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2011 SEP 13 PM 12:09 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGIONAL HEARING CLERK  
EPA REGION VI

REGION 6

IN THE MATTER OF

**Texas Petroleum Investment  
Company  
Plaquemines Parish, LA**

Respondent.

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

Docket No. CWA-06-2010-4855

**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 . . . ."

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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 redelegated, 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 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.

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. 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.

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 onshore and offshore oil production facility, by having both onshore and offshore equipment and appurtenances, the Romere Pass Tank Battery, which is located adjacent to Romere Pass, East of the Mississippi River, in the Delta National Wildlife Refuge, Plaquemines Parish, Louisiana (“the facility”). The coordinates of the facility are 29.27528° N and -89.25972° W. Drainage from the facility flows into Romere Pass and Main Pass.

9. The facility has an aggregate above-ground storage capacity of greater than 1320 gallons (approx. 376,968 gallons) of oil in containers each with a shell capacity of at least 55 gallons.

10. Romere Pass and Main Pass flow to the Gulf of Mexico and are navigable waters of the United States as defined in Section 502(7) of the Act, 33 U.S.C. §1362(7), 40 CFR §110.1 and 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 has both onshore and offshore equipment and appurtenances within the meaning of Section 311(a)(10)&(11) of the Act, 33 USC § 1321(a)(10)&(11), 40 CFR § 112.2, and 40 CFR § 112 Appendix B.

14. The facility is therefore a non-transportation-related onshore and 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 C.F.R. § 112.1 Respondent, as the owner of an SPCC-regulated facility, is subject to the SPCC regulations.

16. The facility began operating prior to August 16, 2002. Information provided indicates the facility began operation in 1950. Respondent began operating the facility in December 2004.

#### **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 January 20, 2010, 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 transfer area and applicable secondary containment. Crude oil and natural gas is primarily sold via pipeline; however, the plan does not discuss the transfer to or from vessels in accordance with 40 CFR § 112.7(a)(3) and (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 its 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 January 20, 2010, 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 SPCC plan for the facility as follows:

- a. **Respondent failed to promptly remove oil accumulated in secondary containment, as required in 40 CFR § 112.9(b)(1) & (2);**
- b. **Respondent failed to implement an adequate flowline maintenance program, as required in 40 CFR § 112.9(d)(3);**
- c. **Respondents failed to provide an adequate secondary containment (due to a breach in containment), as required by 40 CFR § 112.9(c)(1);**
- d. **Respondent failed to provide adequate corrosion protection for all piping appurtenant to the facility, in accordance with 40 CFR § 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 the six spills described below.

**COUNT 3: Failure to submit the information required in 40 CFR § 112.4(a) to the Regional Administrator of EPA Region 6.**

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

26. 40 CFR § 112.4 requires that the owner or operator of an SPCC-regulated facility, whenever such facility has discharged more than 1,000 U.S. gallons of oil in a single discharge as described in § 112.1(b), or discharged more than 42 U.S. gallons of oil in each of two discharges as described in § 112.1(b), occurring within any twelve month period, submit the information listed in 40 CFR § 112.4, to the Regional Administrator within 60 days from the time the facility becomes subject to this section.

27. On January 20, 2010, EPA inspected the facility and found that Respondent had failed to submit the information listed in 40 CFR § 112.4, to the Regional Administrator within 60 days from the spills on September 23, 2006, April 25, 2007, September 17, 2007, October 16, 2007, December 6, 2008 and June 24, 2009.

**Spill Stipulations**

28. Paragraphs 1 through 10 above are hereby incorporated by reference.

29. 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.

30. 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 4: Discharge of Oil into or upon Waters of the US and its adjoining shoreline.**

31. Paragraphs 1-10 and 29-30 above are hereby incorporated by reference.

32. On December 19, 2008, Respondent discharged approximately 2 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 (on the RP 51 flowline) into or upon Romere Pass.

33. Respondent's December 19, 2008, discharge of oil from its facility caused a sheen upon or discoloration of the surface of Romere Pass, 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.

34. Respondent's December 19, 2008, discharge of oil from its facility into or upon Romere Pass 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.

**COUNT 5: Discharge of Oil into or upon Waters of the US and its adjoining shoreline.**

35. Paragraphs 1-10 and 29-30 above are hereby incorporated by reference.

36. On January 26, 2009, Respondent discharged approximately 5 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 (on the RP 51 flowline) into or upon Romere Pass.

37. Respondent's January 26, 2009, discharge of oil from its facility caused a sheen upon or discoloration of the surface of Romere Pass, 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.

38. Respondent's January 26, 2009, discharge of oil from its facility into or upon Romere Pass 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.

**COUNT 6: Discharge of Oil into or upon Waters of the US and its adjoining shoreline.**

39. Paragraphs 1-10 and 29-30 above are hereby incorporated by reference.

40. On June 24, 2009, Respondent discharged approximately 1 barrel 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 (on the Well #59 flowline) into or upon Main Pass.

41. Respondent's June 24, 2009, discharge of oil from its facility caused a sheen upon or discoloration of the surface of Main Pass, 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.



42. Respondent's June 24, 2009, discharge of oil from its facility into or upon Main Pass 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**

47. 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**

48. The Complainant proposes, and Respondent consents to, the assessment of a civil penalty of **\$74,414**.

**Payment Terms**

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

49. The Respondent shall submit this Consent Agreement and Final Order, with original signature to:

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

50. The Respondent shall pay to the United States a civil penalty in the amount of **\$74,414.00**, to settle the violations as alleged in the CAFO, in accordance with 40 C.F.R. 22.18(c).

Payment must be made within thirty (30) days after the effective date of this CAFO, by means of a cashier's or certified check, or by electronic funds transfer (EFT).

- **Penalty Payment:** If you are paying by check, pay the check to "Environmental Protection Agency," noting on the check "**OSTLF-311**" and docket number **CWA-06-2010-4855**.

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

51. 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**

52. 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.

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

54. 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.

**TEXAS PETROLEUM INVESTMENT COMPANY**

Date: 6/21/11

  
Chris Sanfilippo  
Environmental Manager - Eastern Division

**U.S. ENVIRONMENTAL PROTECTION AGENCY**

Date: 7/8/2011

  
Al Armendariz  
Regional Administrator

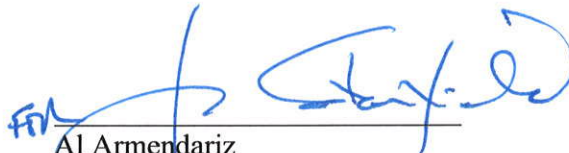
**FINAL ORDER**

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: \_\_\_\_\_

9/13/11

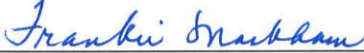
  
\_\_\_\_\_  
Al Armendariz  
Regional Administrator

Docket No. CWA-06-2010-4855

**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 13 day in September 2011, by certified mail, return receipt requested, to:

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

  
\_\_\_\_\_  
Frankie Markham