

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6

2013 OCT 15 10:15:15

FILED IN REGION 6 OFFICE OF THE REGIONAL ADMINISTRATOR

IN THE MATTER OF

**M-I L.L.C.
Port Fourchon Shore Base Facility
Lafourche Parish, LA**

Respondent

**CWA SECTION 311 CLASS I
CONSENT AGREEMENT
AND FINAL ORDER**

UNDER 40 CFR § 22.13(b)

Docket No. **CWA-06-2013-4833**

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)(i) of the Clean Water Act ("Act"), 33 U.S.C. § 1321(b)(6)(B)(i), 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, who has in turn delegated them to the Director of the Superfund Division of EPA, Region 6, who has, by his concurrence, re-delegated the authority to act as Complainant to the Associate Director Prevention and Response Branch in Region 6, Delegation No. R6-2-51, dated February 13, 2008 ("Complainant").

CONSENT AGREEMENT

Stipulations

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

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2. Section 311(j)(1)(C) of the Act, 33 USC § 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 or offshore vessels and from onshore or offshore 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 and offshore facilities.

4. Through Executive Order 12777 (October 18, 1991), 56 Fed. Reg. 54757 (October 22, 1991), the President delegated to DOI, responsibility for spill prevention and control, contingency planning, and equipment inspection activities associated with offshore facilities. Subsequently, pursuant to section 2(i) of E.O. 12777, the Secretary of the Interior re-delegated, and the Administrator of EPA agreed to assume (MOU published as Appendix B to 40 CFR Part 112), responsibility for non-transportation-related offshore facilities located landward of the coast line.

5. EPA promulgated the Spill Prevention Control & Countermeasure (SPCC) regulations pursuant to delegated statutory authorities, and pursuant to its authorities under the Clean Water Act, 33 USC § 1251 *et seq.*, which established certain procedures, methods and other requirements upon each owner and operator of a non-transportation-related onshore or off-shore facility, if such facility, 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”).

6. In promulgating 40 CFR § 110.3, which implements Section 311(b)(4) of the Act, 33 USC § 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.

7. Respondent is a firm conducting business in the State of Louisiana, with a place of business located at 499 A.J. Estay Road Port Fourchon, Louisiana 70357 and 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.

8. Respondent is the owner within the meaning of Section 311(a)(6) of the Act, 33 USC § 1321(a)(6), and 40 CFR § 112.2 of an oil production facility, Port Fourchon Shore Base Facility, located in Lafourche Parish, Louisiana (“the facility”). The approximate coordinates of the facility are 29.119706° N and -90.210208° W. Drainage from the facility travels west and southwest to Bayou Lafourche.

9. The facility has an aggregate above-ground storage capacity greater than 1320 gallons of oil in containers each with a shell capacity of at least 55 gallons. Facility capacity is approximately 1,962,156 gallons.

10. Bayou Lafourche is a navigable waters of the United States within the meaning of 40 CFR § 112.2.

11. Respondent is engaged in drilling, producing, gathering, storing, processing, refining,

transferring, distributing, using or consuming oil or oil products located at the facility.

12. 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.

13. The facility is an offshore facility within the meaning of Section 311(a)(10) of the Act, 33 USC § 1321(a)(11), 40 CFR § 112.2, and 40 CFR § 112 Appendix B.

14. The facility is therefore a non-transportation-related offshore 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").

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

16. The facility began operating on or prior to November 10, 2011.

Allegations

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

18. On July 29, 2013, EPA inspected the facility and found that Respondent had failed to fully implement its SPCC plan for the facility. Respondent failed to fully implement such an SPCC plan for the facility as follows:

- a. Facility failed to adequately address in plan the physical layout and include a facility diagram, which should mark the location and contents of each fixed oil storage container and the storage area where mobile or portable containers are located. Specifically, the diagrams failed to include all the connecting piping and failed to include the estimated number of mobile/portable containers located at the facility in accordance with 40 CFR § 112.7(a)(3).

