

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

**BEFORE THE ADMINISTRATOR**

<b>In the Matter of</b>	)	
	)	Docket No. CWA-07-2023-0057
Colt Energy, Inc.,	)	
	)	COMPLAINT AND
Respondent	)	CONSENT AGREEMENT /
	)	FINAL ORDER
Proceedings under Section	)	
311(b)(6)(B)(ii) of the Clean Water	)	
Act, 33 U.S.C. § 1321(b)(6)(B)(ii)	)	

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1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 311(b)(6) of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act (CWA), 33 U.S.C. § 1321(b)(6), 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 and the Revocation/Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. Part 22.

2. Complainant, the United States Environmental Protection Agency Region 7 (EPA), and Respondent, Colt Energy, Inc., have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

3. The authority to act under Section 311(b)(6)(B)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(ii), 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 the authority under Section 311(b)(6) to the Director of the Enforcement and Compliance Division (Complainant).

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

**Statutory and Regulatory Framework**

5. The objective of the CWA, 33 U.S.C. § 1251 et seq., is to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.”

6. Section 311(j)(1)(C) of the CWA, 33 U.S.C. § 1321(j)(1)(C), provides in part that the President shall issue regulations establishing procedures, methods, and equipment and other

requirements for equipment to prevent discharges of oil and hazardous substances from vessels and from onshore facilities, and to contain such discharges.

7. To implement Section 311(j)(1)(C), the EPA promulgated regulations to prevent oil pollution at 40 C.F.R. Part 112 that set forth the requirements for the preparation and implementation of Spill Prevention, Control, and Countermeasure (SPCC) Plans. The requirements of 40 C.F.R. Part 112 apply to owners and operators of non-transportation-related onshore facilities with an aboveground storage capacity of 1,320 gallons or greater who are engaged in gathering, storing, transferring, distributing, using, or consuming oil or oil products which, due to their locations, could reasonably be expected to discharge oil in quantities that may be harmful into or upon the navigable waters of the United States or adjoining shorelines.

### **Allegations of Fact and Conclusions of Law**

8. Respondent is a Kansas corporation engaged in oil and gas exploration, development, and production. Respondent owns and operates approximately 64 facilities producing oil and gas in eastern Kansas.

9. Respondent is a corporation, so is a person within the meaning of Section 311(a)(7) of the CWA, 33 U.S.C. § 1321(a)(7), and 40 C.F.R. § 112.2.

10. At all times relevant to this action, Respondent was the owner and/or operator, within the meaning of Section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6), and 40 C.F.R. § 112.2, of three oil production facilities in Anderson County, Kansas, known as the “KHVL/Haldeman Facility,” the “JCB & Overall Facility,” and the “Unit 2 Facility” (the “Facilities”) at the following approximate locations:

- a. KHVL/Haldeman Facility: Section 16, Township 26 South, Range 18 East, approximately 3 miles southwest of Colony, Kansas;
- b. JCB & Overall Facility: Section 29, Township 22 South, Range 19 East, approximately 2.75 miles northeast of Colony, Kansas; and
- c. Unit 2 Facility: Section 28, Township 22 South, Range 19 East, approximately 2.25 miles northeast of Colony, Kansas.

11. The Facilities include production wells, flowlines, separator units, crude oil tanks, produced water tanks, and tank batteries.

12. The Facilities have the following estimated aggregate above-ground storage capacities of oil and produced water:

KHVL/Haldeman Facility	32,760 gallons
JCB & Overall Facility	56,280 gallons
Unit 2 Facility	18,060 gallons

13. The KHVL/Haldeman Facility is within 50 feet of an unnamed creek that flows 200 feet to Martin Creek, a perennial stream. The JCB & Overall Facility and the Unit 2 Facility both discharge to unnamed drainage ditches that flow to Deer Creek.

14. Both Martin Creek and Deer Creek are navigable waters of the United States within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7).

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

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

17. The Facilities are “onshore facilities” 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.

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

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

20. On July 2, 2021, representatives of the EPA inspected the JCB & Overall Facility to determine compliance with the SPCC regulations of 40 C.F.R. Part 112. A copy of this inspection report was transmitted to Respondent on or about July 29, 2021.

