

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6

IN THE MATTER OF

**Dexxon Inc.
Kelsey Consolidated Tank battery
Osage County, Oklahoma**

Respondent.

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

Docket No. **CWA-06-2019-4814**

FILED
2020 FEB -6 AM 10:30
REGIONAL ADMINISTRATOR
EPA REGION 6
COLUMBIA, MISSOURI

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 Division of EPA, Region 6. The General Delegation Memo has, in turn, further redelegated these authorities to the comparable official subordinate to the Enforcement 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 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...."

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 and Countermeasure (SPCC) regulations pursuant to these delegated statutory authorities, and pursuant to its authorities under the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, which established certain procedures, methods and requirements upon each owner and operator of a non-transportation-related onshore facility which, 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 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.

6. Respondent is a firm conducting business in the State of Oklahoma, with a place of business located Off County Road 5501 Pawhuska, OK 74056, 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 U.S.C. § 1321(a)(6), and 40 CFR § 112.2 of an onshore oil Production facility located in Osage County, Oklahoma ("the facility"). The approximate coordinates of the facility are 36.609080° N and -96.490030° W. Drainage from the facility flows Northeast to Little Hominy Creek and Southeast to Hominy Creek thence into Skiatook Lake.

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. The Facility capacity is approximately 113,358 gallons.

9. Little Hominy Creek is a navigable water of the United States within the meaning of 40 CFR. § 112.2, and as defined in Section 502(7) of the Act, 33 U.S.C. §1362(7), and 40 CFR §110.1.

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 U.S.C. § 1321(a)(10), and 40 CFR § 112.2.

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.

15. The facility began operating prior to August 16, 2002

SPCC Allegations

Respondent admits the jurisdictional allegations set forth above and neither admits nor denies the violations alleged in paragraphs 17-19.

COUNT 1: Failure to prepare and implement an adequate SPCC plan that meets the requirements of 40 CFR § 112.7 and other applicable sections, as required in 40 CFR § 112.3

16. Paragraphs 1 through 15 above are hereby incorporated by reference.

17. 40 CFR § 112.3 requires that the owner or operator of an SPCC-regulated

facility must prepare in writing and implement a SPCC plan in accordance with 40 CFR § 112.7 and any other applicable sections of 40 CFR Part 112.

18. On March 7, 2019 EPA inspected the facility and found that Respondent had failed to prepare and implement an adequate SPCC plan for the facility that was fully in accordance with 40 CFR § 112.7 and other applicable sections. Respondent's SPCC plan and the facility's specific deficiencies are as follows:

- a. Respondent failed to provide a plan, certified by a licensed Professional Engineer, that attests to all the required elements. Specifically, respondent failed to establish procedures for required inspections and testing and certify that the plan is adequate for the facility in accordance with 40 CFR § 112.3(d).
- b. The facility discharged approximately 300 barrels of crude oil on February 22, 2019 due to a crude oil stock tank overflow. Respondent however, failed to submit any information to the Regional Administrator of the Environmental Protection Agency as required in 40 CFR § 112.4(a).
- c. Respondent failed to amend and implement the SPCC plan for changes in the facility design, construction, operation, or maintenance that materially affects its potential for a discharge as required in 40 CFR § 112.5(a)
- d. Respondent failed to perform and document the five-year Plan review and evaluation as required in 40 CFR § 112.5(b).
- e. Respondent failed to provide a plan that contains the date and signature of management at a level of authority to commit the necessary resources to fully implement the plan in accordance with 40 CFR § 112.7.
- f. 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).
- g. The SPCC plan does not identify and describe the free water knockout tanks (inactive) and the vertical oil storage tank. Specifically, respondent failed to address in the plan the type of oil and storage capacity for each fixed container in accordance with 40 CFR § 112.7(a)(3)(i).
- h. Respondent failed to implement at the facility discharge or drainage

controls, such as secondary containment around containers and other structures, equipment, and procedures for the control of a discharge in accordance with 40 CFR § 112.7(a)(3)(iii).

- i. Respondent failed to address in the plan the contact list and phone numbers for the facility cleanup contractors with whom an agreement for response has been signed in accordance with 40 CFR § 112.7(a)(3)(vi).
 - j. 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).
 - k. Respondent failed to include in the plan and/or maintain at the facility appropriate containment and/or diversionary structures or equipment for the Bulk Storage Containers and Piping and related appurtenances to prevent a discharge from the facility in accordance with 40 CFR § 112.7(c).
 - l. Respondent failed to provide adequately sized facility secondary containment to hold the capacity of the largest single container and sufficient freeboard for precipitation for all tank battery, separation, and treating facility installations in accordance with 40 CFR § 112.9(c)(2).
 - m. Respondent failed to include in the plan an oil spill contingency plan and a written commitment of manpower, equipment and materials required to expeditiously control and remove any quantity of oil discharge that might be harmful in accordance with 40 CFR § 112.9(d)(3)(i) and (ii).
16. Respondent's failure to properly develop and implement an adequate SPCC plan for the facility violated the requirements of 40 CFR § 112.3
19. Respondent's failure to fully implement an adequate SPCC plan for the facility contributed to the spill below and violated 40 CFR § 112.3.

Spill Stipulations

- 20. Paragraphs 1 through 15 above are hereby incorporated by reference.
- 21. 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.

22. 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

Respondent admits the jurisdictional allegations set forth above and neither admits nor denies the violations alleged in paragraphs 23-26.

COUNT 2: Discharge of Oil into or upon Waters of the United States and its adjoining shoreline.

23. Paragraphs 1 - 15 and 20 - 22 above are hereby incorporated by reference.

24. On February 22, 2019, Respondent discharged approximately 300 barrels (12,600 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 Little Hominy Creek and the adjoining shorelines.

25. Respondent's February 22, 2019, discharge of oil from its facility caused a sheen upon or discoloration of the surface of the Little Hominy Creek, 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.

26. Respondent's February 22, 2019 discharge of oil from its facility into or upon the Little Hominy Creek, 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

27. 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

28. The Complainant proposes, and Respondent consents to, the assessment of a civil penalty of **\$37,200**.

Payment Terms

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

29. The Respondent shall submit this Consent Agreement and Final Order, with original signature, along with documentation of the payment to:

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

30. The Respondent shall pay to the United States a civil penalty in the amount of **\$37,200**, to settle the violations as alleged in the CAFO, in accordance with 40 CFR.

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).

- If you are paying by check, pay the check to "Environmental Protection Agency," noting on the check "**OSTLF-311**" and docket number **CWA-06-2019-4814**.

- 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

- 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

31. Failure by the Respondent to pay any portion of 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 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

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

33. 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.


Dexxon Inc.

Date: 1-30-2020


Ira E. Rongey, Jr., President

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 2-4-2020

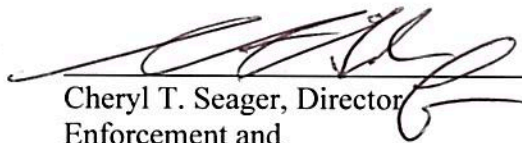

Jerry Saunders
Chief
Water Enforcement Branch

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:
FEB - 5 2020


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 February 6, 2020, 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 7451 0829

NAME: Mr. Ira E. Rongey, Jr.
ADDRESS: P. O. Box 348
Kiefer, OK 74041



Enoch Johnbull
OPA Enforcement Officer