

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS**

_____)	
UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	Civil Action No.
v.)	
)	Judge
SUPERIOR CRUDE GATHERING, INC.,)	
)	
Defendant.)	
_____)	

COMPLAINT

Plaintiff, the United States of America (“United States”), by the authority of the Attorney General of the United States, acting at the request of the Administrator of the United States Environmental Protection Agency (“EPA”), files this Complaint and makes the allegations set forth herein.

NATURE OF THE ACTION

1. This is a civil action brought by the United States against Superior Crude Gathering, Inc. (“Defendant”), seeking civil penalties for violations of Section 311 of the Clean Water Act (“CWA”), 33 U.S.C. § 1321. The Complaint addresses Defendant’s February 2010 discharges of at least 2,200 barrels of crude oil from Defendant’s storage tanks, located within the former Falcon Refinery in Ingleside, San Patricio County, Texas, into waters of the United States or adjoining shorelines and Defendant’s failure to comply with spill prevention and response planning regulations issued under Section 311(j) of the CWA.

JURISDICTION, AUTHORITY, AND VENUE

2. This Court has jurisdiction over this matter pursuant to Section 311(b)(7)(E) of the CWA, 33 U.S.C. § 1321(b)(7)(E), and 28 U.S.C. §§ 1331, 1345, and 1355.

3. Authority to bring this action is vested in the United States Department of Justice by, *inter alia*, Section 506 of the CWA, 33 U.S.C. §1366, and 28 U.S.C. §§ 516 and 519.

4. Venue is proper in the Southern District of Texas pursuant to Sections 309(b) and 311(b)(7)(E) of the CWA, 33 U.S.C. § 1321(b)(7)(E), and 28 U.S.C. §§ 1391 and 1395(a), because the acts or omissions giving rise to the violations alleged herein occurred in the Southern District of Texas and because Defendant does business in the Southern District of Texas.

DEFENDANT

5. Defendant Superior Crude Gathering, Inc. is a Texas corporation whose business was to purchase crude oil from producers in south Texas and then sell the crude oil to refineries along the Texas Gulf Coast. Defendant's business address is at 600 Leopard Street #1702, Corpus Christi, Texas 78401-0452.

6. At all times relevant to this action, Defendant operated storage tanks in Ingleside, Texas.

FACTS

7. Superior Crude Gathering, Inc. purchased crude oil from producers in south Texas and subsequently sold that crude oil to refineries along the Texas Gulf Coast.

8. From 2002 to 2014, Defendant has leased three tanks, which are designated Tanks 13, 15, and 16, within the former Falcon Refinery in Ingleside, San Patricio County, Texas. Defendant's Ingleside facility included the three large oil storage tanks, truck loading and unloading facilities, and a barge dock. Defendant used the barge dock for loading and/or

unloading crude oil onto its barges for transport on the inland waterways up and down the Gulf Coast for delivery of oil to its customers.

9. On April 21, 2008, EPA conducted an inspection of Defendant's facility which included review of the facility's physical condition as well as the Spill Prevention Control and Countermeasure ("SPCC") Plan and its Facility Response Plan ("FRP"). In response to the inspection, on April 25, 2008, EPA sent Defendant the completed inspection checklists, which listed deficiencies at Defendant's facility identified by EPA during the inspection specifying areas of the written plans and physical changes that needed to be made at the facility in order to comply with the regulations, including that secondary containment berms for the facility's crude oil storage tanks had been breached by equipment and roads.

10. On October 2, 2008, EPA sent Defendant a Notice Letter, which referred to the deficiencies identified during the April 2008 inspection. Defendant did not submit an updated SPCC Plan or an updated FRP by the October 15, 2008 deadline from the Notice Letter.

11. On October 29, 2009, EPA conducted a follow-up inspection of Defendant's facility. The EPA inspectors noted that, other than some larger vegetation that was removed from around the tanks, no apparent changes had been made to the facility since the April 21, 2008 inspection.

12. Both Tanks 13 and 15 were located inside open-air secondary containment areas. These secondary containment areas consisted of packed dirt berms whose purpose was to contain any spill from the tanks.

