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5 75 Hawthorne Street
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7 Attorneys for Complainant

8
9 **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**
REGION 9

10 75 Hawthorne Street
San Francisco, California 94105

11 In re the Matter of:) Docket No.: CWA-09-2009-0002
12)
13)
13 **General Petroleum Corporation**) **CONSENT AGREEMENT AND**
14) **PROPOSED FINAL ORDER**
14 1028 S. Seaside Avenue)
Terminal Island, California, 90731)
15)
16 Respondent.) Proceedings Under Section 309(g)(2)(B) of the
Clean Water Act, as amended, 33 U.S.C. §
17) 1319(g)(2)(B)

18 **CONSENT AGREEMENT**

19 **Preliminary Statements**

20 1. This is a class II civil administrative penalty proceeding under section 309(g) of the
21 Clean Water Act (“CWA” or “the Act), 33 U.S.C. § 1319(g), and 40 C.F.R. Part 22,
22 “Consolidated Rules of the Practice Governing the Administrative Assessment of Civil Penalties,
23 Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or
24 Suspension of Permits.”

25
CONSENT AGREEMENT AND
PROPOSED FINAL ORDER
DOCKET NO. CWA-09-2009-0002

1 2. The United States Environmental Protection Agency, Region 9 (“EPA” or “Complainant”)
2 institutes this proceeding against General Petroleum Corporation (“Respondent”) for alleged
3 violations of Sections 301(a) and 308(a) of the Act, 33 U.S.C. §§ 1311(a) and 1318(a).

4 Complainant and Respondent are hereinafter collectively referred to as “the Parties.”

5 3. This Consent Agreement and Final Order (“CA/FO”) simultaneously commences and
6 concludes this penalty proceeding, as authorized by 40 C.F.R. § 22.13(b).

7 4. The Parties agree that settlement of this matter is consistent with the Act’s objectives, in
8 the public interest, and the most appropriate means of resolving this matter.

9 NOW THEREFORE, before the taking of any testimony, without adjudication of any
10 issue of fact or law, and upon consent and agreement of the parties to this Stipulation and Order,
11 it is hereby AGREED, STIPULATED, and ORDERED:

12 **General Provisions**

13 5. EPA has jurisdiction over the subject matter of this action. The Consent Agreement
14 contains the elements of a complaint required by 40 C.F.R. §§ 22.14(a)(1)-(3) and (8).

15 6. For purposes of this proceeding, Respondent admits the jurisdictional allegations herein,
16 and agrees not to contest EPA’s jurisdiction in this proceeding or any subsequent proceeding to
17 enforce the terms of this CA/FO.

18 7. Respondent neither admits nor denies the factual allegations set forth herein.

19 8. Respondent agrees not to contest the terms and conditions set forth in this CA/FO in this
20 or subsequent proceedings, and agrees not to appeal the Final Order set forth below.

21 9. Respondent explicitly waives its right to a hearing on any issue of fact or law set forth
22 herein.

23 10. This CA/FO, inclusive of all exhibits and attachments, is the entire agreement between
24 the parties to resolve EPA’s civil penalty claim against Respondent for the specific CWA
25

1 violations alleged herein. Full compliance with this CA/FO shall constitute full settlement only
2 of Respondent's federal civil penalty liability for the CWA violations specifically alleged herein.

3 11. This CA/FO is not a permit and it does not constitute a waiver, suspension, or
4 modification of the requirements of any federal, state, or local permit, statute, ordinance,
5 regulation, or order, including but not limited to any CWA requirements, permits, or orders.

6 12. Respondent certifies by signing this CA/FO that, to the best of its knowledge, it is in
7 compliance with the requirements of Sections 301, 308 and 402 of the Act, 33 U.S.C. §§ 1311,
8 1318 and 1342.

9 13. Except as set forth in Paragraphs 52 and 53, the Parties agree to bear their own costs and
10 attorneys' fees.

11 14. This CA/FO shall in no way affect the right of EPA or the United States against any third
12 party or the right of any third party against Respondent. This CA/FO does not create any right in
13 or grant any cause of action to any third party.

14 15. This CA/FO shall apply to and be binding upon Respondent, successors, and assigns.
15 Changes in ownership, including but not limited to any transfer of assets or real or personal
16 property, shall not alter Respondent's obligations under this CA/FO.

