

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

BEFORE THE ADMINISTRATOR

In the Matter of:) COMPLAINT, CONSENT AGREEMENT
) AND FINAL ORDER
 Empire Energy E&P, LLC)
) Docket No. CWA-07-2020-0113
 Respondent)

COMPLAINT

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), 33 U.S.C. § 1321(b)(6), 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 U.S. Environmental Protection Agency Region 7 (“EPA”) and Respondent, Empire Energy E&P, LLC (“Respondent”), 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. This Complaint and Consent Agreement/Final Order serves as notice that EPA has reason to believe that Respondent has violated Sections 311(b)(3) and 311(j) of the CWA, 33 U.S.C. §§ 1321(b)(3) and 1321(j), and regulations promulgated thereunder.

Parties

4. The Respondent is Empire Energy E&P, LLC, a foreign limited liability company engaged in the manufacture, transportation and storage of oil products, and is registered and authorized to conduct business in the state of Kansas.

5. The authority to take action under Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6), 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 Enforcement and Compliance Assurance Division of EPA Region 7 (collectively referred to as the “Complainant”).

Statutory and Regulatory Framework

6. Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), prohibits the discharge of oil or hazardous substances into or upon the navigable waters of the United States or adjoining shorelines in such quantities that have been determined may be harmful to the public health or welfare or environment of the United States.

7. Section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1), and 40 C.F.R. § 112.2 define "oil" as "oil of any kind or in any form, including, but not limited to, petroleum [or] fuel oil... "

8. Section 311(b)(4) of the CWA, 33 U.S.C. § 1321(b)(4), authorizes EPA to promulgate a regulation to define what discharges of oil may be harmful to the public health or welfare or environment of the United States. 40 C.F.R. § 110.3 defines such discharges to include discharges of oil that violate applicable water quality standards or cause a film or a 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 the adjoining shorelines.

9. 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 offshore facilities, and to contain such discharges."

10. To implement Section 311(j)(1)(C), 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 Plans ("SPCC Plans").

11. 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, 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. In pertinent part, 40 C.F.R. § 112.8(c)(2) requires that secondary containment for oil storage be sufficiently impervious to contain a spill.

General Allegations

12. As a limited liability company, 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.

13. 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 two oil production facilities, or leases, known as the "Bemis-Shutts Lease" and

“Carmichael-Kollman Lease” (collectively, “Facilities”), located approximately 16 miles north of Hays, in Ellis County, Kansas, at the following approximate locations:

- a. Bemis-Shutts: 39.093059°, -99.246295°; approximately 0.4 mile west of Saline River Road and Hadley Range Avenue intersection; and
- b. Carmichael-Kollman: 39.102831°, -99.248908°; approximately 0.3 mile east of Highway 281 and Saline River Road intersection, south side of Saline River Road.

14. The Bemis-Shutts Lease facility includes production wells, flowlines, storage tank battery consisting of four above ground storage tanks for oil and four other vessels used for oil/water separation, produced water tanks, and other oil filled equipment. The Bemis-Shutts Lease facility has an estimated aggregate above-ground storage capacity of 55,020 gallons of oil and produced water.

15. The Carmichael-Kollman Lease facility includes production wells, flowlines, storage tank battery consisting of three above ground storage tanks for oil and two other above ground storage tanks used for oil/water separation, produced water tanks, and other oil filled equipment. The Carmichael-Kollman Lease facility has an estimated aggregate above-ground storage capacity of 42,420 gallons of oil and produced water.

16. The Facilities are located adjacent to the Saline River with surface drainage towards the Saline River. In addition, an oil field flowline associated with the Bemis-Shutts Lease facility crosses the Saline River. The Saline 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).

17. At all times relevant to this action, Respondent was engaged in storing, processing, using or consuming oil or oil products located at the Facilities.

18. The Bemis-Shutts Lease and Carmichael-Kollman Lease are non-transportation-related facilities within the meaning of 40 C.F.R. § 112 Appendix A, as incorporated by reference within 40 C.F.R. § 112.2.

19. The Bemis-Shutts Lease and Carmichael-Kollman Lease are onshore facilities 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.

20. The Bemis-Shutts Lease and Carmichael-Kollman Lease 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 are, therefore, each “an SPCC-regulated facility.”

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

22. On or about March 5, 2019, a spill of approximately 1 barrel of crude oil and 5 barrels of brine/produced water discharged out of an oil well flowline associated with the Bemis-Shutts Lease facility caused by an underground leak less than 10 feet from the Saline River (the “March 5, 2019, spill”).