13. On February 9, 2010, the floor of Defendant's Tank 13 began rapidly leaking crude oil. In an attempt to contain the remaining oil in the tank, Defendant transferred the remaining oil from Tank 13 into Tank 15.

14. On February 10, 2010, Tank 15 began leaking crude oil.

15. The secondary containment areas for Tanks 13 and 15 failed to contain the spilled oil.

16. The oil released into the secondary containment areas for Tanks 13 and 15 flowed out of secondary containment and into other surrounding containment areas.

17. From the containment areas, oil traveled over land and into the adjacent unnamed lake and wetlands. The unnamed lake and wetlands at the facility are connected to a waterway and wetlands to the northeast, which in turn are connected to Redfish Bay and the Intracoastal Waterways approximately one-half mile from the facility.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

Civil Penalties for Violation of CWA Section 311(b) - Oil Discharge 33 U.S.C. § 1321(b)

18. The preceding paragraphs are incorporated herein.

19. Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), prohibits the unauthorized discharge of oil or hazardous substances in “such quantities as may be harmful as determined by the President” into or upon the navigable waters or adjoining shorelines.

20. Pursuant to Section 311(b)(7)(A) of the CWA, 33 U.S.C. § 1321(b)(7)(A), “[a]ny person who is the owner, operator, or person in charge of any . . . onshore facility . . . from which oil . . . is discharged in violation of paragraph (3), shall be subject to a civil penalty”

21. Civil penalties can be increased pursuant to Section 311(b)(7)(D) of the CWA, 33 U.S.C. § 1321(b)(7)(D), if the violation results from “gross negligence or willful misconduct.”

22. Congress has directed the President to determine by regulation “those quantities of oil and any hazardous substance the discharge of which may be harmful to public health or welfare or the environment of the United States.” Section 311(b)(4) of the CWA, 33 U.S.C. § 1321(b)(4).

23. The President has delegated authority to the Administrator of EPA under CWA § 311(b)(3) and (b)(4) for determining quantities of oil the discharge of which may be harmful. Exec. Order No. 12777, Section 8(a), 56 Fed. Reg. 54757, 54768 (1991).

24. EPA has determined that discharges of oil that “violate applicable water quality standards, or 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” are, for purposes of Section 311(b)(4) of the CWA, 33 U.S.C. § 1321(b)(4), discharges of oil in such quantities that the Administrator has determined may be harmful to the public health or welfare or the environment of the United States. 40 C.F.R. § 110.3.

25. For the purposes of Section 311(a)(2) of the CWA, 33 U.S.C. § 1321(a)(2), “discharge” is defined to include “any spilling, leaking, pumping, pouring, emitting, emptying or dumping . . . ,” subject to certain specified exceptions not applicable here.

26. For discharges of oil prohibited by Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), Section 502(7) of the CWA, 33 U.S.C. § 1362(7) further defines “navigable waters” as “the waters of the United States, including the territorial seas.”

27. Defendant is a “person” within the meaning of Section 311(a)(7) of the CWA, 33 U.S.C. § 1321(a)(7).

28. Defendant was the “operator” of an onshore facility from which oil was discharged within the meaning of Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6).

29. Defendant’s storage tanks are an “onshore facility” within the meaning of Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10).

30. The spilling of oil from Defendant’s storage tanks constituted a “discharge” of oil within the meaning of Section 311(a)(2) of the CWA, 33 U.S.C. § 1321(a)(2).

31. The discharges were of “oil” within the meaning of Section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1).

32. The discharges of oil were into or upon the navigable waters of the United States or adjoining shorelines within the meaning of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3).

33. The discharges were in a quantity “as may be harmful” within the meaning of Section 311(b)(3) and (4) of the CWA, 33 U.S.C. § 1321(b)(3)-(4), and 40 C.F.R. § 110.3.

