

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX

IN THE MATTER OF	CWA SECTION 311 CLASS II
Vital Energy, Inc.	CONSENT AGREEMENT
Respondent.	AND FINAL ORDER PURSUANT TO 40 C.F.R. §§ 22.13(b) and 22.18
	Docket No. OPA-09-2018-0005

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, Delegation 2-29 (April 16, 1984), who has in turn delegated them to the Director of the Enforcement Division (“Complainant”), Delegation R9-2-52A (March 8, 2017).
2. Complainant initiates this proceeding against Vital Energy, Inc. (“Respondent”) for alleged violations of Section 311(j) of the Act, 33 U.S.C. § 1321(j), and its implementing regulations, at the Guam Power Authority Piti Bulk Fuel Terminal in Piti, Guam (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. 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

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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 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 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 Act, 33 U.S.C. § 1251 *et seq.*, which set forth certain procedures, methods and requirements, including requirements for Spill Prevention, Control, and Countermeasure (“SPCC”) planning, applicable to an owner or operator of an onshore facility, which, due to its location, reasonably could be expected to discharge oil into or on 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.
8. “Navigable waters” are defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7) and 40 C.F.R. § 112.2 (1993).
9. 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 has determined that the quantities of oil that may be harmful to the public health or welfare or the environment of the United States include discharges of oil that cause 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.

C. General Allegations

10. Respondent operated the Facility from May 1, 2012 to September 30, 2017. At the time of an EPA inspection conducted on August 3, 2015, Respondent was the “owner or operator” within the meaning of Section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6), of the Facility, a petroleum storage facility.
11. Vital Energy, Inc. is a corporation registered to conduct business in Guam. 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.

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12. The Facility is “non-transportation-related” within the meaning of 40 C.F.R. § 112.2.
13. 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.
14. Respondent, at the time of EPA’s August 3, 2015 inspection, was engaged in onshore bulk storage and distribution of fuel oil.
15. The Facility had, at the time of inspection, several above-ground oil storage tanks with an aggregate maximum above-ground oil storage capacity of approximately 22,500,000 gallons.
16. The Facility is in close proximity to “navigable waters” of the United States within the meaning of Section 502(7) of the Act, U.S.C. § 1362(7) and 40 C.F.R. § 112.2 (1993); specifically, the Facility is located approximately ninety (90) yards from the Piti Channel. The Piti Channel discharges to Apra Harbor, which in turn connects to the Philippine Sea and the Pacific Ocean. The Piti Channel and Apra Harbor are “navigable waters” 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 (1993).
17. The Facility is a non-transportation-related facility that, due to its location, could reasonably have been expected, at the time of inspection, to discharge oil from an above-ground container to a navigable water of the United States or its adjoining shorelines in a harmful quantity, and is therefore subject to the Oil Pollution Prevention regulations at 40 C.F.R. Part 112.

D. Alleged Violations

Count 1

(failure to have an SPCC Plan reviewed and certified by a licensed Professional Engineer)

18. Paragraphs 1 through 17, above, are incorporated herein by this reference as if they were set forth here in their entirety.
19. 40 C.F.R. § 112.3(d) requires that the owner or operator of an SPCC-regulated facility have a licensed Professional Engineer (“PE”) who is familiar with the SPCC regulations, and through a visit and personal examination or through a visit and examination by his agent is also familiar with the facility, review and certify any SPCC Plan as having been prepared in accordance with good engineering practice, including consideration of

applicable industry standards, and in accordance with the requirements of the SPCC regulations.

20. Based on information gathered during and subsequent to its inspection, EPA determined that from September 30, 2012 to April 5, 2016, Respondent did not have an SPCC Plan that was reviewed and certified by a licensed PE.
21. Respondent's failure to have SPCC plan that was reviewed and certified by a licensed PE violated 40 C.F.R. § 112.3(d).

Count 2
(failure to perform required internal tank inspections)

22. Paragraphs 1 through 17, above, are incorporated herein by this reference as if they were set forth here in their entirety.
23. 40 C.F.R. § 112.8(c)(6) requires owners or operators to test or inspect each aboveground container for integrity on a regular schedule and whenever material repairs are made. Owners or 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, taking into account container size, configuration, and design.
24. The appropriate industry standard for internal tank inspections of the Facility is API 653, which generally recommends internal inspections every 10 years. Per the Facility's SPCC Plan, API 653 internal inspections of tanks 1935 and 1934 were due in March 2014 and June 2016, respectively. Respondent asserts it was aware that required API 653 internal inspections of tanks 1934 and 1935 were due and proposed such inspections to be completed to the owner of the Facility. Respondent asserts that the owner of the Facility did not grant permission to have the internal inspections of tanks 1934 and 1935 performed. Therefore, between September 30, 2012 and September 30, 2017, Respondent did not perform required API 653 internal inspections of tanks 1934 and 1935 at the Facility in accordance with industry standards and the Facility's SPCC Plan.
25. Respondent's failure to perform required API 653 internal inspections of tanks 1934 and 1935 in accordance with industry standards violated 40 C.F.R. § 112.8(c)(6).

Count 3
(failure to perform required external tank inspections)

26. Paragraphs 1 through 17, above, are incorporated herein by this reference as if they were set forth here in their entirety.
27. 40 C.F.R. §112.8(c)(6) requires owners or operators to test or inspect each aboveground container for integrity on a regular schedule and whenever material repairs are made. Additionally, owners or operators must frequently inspect the outside of the container for signs of deterioration, discharges, or accumulation of oil inside diked areas. Owners or operators must keep records to document these inspections.
28. At the time of the inspection on August 3, 2015, Respondent could not and did not produce complete or sufficient records to evidence that it had performed required external inspections on all tanks at the Facility in accordance with industry standards.
29. Respondent's failure to perform required external inspections on all storage tanks at the Facility in accordance with industry standards violated 40 C.F.R. § 112.8(c)(6).

Count 4
(storing diesel fuel in a tank not suitable for that purpose)

30. Paragraphs 1 through 17, above, are incorporated herein by this reference as if they were set forth here in their entirety.
31. 40 C.F.R. § 112.8(c)(1) requires that owners or operators not use a container for the storage of oil unless its material and construction are compatible with the material stored and the conditions of storage such as pressure and temperature.
32. During the August 3, 2015 inspection, EPA observed that Respondent was storing diesel in an aboveground tank that had no records for formal inspections. The SPCC Plan dated April 2016 noted that the diesel tank should have a formal external inspection as soon as possible. A formal inspection was performed in September 2016 and the tank was found to be a converted aluminum diesel fuel tanker, with an undersized working vent and no emergency vent. Aluminum is not suitable for storage of fuel due to its low melting point. The use of steel fuel piping resulted in excessive corrosion of the pipes due to galvanic corrosion, some of which were leaking.
33. Respondent's storing diesel in a tank not suitable for that purpose violated 40 C.F.R. § 112.8(c)(1).

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E. Civil Penalty

34. 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, up to a maximum penalty of \$25,000. Pursuant to the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and 40 C.F.R. Part 19, the administrative assessment of civil penalties may not exceed \$18,477 per day for each day during which the violation continues, up to a maximum Class II civil penalty of \$230,958. *See also* 83 Fed. Reg. 1190 (January 10, 2018).
35. Respondent consents to the assessment of and agrees to pay a civil penalty of **EIGHTY-SIX THOUSAND EIGHT HUNDRED SEVENTY-FIVE DOLLARS (\$86,875)** 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

36. 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 (and any additional civil penalty required under Section H), and any delays in performance and/or stipulated penalties have 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.
37. 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.
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.

G. Payment of Civil Penalty

39. Respondent shall submit payment of the EIGHTY-SIX THOUSAND EIGHT HUNDRED SEVENTY-FIVE DOLLARS (\$86,875) within thirty (30) days of the Effective Date as specified in Paragraph 62 of this CA/FO.

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40. Respondent shall make required payments by cashier's check, certified check or electronic funds transfer ("EFT") payable to the "U.S. Environmental Protection Agency," with the notation "OSLTF - 311" and the docket number of this CA/FO. Payment by check shall be addressed to:

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

If paying by EFT, the Respondent shall transfer the payment to:

Federal Reserve Bank of NY
ABA 021030004
Account 68010727
33 Liberty Street
New York, N.Y. 10045

Field Tag 4200 of the EFT message shall read "D 68010727 Environmental Protection Agency."

41. **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 with a transmittal letter, indicating Respondent's name, the case title, and docket number, to each of the following:

Steven Armsey
Regional Hearing Clerk
U.S. Environmental Protection Agency Region 9
75 Hawthorne Street (ORC-1)
San Francisco, California 94105

and to:

Janice Witul
U.S. Environmental Protection Agency Region 9
75 Hawthorne Street (ENF-3-2)
San Francisco, California 94105

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42. 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 40 and 41 above.
43. Respondent's failure to make timely payment in full within the time provided in Paragraph 39 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.
44. 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. Delay in Performance/Stipulated Penalties

