

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2019 MAY -8 AM 11: 01

FILED
EPA REGION VIII
HEARING CLERK

IN THE MATTER OF:)
)
Marathon Oil Company)
5555 San Felipe Street)
Houston, Texas 77056)
)
Respondent.)
)
)
)
)

Docket No. CWA-08-2019-0002

CONSENT AGREEMENT

The U.S. Environmental Protection Agency, Region 8 (EPA), and Respondent Marathon Oil Company (Marathon), by their undersigned representatives, hereby consent and agree as follows:

I. AUTHORITY

1. This proceeding is subject to EPA's "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits," 40 C.F.R. part 22. This Consent Agreement (Agreement) is entered into by the parties for the purpose of simultaneously commencing and concluding this matter, as authorized by 40 C.F.R. § 22.13(b), and is executed pursuant to 40 C.F.R. § 22.18(b)(2) and (3).
2. EPA has jurisdiction over this matter pursuant to section 311(b)(6) of the Clean Water Act (CWA), 33 U.S.C. § 1321(b)(6).

II. PARTIES BOUND

3. This Agreement, upon incorporation into a final order, applies to and is binding upon EPA and upon Respondent, and Respondent's officers, directors, agents, successors and assigns. Each signatory to this Agreement certifies that they are authorized to execute and legally bind the party they represent to this Agreement.

III. STATEMENT OF THE PARTIES

4. Respondent admits the jurisdictional allegations contained herein and neither admits nor denies the specific factual allegations contained herein.
5. Respondent waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth

in this Agreement, including any right of judicial review under the Administrative Procedure Act, 5 U.S.C. §§ 701 – 706.

6. EPA asserts that settlement of this matter is in the public interest, and EPA and Respondent agree that entry of this Agreement and its incorporation into a final order without further litigation and without adjudication of any issue of fact or law will avoid prolonged and complicated litigation between the parties.
7. This Agreement, upon incorporation into a final order and full satisfaction by the parties, shall be a complete and full resolution of Respondent's alleged liability for federal civil penalties for the violation alleged below.

IV. STATUTORY AND REGULATORY FRAMEWORK

8. The objective of the CWA is to restore and maintain the chemical, physical, and biological integrity of the nation's waters. 33 U.S.C. § 1251(a).
9. Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), in pertinent part, prohibits discharging oil into or upon the navigable waters of the United States in such quantities as may be harmful as determined under section 311(b)(4) of the CWA, 33 U.S.C. § 1321(b)(4).
10. The term "discharge" is defined in section 311(a)(2) of the CWA, 33 U.S.C. § 1321(a)(2), to include, in pertinent part, "any spilling, leaking, pumping, pouring, emitting, emptying or dumping"
11. The term "oil" is defined in section 311(a)(1) of the CWA, in pertinent part, as "oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge" 33 U.S.C. § 1321(a)(1).
12. The term "navigable waters" is defined in section 502(7) of the CWA as "waters of the United States, including the territorial seas." 33 U.S.C. § 1362(7).
13. In accordance with section 311(b)(4) of the CWA, 33 U.S.C. § 1321(b)(4), the President, through a delegation to the EPA, has determined, by regulation, those quantities of oil the discharge of which may be harmful to the public health or welfare or the environment of the United States. Exec. Order No. 11735, 38 Fed. Reg. 21243 (Aug. 3, 1973), and Executive Order 12777, 56 Fed. Reg. 54757 (October 22, 1991). Discharges of oil in such quantities as may be harmful include discharges of oil that: "(a) Violate applicable water quality standards; or (b) 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." 40 C.F.R. § 110.3.
14. Pursuant to section 311(b)(6)(A) of the CWA, 33 U.S.C. § 1321(b)(6)(A), any owner, operator, or person in charge of any vessel, onshore facility or offshore facility from which oil is discharged in violation of section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), may be assessed a class I or class II civil penalty.

15. The term “owner or operator” is defined in section 311(a)(6) of the CWA in pertinent part as “in the case of an onshore facility, . . . any person owning or operating such onshore facility” 33 U.S.C. § 1321(a)(6).
16. According to section 311(a)(7) of the CWA, “person” includes an individual, firm, corporation, association, and a partnership. 33 U.S.C. § 1321(a)(7).
17. The term “onshore facility” is defined in section 311(a)(10) of the CWA as “any facility (including, but not limited to, motor vehicles and rolling stock) of any kind located in, on, or under, any land within the United States other than submerged land.” 33 U.S.C. § 1321(a)(10).