21. On November 4, 2021, representatives of the EPA inspected the KHVL/Haldeman and Unit 2 Facilities to determine compliance with the SPCC regulations of 40 C.F.R. Part 112. Copies of these inspection reports were transmitted to Respondent on or about December 2, 2021.

### **Findings of Violation**

#### **Failure to Fully Prepare and Implement an SPCC Plan**

22. 40 C.F.R. § 112.3 requires Respondent to fully prepare and implement an SPCC plan. As part of implementing the SPCC plan, Respondent is required to perform routine checks and maintenance on all SPCC regulated facilities to maintain compliance with the CWA.

23. EPA’s July 2, 2021, and November 4, 2021, inspections documented Respondent’s failure to fully prepare and implement an SPCC plan at the Facilities.

24. Respondent’s errors and omissions at the KHVL/Haldeman Facility included the following:

- a. Respondent failed to complete a review and evaluation of the SPCC plan at least once every five years, in violation of 40 C.F.R. § 112.5(b). Respondent's SPCC plan for this facility was completed in March of 2015, but was not reviewed until October of 2021.
- b. The facility diagram included in Respondent's SPCC plan did not include all transfer stations and connecting pipes, in violation of 40 C.F.R. § 112.7(a)(3).
- c. Respondent's SPCC plan did not include the correct storage capacities of all fixed and mobile containers at the facility, in violation of 40 C.F.R. § 112.7(a)(3)(i).
- d. Respondent did not keep records of all inspections and tests conducted in accordance with the SPCC plan and signed by the appropriate supervisor or inspector for a period of three years, in violation of 40 C.F.R. § 112.7(e).
- e. Respondent failed to prepare and implement a written program of flowline maintenance that addresses procedures to ensure compatibility, visually inspect and test flowlines and any associated appurtenances on a periodic and regular schedule, take corrective action based on regularly scheduled inspections, tests, or evidence of discharge, and promptly remediate any accumulations of oil discharges, in violation of 40 C.F.R. §§ 112.9(b) and 112.9(d). The available inspection records, which cover the month of October 2021, omit elements required by 40 C.F.R. §§ 112.9(b)(1), (b)(2), and (c)(3) and by 40 C.F.R. §§ 112.9(d)(1), (d)(2), (d)(4)(ii), and (d)(4)(iii).
- f. Respondent did not safely confine the drainage from one or more undiked areas in a catchment basin or holding pond in violation of 40 C.F.R. § 112.9(c)(2).
- g. Respondent's SPCC plan did not include an adequate oil spill contingency plan following the provisions of 40 C.F.R. Part 109, including pre-designation of a properly qualified oil discharge response coordinator and specific and well-defined procedures to facilitate recovery of damages and enforcement measures as provided for by State and local statutes and ordinance, as required by 40 C.F.R. §§ 109.5(d)(2) and (e), in violation of 40 C.F.R. §§ 112.7(d)(1) and 112.9(d)(3)(i).

25. Respondent's errors and omissions at the JCB & Overall Facility include the following:

- a. Respondent failed to fully prepare and implement an SPCC plan within six months of beginning operations at the facility, in violation of 40 C.F.R. § 112.3(a).
- b. Respondent failed to provide appropriate containment and/or diversionary structures for bulk storage containers, qualified oil-filled operational equipment, piping and related appurtenances, and transfer areas, equipment, and activities, in violation of 40 C.F.R. § 112.7(c).
- c. Respondent failed to keep records of all inspections and tests conducted in accordance with the SPCC plan and signed by the appropriate supervisor or inspector for a period of three years, in violation of 40 C.F.R. § 112.7(e).

d. Respondent failed to (1) train oil-handling personnel in the operation and maintenance of equipment to prevent discharges, discharge procedure protocols, applicable pollution control laws, rules, and regulations, general facility operations; and the contents of the facility SPCC Plan; (2) designate a person at each applicable facility who is accountable for discharge prevention and who reports to facility management; and (3) schedule and conduct discharge prevention briefings for your oil-handling personnel at least once a year to assure adequate understanding of the SPCC Plan for that facility, in violation of 40 C.F.R. § 112.7(f)(3).

