

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

In the Matter of:	)	Docket No. CWA-04-2008-5127(b)
	)	
Shell Chemical LP	)	
400 Industrial Parkway	)	CLEAN WATER ACT
Saraland, AL 36571	)	SECTION 311 CLASS II
	)	CONSENT AGREEMENT
	)	AND FINAL ORDER
<u>Respondent.</u>	)	UNDER 40 C.F.R. § 22.13(b)

2008 AUG 25 AM 7:03  
 HEARING CLERK  
 REGION IV  
 EPA REGION IV

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 C.F.R. §§ 22.13(b) and 22.18(b)(2). The Administrator has delegated these authorities to the Regional Administrator of EPA Region 4 who in turn has delegated these authorities to the Director of the RCRA Division of EPA Region 4, pursuant to EPA Region 4 Clean Water Act Delegation 2-52-A (“Complainant”).

**CONSENT AGREEMENT**

**Stipulations**

The parties, in their own capacity or by their attorneys or other authorized representatives, hereby stipulate:

1. Shell Chemical LP (“Respondent”) is a corporation organized under the laws of Delaware with its registered agent’s office located at 2000 Interstate Park Drive, Suite 204, Montgomery, AL 36109. The 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 C.F.R. § 110.1.

2. The Respondent is the owner or operator within the meaning of Section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6), and 40 C.F.R. § 110.1 of a crude oil refining facility, called the Mobile Site ; located at 400 Industrial Parkway, Saraland, Alabama (hereinafter referred to as the “Mobile Site”) The Respondent is the owner or operator within the meaning of Section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6), and 40 C.F.R. § 110.1 of the Blakeley Island Terminal, located at Highway 90 Alternate, Bay Bridge Road, Mobile, Alabama (hereinafter referred to as the “Blakeley Island Terminal”).

3. The Mobile Site and the Blakeley Island Terminal are onshore facilities within the meaning of Section 311(a)(10) of the Act, 33 U.S.C. § 1321(a)(10).

4. Chickasaw Creek and the Mobile River and their adjacent wetlands are navigable waters subject to the jurisdiction of Section 311 of the Act as defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 110.1.

5. Section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3), prohibits the discharge of oil 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.

6. 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 C.F.R. § 110.3 to include discharges of oil that (1) violate applicable water quality standards or (2) 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.

7. Respondent admits the jurisdictional statements contained herein.

**Allegations**

Complainant alleges, and Respondent neither admits nor denies, that:

8. On June 30, 2004, Respondent discharged 15 gallons of oil (diesel fuel), as defined in Section 311(a)(1) of the Act, 33 U.S.C. § 1321(a)(1), and 40 C.F.R. § 110.1, from its facility, into or upon the Chickasaw Creek and/or its adjoining shorelines.

9. Respondent's June 30, 2004 discharge of oil from the Mobile Site into or upon the adjacent wetlands of the Chickasaw Creek caused a discoloration of the surface of the wetlands and, therefore, was in a quantity that has been determined may be harmful under 40 C.F.R. § 110.3, in violation of Section 311(b)(3) of the Act.

10. On September 3, 2004, Respondent discharged 2 gallons of oil (crude oil), as defined in Section 311(a)(1) of the Act, 33 U.S.C. § 1321(a)(1), and 40 C.F.R. § 110.1, from the Blakeley Island Terminal, into or upon the Mobile River and/or its adjoining shorelines.

11. Respondent's September 3, 2004 discharge of oil from the Blakeley Island Terminal into or upon the Mobile River caused a sheen upon or discoloration of the surface of the Mobile River and, therefore, was in a quantity that has been determined may be harmful under 40 C.F.R. § 110.3, in violation of Section 311(b)(3) of the Act.

12. On January 29, 2005, Respondent discharged 3 barrels of oil (crude oil), as defined in Section 311(a)(1) of the Act, 33 U.S.C. § 1321(a)(1), and 40 C.F.R. § 110.1, from the Blakeley Island Terminal, into or upon the Mobile River and/or its adjoining shorelines.

13. Respondent's January 29, 2005 discharge of oil from the Blakeley Island Terminal into or upon the Mobile River caused a sheen upon or discoloration of the surface of the Mobile River and, therefore, was in a quantity that has been determined may be harmful under 40 C.F.R. § 110.3, in violation of Section 311(b)(3) of the Act.