34. Defendant’s oil discharges are violations of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3).

35. Defendant is liable for civil penalties of up to \$1,100 per barrel discharged under CWA Section 311(b)(7)(A), or under Section 311(b)(7)(D) if it is proved that the violations are the result of gross negligence or willful misconduct, of up to \$4,300 per barrel discharged. *See* 40 C.F.R. § 19.4 (listing these updated penalty rates).

SECOND CAUSE OF ACTION

Civil Penalties for Violations under CWA Section 311(j)(1)(C) 33 U.S.C. § 1321(j)(1)(C) - Spill Prevention Control and Countermeasure Regulations

36. The preceding paragraphs are incorporated herein.

37. Congress, in Section 311(j)(1)(C) of the CWA, has directed the President to issue regulations establishing procedures, methods, equipment and other requirements to prevent and contain discharges of oil and hazardous substances from vessels and from onshore and offshore facilities. 33 U.S.C. § 1321(j)(1)(C).

38. The President has delegated authority to the Administrator of the EPA to issue regulations under Section 311(j)(1)(C) of the CWA, 33 U.S.C. § 1321(j)(1)(C), for preventing discharges from non-transportation-related onshore facilities. Exec. Order No. 12777, 56 Fed. Reg. 54,757, 54,760 (1991).

39. EPA initially promulgated regulations for preventing and containing discharges of oil from non-transportation-related onshore facilities in 1973. 38 Fed. Reg. 34164 (1973). Those regulations have been codified in 40 C.F.R. Part 112, Subparts A through C, and are referenced as the “Spill Prevention Control and Countermeasure Regulations” or the “SPCC Regulations.”

40. The SPCC Regulations apply to owners and/or operators of non-transportation-related onshore facilities engaged in drilling, producing, gathering, storing, processing, transferring, distributing or consuming oil and oil products, which, due to their location, could reasonably be expected to discharge oil in quantities that may be harmful to the public health or welfare or the environment, as described by 40 C.F.R. Part 110, into or upon the navigable waters or their adjoining shorelines, or that may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States. 40 C.F.R. § 112.1(b).

41. The term “navigable waters” for purposes of the SPCC Regulations includes, but is not limited to, traditional navigable waters and tributaries of such waters, and interstate waters. 40 C.F.R. § 112.2; 73 Fed. Reg. 71941, 71943-71944 (November 26, 2008).

42. The term “discharge” for purposes of the SPCC Regulations includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying, or dumping of oil. 40 C.F.R. § 112.2.

43. The SPCC Regulations require each covered facility to prepare a SPCC Plan describing the equipment, workforce, procedures, and steps to prevent, control and provide adequate countermeasures to discharges into or upon the navigable waters or their adjoining shorelines of oil or hazardous substances in quantities that may be harmful.

44. Each SPCC Plan must be reviewed and certified by a licensed Professional Engineer, 40 C.F.R. § 112.3(c), except as provided in 40 C.F.R. § 112.6.

45. Each SPCC Plan must discuss any additional facilities, procedures, methods or equipment that it calls for but are not yet fully operational. Each SPCC Plan must also include a discussion of the facility’s compliance with the requirements of 40 C.F.R. Part 112. 40 C.F.R. § 112.7(a)(1).

46. Each SPCC Plan must be prepared in writing and must either follow the sequence specified in 40 C.F.R. § 112.7 or be cross-referenced to the specific requirements of 40 C.F.R. § 112.7.

47. Each owner or operator of a facility covered by the SPCC Regulations must review that facility’s SPCC Plan at least once every five years. An owner or operator of a facility in operation on or before August 16, 2002, must review that facility’s SPCC Plan within five years from the date of last review as required by 40 C.F.R. Part 112. Within six months of this review, the owner or operator must amend the facility’s SPCC Plan to include more effective prevention and control technology if the technology has been field proven and will significantly

reduce the likelihood of a discharge. The amendment must be implemented no later than six months thereafter. 40 C.F.R. § 112.5(b).

48. Where an SPCC Plan is in place for a facility, and a change in the facility's design, construction, operation, or maintenance materially affects that facility's potential for a discharge, the owner and/or operator of that facility must amend its SPCC Plan in accordance with the requirements of 40 C.F.R. § 112.7. The amendment must be prepared within six months of the material change and implemented as soon as possible, but no later than six months after the amendment is prepared. 40 C.F.R. § 112.5.