- b. Facility failed to conduct inspections and tests in accordance with written procedure, failed to keep written records and tests signed by the appropriate supervisor or inspector, and failed to keep them with the SPCC Plan for a period of three years. Specifically, the facility failed to have inspection forms specific to the individual facility and failed to have actual dates reflecting the occurrence of the facility's inspections in accordance with 40 CFR § 112.7(e).
- c. Facility failed to implement the training of oil handling personnel in the operation and maintenance of equipment to prevent discharges; discharge procedure, protocol; applicable pollution control laws, rules, and regulations; general facility operation and the contents of the facility SPCC Plan in accordance with 40 CFR § 112.7(f)(1).
- d. Facility failed to address in plan a person designated as accountable for discharge prevention in accordance with 40 CFR § 112.7(f)(2).
- e. Facility failed to conduct discharge prevention briefings at least once a year for oil handling personnel to assure adequate understanding of the Plan. Specifically, the records provided by the facility failed to show that annual spill briefings are/were conducted in accordance with 40 CFR § 112.7(f)(3).
- f. Facility failed to provide evidence indicating retained storm water is inspected and discharged with in permitted requirements. Specifically, the facility failed to maintain and provide records showing that drainage is being inspected in accordance with 40 CFR § 112.8(b)(2).
- g. Facility failed to provide adequate records for drainage as required under permits issued by local or federal entities in accordance with 40 CFR § 112.8(c)(3).
- h. Facility failed to observe effluent treatment facilities frequently enough to detect possible system upsets that could cause a discharge. Specifically, the oil water separator failed to operate at an optimal level of performance and the facility failed to provide maintenance records for its up keep in accordance with 40 CFR § 112.8(c)(9).
- i. Facility failed to discuss in plan for mobile or portable containers secondary containment with sufficient capacity to contain the largest single compartment or container and sufficient freeboard to contain precipitation. Specifically, the facility failed to include in plan the use of spill pallets for secondary containment for mobile containers when mobile

containers are present at the site in accordance with 40 CFR § 112.8(c)(11).

- j. Facility failed to address in plan and failed to implement for aboveground valves, piping and appurtenances regular inspections to assess their general condition. Specifically, the facility failed to incorporate in plan procedures on addressing piping inspections and the facility failed to inspect pipes and appurtenances as evidenced by leaking pipes in accordance with 40 CFR § 112.8(d)(4).

19. Respondent's failure to fully implement its SPCC plan for the facility violated 40 CFR § 112.3, and impacted its ability to prevent an oil spill.

Waiver of Rights

20. Respondent admits the jurisdictional allegations set forth above and neither admits nor denies the other specific violations alleged above. 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

21. The Complainant proposes, and Respondent consents to, the assessment of a civil penalty of **\$9,948.00**.

Payment Terms

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

21. Within thirty (30) days of the effective date of the Final Order, the Respondent shall pay the amount of **\$9,948.00** by means of a cashier's or certified check, or by electronic funds transfer (EFT). The Respondent shall submit this Consent Agreement and Final Order, with

original signature, along with documentation of the penalty payment to:

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

- If you are paying by check, pay the check to "Environmental Protection Agency," noting on the check "OSTLF-311" and docket number **CWA-06-2013-4833**. 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
1005 Convention Plaza, Mail Station SL-MO-C2GL
St. Louis, MO 63101

- The Respondent shall submit copies of the check (or, in the case of an EFT transfer, copies of the EFT confirmation) to the following person:

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

22. Failure by the Respondent to pay the penalty assessed by the Final Order in full 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 USC §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.

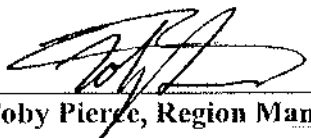
General Provisions

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

24. The Final Order does not constitute a waiver, suspension or modification of the requirements of Section 311 of the Act, 33 USC §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.

M-I L.L.C.

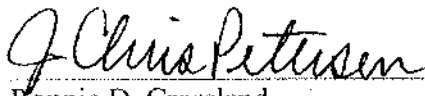
Date: 8/26/14



Toby Pierce, Region Manager

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 9/10/14


for Ronnie D. Crossland
Associate Director
Prevention & Response Branch
Superfund Division

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 9-15, 2014, 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:
7012 3460 0002 4060 8502

NAME: Mr. Ron Domangue
ADDRESS: 5950 North Course Drive
Houston, TX 77072

Frankie Markham

Frankie Markham
OPA Enforcement Administrative Assistant