14. On April 28, 2005, Respondent discharged 25 barrels of oil (vacuum tank bottoms), as defined in Section 311(a)(1) of the Act, 33 U.S.C. § 1321(a)(1), and 40 C.F.R. § 110.1, from the Mobile Site, into or upon the Chickasaw Creek and/or its adjoining shorelines.

15. Respondent's April 28, 2005 discharge of oil from the Mobile Site into or upon the adjacent wetlands of the Chickasaw Creek caused a sheen upon or discoloration of the surface of the wetlands and, therefore, was in a quantity that has been determined may be harmful under 40 C.F.R. § 110.3, in violation of Section 311(b)(3) of the Act.

16. On June 24, 2005, Respondent discharged 10 gallons of oil (crude oil), as defined in Section 311(a)(1) of the Act, 33 U.S.C. § 1321(a)(1), and 40 C.F.R. § 110.1, from the Blakeley Island Terminal, into or upon the Mobile River and/or its adjoining shorelines.

17. Respondent's June 24, 2005 discharge of oil from the Blakeley Island Terminal into or upon the Mobile River caused a sheen upon or discoloration of the surface of the Mobile River and, therefore, was in a quantity that has been determined may be harmful under 40 C.F.R. § 110.3, in violation of Section 311(b)(3) of the Act.

18. On June 6, 2006, Respondent discharged 10 gallons of oil (diesel fuel), as defined in Section 311(a)(1) of the Act, 33 U.S.C. § 1321(a)(1), and 40 C.F.R. § 110.1, from the Mobile Site, into or upon the Chickasaw Creek and/or its adjoining shorelines.

19. Respondent's June 6, 2006 discharge of oil from the Mobile Site into or upon the Chickasaw Creek caused a sheen upon or discoloration of the surface of the Chickasaw Creek and, therefore, was in a quantity that has been determined may be harmful under 40 C.F.R. § 110.3, in violation of Section 311(b)(3) of the Act.

20. On November 8, 2006, Respondent discharged 3 barrels of oil (crude oil), as defined in Section 311(a)(1) of the Act, 33 U.S.C. § 1321(a)(1), and 40 C.F.R. § 110.1, from the Blakeley Island Terminal, into or upon the Mobile River and/or its adjoining shorelines.

21. Respondent's November 8, 2006 discharge of oil from the Blakeley Island Terminal into or upon the Mobile River caused a sheen upon or discoloration of the surface of the Mobile River and, therefore, was in a quantity that has been determined may be harmful under 40 C.F.R. § 110.3, in violation of Section 311(b)(3) of the Act.

22. On December 11, 2006, Respondent discharged 5 gallons of oil (diesel fuel), as defined in Section 311(a)(1) of the Act, 33 U.S.C. § 1321(a)(1), and 40 C.F.R. § 110.1, from the Mobile Site, into or upon the Chickasaw Creek and/or its adjoining shorelines.

23. Respondent's December 11, 2006 discharge of oil from the Mobile Site into or upon the Chickasaw Creek caused a sheen upon or discoloration of the surface of the Chickasaw Creek and, therefore, was in a quantity that has been determined may be harmful under 40 C.F.R. § 110.3, in violation of Section 311(b)(3) of the Act.

24. On August 6, 2007, Respondent discharged 31.7 barrels of oil (oil laden water), as defined in Section 311(a)(1) of the Act, 33 U.S.C. § 1321(a)(1), and 40 C.F.R. § 110.1, from the Mobile Site, into or upon the Chickasaw Creek and/or its adjoining shorelines.

25. Respondent's August 6, 2007 discharge of oil from the Mobile Site into or upon the Chickasaw Creek caused a sheen upon or discoloration of the surface of the Chickasaw Creek and, therefore, was in a quantity that has been determined may be harmful under 40 C.F.R § 110.3, in violation of Section 311(b)(3) of the Act.

**Waiver of Rights**

26. Respondent waives the right to contest the allegations contained herein, to a hearing under Section 311(b)(6)(B)(ii) of the Act, 33 U.S.C. § 1321(b)(6)(B)(ii), to appeal any Final Order in this matter under Section 311(b)(6)(G)(ii) of the Act, 33 U.S.C. § 1321(b)(6)(G)(ii), and consents to the issuance of a Final Order without further adjudication.

27. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during any discussions with, or to be served with and reply to, any memorandum or communication addressed to EPA officials where the purpose of such discussion, memorandum or communication is to persuade such official to accept and issue this Consent Agreement or the Final Order.

**Penalty**

28. The Complainant proposes, and Respondent consents to, the assessment of a civil penalty of thirteen thousand two hundred and forty six dollars (\$13,246).