17 16. This Consent Agreement may be executed and transmitted by facsimile, email or other
18 electronic means, and in multiple counterparts, each of which shall be deemed an original, but all
19 of which shall constitute one instrument. If any portion of this Consent Agreement is determined
20 to be unenforceable by a competent court or tribunal, it is the Parties' intent that the remaining
21 portions shall remain in full force and effect.

22 17. Each signatory to this CA/FO certifies he or she is fully authorized to enter into and bind
23 the party for whom it is signing to the terms of the CA/FO.

1 **Statutory and Regulatory Framework**

2 18. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant
3 from a point source by any person into a water of the United States unless it complies with the
4 Act, including Section 402, 33 U.S.C. § 1342.

5 19. Section 402 of the Act, 33 U.S.C. § 1342, establishes the National Pollutant Discharge
6 Elimination System (“NPDES”) program. Under Section 402 of the Act, 33 U.S.C. § 1342, EPA
7 and states with EPA-approved NPDES programs are authorized to issue permits governing the
8 discharge of pollutants from regulated sources.

9 20. Section 402(p) of the Act, 33 U.S.C. § 1342(p), and EPA’s implementing regulations at
10 40 C.F.R. § 122.26, require NPDES permit authorization for discharges of storm water
11 associated with industrial activity. Facilities engaged in industrial activity, as defined by 40
12 C.F.R. § 122.26(b)(14), must obtain NPDES permit authorization if they discharge or propose to
13 discharge storm water into waters of the United States.

14 21. Bulk fuel storage is an industrial activity classified under Standard Industrial
15 Classification (SIC) Code 5171, and is therefore, pursuant to 40 C.F.R. § 122.26(b)(14)(viii), an
16 industrial activity subject to the discharge and permitting requirements under Section 402 of the
17 Act, 33 U.S.C. § 1342.

18 22. Section 308(a) of the Act, 33 U.S.C. § 1318(a), and its implementing regulations,
19 authorize EPA to, inter alia, require the owner or operator of any point source to establish
20 records, make reports, or submit other reasonably required information, including individual and
21 general NPDES permit applications.

22 23. Pursuant to Section 308(a) of the Act, 33 U.S.C. § 1318(a), and 40 C.F.R. § 122.21, any
23 person who discharges or proposes to discharge storm water associated with industrial activity
24 must submit an application for an NPDES permit 180 days prior to commencing industrial
25 activity.

1 24. The State of California has an EPA-approved NPDES program, and issues permits,
2 including storm water permits, through its State Water Resources Control Board (“State Board”)
3 and nine Regional Water Quality Control Boards (“Regional Boards”). On April 17, 1997, the
4 State Board adopted General Permit No. CAS000001/Water Quality Order No. 97-03-DWQ
5 (“General Permit”), the current statewide NPDES permit for storm water discharges associated
6 with industrial activity.

7 25. All facility operators seeking coverage under the General Permit must submit a *Notice*
8 *of Intent to Comply with the Terms of the General Permit for Storm Water Discharges*
9 *Associated with Industrial Activity* (“NOI”) to the State Board fourteen (14) days prior to
10 commencing industrial operations.

11 26. The General Permit requires facility operators to develop and implement a storm water
12 pollution prevention plan (“SWPPP”) prior to commencing industrial operations. (General
13 Permit, Order Section A(1)(a), p. 11). The SWPPP includes obligations to identify sources of
14 industrial storm water pollution and to identify site-specific best management practices
15 (“BMPs”).

16 27. The General Permit requires facility operators to reduce or prevent pollutants associated
17 with industrial activity in their storm water discharges and authorized non-storm water
18 discharges by implementing best available technology economically achievable (“BAT”) for
19 toxic and non-conventional pollutants and best conventional pollutant control technology
20 (“BCT”) for conventional pollutants. Development and implementation of a SWPPP that
21 complies with the General Permit and that includes BMPs that achieve BAT/BCT constitutes
22 compliance with this requirement. (General Permit, Order Provision B(3), p. 4.)

23 **General Allegations**

24 28. Respondent is a California corporation, and a “person” under Section 502(5) of the Act,
25 33 U.S.C. § 1362(5).

1 29. Respondent operates a dockside refueling and petroleum storage facility (the "Facility")
2 on approximately 1.25 acres of land located at 1028 South Seaside Avenue at the Port of Los
3 Angeles in California. The Facility has been in operation since at least 1946. Respondent is
4 primarily engaged in bulk fuel storage at the Facility, an industrial activity classified under SIC
5 Code 5171.

6 30. Data from the Torrance Municipal Airport Weather Monitoring Station ("Weather
7 Monitoring Station"), approximately six miles from the Facility, indicate there were at least 59
8 days with 0.1 inches or more of rainfall at the Facility (of which 26 days included at least one 24-
9 hour rainfall event in excess of 0.5 inches) from October 1, 2004 to December 4, 2007. Rainfall
10 events exceeding 0.1 inches generally generate surface water runoff from portions of the Facility.

11 31. Storm water runoff from portions of the Facility collects and flows to on-site storm
12 drains that discharge to the Fish Harbor area of the greater Los Angeles Harbor.

13 32. On May 17, 2007, staff from EPA Region 9 inspected the Facility to evaluate
14 Respondent's compliance with the General Permit and found Respondent had not submitted an
15 NOI to the State Board or otherwise sought or received NPDES permit coverage for discharges
16 from the Facility. EPA inspectors also found waste oil storage in uncovered areas of the Facility
17 that lacked adequate secondary containment to prevent and minimize pollutants from contacting
18 storm water. EPA inspectors also observed an oily sheen on the water's surface in Fish Harbor
19 on the open water side of the Facility's containment booms.

20 33. On November 9, 2007, EPA issued Respondent a Findings of Violation and Order for
21 Compliance, EPA Docket No. CWA 309(a)-08-002 (the "Order"), which required Respondent to
22 obtain General Permit coverage and bring the Facility into compliance with the General Permit
23 by, inter alia, implementing additional BMPs and developing a SWPPP.

24 34. On January 7, 2008, Respondent provided EPA with information indicting the on-site
25 drains storm drains that discharged to Fish Harbor had been sealed.

1 **Findings of Violation**

2 Discharges Without an NPDES Permit

3 35. The facts stated in paragraphs 1 through 34 are re-alleged and incorporated herein.

4 36. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant
5 from a point source by any person into a water of the United States unless it complies with the
6 Act, including Section 402, 33 U.S.C. § 1342.

7 37. On or around November 21, 2007, Respondent submitted an NOI to the State Board
8 seeking coverage under the General Permit for the Facility. On December 4, 2007, the State
9 Board granted Respondent coverage under the General Permit and assigned Waste Discharge
10 Identification (“WDID”) Number 419I021320 for the Facility. Prior to December 4, 2007,
11 discharges from Respondent’s industrial activities at the Facility were not authorized by the
12 General Permit or an individual NPDES permit.

13 38. Respondent is a “person” under Section 502(5) of the Act, 33 U.S.C. § 1362(5).

14 39. Respondent’s operations at its Facility fall within the class of industrial activity
15 classified under SIC Code 5171 (“bulk fuel storage”), and is therefore an “industrial activity” for
16 purposes of Section 402(p) of the Act, 33 U.S.C. § 1342(p), and 40 C.F.R. § 122.26(b).

17 40. Storm water runoff from the Facility allegedly contains “pollutants,” including
18 industrial waste, as defined by Section 502(6) of the Act, 33 U.S.C. § 1362(6).

19 41. The storm drains at the Facility that discharge to Fish Harbor, the Los Angeles
20 Harbor, and Pacific Ocean, are “point sources” as defined by Section 502(14) of the Act, 33
21 U.S.C. § 1362(14).

22 42. Storm water runoff from the Facility that discharges to Fish Harbor, the Los Angeles
23 Harbor, and the Pacific Ocean, is a “storm water discharge associated with industrial activity” as
24 defined by 40 C.F.R. § 122.26(b)(14).

1 43. Fish Harbor, the Los Angeles Harbor, and the Pacific Ocean are “waters of the United
2 States” as that term is defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7), and EPA’s
3 implementing regulations at 40 C.F.R. § 122.2.

4 44. Between October 1, 2004, and December 4, 2007, there were at least 59 days of recorded
5 rainfall at the local weather monitoring station, of which 26 days included at least one 24-hour
6 rainfall event in excess of 0.5 inches. Upon information and belief, each of the 59 rainfall events
7 generated storm water associated with industrial activity at the Facility that allegedly discharged
8 into and added pollutants to Fish Harbor, Los Angeles Harbor, and the Pacific Ocean.

9 45. Each storm water discharge from the Facility between October 1, 2004 and December 4,
10 2007, was an unauthorized discharge to waters of the United States and, together, the discharges
11 constitute no fewer than 59 days of violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

12 Failure to Submit an NOI for General Permit Coverage

13 46. The facts stated in paragraphs 1 through 45 are re-alleged and incorporated herein.

14 47. Section 308(a) of the Act, 33 U.S.C. § 1318(a), and 40 C.F.R. § 122.21, require
15 dischargers of storm water associated with industrial activity to submit an application for an
16 NPDES permit prior to commencing industrial activity.

17 48. Respondent’s failure to submit an NOI for coverage under the General Permit for
18 industrial activities at the Facility constitutes a violation of Section 308(a) of the Act, 33 U.S.C.
19 § 1308(a), and 40 C.F.R. § 122.21.

20 **Penalty**

21 49. Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), authorizes the
22 administrative assessment of civil penalties in an amount not to exceed \$10,000 per day for each
23 day during which the violation continues, up to a maximum penalty of \$125,000. Pursuant to the
24 Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and 40 C.F.R. Part 19, the
25 administrative assessment of civil penalties may not exceed \$16,000 per day for each day during

1 which the violation continues, up to a maximum penalty of \$177,500. *See also* 73 Fed. Reg.
2 75340 (December 11, 2008) (2008 Penalty Inflation Rule).

3 50. Respondent consents to the assessment of and agrees to pay a civil penalty of Seventy-
4 Four Thousand, Four Hundred and Seventy-Three Dollars (\$74,473). The penalty was
5 calculated based on the nature, circumstances, extent and gravity of the violations, Respondent's
6 ability to pay, its prior history of violations, its degree of culpability, and any economic benefit
7 or savings accruing to Respondent as a result of the violations.

8 51. Payment of the civil penalty shall be made within thirty (30) days of the effective date of
9 the CA/FO. The date by which payment must be received by the United States shall be the "due
10 date" for the payment. Respondent shall make the payment in accordance with any of the
11 acceptable methods of payment listed in Exhibit A, "EPA Region 9 Collection Information,"
12 which is incorporated by reference as part of this CA/FO. Concurrent with payment of the
13 penalty, Respondent shall provide written notice of payment, referencing the title and docket
14 number of this case and attaching a photocopy of the penalty payment, via mail to:

15	Steve Armsey		Rick Sakow
16	Regional Hearing Clerk		CWA Compliance Office
17	U.S. EPA Region 9 (ORC-1)	and	U.S. EPA Region 9 (WTR-7)
	75 Hawthorne Street		75 Hawthorne Street
	San Francisco, California 94105		San Francisco, California 94105

18 52. If the penalty is not paid when due, interest shall accrue on any overdue amount from
19 the first date after the due date through the date of payment, at the interest rate established by the
20 Secretary of the Treasury under 31 U.S.C. § 3717. In addition, a late payment handling charge
21 of fifteen dollars (\$15.00) will be assessed for each thirty (30) day period (or any portion thereof)
22 following the due date during which time the balance remains unpaid. Payment of any interest
23 and late handling charges shall be made in accordance with paragraph 51 above.
24
25

1 53. Failure by Respondent to pay the full penalty when due entitles EPA and the United
2 States to bring a civil action to recover the amount assessed. In such an action, Respondent shall
3 pay (in addition to any assessed penalty, interest, and monthly handling charges) attorney fees,
4 cost for collection proceedings, and a quarterly nonpayment penalty for each quarter during
5 which such failure to pay persists. Pursuant to Section 309(g)(9) of the Act, 33 U.S.C. §
6 1319(g)(9), the quarterly nonpayment penalty shall equal twenty percent (20%) of the aggregate
7 amount of Respondent's penalties and nonpayment penalties that are unpaid as of the beginning
8 of that quarter.

9 54. The civil penalty and any interest, late handling fees, or late penalty payments provided
10 for in the CA/FO shall not be deducted from Respondent's or any affiliated entity's taxes.

11 55. EPA has consulted with the State of California pursuant to Section 309(g) of the Act, 33
12 U.S.C. § 1319(g), and 40 C.F.R. § 22.38, in regards to this matter.

13 **Effective and Termination Dates**

14 56. This CA/FO shall take effect on the date the Final Order is filed with the Regional
15 Hearing Clerk, and shall terminate when Respondent has fully complied with its terms.