23. The oil that discharged from the facility during the March 5, 2019, spill reached and caused the observable presence of oil and a sheen in the Saline River.

24. Following the March 5, 2019, spill, EPA and Kansas Corporation Commission (“KCC”) representatives inspected and/or obtained information about the facility and provided oversight to Respondent’s response to the spill.

25. On March 7, 2019, EPA conducted an inspection at the facility in order to determine compliance with the SPCC regulations of 40 C.F.R. Part 112 (“EPA Inspection”). A copy of EPA’s inspection report was transmitted to Respondent on or about April 29, 2019.

26. On or about May 22, 2019, a spill of approximately 0.5 barrel of crude oil and 9.5 barrels of brine/produced water discharged out of the same oil well flowline associated with Respondent’s Bemis-Shutts Lease facility at a break in the line where it crosses the Saline River as a result of the collapse of a suspension bridge (the “May 22, 2019, spill”).

27. The oil that discharged from the facility during the May 22, 2019, spill reached and caused the observable presence of oil and a sheen in the Saline River.

28. Following the May 22, 2019, spill, a KCC representative inspected and/or obtained information about the facility and provided oversight to Respondent’s response to the May 22, 2019, spill.

29. On June 7, 2019, Respondent submitted information by email to an EPA representative following the two reportable discharges described above within a twelve-month period pursuant to 40 CFR §112.4(a).

Alleged Violations

**Count 1:
Prohibited Discharge of Oil**

30. Complainant hereby incorporates the allegations contained in the paragraphs above, as if fully set forth herein.

31. Respondent's May 5, 2019, and May 22, 2019, discharges of oil from the Bemis-Shutts Lease facility caused a film or sheen upon the surface of the Saline River and/or adjoining shorelines, and, therefore, was in a quantity that has been determined may be harmful under 40 C.F.R § 110.3, which implements Section 311(b)(3) and (b)(4) of the Act, 33 U.S.C. § 1321(b)(3) and (b)(4).

32. Respondent's May 5, 2019, and May 22, 2019, discharges of oil from the Bemis-Shutts Lease facility into the Saline River and/or adjoining shorelines violated Section 311 (b)(3) of the Act, 33 U.S.C. § 1321(b)(3).

33. In accordance with Section 311(b)(6)(A)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(A)(ii), EPA may assess a civil penalty to any owner or operator in charge of any onshore facility who fails to comply with Section 311(b)(3) of CWA, 33 U.S.C. § 1321(b)(3).

**Count 2:
Violations of SPCC Program**

34. Complainant hereby incorporates the allegations contained in the paragraphs above, as if fully set forth herein.

35. Based on information gathered during EPA's Inspection and EPA's review of other available information, Respondent failed to fully prepare and implement an SPCC Plan at each facility, as required by 40 C.F.R. 112.3, as follows:

- a. At both Facilities, Respondent failed to include accurate information in the SPCC Plans' facility diagrams, including the locations of all tanks and containers, production and injection wellheads, test barrels, breakout tanks, portable containers, transfer areas, flowlines, and intra-facility gathering lines, in violation of 40 C.F.R. § 112.7(a)(3);
- b. At both Facilities, Respondent failed to describe a procedure adequate for reporting a discharge, in violation of 40 C.F.R. § 112.7(a)(4);
- c. At both Facilities, Respondent failed to list all scenarios of a reasonable potential for equipment failure, such as discharges from wellheads, breakout tanks, flowlines, or intra-facility gathering lines, and for discharges from transfers, failed to provide a prediction of the direction, rate of flow, and total quantity of oil, in violation of 40 C.F.R. § 112.7(b);
- d. At both Facilities, Respondent failed to describe secondary containment in the Plan, including for portable containers, production wellheads, transfer area at the tank battery, above-ground flowlines and buried flowlines, in violation of 40 C.F.R. § 112.7(c), or to clearly explain in the Plan why secondary containment measures are not practicable, in violation of 40 C.F.R. § 112.7(d);
- e. At both Facilities, Respondent failed to include an adequate oil spill contingency plan, as required by 40 C.F.R. §§ 112.7(d)(1) and 112.9(d)(3)(i), following the provisions of 40 C.F.R. Part 109, including failure to provide information specific to the Facilities for the components required by 40 C.F.R. §§ 109.5(b)(2)-(3),

109.5(c)(1)-(3), 109.5(d)(1), and 109(d)(5); and

- f. At both Facilities, Respondent failed to prepare and implement a written program of flowline maintenance, in violation of 40 C.F.R. § 112.9(d)(4), 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.