e. Respondent failed to keep adequate records of drainage of uncontaminated rainwater from the diked area into a storm drain or discharge of an effluent into an open watercourse, lake, or pond, in violation of 40 C.F.R. §§ 112.8(c)(3)(iv) and 112.9(b)(1).

f. Respondent failed to inspect at regularly scheduled intervals field drainage systems (such as drainage ditches or road ditches), and oil traps, sumps, or skimmers, for an accumulation of oil that may have resulted from any small discharge, and to promptly remove any accumulations of oil, in violation of 40 C.F.R. § 112.9(b)(2).

g. Respondent did not, periodically and upon a regular schedule, visually inspect containers for deterioration and maintenance needs, including foundation and supports of each container on or above the surface of the ground, in violation of 40 C.F.R. § 112.9(c)(3).

h. Respondent failed to prepare and implement a written program of flowline maintenance that addresses procedures to ensure compatibility, visually inspect and test flowlines and any associated appurtenances on a periodic and regular schedule, take corrective action based on regularly scheduled inspections, tests, or evidence of discharge, and promptly remediate any accumulations of oil discharges, in violation of 40 C.F.R. §§ 112.9(b) and 112.9(d).

26. Respondent's errors and omissions at the Unit 2 Facility include the following:

a. Respondent failed to fully prepare and implement an SPCC plan within six months of beginning operations at the facility, in violation of 40 C.F.R. § 112.3(a).

b. Respondent failed to provide appropriate containment and/or diversionary structures for qualified oil-filled operational equipment, piping and related appurtenances, and transfer areas, equipment, and activities, in violation of 40 C.F.R. § 112.7(c).

c. Respondent did not keep all records of inspections and tests conducted in accordance with the SPCC plan and signed by the appropriate supervisor or inspector for a period of three years, in violation of 40 C.F.R. § 112.7(e).

d. Respondent failed to keep adequate records of drainage of uncontaminated rainwater from the diked area into a storm drain or discharge of an effluent into an open watercourse, lake, or pond, in violation of 40 C.F.R. §§ 112.8(c)(3)(iv) and 112.9(b)(1).

e. Respondent failed to inspect at regularly scheduled intervals field drainage systems (such as drainage ditches or road ditches), and oil traps, sumps, or skimmers, for an accumulation of oil that may have resulted from any small discharge, and to promptly remove any accumulations of oil, in violation of 40 C.F.R. § 112.9(b)(2).

f. Respondent failed to provide a secondary means of containment for the entire capacity of the largest single container and sufficient freeboard to contain precipitation and to safely confine drainage from undiked areas in a catchment basin or holding pond, in violation of 40 C.F.R. § 112.9(c)(2).

g. Respondent failed to, periodically and upon a regular schedule, visually inspect containers for deterioration and maintenance needs, including foundation and supports of each container on or above the surface of the ground, in violation of 40 C.F.R. § 112.9(c)(3).

h. Respondent failed to prepare and implement a written program of flowline maintenance, that addresses procedures to ensure compatibility, visually inspect and test flowlines and any associated appurtenances on a periodic and regular schedule, take corrective action based on regularly scheduled inspections, tests, or evidence of discharge, and promptly remediate any accumulations of oil discharges, in violation of 40 C.F.R. §§ 112.9(b) and 112.9(d).

27. Respondent's failure to prepare and fully implement SPCC plans at the Facilities is a violation of 40 C.F.R. § 112.7 and 40 C.F.R. § 112.3.

### **Consent Agreement**

#### **General Provisions**

28. Respondent and the EPA agree to the terms of this CAFO. Respondent agrees to comply with the terms of this CAFO.

29. 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 any portion of this CAFO.

30. Respondent and Complainant agree to bear their own costs and attorney's fees incurred as a result of this action.

31. Respondent agrees that, in settlement of the claims alleged in this CAFO, Respondent shall pay a civil penalty of \$60,000, as set forth in the Penalty section below.

32. Respondent admits the jurisdictional allegations of this CAFO 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 CAFO.