49. Facilities in existence before August 16, 2002, that had not prepared SPCC Plans in accordance with the SPCC Regulations were required to implement the 2002 amendments to the SPCC Regulations immediately, as explained in more detail in the preamble to the 2002 amendments. 67 Fed. Reg. 47042, 47082-47083 (July 17, 2010).

50. Any person who fails or refuses to comply with any regulation issued under section 311(j) of the CWA, 33 U.S.C. § 1321(j), shall be subject to a civil penalty. 33 U.S.C. § 1321(b)(7)(C).

51. The penalty amount in Section 311(b)(7)(C) of the CWA, 33 U.S.C. § 1321(b)(7)(C), has been adjusted from up to \$25,000 per day of violation to up to \$32,500 per day for each violation occurring after March 15, 2004, and through January 12, 2009; and up to \$37,500 per day for each violation occurring after January 12, 2009. 40 C.F.R. Part 19, (implementing the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. § 2461 note; Pub. L. 101-410), as amended by the Debt Collection Improvement Act of 1996).

52. Defendant operated three crude oil storage tanks, at the Ingleside facility, which are referred to collectively as "the SPCC Tank Farm."

53. The SPCC Tank Farm is an “onshore facility” as defined in Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10), and 40 C.F.R. § 112.2. For the SPCC Tank Farm, Defendant is an “owner or operator” as that term is defined in Section 311(a)(6)(B) of the CWA, 33 U.S.C. § 1321(a)(6)(B), and 40 C.F.R. § 112.2.

54. The SPCC Tank Farm is a “non-transportation-related facility” subject to SPCC Regulations.

55. The SPCC Tank Farm has a total oil storage capacity greater than one million gallons.

56. The SPCC Tank Farm was in existence before August 16, 2002.

57. At the SPCC Tank Farm, Defendant is engaged in gathering, storing, and transferring “oil,” as defined in Section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1), and “oil” and “petroleum oil” as defined in 40 C.F.R. § 112.2.

58. The SPCC Tank Farm is located such that it could reasonably be expected to discharge oil or hazardous substances in quantities as may be harmful into or upon the navigable waters of the United States or their adjoining shorelines.

59. Since at least April 21, 2008, until a time yet to be determined, Defendant failed to maintain an adequate SPCC Plan in compliance with the SPCC Regulations.

60. In violation of Section 311(j)(1)(C) of the CWA, 33 U.S.C. § 1321(j)(1)(C), and the requirements of 40 C.F.R. Part 112, Defendant failed to adequately develop and implement a SPCC Plan containing procedures, methods, equipment and other requirements to prevent and contain discharges of oil or hazardous substances in quantities that may be harmful into or upon the navigable waters or their adjoining shorelines.

THIRD CAUSE OF ACTION

Civil Penalties for Violations under CWA Section 311(j)(5) 33 U.S.C. § 1321(j)(5) - Facility Response Plan Regulations

61. The preceding paragraphs are incorporated herein.

62. Congress has directed the President to issue regulations requiring an owner or operator of a facility that, because of its location, could reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters or adjoining shorelines, to submit a plan for responding, to the maximum extent practicable, to a worst case oil discharge, and to a substantial threat of such a discharge. Section 311(j)(5)(A)(i) and (C)(iv) of the CWA, 33 U.S.C. § 1321(j)(5)(A)(i) and (C)(iv).

63. The President has delegated authority to the Administrator of the EPA to issue regulations under Section 311(j)(5) of the CWA, 33 U.S.C. § 1321(j)(5), requiring owners or operators of non-transportation-related onshore facilities to prepare and submit response plans. Executive Order No. 12777, dated October 18, 1991, Section 2(d)(1), 56 Fed. Reg. 54757, 54761 (October 22, 1991).

64. EPA has promulgated 40 C.F.R. Part 112, Subpart D, also known as the “Facility Response Plan Regulations” or “FRP Regulations.”

