

FILED
2016 JUN 16 AM 7:41

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6

REGIONAL HEARING CLERK
EPA REGION VI

IN THE MATTER OF

**Linc Gulf Coast Petroleum Inc.
Bessie Height Onshore TB
Port Neches Field Facility
Orange County, TX**

Respondent

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

Docket No. CWA-06-2016-4803

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:

Docket No. CWA-06-2016-4803

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 Texas, with a place of business located at 11153 Bessie Heights Road Orange, TX 77630 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, Bessie Heights Onshore Tank Battery, located in Orange County, Texas (“the facility”). The approximate coordinates of the facility are 30.044917° N and -93.920306° W. Drainage from the facility travels to the Neches River; thence to Sabine Lake.

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 580,867 gallons.

10. The Neches River and Sabine Lake 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 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 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 May 12, 2015 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 discuss in plan the appropriate containment and/or diversionary structures or equipment to prevent a discharge. The entire containment system, including walls and floors, must be capable of containing oil and must be in accordance with 40 CFR § 112.7(c).
- b. Facility fail to implement a person designated as accountable for discharge prevention at the facility and reports to facility management; and failed to conduct discharge briefing once a year in accordance with 40 CFR § 112.7(f)(1)-(f)(3).
- c. Respondent failed to implement oil drainage collection equipment used to

prevent and control small discharges, and facility failed to implement a direct control collection sump to prevent discharges in accordance with 40 CFR § 112.11(b).

- d. Respondent failed to discuss in plan and implement suitable sump, sump system, spare pump and failed to ensure regularly scheduled preventive maintenance inspections and testing program and failed to ensure that redundant automatic sump pumps and control devices are installed if necessary in accordance with 40 CFR § 112.11(c).
- e. Respondent failed to implement measures to prevent pollution for separators and treaters that are equip with dump vales that have the potential to fail in accordance with 40 CFR § 112.11(d).
- f. Respondent failed to ensure for atmospheric storage or surge containers are equipped with high liquid level sensing devices that activate an alarm in accordance with 40 CFR § 112.11(e).
- g. Respondent failed to implement requirements for pressure containers with high and low pressure sensing devices that activate an alarm in accordance with 40 CFR § 112.11(f).
- h. Respondent failed to conduct testing and inspections of pollution prevention equipment and systems on a periodic basis in accordance with 40 CFR § 112.11(i).
- i. Respondent failed to provide detail records that describe surface and surface well shut-in valves and devices in accordance with in accordance with 40 CFR§ 112.11(j).
- j. Respondent failed to ensure piping appurtenant to the facility is protected from corrosion in accordance with 40 CFR § 112.11(n).
- k. Respondent failed to conduct periodic inspections or tests, at a regular schedule on sub-marine piping and appurtenances and keep documentation of inspection or test at facility in accordance with 40 CFR § 112.11(p).
- l. Respondent failed to drain from diked storage areas by valves to prevent a discharge into the drainage system in accordance with 40 CFR § 112.8(b).
- m. Respondent failed to discuss in plan and failed to provide comparison records of aboveground container integrity testing which must be maintained in accordance with 40 CFR § 112.8(c)(6).
- n. Respondent failed to discuss in plan and failed to conduct integrity and leak testing on buried piping at time of installation, modification, construction relocation or replacement in accordance with 40 CFR §

112.8(d)(4).

- o. Respondent failed to implement for flow-through process vessels in and produced water containers, secondary containment provided for all tank battery, separation and treating facilities sized to hold the capacity of largest single container and sufficient freeboard for precipitation in accordance with 40 CFR § 112.9(c)(2).
- p. Respondent failed to discuss in plan and failed to implement for gathering lines an oil spill contingency plan and a written comment of man power materials in accordance with 40 CFR § 112.9(d)(3).
- q. Respondent failed to discuss in plan and failed to implement for flowlines and intra-facility gathering lines a maintenance plan to prevent discharges in accordance with 40 CFR § 112.9(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 **\$21,223.00**.

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 **\$21,223.00** 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-06-2016-4803**. 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.

Linc Gulf Coast Petroleum, Inc.


Date: 6/15/2016



Andreana Madar
Compliance Manager

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 6/15/16



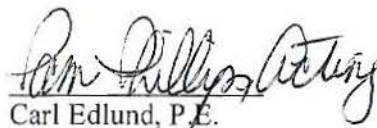
Ronnie D. Crossland
Associate Director
Prevention & Response Branch
Superfund Division

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: 6/15/16

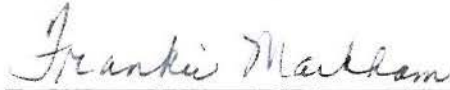


Carl Edlund, P.E.
Director
Superfund Division

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 6-16, 2016, 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:

NAME: Andreana Madar
ADDRESS: 1000 Louisiana Street, Suite 1500
Houston, Texas 77002



Frankie Markham
OPA Enforcement Administrative Assistant