33. Respondent neither admits nor denies the factual allegations and legal conclusions asserted by the EPA.

34. Respondent certifies by the signing of this CAFO that Respondent is currently in and will remain in compliance with the terms of the Administrative Order on Consent (Docket No. CWA-07-2022-0065).

35. The effect of settlement is conditional upon the accuracy of the Respondent's representations to the EPA in this CAFO.

*Reservation of Rights*

36. This CAFO addresses all civil and administrative claims for the CWA violations alleged above. With respect to matters not addressed in this CAFO, the EPA reserves the right to take any enforcement action pursuant to the CWA and its implementing regulations, or any other available legal authority, including without limitation, the right to seek injunctive relief, penalties and damages.

37. Nothing contained in this CAFO shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

38. Notwithstanding any other provision of this CAFO, the EPA reserves the right to enforce the terms of this CAFO by initiating a judicial or administrative action pursuant to Section 311 of the CWA, 33 U.S.C. § 1321, and to seek penalties against Respondent or to seek any other remedy allowed by law.

*Penalty*

39. Respondent agrees to pay a civil penalty of **Sixty Thousand Dollars (\$60,000)** pursuant to the authority of Section 311 of the CWA, 33 U.S.C. § 1321, within thirty (30) days of the Effective Date of this CAFO.

40. The payment of penalties must reference docket number CWA-07-2022-0065 and be remitted to:

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

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

41. Copies of the checks or verification of another payment method for the penalty payments remitted shall be emailed to:

Natasha Goss  
Attorney Advisor  
U.S. Environmental Protection Agency Region 7  
[goss.natasha@epa.gov](mailto:goss.natasha@epa.gov)

and

Regional Hearing Clerk  
U.S. Environmental Protection Agency Region 7  
*r7\_hearing\_clerk\_filings@epa.gov.*

42. Should the civil penalty not be paid as provided above, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. The interest will be assessed on the overdue amount from the due date through the date of payment.

43. Respondent understands that its failure to timely pay any portion of the civil penalty described herein may result in the commencement of a civil action in the United States District Court for the District of Kansas to recover the full remaining balance, along with penalties and accumulated interest.

44. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this CAFO shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

*Signatories*

45. The undersigned for each party has the authority to bind each respective party to the terms and conditions of this CAFO. The CAFO may be signed in part and counterpart by each party.

*Parties Bound*

46. This CAFO 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 CAFO.

*Executed Agreement Filed*

47. This executed Complaint and CAFO shall be filed with the Regional Hearing Clerk, U.S. Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219.

*Electronic Service*

48. Respondent consents to receiving the filed CAFO electronically at the following email address: *davidrtripp1946@gmail.com.*



**For the Respondent, Colt Energy, Inc.:**

Signature: DP

Date: 3/9/23

Name: DAVID POWELL

Title: PRESIDENT

**For the Complainant, U.S. Environmental Protection Agency Region 7:**

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David Cozad  
Director  
Enforcement and Compliance Assurance Division

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Natasha Goss  
Attorney-Advisor  
Office of Regional Counsel

**FINAL ORDER**

Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits, 40 C.F.R. Part 22, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

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

IT IS SO ORDERED.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Karina Borromeo  
Regional Judicial Officer

**Certificate of Service**

I certify that on the date noted below I delivered a true and correct copy of this Consent Agreement and Final Order by electronic mail, to:

For Complainant:

Natasha Goss  
Office of Regional Counsel  
U.S. Environmental Protection Agency Region 7  
*goss.natasha@epa.gov*

Mark Aaron  
Enforcement and Compliance Assurance Division  
U.S. Environmental Protection Agency Region 7  
*aaron.mark@epa.gov*

For Respondent:

David Powell  
President, Colt Energy, Inc.  
6299 Nall Avenue, Suite 100  
Mission, Kansas 66202  
*dpowell@coltenergy.com*

Dave Tripp  
Counsel for Respondent  
David R. Tripp Law Firm, LLC  
10320 Howe Lane, Leawood, KS. 66206  
*davidrtripp1946@gmail.com*

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature