

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

FILED

10/2/2024

12:00 PM

**U.S. EPA REGION 8
HEARING CLERK**

<p>IN THE MATTER OF:</p> <p>City of Springville, Utah,</p> <p style="text-align: center;">Respondent</p>	<p>CONSENT AGREEMENT</p> <p>Docket No. CWA-08-2025-0001</p>
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I. INTRODUCTION

1. This is an administrative penalty assessment proceeding pursuant to sections 22.13(b) and 22.18(b)(2) and (3) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules of Practice), as codified at 40 C.F.R. part 22.
2. The parties to this proceeding are the undersigned U.S. Environmental Protection Agency (EPA) official (Complainant) and City of Springville (Respondent).
3. Respondent owns and/or operates the Springville Power generation facility called Whitehead Power Plant that had a discharge on November 3, 2022, and spilled 178 gallons of red dyed diesel into the sewer plant discharge stream at 40.1183 latitude, -111.6686 longitude, 450 W 600 N Springville, Utah 84663 (Site).
4. The parties, having agreed settlement of this action is in the public interest, consent to the entry of this consent agreement (Agreement) without adjudication of any issues of law or fact herein, and Respondent agrees to comply with the terms of this Agreement.

II. JURISDICTION

5. This Agreement is issued under the authority of section 311(b)(6) of the Clean Water Act (Act), 33 U.S.C. § 1321(b)(6). This is a Class I proceeding, as described in section 311(b)(6)(B)(i) of the Act, 33 U.S.C. § 1321(b)(6)(B)(i).
6. This proceeding is subject to the Consolidated Rules of Practice, under which this proceeding may be resolved by a final order from a Regional Judicial Officer or Regional Administrator ratifying this Agreement. The final order will simultaneously commence and conclude this proceeding. 40 C.F.R. § 22.13(b).

III. GOVERNING LAW

A. Oil Discharge Prohibition

7. Section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3), 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 Act, 33 U.S.C. § 1321(b)(4).
8. Section 311(b)(4) of the Act, 33 U.S.C. § 1321(b)(4), directed the President to determine by regulation, for purposes of section 311 of the Act, those quantities of oil and any hazardous substances the discharge of which may be harmful to the public health or welfare of the United States, including but not limited to fish, shellfish, wildlife and public and private property, shorelines, and beaches. The President delegated the authority to make this determination to the EPA Administrator in section 8(a) of Executive Order No. 12777 (56 Fed. Reg. 54757, October 21, 1991).
9. In response to the directive referenced in paragraph 8, above, the EPA Administrator promulgated 40 C.F.R. § 110.3. That regulation provides that a discharge of oil may be harmful to the public health or welfare or the environment of the United States if that discharge (a) violates applicable water quality standards or (b) causes a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or causes a sludge or emulsion to be deposited beneath the surface of the water or upon the adjoining shorelines.
10. Consequently, a discharge of oil that (a) violates applicable water quality standards or (b) causes a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or causes a sludge or emulsion to be deposited beneath the surface of the water or upon the adjoining shorelines is prohibited by section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3).

B. Spill Prevention, Control, and Countermeasure Requirements

11. Section 311(j)(1)(C) of the CWA, 33 U.S.C. § 1321(j)(1)(C), directed the President to issue regulations “establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil . . . from vessels and from onshore and offshore facilities, and to contain such discharges” The President

delegated the authority to issue these regulations to the EPA Administrator in section 2(b)(1) of Executive Order No. 12777 (56 Fed. Reg. 54757, October 21, 1991).

12. In response to the directive referenced in paragraph 11, above, the EPA promulgated 40 C.F.R. part 112, entitled “Oil Pollution Prevention.”
13. A facility subject to 40 C.F.R. part 112 is required to prepare a written Spill Prevention, Control and Countermeasure (SPCC) plan and to adhere to the discharge prevention and containment procedures specified in that regulation. The regulations in 40 C.F.R. part 112, subparts A through C will be referenced as the “SPCC Regulations.”
14. The SPCC Regulations apply to “any owner or operator of a non-transportation related onshore or offshore facility engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using, or consuming oil and oil products, which due to its location, could reasonably be expected to discharge oil in quantities that may be harmful, as described in [40 C.F.R. part 110], into or upon the navigable waters of the United States or adjoining shorelines.” 40 C.F.R. § 112.1(b). There are certain exceptions in 40 C.F.R. § 112.1(d) that are not relevant to this proceeding.
15. As indicated in paragraph 9, above, under 40 C.F.R. 40 C.F.R. § 110.3, discharges of oil that may be harmful to the public health or welfare or the environment of the United States 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.

