirements of 40 CFR § 112.7 and any other applicable section of the SPCC regulations.

109. Respondent's failure to prepare an SPCC plan for the Vigle lease facility in accordance with the requirements of 40 CFR Part 112, as described in Paragraph 108, violated 40 CFR § 112.3.

**COUNT 8 - Wiershing B Lease**

110. The allegations made in paragraph 8 and paragraphs 66 through 73 are herein incorporated by reference and re-alleged.

111. Respondent did not prepare a SPCC plan for the facility.

112. 40 CFR § 112.3 requires that the owner or operator of an SPCC-regulated facility must prepare an SPCC plan that is in accordance with the requirements of 40 CFR § 112.7 and any other applicable section of the SPCC regulations.

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

**COUNT 9 - Grundy B Lease**

114. The allegations made in paragraph 8 and paragraphs 74 through 81 are herein incorporated by reference and re-alleged.

115. Respondent did not prepare a SPCC plan for the facility.

116. 40 CFR § 112.3 requires that the owner or operator of an SPCC-regulated facility must prepare an SPCC plan that is in accordance with the requirements of 40 CFR § 112.7 and any other applicable section of the SPCC regulations.

117. Respondent's failure to prepare an SPCC plan for the facility in accordance with the requirements of 40 CFR Part 112, as described in Paragraph 116, 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, Respondent shall pay a penalty of \$27,000.00 as set forth in Paragraph 2 of the Final Order and has prepared an SPCC plan that covers all of the facilities in accordance with the requirements of 40 CFR Part 112.

10. Respondent understands that failure to pay any portion of the civil penalty on the date the same is due may result in the commencement of a civil action in Federal District Court to collect said penalty, along with interest thereon at the applicable statutory rate.

11. 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.

### **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 Twenty-seven Thousand Dollars (\$27,000.00).

2. Payment of the penalty shall be due upon the effective date of the Final Order and paid by a cashier's or certified check made payable to the "Environmental Protection Agency" with a reference or notation on the check: Docket CWA-07-2008-0091/Oil Spill Liability Trust Fund – 311. Please remit the payment to:

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

Copies of the check 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.

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

#### **B. Parties Bound**

4. 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**

5. 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.

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

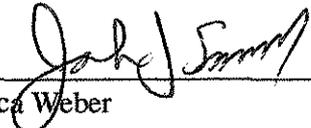
7. The headings in this Consent Agreement and Final Order are for convenience of reference only and shall not affect interpretation of this Consent Agreement and Final Order.

COMPLAINANT:  
U.S. ENVIRONMENTAL PROTECTION AGENCY

\_\_\_\_\_  
Date

11/20/08

\_\_\_\_\_  
Date

for   
\_\_\_\_\_  
Rebecca Weber  
Director  
Air and Waste Management Division

  
\_\_\_\_\_  
James D. Stevens, Assistant Regional Counsel

Consent Agreement and Final Order  
Richard Soule  
CWA-07-2008-0091

17

RESPONDENT:  
Richard Soule

11-17-08  
Date

Richard Soule  
Richard Soule

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



Robert Patrick  
Regional Judicial Officer

Date January 5, 2009

IN THE MATTER OF Richard Soule, Respondent  
Docket No. CWA-07-2008-0091

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. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Richard Soule  
822 E. River  
Eureka, Kansas 67045

Dated: 1/6/09

  
\_\_\_\_\_  
Kathy Robinson  
Hearing Clerk, Region 7