



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

December 23, 2019

CERTIFIED MAIL-RETURN RECEIPT REQUESTED: 7001 0360 0003 6673 6992

Mr. Todd M. Lopez  
EH&S Specialist  
Delek US  
7201 Commerce Way  
Brentwood, TN 37027

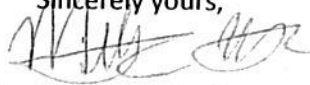
Re: Class I Consent Agreement and Final Order  
EPA Docket No. CWA-06-2020-4802

Dear Mr. Lopez,

This is to acknowledge receipt of the signed Consent Agreement and Final Order (CAFO) for the above referenced action. The U.S. Environmental Protection Agency hereby issues this CAFO, a copy of which is enclosed. The required penalty payment must be submitted in accordance with the terms set forth in the CAFO. Copies of the penalty payment check or confirmation of electronic funds transfer should also be sent to the persons named in the Final Order.

We very much appreciate your cooperation and patience in resolving this matter. If you have any questions, please contact me at (214) 665-3173.

Sincerely yours,

  
EJA Enoch Johnbull  
Water Enforcement Branch

Enclosure

FILED  
2019 APR 19 10:00 AM  
EPA REGION 6

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6

IN THE MATTER OF

Delek US dba Lion Oil Company  
El Dorado Refinery  
Union County, Arkansas

Respondent.

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

Docket No. CWA-06-2019-4802

**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 Arkansas, with a place of business located at 1000 McHenry Avenue, El Dorado, Arkansas 71730, 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 gasoline, diesel, LPG, and fuel oil storage facility, located in Union County, Arkansas (“the facility”). The approximate coordinates of the facility are 33.201556° N and -92.673596° W. Drainage from the facility drains into Loutre Creek which flows into Loutre Bayou and ultimately discharges into the Ouchita River.

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 96,939,612 gallons.

9. Loutre Bayou 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 October 16, 2018 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 review, evaluate, and update the facility's SPCC plan. The facility's SPCC plan must be reviewed and evaluated at least once every five years in accordance with 40 CFR § 112.5(b).
- b. Respondent failed to address in the plan a prediction of the direction, rate of flow, and total quantity of oil which could be discharged from the facility as a result of each type of major equipment failure where experience indicates a reasonable potential for equipment failure in accordance with 40 CFR § 112.7(b).
- c. The SPCC Plan discusses the containment set up for the facility above ground storage tanks (ASTs). Respondent failed to include in the plan containment and/or diversionary structures or equipment for Mobile/portable containers, Piping and related appurtenances, and

Transfer areas, equipment and activities, as required in 40 CFR § 112.7(c).

- d. Respondent failed to identify in the plan a person accountable for discharge prevention at the facility and reports to facility management in accordance with 40 CFR § 112.7(f)(2).
- e. Respondent failed to discuss in the plan whether brittle fracture evaluation of field-constructed aboveground containers is conducted after tank repair, alteration, reconstruction, or change in service that might affect the risk of a discharge in accordance with 40 CFR § 112.7(i)
- f. Respondent failed to discuss in the plan use of valves of manual, open-and- closed design, for the drainage of diked areas and whether retained storm water is inspected and discharged in accordance with 40 CFR § 112.8(b)(2).
- g. Respondent failed to include in the plan a discussion of the appropriate drainage system for drainage of uncontaminated rainwater from the diked areas and whether adequate records of drainage are kept in accordance with 40 CFR § 112.8(c)(3).
- h. Respondent failed to address in the plan integrity testing or inspection for each above ground container on a regular schedule and whenever material repairs are made. Additionally, respondent failed to maintain at the facility appropriate qualifications for personnel performing tests and inspections and document the frequency and type of testing and inspections in accordance with 40 CFR § 112.8(c)(6).
- i. Respondent failed to include in the plan the specific liquid level sensing devices used to prevent discharges from each container as required in 40 CFR § 112.8(c)(8).
- j. Respondent failed to discuss in the plan requirements for the effluent treatment facility for detection of possible system upsets that could cause a discharge in accordance with 40 CFR § 112.8(c)(9)

16. 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.

#### **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 a 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 October 16, 2018, 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:

- k. Respondent failed to provide a complete Emergency Response Action Plan (ERAP), Emergency Response Information, Facility Response Team Information, and Evacuation Plans in accordance with 40 CFR § 112.20(h)(1) and (h)(3).
- l. Respondent failed to include in the plan all the required facility information such as description of specific response training experience in accordance with 40 CFR § 112.20(h)(2).
- m. Respondent failed to provide a complete discussion of Hazard Evaluation, Analysis of the Potential for an Oil Spill, the Facility Reportable Oil Spill History Description, Discharge Scenarios and Scenarios Affected by the Response Efforts in accordance with 40 CFR § 112.20(h)(4).
- n. Respondent failed to provide an adequate description of the Worst Case Discharge Scenario including scenarios affected by the response efforts in accordance with 40 CFR § 112.20(h)(5)
- o. Respondent failed to provide a complete discussion of the Containment and Drainage Planning, Self-Inspection, Training,



and Meeting Logs, Facility Drills/Exercises and Diagrams in accordance with 40 CFR § 112.20(h)(7).

- p. Respondent failed to include in plan a Facility Response Plan that meets the requirements of 40 CFR § 112 Appendix F in accordance with 40 CFR § 112.20(h)(11).

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 **\$15,100.00**.

### **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 **\$15,100.00** 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 to:

Energy Sector Compliance Section Chief  
U. S. Environmental Protection Agency  
Region 6 (6ECD-WE)  
1201 Elm Street  
Dallas, TX 75270-2102

- If you are paying by check, pay the check to "Environmental Protection Agency," noting on the check "**OSTLF-311**" and docket number **CWA-06-2019-4802**.

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.

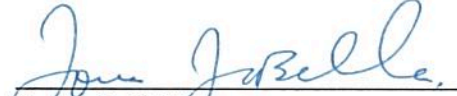
**General Provisions**

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

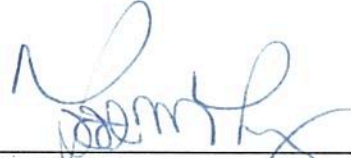
35. The Final Order does not constitute a waiver, suspension or modification of the requirements of Section 311 of the Act, 33 USC §1321, or any regulations promulgated thereunder, and does not affect the right of the Administrator or the United States to pursue any applicable injunctive or other equitable 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.

Delek US dba Lion Oil Company

Date: 12-4-19

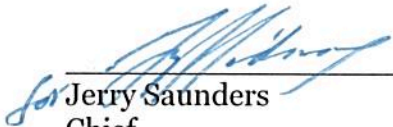
  
\_\_\_\_\_  
Louis LaBella  
President, Refining

Date: 12/6/19

  
\_\_\_\_\_  
Todd M. Lopez  
VP, Environmental Health & Safety  
Delek US

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 16 Dec 2019

  
\_\_\_\_\_  
for Jerry Saunders  
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: 12-15-19



\_\_\_\_\_  
Cheryl T Seager, Director  
Enforcement and  
Compliance Assurance 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 December 18, 2019, 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 by certified mail,  
return receipt requested:  
7005 1820 0003 6673 6992

NAME: Mr. Todd M. Lopez  
ADDRESS: EH&S Specialist  
Delek US  
7201 Commerce Way  
Brentwood, TN 37027

  
\_\_\_\_\_  
Enoch Johnbull  
OPA Enforcement Officer