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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGIONAL HEARING CLERK  
EPA REGION VI

REGION 6

IN THE MATTER OF

**Formation Resources, LLC  
Calhoun County, Texas**

Respondent.

**CWA SECTION 311 CLASS II  
CONSENT AGREEMENT  
AND FINAL ORDER  
UNDER 40 CFR § 22.13(b)**

Docket No. CWA-06-2011-4851

**LEGAL AUTHORITY**

1. This Consent Agreement is proposed and entered into under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 311(b)(6)(B)(ii) of the Clean Water Act ("Act"), 33 U.S.C. § 1321(b)(6)(B)(ii), as amended by the Oil Pollution Act of 1990, and under the authority provided by 40 CFR §§ 22.13(b) and 22.18(b)(2). The Administrator has delegated these authorities to the Regional Administrator of EPA, Region 6, Delegation No. 2-52-A, dated May 11, 1994 and Delegation No. R6-2-52-A, dated January 31, 2008 ("Complainant").

**CONSENT AGREEMENT**

**SPCC Stipulations**

The parties, in their own capacity or by their attorneys or other authorized representatives, hereby stipulate:

2. Section 311(j)(1)(C) of the Act, 33 U.S.C. § 1321(j)(1)(C), provides that the President shall issue regulations "establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil . . . from onshore . . . facilities, and to contain such discharges . . . ."

3. Initially by Executive Order 11548 (July 20, 1970), 35 Fed. Reg. 11677 (July 22, 1970), and most recently by Section 2(b)(1) of Executive Order 12777 (October 18, 1991), 56 Fed. Reg. 54757 (October 22, 1991), the President delegated to EPA his Section 311(j)(1)(C) authority to issue the regulations referenced in the preceding Paragraph for non-transportation-related onshore facilities.

4. EPA subsequently promulgated the Spill Prevention Control and Countermeasure (SPCC) regulations pursuant to these delegated statutory authorities, and pursuant to its authorities under the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, which established certain procedures, methods and requirements upon each owner and operator of a non-transportation-related onshore facility which, due to its location, could reasonably be expected to discharge oil into or upon the navigable waters of the United States and their adjoining shorelines in such quantity as EPA has determined in 40 CFR § 110.3 may be harmful to the public health or welfare or the environment of the United States (“harmful quantity”).

5. In promulgating 40 CFR § 110.3, which implements Section 311(b)(4) of the Act, 33 U.S.C. § 1321(b)(4), EPA has determined that discharges of harmful quantities include oil discharges that cause either (1) a violation of applicable water quality standards or (2) a film, sheen upon, or discoloration of the surface of the water or adjoining shorelines, or (3) a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

6. Respondent is a limited liability company conducting business in the State of Texas with a place of business located at 306 West Seventh Street, Suite 915, Fort Worth, Texas 76102. Respondent is a person within the meaning of Sections 311(a)(7) and 502(5) of the Act, 33 U.S.C. §§ 1321(a)(7) and 1362(5), and 40 CFR § 112.2.

7. Respondent is the owner within the meaning of Section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6), and 40 CFR § 112.2 of an onshore oil production facility, which is located approximately six miles West of Port Lavaca, on FM 1679 at Shannon Road, in Calhoun County, Texas ("the facility"). Drainage from the facility flows Northeast into an unnamed channel; thence into Dulce Creek; thence to Chocolate Bayou; thence to Chocolate Bay and the Gulf of Mexico.

8. The facility has an aggregate above-ground storage capacity of greater than 1320 gallons (approx. 93,240 gallons) of oil in containers each with a shell capacity of at least 55 gallons.

9. Dulce Creek, Chocolate Bayou, Chocolate Bay and the Gulf of Mexico are navigable waters of the United States within the meaning of 40 CFR § 112.2, and as defined in Section 502(7) of the Act, 33 U.S.C. §1362(7), and 40 CFR §110.1.