C. Enforcement

16. Any owner or operator of an onshore facility who violates section 311 of the Act, 33 U.S.C. § 1321, may be assessed an administrative civil penalty by the EPA, according to section 311(b)(6)(A) of the Act, 33 U.S.C. § 1321(b)(6)(A). As adjusted for inflation pursuant to 40 C.F.R. part 19, the maximum administrative class I penalty under section 311 of the Act for violations occurring after November 2,

2015, when penalties are assessed on or after December 27, 2023, is \$23,048 per day for each day during which the violation continues, with a maximum of \$57,617. (See 88 Fed. Reg. 89309, 89312 (December 27, 2023)).

IV. ALLEGATIONS OF FACT AND LAW

The following allegations apply at all times relevant to this Agreement:

17. Respondent is a municipality with its principal place of business at 110 S Main Street, Springville, Utah 84663.
18. Respondent is a “person” for purposes 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. § 122.2.
19. At the Site, Respondent stores oil.
20. The Site has an aboveground oil storage capacity of 63,800 gallons.
21. On November 3, 2022, Respondent discharged approximately 178 gallons of red dyed diesel from a storage tank at the Site into a storm drain that connects to a manmade drainage system referred to as the sewer plant discharge stream (Unnamed Tributary) that runs along Spring Creek Road. The red dyed diesel was present in the Unnamed Tributary until at least November 11, 2022.
22. The diesel fuel referenced in paragraph 21, above, came from underground piping connected to aboveground storage tanks at the Site. The diesel fuel entered a storm drain near the fuel storage tanks and flowed to the Unnamed Tributary referenced in paragraph 21, above, along Spring Creek Road.
23. The Unnamed Tributary referenced in paragraph 21, above, is approximately six feet wide and 16 inches deep and takes treated water from the power plant to Utah Lake via Spring Creek.
24. The red dyed diesel referenced in paragraph 21, above, constitutes “oil” as defined in section 311(a)(1) of the Act, 33 U.S.C. § 1321(a)(1).
25. The discharge referenced in paragraph 21, above, caused a sheen on the Unnamed Tributary referenced in paragraph 21, above.
26. The discharge referenced in paragraph 21, above, was a discharge of oil in such quantities as may be harmful, under section 311(b)(3) of the Act, 33 U.S.C. 1321(b)(3).

27. The red dyed diesel referenced in paragraph 21, above, is a “pollutant” as defined in section 502(6) of the Act, 33 U.S.C. § 1362(6).
28. The pipeline from which the red dyed diesel referenced in paragraph 21, above, was released is a “point source” as defined in section 502(14) of the Act, 33 U.S.C. § 1362(14).
29. The discharge referenced in paragraph 21, above, was not authorized by any permit issued under the Act or by any provision enumerated in 33 U.S.C. § 1311(a).
30. The Unnamed Tributary referenced in paragraph 21, above, is a relatively permanent tributary of Spring Creek.
31. The Unnamed Tributary to Spring Creek referenced in paragraph 21, above, is a “navigable water” as defined in section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 112.2. It is also a “water of the United States” as defined in 40 C.F.R. § 120.2.
32. Spring Creek is a relatively permanent tributary of Utah Lake, a traditional navigable water.
33. Spring Creek is a “navigable water” as defined in section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 112.2. It is also a “water of the United States” as defined in 40 C.F.R. § 122.2.
34. Utah Lake is a “navigable water” as defined in section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 112.2. It is also a “water of the United States” as defined in 40 C.F.R. § 120.2.
35. Due to its location, the Site could reasonably be expected to discharge oil and/or other pollutants to Spring Creek and/or its adjoining shorelines in quantities that would (a) violate applicable water quality standards or (b) cause a film or sheen upon or discoloration of the surface of the navigable waters of the United States or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of such water or adjoining shorelines.
36. On or about September 14, 2023, the EPA sent Respondent an information request under section 308 of the CWA, 33 U.S.C. § 1318, to investigate the discharge

referenced in paragraph 21, above.

