

FILED

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**U.S. EPA REGION 7
HEARING CLERK**

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

BEFORE THE ADMINISTRATOR

In the Matter of

ContiTech USA, Inc.,

Respondent

Proceedings under Section 311(b)(6)(B)(i)
of the Clean Water Act, 33 U.S.C.
§ 1321(b)(6)(B)(i)

)
) Docket No. CWA-07-2023-0142
)
) COMPLAINT AND
) CONSENT AGREEMENT /
) FINAL ORDER
)
)
)
)

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, ContiTech USA, 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 Sections 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)(i) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(i), 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 Assurance 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 Background

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. Sections 311(b)(3) and (4) of the CWA, 33 U.S.C. § 1321(b)(3) and (4), prohibit the discharge of oil or hazardous substances into or upon the navigable waters of the United States or

adjoining shorelines in such quantities as have been determined may be harmful to the public health or welfare 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 the 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.

9. 40 C.F.R. § 110.3 defines discharges of oil that the Administrator has determined may be harmful to the public health or welfare or the environment of the United States to 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.

10. 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.

11. 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.

General Factual Allegations

12. Respondent is and was at all relevant times a corporation under the laws of, and authorized to conduct business in, the state of Nebraska.

13. Respondent, a corporation, 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.

14. At all times relevant to this action, Respondent was the owner and/or operator, within the meaning of Section 311(a)(6) of the CWA and 40 C.F.R. § 112.2, of rubber belting manufacturing located at 4021 North 56th Street, Lincoln Nebraska, 68504 (the “Facility”).

15. The Facility primarily operates in belting and rubber manufacturing.

16. The Respondent stores heptane, No. 6 fuel oil, various petroleum and non-petroleum oils and lubricants, diesel, and gasoline.

17. The Facility’s total aboveground storage capacity is approximately 397,240 gallons.

18. The Facility is a “non-transportation-related” facility within the meaning of 40 C.F.R. § 112 Appendix A, as incorporated by reference within 40 C.F.R. § 112.2.

19. The Facility is an onshore facility 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.

20. The Facility is 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 and, therefore, is an SPCC-regulated facility pursuant to Section 311(j)(1)(C) of the Act, Executive Order 12777 and 40 C.F.R. § 112.1.

21. The Facility has an SPCC plan. The current version of the SPCC plan was recertified on January 29, 2018.

22. On February 8, 2022, the Facility accidentally discharged approximately 1,300-1,500 gallons of heptane to Outfall004 (“OF004”), a concrete channel carrying water.

23. The Facility discharges through Outfall004 (“OF004”) directly into a partially concrete-lined, perennial tributary of Salt Creek. Salt Creek is a perennial stream that connects to the Missouri River, a traditionally navigable water.

24. The tributary to Salt Creek and Salt Creek are relatively permanent waters that flow to a navigable water and therefore are navigable waters of the United States within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7) and regulations promulgated thereunder.

25. On February 11, 2022, representatives of the EPA inspected the Facility to determine compliance with the SPCC regulations of 40 C.F.R. Part 112 and obtained information about the Facility.

Allegation of Violations

Count 1: Unauthorized Discharge

26. The facts stated in Paragraphs 12 through 25 above are herein incorporated.

27. Section 311(b) of the CWA, 33 U.S.C. § 1321, prohibits the discharge of oil in or onto “navigable waters of the United States”. Pursuant to 40 C.F.R. § 110.3, such discharges 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.

28. On February 8, 2022, the Facility discharged approximately 1,300-1,500 gallons of heptane into the tributary of Salt Creek.

29. Respondent’s discharge of heptane from the Facility into the tributary of Salt Creek was in a quantity that has been determined may be harmful under 40 C.F.R § 110.3, which is a violation of Sections 311(b)(3) and (b)(4) of the Act, 33 U.S.C. §§ 1321(b)(3) and (b)(4).

Count 2: Failure to Fully Prepare and Implement an SPCC Plan

30. The facts stated in Paragraphs 12 through 25 above are herein incorporated.

31. 40 C.F.R § 112.3 requires Respondent to fully prepare and implement an SPCC plan.

