**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

**REGION 6**

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| **IN THE MATTER OF**<br><br>**Valero Refining - Meraux LLC**<br>**Meraux Refinery**<br>**St. Bernard Parish**<br>**LA**<br><br>Respondent. | **CWA SECTION 311 CLASS I**<br>**CONSENT AGREEMENT**<br>**AND FINAL ORDER**<br>**UNDER 40 CFR § 22.13(b)**<br><br>Docket No. **CWA-06-2023-4806** |

## 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 Louisiana, with a place of business located at 2500 E St. Bernard Hwy, Meraux, LA 70075, 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, diesel, gasoline, Kerosene, LPG, and No. 6 oil storage facility, located in St Bernard Parish, LA (the facility). The approximate coordinates of the facility are 29.93080° N and -89.94380° W. Drainage from the facility drains into Meraux Canal and 20 Arpent Canal, thence into 40 Arpent Canal.

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 160,579,650 gallons.

9. Meraux Canal and 40 Arpent Canal are navigable waters 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 a non-transportation-related facility within the meaning of 40 CFR § 112.2 Appendix A, as incorporated by reference within 40 CFR § 112.2.

12. 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.

13. 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).

14. 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**

15. Paragraphs 1 through 14 above are re-stipulated as though fully set forth herein.

16. 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.

17. On November 9, 2022, 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 include in the plan a description of the physical layout of the facility and a diagram that identifies all the required elements in accordance with 40 CFR § 112.7(a)(3).

b. Respondent failed to adequately address in the SPCC Plan the following:
   - Countermeasures for discharge discovery, response, and cleanup, and
   - Methods of disposal of recovered materials as required in 40 CFR §112.7(a)(3)(iv & v).

c. Respondent failed to describe in the SPCC Plan appropriate containment and/or diversionary structures or equipment for the piping and related appurtenances and transfer areas, equipment, and activities to prevent a discharge from the facility in accordance with 40 CFR § 112.7(c).

d. Respondent failed to describe in the SPCC plan whether valves of manual, open-and-closed design are used for the drainage of diked areas in accordance with 40 CFR § 112.8(b)(2).

e. The facility SPCC plan does not address facility drainage 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. Respondent failed to provide a discussion based on site specific information and therefore not in accordance with 40 CFR § 112.8(b)(3).

f. The facility SPCC Plan does not discuss whether the facility is equipped with a diversion system to retain oil in the facility in the event of an uncontrolled discharge based on site specific information and therefore not in accordance with 40 CFR § 112.8(b)(4).

g. Field operation shows that the facility drains uncontaminated rainwater from the diked areas into a storm drain or open watercourse. However, respondent failed to address whether bypass valve is opened and resealed under responsible supervision as required in 40 CFR § 112.8(c)(3).

h. Respondent failed to describe in the SPCC Plan how pipe supports are designed to minimize abrasion and corrosion and allow for expansion and contraction in accordance with 40 CFR § 112.8(d)(3).

18. 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**

19. Paragraphs 1 through 14 above are re-stipulated as though fully set forth herein.

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 1 through 14 and 23 through 26 above are re-stipulated as though fully set forth herein.

28. On November 9, 2022, 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 include in the Emergency Response Action Plan (ERAP) a complete Facility Response Team Information as required in 40 CFR § 112.20(h)(3)(ii).

b. Respondent failed to adequately include in the FRP Facility Reportable Oil Spill History Description as required in 40 CFR § 112.20(h)(4).

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.

**Spill Stipulations**

30. Paragraphs 1 through 14 above are hereby re-stipulated as though fully set forth herein.

31. 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.

32. 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.

**Spill Allegations**

Respondent admits the jurisdictional allegations set forth above and neither admits nor denies the violations alleged in paragraphs 33-36.

33. Paragraphs 1 - 14 and 30 - 32 above are hereby incorporated by reference.

34. On June 6, 2022, Respondent discharged approximately 23 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 Meraux Canal; thence into 40 Arpent Canal and the adjoining shorelines.

35. Respondent's June 6, 2022, discharge of oil from its facility caused a sheen upon or discoloration of the surface of Meraux Canal and 40 Arpent 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.

36. Respondent's June 6, 2022, discharge of oil from its facility into or upon Meraux Canal and 40 Arpent 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**

37. 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**

38. The Complainant proposes, and Respondent consents to, the assessment of a civil penalty of **$42,300.00.**

**Payment Terms**

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

39. Within thirty (30) days of the effective date of the Final Order, the Respondent shall pay the amount of **$42,300.00** 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
johnbull.enoch@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-06-2023-4806. 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

40. 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**

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

42. 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 – MERAUX LLC

Date: 3/28/23

Leslie Sullivan
Vice President & General Manager
Valero Refining – Meraux LLC

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 3/30/2023

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.

Cheryl T Seager

Digitally signed by Seager, Cheryl
Date: 2023.03.30 10:00:07 -05'00'

Date: March 30, 2023

Cheryl T Seager, Director
Enforcement and
Compliance Assurance Division

**Docket No. CWA-06-2023-4806**

## 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 March 30, 2023, with the Regional Hearing Clerk, U.S. EPA Region 6, 1201 Elm Street, Dallas, TX 75270-2102; and that on the same date a copy of the same was sent to the following, in the manner specified below:

Copy sent by e-mail:

NAME: Mr. JC Martin
ADDRESS: One Valero Way
San Antonio, TX 78249

Enoch Johnbull

Enoch Johnbull
OPA Enforcement Officer