16 **Public Notice**

17 57. EPA's consent to this Consent Agreement is subject to the requirements of Section
18 309(g)(4) of the Act, 33 U.S.C. § 1319(g)(4), and 40 C.F.R. § 22.45(b), that EPA provide public
19 notice of and a reasonable opportunity for comment on the Consent Agreement and proposed
20 Final Order. EPA reserves the right to withdraw the Consent Agreement and proposed Final
21 Order in response to public comments that petition EPA to set aside the Consent Agreement and
22 proposed Final Order on the basis that material evidence was not considered. 40 C.F.R. §
23 22.45(c)(4). In such case, Respondent's obligations under this document shall terminate, and
24 EPA may pursue any and all enforcement options as provided by law. If no comment is received
25 during the comment period regarding the Consent Agreement, EPA shall file the Final Order.

1 CONSENTING PARTIES:

2 For Respondent General Petroleum Corporation:

3

4 BY: _____
5 Sean Kha
6 Vice President, Finance

DATE: _____

6 For Complainant U.S. Environmental Protection Agency, Region 9:

7 BY: _____
8 Alexis Strauss, Director
9 Water Division

DATE: _____

10

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1 NANCY MARVEL
Regional Counsel
2 United States Environmental Protection Agency, Region 9

3 RICH CAMPBELL
Assistant Regional Counsel
4 United States Environmental Protection Agency, Region 9
5 75 Hawthorne Street
San Francisco, California 94105
6 (415) 972-3870

7 Attorneys for Complainant

8
9 **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**
10 **REGION 9**
75 Hawthorne Street
San Francisco, California 94105

11 In re the Matter of:) Docket No.: CWA-09-2009-0002
12)
13)
14 **General Petroleum Corporation**)
15) **[PROPOSED]**
1028 S. Seaside Avenue) **FINAL ORDER**
Terminal Island, California, 90731,)
16 Respondent.)
17) Proceedings Under Section 309(g)(2)(B) of the
Clean Water Act, as amended, 33 U.S.C. §
1319(g)(2)(B)

18
19 The foregoing Consent Agreement is hereby approved and incorporated by reference into
20 this Order. Respondent General Petroleum Corporation is hereby ordered to comply with the
21 Consent Agreement.

22
23 _____
Steven Jawgiel
24 Regional Judicial Officer
U.S. Environmental Protection Agency
25 Region 9

DATE:

CONSENT AGREEMENT AND
PROPOSED FINAL ORDER
DOCKET NO. CWA-09-2009-0002

1 **ATTACHMENT A**

2 **EPA REGION 9 COLLECTION INFORMATION:**

3
4 **ELECTRONIC FUNDS TRANSFERS**

5 Federal Reserve Bank of New York
6 ABA = 021030004
7 Account = 68010727
8 SWIFT address = FRNYUS33
9 33 Liberty Street
10 New York, NY 10045
11 Field Tag 4200 of the Fedwire message should read:
12 "D 68010727 Environmental Protection Agency "
13

14 **CHECK PAYMENTS**

15 U.S. Environmental Protection Agency
16 Fines and Penalties
17 Cincinnati Finance Center
18 P.O. Box 979077
19 St. Louis, MO 63197-9000

20 **OVERNIGHT MAIL:**

21 U.S. Bank
22 1005 Convention Plaza
23 Mail Station SL-MO-C2GL
24 St. Louis, MO 63101

25 Contact: 314-418-4087

1 **CERTIFICATE OF SERVICE**

2 In the Matter of General Petroleum Corporation,
3 EPA Docket No. CWA-09-2009-0002

4 I hereby certify that the original of the foregoing Consent Agreement and Proposed Final
5 Order was filed with the Regional Hearing Clerk, Region 9, and that a copy was sent, certified
6 mail, return receipt requested, to:

7
8 Shanda M. Beltran, Esq.
9 Allen Matkins Leck Gamble Mallory & Natsis LLP
10 1900 Main Street, 5th Floor
11 Irvine, CA 92614 -7321
12 (949) 553-1313 - Main
13 (949) 553-8354 - Facsimile
14 (949) 851-5451 - Direct
15 sbeltran@allenmatkins.com

16 _____
17 Date

16 _____
17 Steve Armsey
18 Regional Hearing Clerk
19 U.S. EPA, Region 9