45. In the event Respondent fails to meet any requirement set forth in this CA/FO, Respondent shall pay stipulated penalties as set forth below. Compliance by Respondent shall include completion of any activity under this CA/FO in a manner acceptable to EPA and within the time specified in and approved under this CA/FO.
46. For failure to submit a payment to EPA by the time required in this CA/FO: FIVE HUNDRED DOLLARS (\$500) per day for the first to the fifteenth day of delay, ONE THOUSAND DOLLARS (\$1,000) per day for the sixteenth to the thirtieth day of delay, and FIVE THOUSAND DOLLARS (\$5,000) per day for each day of delay thereafter.
47. Stipulated penalties shall begin to accrue on the day after performance is due, and shall continue to accrue through the final day until performance is complete. Respondent shall pay stipulated penalties within fifteen (15) days of receipt of a written demand by Complainant for such penalties. Payment of stipulated penalties shall be made in accordance with the procedure set forth for payment of penalties in Section G of this CA/FO.
48. If a stipulated penalty is not paid in full, interest shall begin to accrue on the unpaid balance at the end of the fifteen-day period at the current rate published by the United States Treasury, as described at 40 C.F.R. § 13.11. Complainant reserves the right to take

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any additional action, including but not limited to, imposition of civil penalties to enforce compliance with this CA/FO or the Act and its implanting regulations.

49. The payment of stipulated penalties specified in this Section shall not be deducted by Respondent or any other person or entity for federal, state, or local taxation purposes.
50. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this CA/FO.

I. Admissions and Waivers of Rights

51. For the purposes of this proceeding, Respondent admits and agrees that EPA has jurisdiction and authority over the subject matter of the action commenced in this CA/FO. Respondent consents to and agrees not to contest EPA's jurisdiction and authority to enter into and issue this CA/FO and to enforce its terms. Further, Respondent will not contest EPA's jurisdiction and authority to compel compliance with this CA/FO in any enforcement proceedings, either administrative or judicial, or to impose sanctions for violations of this CA/FO.
52. Respondent neither admits nor denies any factual allegations set forth herein and does not admit any liability arising out of the occurrences alleged in this CA/FO. Respondent hereby waives any rights Respondent may have to contest the allegations set forth in this CA/FO, waives any rights Respondent may have to a hearing on any issue relating to the factual allegations or legal conclusions set forth in this CA/FO, including without limitation a hearing, and hereby consents to the issuance of this CA/FO without adjudication. In addition, Respondent hereby waives any rights Respondent may have to appeal the Final Order attached to this Consent Agreement and made part of this CA/FO.

J. Reservation of Rights

53. 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 Act, 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

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has under the Act, or any other statutory, regulatory, or common law enforcement authority of the United States, except as otherwise set forth herein.

54. 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. This CA/FO is not intended to be nor shall it be construed as a permit. This CA/FO does not relieve Respondent of any obligation to obtain and comply with any local, state, or federal permits nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit.
55. The entry of this CA/FO and Respondent's consent to comply shall not limit or otherwise preclude EPA from taking additional enforcement actions should EPA determine that such actions are warranted except as it relates to those matters resolved by 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.
56. EPA reserves its right to seek reimbursement from Respondent for such additional costs as may be incurred by the United States in the event of delay of performance as provided by this CA/FO.

K. Miscellaneous

57. This CA/FO may be amended or modified only by written agreement executed by both EPA and Respondent.
58. The headings in this CA/FO are for convenience of reference only and shall not affect interpretation of this CA/FO.
59. 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.
60. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in this proceeding.
61. EPA and Respondent consent to entry of this CA/FO without further notice.

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L. Effective Date

62. 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.

M. Public Notice

63. Pursuant to Section 311(b)(6)(C) of the Act, 33 U.S.C. § 1321(b)(6)(C), 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. Complainant reserves the right to withhold or withdraw consent to this Consent Agreement if public comments disclose relevant and material information that was not considered by Complainant in entering into this Consent Agreement. Respondent may withdraw from this Consent Agreement only upon receipt of written notice from EPA that it no longer supports entry of this Consent Agreement.

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IT IS SO AGREED,

For Respondent:

//s//

Name: Maderson Ramon
Title: General Manager, VEI

Date: 7/24/2018

For Complainant U.S. Environmental Protection Agency:

//s//

Kathleen H. Johnson
Director, Enforcement Division
U.S. Environmental Protection Agency Region 9

Date: 8/7/2018

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FINAL ORDER

Pursuant to Section 311(b)(6) of the Clean Water Act, 33 U.S.C. § 1321(b)(6) and the delegated authority of the undersigned, and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits,” codified at 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order.

The Respondent is ordered to comply with the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), this order shall become effective upon filing, and shall constitute a full adjudication of the allegations stated in the Consent Agreement.

Date: _____

Steven L. Jawgiel
Regional Judicial Officer
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, CA 94105