32. The EPA's inspection documented violations to Respondent's SPCC Plan at the Facility as required by 40 C.F.R. 112.3, as follows:

a. Respondent's plan does not include the type of oil in each fixed container and its storage capacity, in violation of 40 C.F.R. § 112.3(a)(i);

b. Respondent's plan does not describe all the routine handling procedures used by facility personnel, i.e., loading and unloading activities, in violation of 40 C.F.R. § 112.7(a)(3)(ii);

c. Respondent's plan does not describe how general containment is provided for loading and unloading to/from Underground Storage Tanks, transformers TR-09 and TR-10, and the railcars. No containment has been provided for the railcars storing oil 40 C.F.R. § 112.7(d);

d. Respondent's plan does not have secondary containment provided for the loading/unloading rack, in violation of 40 C.F.R. § 112.7(h);

e. The Respondent's plan does not adequately provide monthly and annual visual inspection forms to include inspections of oil-filled operation equipment, in violation of 40 C.F.R. § 112.7(k);

f. Tanks FT-01 and FT-02 are not included in the schedule of inspections. The visual inspection checklists do not comport with the respective standards' monthly and annual visual inspection checklists for tanks and portable containers and the respective standards and procedures. These findings are in violation of 40 C.F.R. 112.8(c)(6);

g. Respondent's plan does not describe how overfill prevention is provided for each of the facility's tanks and containers, in violation of 40 C.F.R. § 112.8(c)(8);

h. At the time of the discharge, there was inadequate containment provided for the tanks in the cement room, in violation of 40 C.F.R. § 112.8(c)(2).

33. Respondent's failure to fully prepare and implement an SPCC Plan is a violation of 40 C.F.R. §§ 112.3 and 112.7.

CONSENT AGREEMENT

General Provisions

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

35. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above and waives its right to appeal the Final Order accompanying this Consent Agreement. Respondent waives any right to contest the allegations pursuant to 40 C.F.R. § 22.18(b)(2).

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

37. Respondent consents to the issuance of this Consent Agreement and Final Order and consents for the purposes of settlement to the payment of the civil penalty specified herein and to complete the Supplemental Environmental Project (SEP) described below.

38. 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.

39. Respondent neither admits nor denies the factual allegations asserted above by the EPA.

40. Respondent certifies by the signing of this CAFO that Respondent is in compliance with all requirements of the CWA in relation to alleged CWA violations contained herein.

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

Reservation of Rights

42. 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.

43. 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.

44. 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

45. Respondent agrees to pay a civil penalty of **Sixteen Thousand Five Hundred and Ninety-One Dollars (\$16,591)** 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.

46. The payment of penalties must reference docket number CWA-07-2023-0142 and be remitted to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979078
St. Louis, Missouri 63197-9000

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

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

Anna Landis
Attorney Advisor
U.S. Environmental Protection Agency Region 7
landis.anna@epa.gov

and

Regional Hearing Clerk
U.S. Environmental Protection Agency Region 7
r7_hearing_clerk_filings@epa.gov.

48. 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.

49. Respondent understands that its failure to timely pay any portion of the civil penalty described in 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.

50. 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.

Supplemental Environmental Project

51. In response to the alleged violations of CWA and in settlement of this matter, although not required by CWA or any other federal, state, or local law, Respondent agrees to implement a supplemental environmental project (“SEP”), as described below in paragraphs 52-53, and in Appendix A.

52. Respondent shall complete the following SEP:

- a. Respondent will construct a new, stand-alone spill containment area for the MEK pump and drums within the Cement Room.
- b. Respondent will replace the material distribution controls with modern spill protection capabilities including advanced flow meters, volume sensors, and improved orientation of the controls.
- c. Respondent will replace the existing rubber matting with drum dollies to improve movement of drums and reduce spill risk.

53. The estimated SEP Cost is approximately \$64,048. The Respondent shall spend no less than Twenty-One Thousand Seven Hundred Seventy-Six Dollars (\$21,776) on implementing the SEP. Respondent shall include documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report.

54. Respondent shall complete the SEP within sixty (60) days of the Effective Date of this Consent Agreement and Final Order. Respondent shall submit a SEP Completion Report to the EPA contact identified in Paragraph 59 below.

