



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 6  
1201 ELM STREET, SUITE 500  
DALLAS, TEXAS 75270

March 30, 2023

TRANSMITTED VIA E-MAIL

Mr. Patrick Passantino, Environmental Manager  
Valero Refining-Texas, L.P.  
1301 Loop 197 South  
Texas City, TX 77592  
[patrick.passantino@valero.com](mailto:patrick.passantino@valero.com)

Re: Draft Consent Agreement and Final Order  
Docket No. CWA-06-2023-4805  
Inspection No: SPCC-TX-2023-00102  
Galveston County, Texas

Dear Mr. Passantino:

The enclosed Class I Consent Agreement and Final Order (CAFO) has been drafted by the EPA in order to seek a settlement agreement regarding the potential violations found during the Spill Prevention, Control and Countermeasures (SPCC) and Facility Response Plan (FRP) inspection of your facility on January 10, 2023. The specific allegations are identified in the enclosed draft CAFO. The EPA has authority under Section 311 of the CWA to pursue civil penalties for SPCC and FRP violations in accordance with 40 C.F.R. Part 22, "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".(enclosed). The EPA requests that you immediately confirm receipt of this e-mail by sending a response e-mail to [blaha.michael@epa.gov](mailto:blaha.michael@epa.gov).

If Valero Refining-Texas, L.P. wishes to settle this matter without further legal action, the enclosed CAFO should be returned, signed by an authorized official of the company within thirty (30) days of receipt of this letter. Final issuance of the CAFO may be subject to additional verification that all necessary corrective actions have been completed. The CAFO, once finalized, is binding on both you and the EPA. Upon conclusion of the final action, EPA will take no further action against you for the violations cited in the CAFO.

The original, signed, CAFO must be sent via MAIL and E-MAIL to:

Energy Sector Compliance Section  
U. S. Environmental Protection Agency  
Region 6 (6ECD-WE)  
1201 Elm Street  
Dallas, TX 75270-2102  
[blaha.michael@epa.gov](mailto:blaha.michael@epa.gov)

Valero Refining-Texas, L.P.  
CWA-06-2023-4805

Upon receipt and processing of the signed document, the EPA will forward to you copies of the fully executed CAFO. Penalty payment is not due until thirty (30) days after the EPA has returned the fully executed CAFO to you.

By terms of the CAFO, and upon payment of the penalty, you waive your opportunity for a hearing pursuant to Section 311 of the Clean Water Act. You have the right to be represented by an attorney at any stage of the proceedings, including any informal discussions with the EPA.

If you elect not to sign and return the CAFO within 30 days of your receipt of this letter and pay the penalty, unless an extension has been granted by the EPA, the CAFO will be automatically withdrawn, without prejudice to the EPA's ability to file an enforcement action for the cited violations. The EPA can pursue more formal enforcement measures to correct the violation(s) and seek penalties of up to \$20,719 per violation.

Valero Refining-Texas, L.P. may request an informal conference to discuss the facts of this case. In the event that a settlement cannot be reached, the EPA may elect to file an Administrative Complaint and Opportunity to Request Hearing and Conference (Complaint) in accordance with 40 C.F.R. Part 22. If a Complaint is filed, Valero Refining-Texas, L.P. will have the right to request a hearing to contest the factual allegations set forth in the Complaint.

If you have any questions, or if you wish to schedule an informal settlement conference, please contact Michael Blaha at 214-665-8574.

Sincerely,

  
Bryant Smalley  
Chief  
Water Enforcement Branch

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6

FILED

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REGIONAL HEARING CLERK  
EPA REGION VI

IN THE MATTER OF

Valero Refining-Texas, L.P.  
Texas City Refinery  
Galveston County, TX

Respondent.

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

Docket No. CWA-06-2023-4805

**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. Pursuant to the April 17, 2019, Region 6 Realignment: General Delegation Memo (General Delegation Memo), the Regional Administrator delegated these authorities to the successor Division Director or Office Director in accordance with the Region 6 2019 reorganization, to wit: the Enforcement and Compliance Assurance Division of EPA, Region 6. The General Delegation Memo has, in turn, further redelegated these authorities to the comparable official subordinate to the Enforcement and Compliance Assurance Division Director, to wit: the Branch Chief, Water Enforcement Branch in Region 6.

**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 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 facilities.

4. EPA subsequently 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).

5. 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.

6. Respondent is a firm conducting business in the State of Texas, with a place of business located at 1301 Loop 197 South, Texas City, TX 77592, 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.

7. 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 a crude oil, gasoline, diesel fuel, and jet fuel storage facility, located in Galveston County, TX (the facility). The approximate coordinates of the facility are 29.368333° N and -94.909444° W. Drainage from the facility drains into the Texas City Harbor which connects to the Galveston Bay.

8. 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 324,875,624 gallons.

