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2011 JUL 21 AM 8:57 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGIONAL HEARING CLERK
EPA REGION VI

REGION 6

IN THE MATTER OF

**Texas Petroleum Investment
Company
Terrebonne Parish, Louisiana**

Respondent.

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

Docket No. **CWA-06-2010-4810**

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 vessels and from onshore facilities and 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. 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 Corporation conducting business in the State of Louisiana, with a place of business located at 5850 San Felipe Road, Suite 250, Houston, Texas 77057, 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 offshore oil production facility, the Lake Hatch Field Facility, located adjacent to an unnamed canal 1.1 miles South of the Intracoastal Waterway and 0.5 miles Southeast of St Paul Bayou, in Terrebonne Parish, Louisiana ("the facility"). The coordinates of the facility are 29.51760° N and -90.86880° W. Drainage from the facility travels directly into and upon an unnamed canal and tributary of the Intracoastal Waterway; thence to the Houma Navigation Canal; thence to Terrebonne Bay; thence to 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 126,000 gallons.

10. The unnamed canal, Intracoastal Waterway, Terrebonne Bay 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 before August 16, 2002. Information provided indicates the facility began operation in 1972, and the Respondent began operating the facility in April 2001.

Allegations

EPA alleges and Respondent admits the jurisdictional allegations set forth and neither admits nor denies that:

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

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

18. 40 CFR § 112.3 requires that the owner or operator of an SPCC-regulated facility must prepare a SPCC plan in writing, and in accordance with 40 CFR § 112.7 and any other applicable section of 40 CFR Part 112.

19. On October 20, 2009, EPA inspected the facility and found that Respondent had failed to prepare a SPCC plan for the facility that was fully in accordance with 40 CFR § 112.7 and other applicable sections. Specifically, Respondent's SPCC plan inadequately addressed the requirement of a spare pump or equivalent method available (redundant automatic sump pumps and control devices), as described in 40 CFR § 112.11(c).

20. Respondent's failure to prepare an adequate SPCC plan for the facility violated 40 CFR § 112.3, and impacted its ability to prevent a spill.

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

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

22. 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.

23. On October 20, 2009, 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. **Respondent failed to provide adequate secondary containment, by allowing holes from deteriorated pipes and missing joint sealant in the waskey slab, as required at 40 CFR § 112.7(c), and § 112.11(b);**
- b. **Respondent failed to provide adequate training to oil-handling personnel, in accordance with 40 CFR § 112.7(f);**
- c. **Respondents failed to maintain the required spare pump for the sump system, as required at 40 CFR § 112.11(c);**
- d. **Respondent failed to provide adequate corrosion protection for all piping appurtenant to the facility, in accordance with 112.11(n).**

24. 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, as documented by its October 23, 2009 oil spill.

Spill Stipulations

25. Paragraphs 1 through 8 above are hereby incorporated by reference.

26. The unnamed canal, Intracoastal Waterway and the Gulf of Mexico are navigable waters of the United States as defined in Section 502(7) of the Act, 33 U.S.C. §1362(7), and 40 CFR §110.1.

27. 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.

28. 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

EPA alleges and Respondent admits the jurisdictional allegations set forth and neither admits nor denies that:

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

29. Paragraphs 1-8 and 26-28 above are hereby incorporated by reference.

30. On October 23, 2009, Respondent discharged approximately 420 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 a wetland area and unnamed canal, which are tributaries of the Intracoastal Waterway and Gulf of Mexico.

31. Respondent's October 23, 2009, discharge of oil from its facility caused a sheen upon or discoloration of the surface of the wetland area and unnamed canal, 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.

32. Respondent's October 23, 2009, discharge of oil from its facility into or upon the wetland area and unnamed canal, 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

33. 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

34. The Complainant proposes, and Respondent consents to, the assessment of a civil penalty of **\$28,333.00**.

Payment Terms

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

35. Within thirty (30) days of the effective date of the Final Order, the Respondent shall pay the amount of **\$28,333.00** 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-06-2010-4810**. 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

36. 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

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 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.

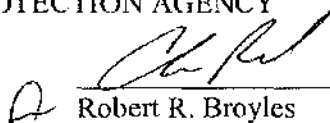
Texas Petroleum Investment Co.

Date: 6/21/11


Chris Sanfilippo
Environmental Manager - Eastern Division

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 7/19/2011


Robert R. Broyles
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:

7/20/11




Samuel Coleman, P.E.
Director
Superfund Division

CERTIFICATE OF SERVICE

I certify that the original and one true and correct copy of the foregoing "Consent Agreement and Final Order" issued pursuant to 40 CFR 22.13(b), was sent on this 20 day in July, 2011, by certified mail, return receipt requested, to:

Certified Mail #: 7009 1680 0002 2886 5174

Mr. Chris Sanfilippo
Environmental Manager - Eastern Division
Texas Petroleum Investment Co.
5850 San Felipe Road, Suite 250
Houston, Texas 77057


Frankie Markham