10. Respondent is engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using or consuming oil or oil products located at the facility.

11. The facility is a non-transportation-related facility within the meaning of 40 CFR § 112.2 Appendix A, as incorporated by reference within 40 CFR § 112.2.

12. The facility is an onshore facility within the meaning of Section 311(a)(10) of the Act, 33 U.S.C. § 1321(a)(10), and 40 CFR § 112.2.

13. The facility is therefore 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 ("an SPCC-regulated facility").

14. Pursuant to Section 311(j)(1)(C) of the Act, E.O. 12777, and 40 C.F.R. § 112.1 Respondent, as the owner of an SPCC-regulated facility, is subject to the SPCC regulations.

15. The facility began operating prior to August 16, 2002., from the information provided, the facility began operating in 1945. The Respondent began operating the facility in July 2009.

### Allegations

Respondent admits the jurisdictional allegations set forth above and neither admits nor denies the violations alleged in paragraphs 17-23.

### **COUNT 1: Failure to prepare a SPCC plan that meets the requirements of 40 CFR § 112.7 and other applicable section, as required in 40 CFR § 112.3**

16. Paragraphs 1 through 15 above are hereby incorporated by reference.

17. 40 CFR § 112.3 requires that the owner or operator of an SPCC-regulated facility must prepare an SPCC plan in writing, and in accordance with 40 CFR § 112.7 and any other applicable section of 40 CFR Part 112.

18. On May 18, 2010, EPA inspected the facility and found that Respondent had failed to prepare such SPCC plan for the facility that was fully in accordance with 40 CFR § 112.7 and other applicable sections. Respondent's SPCC plan deficiencies are as follows:

**a.) Respondent failed to provide a SPCC plan that had been reviewed and certified by a licensed Professional Engineer, to satisfy the requirements of 40 CFR § 112.3(d)**

**b.) Respondent failed to provide Inspections & documentation procedures in their SPCC plan, for required inspections of the tanks, piping, valves, supports, and other facility equipment, in accordance at 40 CFR § 112.7(e) and 112.9(d).**

**c.) Respondent failed to provide required elements in their SPCC plan, such as 1) an adequate description of the physical layout of the facility; 2) procedures to use when a discharge may occur; 3) and dike drainage procedures, as required at 40 CFR § 112.7 and 112.8(c) and 112.9;**

**d.) Respondent failed to provide required training and discharge prevention procedures for oil handling personnel, as required at 40 CFR § 112.7(f).**

**e.) Respondent failed to establish an adequate flowline maintenance program in its SPCC plan, as required at 40 CFR § 112.9(d)(3).**

19. Respondent's failure to prepare an SPCC plan for the facility that was fully in accordance with 40 CFR § 112.7 and other applicable sections violated 40 CFR § 112.3, and impacted its ability to prevent a spill.

**COUNT 2: Failure to fully implement an SPCC plan as required in 40 CFR § 112.3**

20. Paragraphs 1 through 15 above are hereby incorporated by reference.

21. 40 CFR § 112.3 requires that the owner or operator of an SPCC-regulated facility shall have prepared a written SPCC plan and implement that plan in accordance with 40 CFR § 112.7 and any other applicable section of 40 CFR Part 112.

22. On May 18, 2010, EPA conducted an inspection of the subject facility and determined that the Respondent had failed to fully implement its SPCC Plan for the facility in accordance with 40 CFR § 112.7 and any other applicable section of 40 CFR Part 112. Specific inadequacies are described below:

**a.) The Respondent failed to conduct inspections and tests in accordance with written procedures developed for the facility, as required in 40 CFR § 112.7(e);**

**b.) The Respondent failed to implement adequate personnel training and discharge Prevention Procedures, as required in 40 CFR § 112.7(f);**

**c.) Respondent failed to implement a flowline maintenance program in its SPCC plan, as required at 40 CFR § 112.9(d)(3).**

23. Respondent's failure to fully implement its SPCC plan for the facility contributed to the spill below and violated 40 CFR § 112.3.

**Spill Stipulations**

24. Paragraphs 1 through 15 above are hereby incorporated by reference.

25. Section 311(b)(3) of the Act prohibits the discharge of oil or a hazardous substance into or upon the navigable waters of the United States or adjoining shorelines in such quantities that have been determined may be harmful to the public health or welfare or environment of the United States.

26. For purposes of Section 311(b)(3) and (b)(4) of the Act, 33 U.S.C. §1321(b)(3) and (b)(4), discharges of oil into or upon the navigable waters of the United States in such quantities that have been determined may be harmful to the public health or welfare or environment of the United States are defined in 40 CFR §110.3 to 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.

**Allegations**

Respondent admits the jurisdictional allegations set forth above and neither admits nor denies the violations alleged in paragraphs 28-30.

**COUNT 3: Discharge of Oil into or upon Waters of the US and its adjoining shoreline.**

27. Paragraphs 1 - 15 and 24 - 26 above are hereby incorporated by reference.

28. On May 17, 2010, Respondent discharged approximately 280 barrels (11,760 gallons) of oil as defined in Section 311(a)(1) of the Act, 33 U.S.C. §1321(a)(1), and 40 CFR §110.1, from its facility into or upon an unnamed channel; thence into Dulce Creek; thence to Chocolate Bayou and the adjoining shorelines.

29. Respondent's May 17, 2010, discharge of oil from its facility caused a sheen upon or discoloration of the surface of Dulce Creek and Chocolate Bayou, and therefore, was in a quantity that has been determined may be harmful under 40 CFR §110.3, which implements Sections 311(b)(3) and (b)(4) of the Act.

30. Respondent's May 17, 2010, discharge of oil from its facility into or upon Dulce Creek and Chocolate Bayou, and adjoining shorelines in a quantity that has been determined may be harmful under 40 CFR §110.3, violated Section 311(b)(3) of the Act.

#### **Waiver of Rights**

31. Respondent waives the right to a hearing under Section 311(b)(6)(B)(i) of the Act, 33 U.S.C. § 1321(b)(6)(B)(i), and to appeal any Final Order in this matter under Section 311(b)(6)(G)(i) of the Act, 33 U.S.C. §1321(b)(6)(G)(i), and consents to the issuance of a Final Order without further adjudication.

#### **Penalty**

32. The Complainant proposes, and Respondent consents to, the assessment of a civil penalty of **\$10,000.00**.

#### **Payment Terms**

Based on the forgoing, the parties, in their own capacity or by their attorneys or authorized representatives, hereby agree that:

33. The Respondent shall pay to the United States a civil penalty in the amount of **\$10,000.00**, to settle the violations as alleged in the CAFO, in accordance with 40 C.F.R. 22.18(c). The Respondent shall make monthly installment payments of **\$504.73** per month, which includes principle and interest, for 20 months. The first payment must be made within thirty (30) days after the effective date of this CAFO, and each subsequent payment will be due on the 15th day of each month. The Respondent shall submit this Consent Agreement and Final Order, with original signature and documentation of the initial penalty payment to:

OPA Enforcement Coordinator  
U. S. Environmental Protection Agency  
Region 6 (6SF-PC)  
1445 Ross Avenue  
Dallas, Texas 75202-2733.

34. The payments shall be made by a cashier's or certified check, or by an electronic funds transfer (EFT). If you are paying by check, pay the check to "Environmental Protection Agency," noting on the check "OSTLF-311" and docket number **CWA-06-2011-4851**. If you use the U.S. Postal Service, address the payment to:

**U.S. Environmental Protection Agency, Fines & Penalties  
P.O. Box 979077, St. Louis, MO 63197-9000**

- If you use a private delivery service, address the payment to:

U.S. Bank  
Government Lockbox 979077 US EPA Fines & Penalties  
1005 Convention Plaza, Mail Station SL-MO-C2GL  
St. Louis, MO 63101  
314-418-1028

- The Respondent shall submit copies of the check to the OPA Enforcement Coordinator, at the address above as well as:



Lorena Vaughn  
Regional Hearing Clerk (6RC)  
U.S. Environmental Protection Agency  
Region 6  
1445 Ross Avenue  
Dallas, TX 75202-2733

35. Failure by the Respondent to pay any portion of the penalty assessed by the Final Order in by its due date may subject Respondent to a civil action to collect the assessed penalty, plus interest, attorney's fees, costs and an additional quarterly nonpayment penalty pursuant to Section 311(b)(6)(H) of the Act, 33 U.S.C. §1321(b)(6)(H). In any such collection action, the validity, amount and appropriateness of the penalty agreed to herein shall not be subject to review.

**General Provisions**

36. Complainant reserves the right, pursuant to 40 CFR § 22.45(c)(4)(iii), to withdraw this Consent Agreement and proposed Final Order within 15 days of receipt of a Commenter's petition requesting, pursuant to 40 CFR § 22.45(c)(4)(ii), that the Regional Administrator set aside the Consent Agreement and proposed Final Order on the basis that material evidence was not considered.


37. The Final Order shall be binding upon Respondent and Respondent's officers, directors, agents, servants, employees, and successors or assigns.

38. The Final Order does not constitute a waiver, suspension or modification of the requirements of Section 311 of the Act, 33 U.S.C. §1321, or any regulations promulgated thereunder, and does not affect the right of the Administrator or the United States to pursue any applicable injunctive or other equitable relief or criminal sanctions for any violation of law.

Payment of the penalty pursuant to this Consent Agreement resolves only Respondent's liability for federal civil penalties for the violations and facts stipulated to and alleged herein.

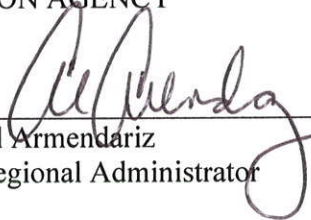
**FORMATION RESOURCES, LLC**

Date: 9/26/11

  
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John Coffey  
President

**U.S. ENVIRONMENTAL PROTECTION AGENCY**

Date: 10/12/11

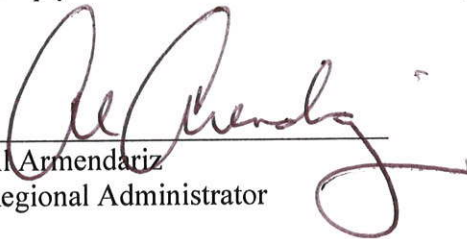
  
\_\_\_\_\_  
Al Armendariz  
Regional Administrator

**FINAL ORDER**

Pursuant to Section 311(b)(6) of the Act, 33 U.S.C. §1321(b)(6) and the delegated authority of the undersigned, and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits," codified at 40 CFR Part 22, the forgoing Consent Agreement is hereby approved and incorporated by reference into this Final Order, and the Stipulations by the parties and Allegations by the Complainant are adopted as Findings in this Final Order.

The Respondent is ordered to comply with the terms of the Consent Agreement.

Date: 2/17/2012

  
Al Armendariz  
Regional Administrator

**CERTIFICATE OF SERVICE**

I certify that the original and one copy of the foregoing "Consent Agreement and Final Order," issued pursuant to 40 C.F.R. 22.13(b), was filed on 2-22, 2011, with the Regional Hearing Clerk, U.S. EPA Region 6, 1445 Ross Avenue, Dallas, TX 75202-2733; and that on the same date a copy of the same was sent to the following, in the manner specified below:

Copy by certified mail,  
return receipt requested:

NAME: Mr. John Coffey  
ADDRESS: 306 West 7th Street, Suite 915  
Fort Worth, TX 76102



Frankie Markham  
OPA Enforcement Administrative Assistant