65. The FRP Regulations require any owner or operator of an onshore facility that, because of its location, could reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters or adjoining shorelines, to prepare and submit a facility response plan (“FRP”) to the EPA Regional Administrator. 40 C.F.R. § 112.20(a).

66. Definitions applicable to FRP Regulations are set forth at 40 C.F.R. § 112.2.

67. A facility can reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters or adjoining shorelines if, among other things, the facility has an oil storage capacity of over one million gallons, does not have secondary containment sufficiently large enough to contain the capacity of the largest aboveground tank plus sufficient freeboard for precipitation, and is located such that a discharge from the facility could cause injury to fish and wildlife and sensitive environments. 40 C.F.R. § 112.20(f)(1)(ii)(B).

68. EPA may, at any time, require the owner or operator of any non-transportation-related onshore facility to prepare and submit an FRP based on consideration of the criteria set forth in 40 C.F.R. § 112.20(f). Such a facility must submit an FRP to EPA within six months of receiving written notice of EPA's determination. 40 C.F.R. § 112.20(b)(1).

69. Each owner or operator of a facility required to prepare an FRP must review and update the facility's FRP periodically to reflect changes at the facility. 40 C.F.R. § 112.20(g)(3).

70. Any person who fails or refuses to comply with any regulation issued under section 311(j) of the CWA, 33 U.S.C. § 1321(j), shall be subject to a civil penalty. 33 U.S.C. § 1321(b)(7)(C).

71. The penalty amount in Section 311(b)(7)(C) of the CWA, 33 U.S.C. § 1321(b)(7)(C), has been adjusted from up to \$25,000 per day of violation to up to \$32,500 per day for each violation occurring after March 15, 2004, and through January 12, 2009; and up to \$37,500 per day for each violation occurring after January 12, 2009. 40 C.F.R. Part 19 (implementing the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. § 2461 note; Pub. L. 101-410), as amended by the Debt Collection Improvement Act of 1996).

72. Because of the amount and location of oil stored, Defendant's facility could reasonably be expected to cause substantial harm to the environment by discharging oil into or on navigable waters or adjoining shorelines.

73. In violation of Section 311(j)(5) of the CWA, 33 U.S.C. § 1321(j)(5), and the requirements of 40 C.F.R. Part 112, Defendant failed to prepare, submit to EPA, and implement an adequate FRP for its facility in Ingleside, Texas.

74. Since at least April 21, 2008, until a time yet to be determined, Defendant failed to maintain an adequate FRP in compliance with the FRP Regulations.

REQUEST FOR RELIEF

WHEREFORE, The United States respectfully requests that this Court:

A. Assess civil penalties against Defendant for the violations of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), in the amount of up to \$1,100 per barrel discharged under CWA Section 311(b)(7)(A), or under Section 311(b)(7)(D) if it is proved that the violations are the result of gross negligence or willful misconduct, of up to \$4,300 per barrel discharged.

B. Impose civil penalties of up to \$32,500 per day for each violation occurring after March 15, 2004, and through January 12, 2009; and up to \$37,500 per day for each violation occurring after January 12, 2009, of Section 311(j) of the CWA, 33 U.S.C. § 1321(j), and the SPCC regulations promulgated thereunder at 40 C.F.R. Part 112, as authorized under Section 311(b)(7)(C), 33 U.S.C. § 1321(b)(7)(C);

C. Impose civil penalties of \$32,500 per day for each violation occurring after March 15, 2004, and through January 12, 2009; and up to \$37,500 per day for each violation occurring after January 12, 2009, of Section 311(j) of the CWA, 33 U.S.C. § 1321(j), and the FRP

regulations promulgated thereunder at 40 C.F.R. Part 112, as authorized under Section 311(b)(7)(C), 33 U.S.C. § 1321(b)(7)(C);

D. Order Defendant to take all steps necessary to redress or mitigate the impact of its violations; and

E. Award such other and further relief as the Court may deem just and proper.

Respectfully submitted,



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