37. On or about October 11, 2023, Respondent provided a copy of its SPCC plan to the EPA in response to the information request referenced in paragraph 36, above.
38. On or about February 7, 2024, the EPA determined, following a review of the information provided by Respondent pursuant to the information request referenced in paragraph 36, above, that Respondent's SPCC plan was deficient and therefore in violation of the SPCC requirements of 40 C.F.R. part 112. The deficiencies included the following:
 - a. The plan did not implement the amended SPCC rule, which was required no later than November 10, 2011 (75 Fed. Reg. 63093).
 - b. The plan had not been reviewed every five years as required by 40 C.F.R. § 112.5(b).
39. Respondent is an "owner or operator" as that term is defined in section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6), of the Site.
40. The Site is an "onshore facility" as that term is defined in section 311(a)(10) of the Act, 33 U.S.C. §1321(a)(10).
41. The Site is a "non-transportation related" facility" as that term is defined in 40 C.F.R. § 112.2.
42. At all relevant times, the Site has been subject to the SPCC Regulations.

V. ALLEGED VIOLATIONS OF LAW

The Complainant alleges the following violations.

A. Count 1: Discharge of Oil

43. The discharge of red dyed diesel described in paragraph 21, above, was a violation of section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3).

B. Count 2: Failure to Prepare an Adequate SPCC Plan

44. Respondent failed to prepare an adequate SPCC plan in accordance with 40 C.F.R. part 112, as required by 40 C.F.R. § 112.3, because Respondent failed to implement all of the requirements of 40 C.F.R. part 112, as described in paragraph 38, above.
45. The deficiencies identified in Respondent's SPCC plan described in paragraph 38,

above, constitute a violation of section 311(j), 33 U.S.C. § 1321(j), and 40 C.F.R. part 112.

VI. TERMS OF CONSENT AGREEMENT

46. For the purpose of this proceeding, Respondent:
- a. admits the facts set forth in paragraph 3 above, of this Agreement;
 - b. admits the jurisdictional allegations in section II of this Agreement;
 - c. neither admits nor denies the factual allegations in sections IV and V of this Agreement;
 - d. consents to the assessment of a civil penalty as stated below;
 - e. acknowledges this Agreement constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement action; and
 - f. waives any right to contest the allegations in this Agreement and to appeal any final order approving this Agreement.
47. In determining the amount of the penalty to be assessed, the EPA considered the seriousness of the violations, the economic benefit to the violator, if any, resulting from the violation, the degree of culpability involved, any other penalty for the same incident, any history of prior violations, the nature, extent, and degree of success of any efforts of the violator to minimize the effects of the discharge, the economic impact of the penalty on the violator, and any other matters as justice shall require.
48. Based on the allegations in sections IV and V, above, and having considered the penalty assessment factors cited in paragraph 47 above, the Complainant has determined a civil penalty of \$34,600.00 is appropriate to settle this proceeding.

A. TERMS OF PAYMENT

49. Respondent agrees to pay a civil penalty in the amount of \$34,600.00 (Assessed Penalty) within 30 days after the date the Final Order ratifying this Agreement is filed with the Regional Hearing Clerk (Filing Date).
50. Respondent shall pay the Assessed Penalty and any interest, fees, and other charges due using any method, or combination of appropriate methods, as provided

on the EPA website: <https://www.epa.gov/financial/makepayment>. For additional instructions see: <https://www.epa.gov/financial/additional-instructions-making-payments-epa>.

51. When making a payment, Respondent shall:

- a. Identify payment with Respondent's name and the docket number of this Agreement;
- b. Indicate the payment is payable to the "Environmental Protection Agency" and include in the payment a reference to the "Oil Spill Liability Trust Fund-311";
- c. Concurrently with any payment or within 24 hours of any payment, Respondent shall serve proof of such payment to the following persons:

Darla Hohman, OPA Enforcement Technical Lead
U.S. Environmental Protection Agency,
Region 8 1595 Wynkoop Street,
Denver, CO 80202
hohman.darla@epa.gov

and

U.S. Environmental Protection Agency
Regional Hearing Clerk
Via electronic mail to:
R8_Hearing_Clerk@epa.gov

"Proof of payment" means, as applicable, a copy of the check, confirmation of credit card or debit card payment, or confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to the EPA requirements, in the amount due, and identified with the appropriate docket number and Respondent's name.

52. Interest, Charges, and Penalties on Late Payments. Pursuant to 33 U.S.C. § 1321(b)(6)(H), 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to timely pay any portion of the Assessed Penalty per this Agreement, the entire unpaid balance of the Assessed Penalty and all accrued interest shall become immediately due and owing, and the EPA is authorized to

recover the following amounts.