55. Use of SEP Implementer

a. SEP Implementer

- i. Respondent has selected Ackerman Design & Engineering, Wired, and Veyance Technologies as a contractor/consultant to assist with implementation of the SEP;

b. Except as provided in subsections 55.a.i. above, the EPA had no role in the selection of any SEP implementer, SEP recipient, or specific equipment identified in the SEP, nor shall this CAFO be construed to constitute EPA approval or endorsement of any SEP implementer, SEP recipient, or specific equipment identified in this CAFO.

56. The SEP is consistent with applicable EPA policy and guidelines, specifically EPA's 2015 Update to the 1998 Supplemental Environmental Projects Policy, (March 10, 2015). The SEP advances at least one of the objectives of the CWA by mitigating the risks of releases to the environment by isolating the spill containment area for the MEK pump and drums within the Cement Room. Additionally, the improvements to the flow meters, volume sensors, and layout improvements for the pumps will result in less opportunity for human error, thereby reducing the likelihood of a future violation and increased protection of public health and the environment. The SEP is not inconsistent with any provision of the CWA. The SEP relates to the alleged violation(s), and is designed to reduce:

- a. The likelihood that similar unauthorized discharges will occur in the future by constructing a new, stand-alone spill containment area for the MEK pump and drums within the Cement Room which will provide risk mitigation; and

b. The overall risk to public health and/or the environment potentially affected by the alleged violations by creating a spill-containment area, replacing current flow meters to reduce the risk of human error by the operators, adding volume sensors to reduce the risk of overflow and release, improving the overall layout of the pumps to allow operators to easily access and read the information shown, and replacing the existing rubber matting with a drum dolly system to reduce the likelihood of future chemical/product releases.

57. Respondent certifies the truth and accuracy of each of the following:

a. That all cost information provided to the EPA in connection with the EPA's approval of the SEP is complete and accurate and that the Respondent in good faith estimates that the cost to implement the SEP is \$64,048;

b. That, as of the date of executing this CAFO, Respondent is not required to perform or develop the SEP by any federal, state, or local law or regulation and is not required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum;

c. That the SEP is not a project that Respondent was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this CAFO;

d. That Respondent has not received and will not have received credit for the SEP in any other enforcement action;

e. That Respondent will not receive reimbursement for any portion of the SEP from another person or entity;

f. That for federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP;

g. That Respondent is not a party to any open federal financial assistance transaction that is funding or could fund the same activity as the SEP described in Paragraphs 52-53; and

h. That Respondent has inquired of the SEP implementers whether they are parties to an open federal financial assistance transaction that is funding or could fund the same activity as the SEP and has been informed by the implementers that neither is a party to such a transaction.

58. Any public statement, oral or written, in print, film, or other media, made by Respondent or a representative of Respondent making reference to the SEP under this CAFO from the date of its execution of this CAFO shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for alleged violations of the federal laws."

59. SEP Reports.

- a. Respondent shall submit a SEP Completion Report to EPA within ninety (90) days of the Effective Date of this CAFO. The SEP (Completion) Report shall contain the following information, with supporting documentation:
 - (i) A detailed description of the SEP as implemented;
 - (ii) A description of any operating problems encountered and the solutions thereto;
 - (iii) Itemized costs;
 - (iv) Certification that the SEP has been fully implemented pursuant to the provisions of this CAFO; and
 - (v) A description of the environmental and public health benefits resulting from implementation of the SEP with a quantification of the benefits and pollutant reductions, if feasible.
- b. Respondent agrees that failure to submit the SEP Completion Report shall be deemed a violation of this CAFO and Respondent shall become liable for stipulated penalties pursuant to paragraph 61 below.
- c. In itemizing its costs in the SEP Completion Report, Respondent shall clearly identify and provide acceptable documentation for all eligible SEP costs. Where the SEP completion report includes costs not eligible for SEP credit, those costs must be clearly identified as such. For purposes of this Paragraph, “acceptable documentation” includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made. Canceled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made.

