

2014 SEP 13 AM 10:43

RECEIVED COMPLAINT

IN THE MATTER OF

**Crosstex Energy
River Fractionation Plant
Ascension Parish, LA**

Respondent

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

UNDER 40 CFR § 22.13(b)

Docket No. **CWA-06-2014-4816**

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:

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 2501 Cedar Springs Ste. 100 Dallas TX 75201 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, Riverside Fractionation Plant, located in Ascension Parish, Louisiana (“the facility”). The approximate coordinates of the facility are 30.2100° N and -91.0374° W. Drainage from the facility travels to the Mississippi River; thence, the Gulf of Mexico.

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 7,100,685 gallons.

10. The Mississippi River and the Gulf of Mexico are 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 February 11, 2014 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 discuss in physical layout of the facility and include a facility diagram that identifies location, storage area, buried tanks transfer stations and connecting pipes in accordance with 40 CFR § 112.7(a)(3).
- b. Facility failed to adequately address in plan a prediction of the direction, rate of flow and total quantity of oil that could be discharged for each type of major equipment failure where experience indicates a reasonable potential for equipment failure for fixed containers types of oil and storage capacity. Specifically, the table in plan did not include a prediction flow rate for all tanks listed in plan and therefore not in accordance with 40 CFR § 112.7(b).

- c. Facility fail to adequately address in plan the reason for claiming impracticability for bulk storage tank and facility failed to discuss in plan the periodic integrity testing of containers and integrity and leak testing of the associated valves and piping is conducted as it relates to this claim. Specifically, the produced water tanks do not have secondary containment and facility claim impracticable; however, the claim was not adequately addressed in the plan. Additionally, during inspection it was noted that there was room for containment to be installed and therefore not in accordance with 40 CFR § 112.7(d).
- d. Facility failed to discuss in plan inspections and tests conducted in accordance with written procedure. Specifically the plan does not provide the specific time frame for inspections conducted and therefore not in accordance with 40 CFR § 112.7(e).
- e. Facility failed to communicate in plan the correct description of loading/unloading rack drainage flow into a catchment basin or treatment facility designed to handle discharges, use a quick drainage system for tank car or tank loading/unloading racks and facility failed to provide discussion on interlocked warning light or physical barriers, warning signs wheel chocks or vehicle brake interlock system in the area adjacent to the loading or unloading rack to prevent vehicles from departing before complete disconnection of flexible or fixed oil transfer lines. Specifically, the plan should be written to include site specific information regarding the loading/unloading area and therefore not in accordance with in accordance with 40 CFR § 112.7(h)(1) and (h)(2).
- f. Facility failed to provide a detail discussion of conformance with applicable more stringent State rules, regulations, and guidelines and other effective discharge prevention and containment procedures listed. Specifically the plan should provide a detail discussion on conformance with applicable State rules and therefore not in accordance with 40 CFR § 112.7(j).
- g. Facility failed to adequately discuss in plan procedures to retain drainage from diked storage areas by valves to prevent a discharge into the drain system or facility effluent treatment system, except where facility systems are designed to control such discharge in accordance with 40 CFR § 112.8(b)(1).
- h. Facility failed to adequately discuss the use of valves of manual, open-and-closed design, for the drainage of diked areas. Specifically, the facility failed to provide a discussion based on site specific information and therefore not in accordance with 40 CFR § 112.8(b)(2).
- i. Facility failed to adequately discuss in plan the design of facility drainage

systems from undiked areas with a potential for a discharge (such as where piping is located outside containment walls or where tank truck discharges may occur outside the loading area) to flow into ponds, lagoons, or catchment basins designed to retain oil or return it to the facility in accordance with 40 CFR § 112.8(b)(3).

- j. Facility failed to adequately discuss in plan drainage that is not engineered by ensuring the final discharge of all ditches inside the facility with a diversion system that would in the event of an uncontrolled discharge, retain oil in the facility in accordance with in accordance with 40 CFR § 112.8(b)(4).
- k. Facility failed to adequately discuss in plan facility drainage waters that are continuously treated in more than one treatment unit and pump transfer when needed and therefore not in accordance with 40 CFR § 112.8(b)(5).
- l. Facility failed to discuss in plan each aboveground container for integrity on a regular schedule and whenever materials repairs are made. Additionally, the plan must include facility must determine in accordance with industry standards, the appropriate qualifications for personnel performance test and inspections and the facility failed to discuss in plan the comparison records of above ground container integrity testing are maintained in accordance with 40 CFR § 112.8(c)(6).
- m. Facility failed to discuss in plan engineer or update each container installation in accordance with good engineering practice to avoid discharges by providing one type of liquid level sensing in accordance with 40 CFR § 112.8(c)(8).
- n. Facility failed to adequately discuss in plan on effluent treatment facilities for detection of possible system upsets that could cause a discharge in accordance with 40 CFR § 112.8(c)(9).
- o. Facility failed to adequately discuss in plan a detail description of prompt handling of visible discharges which result in a loss of oil from the container and other pertinent parts (seams, gaskets piping, pumps, valves, rivets, and blots), as well as incorporating a discussion in plan on oil removal from dike areas in accordance with 40 CFR § 112.8(c)(10).
- p. Facility failed to adequately discuss in plan a detailed description for buried piping installed or replaced on or after August 16, 2002 has protective wrapping or coating, buried piping installed or replaced on or after August 16, 2002 is also catholically protected or otherwise satisfies corrosion protection standards for piping and buried piping exposed for any reason is inspected for deterioration; corrosion damage is examined; and corrective action is taken in accordance with 40 CFR § 112.8(d)(1).

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 **\$17,748.00**.

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 **\$17,748.00** 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-06-2014-4816**. 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.

Crosstex Energy


Date: 9/2/14



Aaron ~~Aaron~~ Wimberly
Plant Manager

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 9/10/14



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

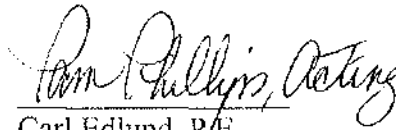
FINAL ORDER

Pursuant to Section 311(b)(6) of the Act, 33 USC §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:

9-11-14



Carl Edlund, P.E.
Director
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 8540

NAME: Mr. Aaron Wimberly
ADDRESS: P. O. Box 225
Geismar, Louisiana 70734



Frankie Markham
OPA Enforcement Administrative Assistant