36. In accordance with Section 311(b)(6)(A)(ii) of CWA, 33 U.S.C. § 1321(b)(6)(A)(ii), EPA may assess a civil penalty to any owner or operator in charge of any onshore facility who fails to comply with any regulation issued under Section 311(j) of CWA, 33 U.S.C. § 1321(j).

CONSENT AGREEMENT

37. Respondent and the EPA agree to the terms of this Consent Agreement/Final Order.

38. Respondent admits the jurisdictional allegations of this Complaint and Consent Agreement/Final Order and agrees not to contest the EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of this Consent Agreement/Final Order.

39. Respondent neither admits nor denies the factual allegations and legal conclusions asserted by the EPA in this Complaint and Consent Agreement/Final Order.

40. Respondent waives its right to contest any issue of fact or law set forth above, and their right to appeal this Consent Agreement/Final Order.

41. Respondent and Complainant agree to conciliate the matters set forth in this Consent Agreement/Final Order without the necessity of a formal hearing and agree to bear their own costs and attorney's fees incurred as a result of this action.

42. Respondent consents to receiving the filed Consent Agreement and Final Order electronically at the following email address: thull@empireenergyusa.com.

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

44. Respondent understands and agrees that this Consent Agreement/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/Final Order.

Penalty Payment

45. Respondent agrees that, in settlement of the claims alleged in this Consent Agreement/Final Order, Respondent shall pay a civil penalty of **Thirty-Seven Thousand Dollars (\$37,000)** to be paid in full no later than 30 days after the effective date of this Consent Agreement/Final Order as set forth below.

46. Respondent shall pay the penalty identified above by certified or cashier's check made payable to "Environmental Protection Agency – OSLTF-311" with a reference to the case name and docket number CWA-07-2020-0113, and 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>.

47. Respondent shall simultaneously email copies of the transmittal letter and the check, as directed above, to the following:

Regional Hearing Clerk at: R7_Hearing_Clerk_Filings@epa.gov

Shane McCoin, at: mccoin.shane@epa.gov

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

49. Interest on any late payment will be assessed at the annual interest rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. The interest will be assessed on any overdue amount from the due date through the date of payment. Failure to pay the civil penalty when due may result in the commencement of a civil action in Federal District Court to collect said penalty, together with costs or interest.

Effect of Settlement and Reservation of Rights

50. Respondent's payment of the entire civil penalty pursuant to this Consent Agreement/Final Order resolves all civil and administrative claims for violations of the CWA alleged in this Complaint and Consent Agreement/Final Order. Complainant reserves the right to

take any enforcement action with respect to any other violations of the CWA or any other applicable law.

51. Nothing contained in this Consent Agreement/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.

52. Notwithstanding any other provision of this Consent Agreement/Final Order, the EPA reserves the right to enforce the terms of this Consent Agreement/Final Order 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.

53. With respect to matters not addressed in this Consent Agreement/Final Order, 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.

General Provisions

54. The Parties acknowledge that this Consent Agreement/Final Order is subject to the 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.

55. Pursuant to 40 C.F.R. § 22.31(b), this Consent Agreement/Final Order shall be effective after signature by the authorized regional official and upon filing with the Regional Hearing Clerk, U.S. Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219. All time periods herein shall be calculated therefrom in calendar days unless otherwise provided in this Consent Agreement/Final Order.

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

57. Respondent and Complainant agree that this Consent Agreement/Final Order may be signed in part and counterpart.

For the Complainant, United States Environmental Protection Agency Region 7:


Date

David Cozad
Director
Enforcement and Compliance Assurance Division

Date

Shane McCain
Office of Regional Counsel

For the Respondent, Empire Energy E&P, LLC:



Signature

9/23/2020

Date

TIMOTHY HULE

Name

VICE PRESIDENT

Title

FINAL ORDER

Pursuant to Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6), 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 a true and correct copy of the Complaint and Consent Agreement/Final Order was sent this day in the following manner to the addressees:

Copy emailed to Respondent:

Tim Hull, Vice President Appalachia Operations
Empire Energy E&P LLC
thull@empireenergyusa.com

Copy emailed to representatives for Complainant:

Shane McCain
EPA Region 7 Office of Regional Counsel
mccoin.shane@epa.gov

Mark Aaron
EPA Region 7 Enforcement and Compliance Assurance Division
aaron.mark@epa.gov

Date