60. EPA acceptance of SEP Report.

- a. After receipt of the SEP Completion Report described in paragraph 60 above, EPA will, in writing to the Respondent, either:
 - (i) Identify any deficiencies in the SEP Completion Report itself along with a grant of an additional thirty (30) days for Respondent to correct any deficiencies; or
 - (ii) Indicate that EPA concludes that the project has been completed satisfactorily; or
 - (iii) Determine that the project has not been completed satisfactorily and seek stipulated penalties in accordance with paragraph 61 herein.
- b. If EPA elects to exercise option (i) above, i.e., if the SEP Report is determined to be deficient but EPA has not yet made a final determination about the adequacy of SEP completion itself, Respondent may object in writing to the notification of deficiency given pursuant to this paragraph within ten (10) days of receipt of such

notification. EPA and Respondent shall have an additional thirty (30) days from the receipt by EPA of the notification of objection to reach agreement on changes necessary to the SEP Report. If agreement cannot be reached on any such issue within this thirty (30) day period, EPA shall provide a written statement of its decision on adequacy of the completion of the SEP to Respondent, which decision shall be final and binding upon Respondent.

61. Stipulated Penalties.

- a. Except as provided in subparagraphs (b) and (c) below, if Respondent fails to satisfactorily complete the requirements regarding the SEP specified in Paragraphs 51-60 by the deadline in Paragraph 55 Respondent agrees to pay, in addition to the civil penalty in Paragraph 45, the following per day per violation stipulated penalty for each day the Respondent is late meeting the applicable SEP requirement:
 - (i) \$250 per day for days 1-30
 - (ii) \$300 per day for days 31 – 60
 - (iii) \$500 per day for days 61-90
 - (iv) And \$750 for each day thereafter that the failure continues.
- b. If Respondent fails to timely submit any SEP reports, such as those referred to in Paragraph 59, in accordance with the timelines set forth in this CAFO, Respondent agrees to the following per day stipulated penalty for each day after the report was due until Respondent submits the report in its entirety:
 - (i) \$100 per day for days 1-30
 - (ii) \$150 per day for days 31 – 60
 - (iii) \$300 per day for days 61 and beyond
- c. If Respondent does not satisfactorily complete the SEP, including spending the minimum amount on the SEP set forth in paragraph 53 above, Respondent shall pay a stipulated penalty to the United States in the amount of \$21,732. “Satisfactory completion” of the SEP is defined as Respondent spending no less than \$21,776 to construct a new, stand-alone spill containment area, replace the existing flow meters and volume sensors, change the layout of the current pumps, and replace the existing rubber matting of the drums within 60 days of the Effective Date of this CAFO. The determinations of whether the SEP has been satisfactorily completed shall be in the sole discretion of EPA.
- d. EPA retains the right to waive or reduce a stipulated penalty at its sole discretion.
- e. Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. The method of payment shall be in accordance with the provisions of paragraph 45 above. Interest and late charges shall be paid as stated in paragraphs 48-49.

62. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except upon the written agreement of all parties and approval of the Regional Judicial Officer, except that the Regional Judicial Officer need not approve written agreements

between the parties modifying the SEP schedule described in paragraph 59. The EPA shall have the authority to extend the deadlines for good cause.

Parties Bound

63. 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.

64. The undersigned for each party have 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.

Definitions

65. Terms used in this order that are defined in the CWA or EPA regulations promulgated under the CWA have the meanings assigned to them in the CWA or those regulations, unless otherwise provided in this Order.

Executed Agreement Filed

66. This executed Complaint and Consent Agreement and Final Order shall be filed with the Regional Hearing Clerk, U.S. Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219.

Electronic Service

67. Respondent consents to receiving the filed Consent Agreement/Final Order electronically at the following email address: Joel.Eagle@thompsonhine.com.

For the Respondent, ContiTech USA, Inc.:

Signature: 

Date: 10/22/24

Name: JOSEPH M. RUSCANE

Title: ATTORNEY - CONTITECH

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

David Cozad
Director
Enforcement and Compliance Assurance Division

Anna Landis
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 Findings of Violation and Administrative Order for Compliance on Consent by electronic mail, to:

For Complainant:

Anna Landis
Office of Regional Counsel
U.S. Environmental Protection Agency Region 7
landis.anna@epa.gov

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

For Respondent:

Joel Eagle
Thompson Hine LLP
3900 Key Center
127 Public Square
Cleveland, Ohio 44114
joel.eagle@ThompsonHine.com

Date

Regional Hearing Clerk