V. EPA’S FINDINGS OF FACT AND OF ALLEGED VIOLATION

18. Respondent was at all relevant times a corporation organized under the laws of the State of Ohio and authorized to do business in the State of Wyoming.
19. Respondent was at all relevant times a “person” within the meaning of sections 311(a)(7) and 502(5) of the CWA, 33 U.S.C. §§ 1321(a)(7) and 1362(5).
20. Respondent was at all relevant times the owner and operator of the Circle Ridge Shoshone 66-25 wellhead (Facility) located within the exterior boundaries of the Wind River Indian Reservation in Wyoming.
21. The Facility at all relevant times met the definition of an “onshore facility” within the meaning of section 311(a)(10), 33 U.S.C. § 1321(a)(10).
22. On or about March 10, 2015, approximately 446 barrels of crude oil and produced water were released from a pipe assembly and stub-out pipe at the Facility.
23. EPA learned of the discharge described in paragraph 22 above after Respondent reported the discharge to the United States Coast Guard National Response Center (NRC) on or about March 10, 2015 (NRC Report No. 1110142).
24. The discharge described in paragraph 22 above impacted Coal Draw, a perennial stream, which flows to Five Mile Creek, also a perennial stream. Five Mile Creek flows to the Boysen Reservoir, which is a traditional navigable water and an impoundment of the Wind River, which is a traditional navigable water and an interstate water.
25. The discharge referenced in paragraph 22 above violated water quality standards, caused a film or sheen upon or discoloration of the surface of the water and/or its adjoining shorelines, and/or caused a sludge or emulsion to be deposited beneath the surface of the water(s) and/or upon the adjoining shorelines of Coal Draw.

26. The discharged material referenced in paragraph 22 above meets the definition of “oil” in section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1).
27. The release of oil referenced in paragraph 22 above was at all relevant times a “discharge” within the meaning of section 311(a)(2) of the CWA, 33 U.S.C. § 1321(a)(2).
28. The oil that was discharged into Coal Draw and upon its adjoining shorelines as a result of the release referenced in paragraph 22 above was discharged in “quantities as may be harmful” within the meaning of section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), and 40 C.F.R. § 110.3.
29. The waters identified in paragraph 24 above are and were at all relevant times “navigable waters” within the meaning of section 502(7) of the CWA, 33 U.S.C. § 1362(7). Section 502(7) of the CWA defines “navigable waters” as “the waters of the United States, including the territorial seas.” 33 U.S.C. § 1362(7). In turn, “waters of the United States” has been defined to include, *inter alia*, all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce; and tributaries to such waters. 40 C.F.R. §§ 122.2 and 110.1 (1993).
30. Therefore, Respondent’s discharge of oil referenced in paragraph 22 above constitutes a violation of section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3).

VI. CIVIL PENALTY

31. Section 311(b)(6)(B)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(ii), and 40 C.F.R. part 19 authorize the assessment of a class II civil penalty for violations of section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3).
32. Pursuant to section 311(b)(6)(A) of the CWA, 33 U.S.C. § 1321(b)(6)(A), and after consideration of the facts of this case as they relate to the factors set forth in section 311(b)(8) of the CWA, 33 U.S.C. § 1321(b)(8), EPA has determined that a civil penalty of \$99,000.00 is appropriate to settle this matter.
33. Respondent consents and agrees to pay a civil penalty in the amount of \$99,000.00 in the manner described below:
 - a. pay a civil penalty in the amount of \$99,000.00 within 30 calendar days of the date of the final order;
 - b. pay the civil penalty using any method provided on the following website <https://www.epa.gov/financial/makepayment>;
 - c. identify each and every payment with the docket number that appears on the final order; and
 - d. within 24 hours of payment, email proof of payment to Dennis Jaramillo at Jaramillo.Dennis@epa.gov (“proof of payment” means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or

automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with the docket number that appears on the final order).

34. Any failure by Respondent to pay the entire civil penalty may result in appropriate administrative or judicial action by any agency of the United States government for collection of the unpaid penalty, including applicable interest and nonpayment penalties, and for any other appropriate relief.
35. Consistent with section 162(f)(1) of the Internal Revenue Code, 26 U.S.C. § 162(f)(1), the Respondent will not deduct penalties paid under this Agreement for federal tax purposes.

VII. PUBLIC NOTICE

36. As required by section 311(b)(6)(C)(i) of the CWA, 33 U.S.C. § 1321(b)(6)(C)(i), and 40 C.F.R. § 22.45, EPA will provide public notice and a reasonable opportunity to comment on the penalty that Respondent has agreed to pay in this matter. EPA may modify or withdraw its consent to this Agreement if comments received disclose facts or considerations which indicate this Agreement is improper or inadequate.

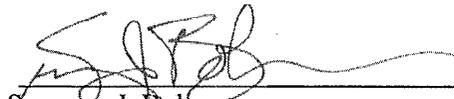
VIII. GENERAL PROVISIONS

37. Nothing in this Agreement shall relieve Respondent of the duty to comply with the CWA and any regulation, order, or permit issued pursuant to the CWA.
38. Any failure by Respondent to comply with this Agreement shall constitute a breach of this Agreement and may result in referral of the matter to the United States Department of Justice for enforcement of this Agreement and such other relief as may be appropriate.
39. Nothing in this Agreement shall be construed as a waiver by EPA or any other federal entity of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of any failure by Respondent to comply with this Agreement.
40. Each party shall bear its own costs and attorneys' fees in connection with this matter.

Consent Agreement In the Matter of Marathon Oil Company

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
Complainant**

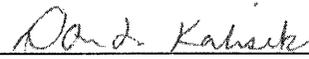
Date: 5/7/19

By: 

Suzanne J. Bohan
Assistant Regional Administrator
Enforcement & Compliance Assurance Division

**MARATHON OIL COMPANY
Respondent**

Date: 4/30/19

By: 

Dan Kalisek, HES Director
5555 San Felipe Street, Houston, Texas 77056-2723