**Payment Terms**

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

29. No later than 30 days after the effective date of the Final Order, the Respondent shall pay the amount of thirteen thousand two hundred and forty six dollars (\$13,246) by means of a

check or by electronic funds transfer (EFT). If paying by check, the Respondent shall submit a check, payable to "Environmental Protection Agency," and bearing the notation "OSLTF § 311."

If the Respondent sends payment by the U.S. Postal Service, the payment shall be addressed to:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
PO Box 979007  
St. Louis, MO 63197-9000

If paying by EFT, the Respondent shall transfer \$13,246 to:

Federal Reserve Bank of New York  
ABA 021030004  
Account 68010727  
33 Liberty St.  
New York, NY 10045

Field tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency." In the case of an international transfer of funds, the Respondent shall use SWIFT address FRNYUS33.

30. If paying by check, the Respondent shall note on the penalty payment check the title and docket number of this case. The Respondent shall submit copies of the check (or, in the case of an EFT transfer, copies of the EFT confirmation) to the following people:

Patricia Bullock  
Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 4  
61 Forsyth St., S.W.  
Atlanta, GA 30303

and

Frank Ney  
U.S. Environmental Protection Agency  
Region 4

Acting Chief, South RCRA and OPA Enforcement and Compliance Section  
RCRA Division  
61 Forsyth St., S.W.  
Atlanta, GA 30303

31. Respondent's failure 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 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. Complainant reserves the right, pursuant to 40 C.F.R. § 22.45(c)(4)(iii), to withdraw from this Consent Agreement and proposed Final Order within 15 days of receipt of a Commenter's petition requesting, pursuant to 40 C.F.R. § 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.

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

34. 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

35. The undersigned representative of Respondent hereby certifies that he/she is fully authorized to enter into the terms and conditions of this Consent Agreement and attached Final Order and to execute and legally bind Respondent to this Consent Agreement and attached Final Order.

**Effective Date**

36. This Consent Agreement and attached Final Order is effective upon the filing of the Final Order with the Regional Hearing Clerk.

**Shell Chemical LP**

Date: 7/1/08

Signature: Donald W. Weaver  
Name: Donald W. Weaver  
Title: General Manager

**U.S. ENVIRONMENTAL PROTECTION AGENCY**

Date: 7/9/08

Signature: G Alan Farmer  
G Alan Farmer  
Director  
RCRA Division

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

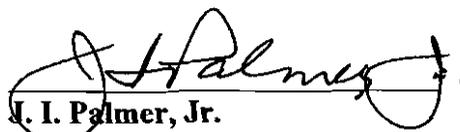
In the Matter of:	)	Docket No. CWA-04-2008-5127(b)
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Shell Chemical LP	)	
400 Industrial Parkway	)	CLEAN WATER ACT
Saraland, AL 36571	)	SECTION 311 CLASS II
	)	CONSENT AGREEMENT
	)	AND FINAL ORDER
<u>Respondent.</u>	)	UNDER 40 C.F.R. § 22.13(b)

**FINAL ORDER**

Pursuant to Section 311(b)(6) of the Clean Water 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 and the Revocation/ Termination or Suspension of Permits," codified at 40 C.F.R. Part 22, the foregoing 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: AUG 22 2008

  
**J. I. Palmer, Jr.**  
**Regional Administrator**

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing Consent Agreement and Final Order, in the Matter of Shell Chemical, LP, Docket No. CWA-04-2008-5127(b), on the parties listed below in the manner indicated:

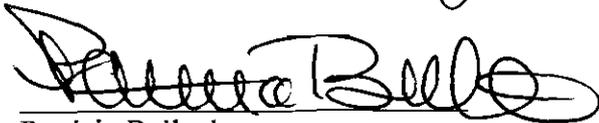
Joan Redleaf Durbin  
Office of Environmental Accountability  
U.S. Environmental Protection Agency - Region 4  
61 Forsyth Street  
Atlanta, GA 30303

(Via EPA Internal Mail)

Roberta S. Lewis  
Senior Legal Counsel  
Shell Oil Company  
OSP 4864  
910 Louisiana St.  
Houston, TX 77002-4916

(Via Certified Mail, Return  
Receipt Requested)

Dated this 26 day of August, 2008



Patricia Bullock  
Regional Hearing Clerk  
U.S. Environmental Protection Agency - Region 4  
61 Forsyth Street  
Atlanta, GA 30303