9. The Texas City Harbor is a navigable water of the United States within the meaning of 40 CFR § 112.2.

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 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).

12. 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.

#### SPCC Allegations

13. Paragraphs 6 through 12 above are re-stipulated as though fully set forth herein.

14. 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.

15. On January 10, 2023, EPA inspected the facility and found that Respondent had failed to develop and implement an SPCC plan for the facility as follows:

- a. Respondent failed to adequately address in the plan discharge prevention measures, including procedures for routine handling of products (loading, unloading, and facility transfers, etc.), in accordance with 40 CFR § 112.7(a)(3)(ii).
- b. Respondent failed to implement at the facility appropriate containment and/or diversionary structures or equipment for bulk storage containers, as required in 40 CFR § 112.7(c).
- c. Respondent failed to maintain at the facility containers with materials and construction that are compatible with material stored and conditions of storage such as pressure and temperature, in accordance with 40 CFR § 112.8(c)(1).
- d. Respondent failed to maintain at the facility secondary containment for the bulk storage tank installations at the facility, that can hold the entire capacity of the single largest container and sufficient freeboard for precipitation, in accordance with 40 CFR § 112.8(c)(2).
- e. Respondent failed to discuss within the plan how the bypass valve will be opened and resealed under supervision, in accordance with 40 CFR § 112.8(c)(3).

- f. Respondent failed to adequately address in the plan the standard for testing or inspection of each aboveground container for integrity on a regular schedule and whenever material repairs are made, appropriate qualifications for personnel performing tests and inspections, frequency and type of testing and inspections documentation, in accordance with the industry standards, as required in 40 CFR § 112.8(c)(6).
- g. Respondent failed to discuss in the plan how effluent treatment facilities are observed frequently enough to detect possible system upsets that could cause a discharge. Specifically, respondent failed to describe visual rounds at the facility to identify upsets, in accordance with 40 CFR § 112.8(c)(9).
- h. Respondent failed to adequately address in the plan how pipe supports are properly designed to minimize abrasion and corrosion and allow for expansion and contraction, as required in 40 CFR § 112.8(d)(3).

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

#### FRP Stipulations

17. Paragraphs 6 through 12 above are re-stipulated as though fully set forth herein.

18. 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.

19. The facility is an onshore 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.

20. Section 311(j)(5)(A) of the Act, 33 U.S.C. § 1321(j)(5)(A), provides that the President shall issue regulations requiring each owner or operator of certain facilities to "submit to the President a plan for responding, to the maximum extent practicable, to a worst-case discharge, and to a substantial threat of such a discharge, of oil or a hazardous substance."

21. By Section 2(d)(1) of Executive Order 12777 (October 18, 1991), the President delegated to the Administrator of EPA the authorities under Section 311(j)(5)(A) of the Act.

22. The Administrator of EPA promulgated regulations, codified within Subparts A and D of 40 CFR Part 112 (the [Facility Response Plan] FRP regulations), implementing these delegated statutory authorities.

23. The facility has a total oil storage capacity of at least one (1) million U.S. gallons and the facility is located at a distance such that a discharge could cause injury to fish and wildlife and sensitive environments.

24. The facility is therefore a non-transportation related, onshore facility within the meaning of 40 CFR § 112.2 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, within the meaning of Section 311(j)(5)(B)(iii) of the Act, 33 U.S.C. § 1321(j)(5)(B)(iii), and 40 CFR § 112.20(f)(1) (an FRP-regulated facility).

25. Therefore, Respondent, as the owner/operator of an FRP-regulated facility, is subject to the FRP regulations found at 40 CFR. § 112.20.

26. It is stipulated that pursuant to Section 311(j)(5) of the Act and 40 CFR § 112.20, the owner or operator of an FRP-regulated facility in operation on or before February 18, 1993, must no later than that date submit a Facility Response Plan (FRP) that satisfies the requirements of Section 311(j)(5).

#### **FRP Allegations**

27. Paragraphs 6 through 12 and 18 through 26 above are re-stipulated as though fully set forth herein.



28. On January 10, 2023, EPA inspected the facility and found that Respondent had failed to properly develop and implement an FRP plan in accordance with 40 CFR § 112.20, as follows:

- a. Respondent failed to provide the Emergency Response Action Plan in a separate section of the FRP or as a stand-alone document. The Emergency Response Action Plan failed to adequately address response equipment testing and deployment, facility response team list, and facility diagrams in accordance with 40 CFR § 112.20.
- b. Respondent failed to fully address the Facility Information section in the FRP. More specifically, respondent failed to provide the description of specific response training experience for qualified individuals in accordance with 40 CFR § 112.20.
- c. Respondent failed to fully address the Emergency Response Information section in the FRP. Specifically, respondent failed to provide fire marshal phone numbers, weather report phone number, and release handling capabilities and limitations as required in 40 CFR § 112.20.
- d. Respondent failed to fully address the Evacuation Plans within the FRP. More specifically, respondent failed to adequately provide spill flow direction and water currents, tides, or wave conditions as required in 40 CFR § 112.20.
- e. Respondent failed to fully address the Vulnerability Analysis section in the FRP. More specifically, respondent failed to provide water intakes, schools, residential areas, and recreational areas as required in 40 CFR § 112.20.
- f. Respondent failed to fully address the Analysis of the Potential for an Oil Spill section in the FRP. More specifically, respondent failed to provide horizontal range of potential spill in accordance with 40 CFR § 112.20.
- g. Respondent failed to fully address the Facility Reportable Oil Spill History Description section in the FRP. Specifically, respondent failed to provide list of discharge causes, amount that reached navigable waters, effectiveness and capacity of secondary containments, steps taken to reduce possibility of recurrence, total oil storage capacity of tank(s) or impoundment(s) from which material discharged, enforcement actions, effectiveness of monitoring equipment, and description(s) of how each oil discharge was detected in accordance with 40 CFR § 112.20.

- h. Respondent failed to provide an adequate Discharge Scenarios section in the FRP. More Specifically, respondent failed to provide proximity to down gradient wells, waterways, and drinking water intakes and proximity to fish and wildlife and sensitive environments for small discharges. Respondent also failed to provide these items, plus the likelihood that the discharge will travel offsite, probability of a chain reaction of failures, and direction of discharge pathway for medium discharges, in accordance with 40 CFR § 112.20.
- i. Respondent failed to provide an adequate Worst Case Discharge section in the FRP. Specifically, respondent failed to provide correct worst-case discharge (WCD) calculation for the type of facility, including calculation for complexes, proximity to down gradient wells, waterways, and drinking water intakes, location of material discharged, weather or aquatic conditions, probability of chain reaction of failures, and direction of discharge pathway, as required in 40 CFR § 112.20.
- j. Respondent failed to provide an adequate Discharge Detection System section in the FRP. Specifically, respondent failed to provide description of alarm verification procedures and subsequent actions, and initial response actions, as required in 40 CFR § 112.20.
- k. Respondent failed to adequately provide a Plan Implementation section in the FRP. Specifically, respondent failed to provide supporting information for temporary storage. Respondent also failed to provide adequate information regarding the Containment and Drainage Planning section in accordance with 40 CFR § 112.20.
- l. Respondent failed to provide adequate Self-Inspection, Training, and Meeting Logs in the FRP. More specifically, respondent failed to provide records of secondary containment inspections (with dates for five years), response equipment inspection records, of actual use/testing (last date and frequency of testing), to include shelf life, inspection date, inspectors signature, inspection records for five years, in accordance with 40 CFR § 112.20.
- m. Respondent failed to provide adequate Diagrams in the FRP. More specifically, respondent failed to provide a Site Drainage Plan Diagram, as required in 40 CFR § 112.20.
- n. Respondent failed to provide an adequate Site Security section in the FRP. More specifically, respondent failed to include current and normal condition site security operations, as required in 40 CFR § 112.20.

29. Respondent's failure to properly develop and implement an FRP violates the requirements of Section 311(j)(5) of the Act and 40 CFR § 112.20.

**Waiver of Rights**

30. 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**

31. The Complainant proposes, and Respondent consents to, the assessment of a civil penalty of \$47,100.00.

**Payment Terms**

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

32. Within thirty (30) days of the effective date of the Final Order, the Respondent shall pay the amount of \$47,100.00 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 via Mail and E-Mail to:

Energy Sector Compliance Section  
U. S. Environmental Protection Agency  
Region 6 (6ECD-WE)  
1201 Elm Street  
Dallas, TX 75270-2102  
[blaha.michael@epa.gov](mailto:blaha.michael@epa.gov)

- If you are paying by check, pay the check to "Environmental Protection Agency," noting on the check "OSTLF-311" and docket number CWA-06-2023-4805. 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  
1201 Elm Street  
Dallas, TX 75270-2102

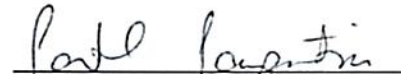
33. Failure by the Respondent to pay the penalty assessed by the Final Order in full by its due date may subject Respondent to a civil action to collect the assessed penalty, plus interest, attorney's fees, costs and an additional quarterly nonpayment penalty pursuant to Section 311(b)(6)(H) of the Act, 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**

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

35. 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. Valero Refining-Texas, L.P.

Date: 4/29/23

  
Patrick Passantino  
Environmental Manager  
Valero Refining-Texas, L.P.

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: June 27, 2023

  
Bryant Smalley  
Chief  
Water Enforcement Branch

**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: June 27, 2023

  
Digitally signed by CHERYL  
SEAGER  
Date: 2023.06.27 12:29:13  
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Cheryl T Seager, Director  
Enforcement and  
Compliance Assurance Division