- a. Interest. Interest begins to accrue from the Filing Date. If the Assessed Penalty is paid within 30 days, interest accrued is waived. If the Assessed Penalty is not paid in full within 30 days, interest will continue to accrue until the unpaid portion of the Assessed Penalty as well as any interest, penalties, and other charges are paid in full. Interest will be assessed at prevailing rates, per 33 U.S.C. § 1321(b)(6)(H). The rate of interest is the IRS's 8% underpayment rate.
 - b. Handling Charges. The United States' enforcement expenses including, but not limited to, attorneys' fees and costs of collection proceedings.
 - c. Late Payment Penalty. A 20% quarterly non-payment penalty.
53. Late Penalty Actions. In addition to the amounts described in the prior paragraph, if Respondent fails to timely pay any portion of the Assessed Penalty, interest, or other charges and penalties per this Agreement, the EPA may take additional actions. Such actions the EPA may take include, but are not limited to, the following.
- a. Refer the debt to a credit reporting agency or a collection agency, per 40 C.F.R. §§ 13.13 and 13.14.
 - b. Collect the debt by administrative offset (i.e., the withholding of money payable by the United States government to, or held by the United States government for, a person to satisfy the debt the person owes the United States government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, per 40 C.F.R. Part 13, Subparts C and H.
 - c. Suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with the EPA or engaging in programs the EPA sponsors or funds, per 40 C.F.R. § 13.17.
 - d. Refer this matter to the United States Department of Justice for litigation and collection, per 40 C.F.R. § 13.33.
54. Allocation of Payments. Pursuant to 31 C.F.R. § 901.9(f) and 40 C.F.R. § 13.11(d),

a partial payment of debt will be applied first to outstanding handling charges, second to late penalty charges, third to accrued interest, and last to the principal that is the outstanding Assessed Penalty amount.

55. Tax Treatment of Penalties. Penalties, interest, and other charges paid pursuant to this Agreement shall not be deductible for purposes of federal taxes.
56. This Agreement applies to Respondent and its officers, directors, employees, agents, trustees, authorized representatives, successors, and assigns. Respondent must give written notice and a copy of this Agreement to any successors in interest prior to any transfer of any interest in the Site occurring prior to payment in full of the penalty referenced above. Any change in ownership or corporate control of Respondent, including but not limited to any transfer of assets or real or personal property, shall not alter Respondent's responsibilities under this Agreement.
57. The undersigned representative of Respondent certifies he or she has authority to bind Respondent to this Agreement.
58. Except as qualified by paragraph 52, above, each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.

VII. EFFECT OF CONSENT AGREEMENT

59. In accordance with 40 C.F.R. § 22.18(e), compliance with the final order approving this Agreement resolves Respondent's liability only for federal civil penalties for the violations specifically alleged above.
60. Nothing in this Agreement shall relieve Respondent of the duty to comply with all applicable provisions of the Act, any regulation, order, or permit issued pursuant to the Act, and any other federal, state, or local laws, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.
61. Nothing herein shall be construed to limit the power of the EPA to pursue injunctive or other equitable relief, or criminal sanctions, for any violations of law or to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the

public health, welfare, or the environment.

62. If and to the extent the EPA finds, after signing this Agreement, that any information provided by Respondent was materially false or inaccurate at the time such information was provided to the EPA, the EPA reserves any and all of its legal and equitable rights.

VIII. SERVICE OF FINAL ORDER

63. The contact information for the individuals authorized to receive service for each party are:

For Complainant:

Abigail Dean, 8ORC-LE-R
Senior Assistant Regional Counsel
U.S. EPA, Region 8
Telephone: (303) 312-6106
Email: dean.abigail@epa.gov

For Respondent:

John Penrod
City Attorney
City of Springville
Telephone: (801) 489-2703
Email:jpenrod@springville.org

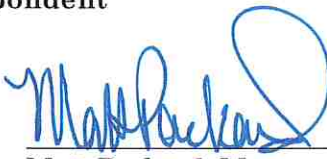
64. The parties consent to service of the final order approving this Agreement at the respective email addresses in paragraph 63, above.

**UNITED STATES
ENVIRONMENTAL PROTECTION
AGENCY, REGION 8**

Sridhar Susarla, Manager
RCRA and OPA Enforcement Branch
Complainant

**CITY OF SPRINGVILLE,
Respondent**

Date: October 01, 2024

By: 

Matt Packard, Mayor

Attest
Jennifer Gregg
Deputy Recorder

