

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF)	
)	CWA SECTION 311 CLASS II
)	CONSENT AGREEMENT AND
BWI Companies, Inc.)	FINAL ORDER
d/b/a BWI - Jackson)	UNDER 40 C.F.R. § 22.13(b)
)	
)	
Respondent.)	Docket No. CWA-04-2009-5140(b)
_____)	

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 HEARING CLERK

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 has in turn 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 (“Complaint”).

CONSENT AGREEMENT

Stipulations

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

1. Respondent, BWI Companies, Inc., d/b/a BWI-Jackson, is a corporation organized under the laws of Texas and doing business in the State of Mississippi. 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).

2. The Respondent was at all times relevant to this Consent Agreement an “owner or operator” of an “onshore facility” within the meaning of Sections 311(a)(6) and (10) of the Act, 33 U.S.C. §§1321(a)(6) and (10), which includes a 10,000 gallon tank for diesel, a 300 gallon tank for waste oil, and a 250 gallon tank for new oil (“the Facility”) operating at 6013 North McRaven Road, Jackson, Mississippi.

3. Diesel, new oil, and waste oil are “oil” within the meaning of “oil” as defined at Section 311(a)(1) of the Act, 33 U.S.C. § 1321(a)(1).

4. 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"

5. 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.

6. EPA subsequently promulgated the Spill Prevention, Control and Countermeasures (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 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 C.F.R. § 110.3 may be harmful to the public health or welfare or the environment of the United States (“harmful quantity”).

7. In promulgating 40 C.F.R. § 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.

8. The Facility lies approximately 280 feet upgradient from Baker Creek.

9. Baker Creek is a navigable water as that term is defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 112.2 and is therefore subject to the jurisdiction of Section 311 of the Act.

10. The Facility is a non-transportation-related facility within the meaning of 40 C.F.R. § 112.2 Appendix A, as incorporated by reference within 40 C.F.R. § 112.2.

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, and is, as such, an SPCC-regulated facility.

Allegations

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

12. Respondent began operating the Facility on January 12, 1982.

13. 40 C.F.R. § 112.3 requires that the owner or operator of an SPCC-regulated facility must prepare a written SPCC plan in compliance with 40 C.F.R. § 112.7 and any other applicable section of 40 C.F.R. Part 112.

14. On March 9, 2005, an EPA On Scene Coordinator conducted an SPCC inspection at the BWI Facility in Jackson, Mississippi. The inspection was prompted by an earlier oil release on February 26, 2005, which reached Baker Creek.

15. At the time of the inspection, the Facility did not have an SPCC plan.

16. Respondent's failure to prepare such an SPCC plan for the facility violated 40 C.F.R. § 112.3, which was issued pursuant to Section 311(j) of the Act.

17. Section 311(b)(6)(A) of the Act, 33 U.S.C. § 1321(b)(6)(A), states in pertinent part that any owner, operator, or person in charge of any vessel, onshore facility, or offshore facility who fails or refuses to comply with any regulation issued under subsection (j) of this section may be assessed a Class I or Class II civil penalty by the Administrator.

Waiver of Rights

18. 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), and to appeal any Final Order accompanying this Consent Agreement in this matter under Section 311(b)(6)(G)(ii) of the Act, 33 U.S.C. § 1321(b)(6)(G)(ii), and 40 C.F.R. § 22.18(b)(2), and consents to the issuance of a Final Order without further adjudication.

19. 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

20. The Complainant proposes, and Respondent consents to, the assessment of a civil penalty of twenty-eight thousand dollars (\$28,000.00) which shall constitute a full and final settlement and resolution of all of the causes of action alleged in this Consent Agreement.

Payment Terms

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

21. No later than 30 days after the effective date of the Final Order, the Respondent shall pay the amount of twenty-eight thousand dollars (\$28,000.00) by means of a corporate/cashier's check or certified check, or by electronic funds transfer (EFT). If paying by check, the Respondent shall submit a corporate/cashier's check or certified 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
P.O. Box 979077
St. Louis, MO 63197-9000

If paying by EFT, the Respondent shall transfer \$28,000 to www.pay.gov. Enter SFO1.1 into the "search public forms" field. Open the form and enter the requested information. If paying by wire transfer, the payment shall be addressed to the following:

Federal Reserve Bank of New York
ABA: 021030004
Account No.:68010727
SWIFT address: FRNYUS33
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

22. 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 or wire transfer, copies of the EFT or wire confirmation) to the following people:

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

and

Frank Ney, Acting Chief
South Enforcement and Compliance Section
RCRA and OPA Enforcement and Compliance Branch
RCRA Division
U.S. Environmental Protection Agency
Region 4
SNAFC
61 Forsyth Street, SW
Atlanta, GA 30303

23. 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

24. Complainant reserves the right, pursuant to 40 C.F.R. § 22.45(c)(4)(iii), to withdraw from this Consent Agreement and 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.

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

26. 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 there under, 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.

27. 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 to execute and legally bind Respondent to this Consent Agreement.

28. The following attorney represents EPA in this matter and is authorized to receive service for EPA in the proceeding:

Susan Capel
Associate Regional Counsel
United States Environmental Protection Agency, Region 4
Sam Nunn Atlanta Federal Center,
61 Forsyth Street, SW
Atlanta, Georgia 30303
(404) 562-9566
Capel.susan@epa.gov

Effective Date

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

For

BWI Companies, Inc.

Date: November 25, 2008 Robert H Bunch

By: Robert Bunch
Title: President/CEO

For

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 12/17/08 Alan Farmer

G. Alan Farmer
RCRA Division

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF)
) CWA SECTION 311 CLASS II
) CONSENT AGREEMENT AND
) BWI Companies, Inc.) FINAL ORDER
) UNDER 40 C.F.R. § 22.13(b)
)
)
) Respondent.) Docket No. CWA-04-^{2009 5140(b)}~~2008-5128(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.

BWI Companies, Inc., the Respondent, is ordered to comply with the terms of the Consent Agreement, Docket No. CWA-04-^{2009 5140}~~2008-5128(b)~~.

Date: 2/18/09


A. Stanley Meiburg
Acting Regional Administrator

CERTIFICATE OF SERVICE

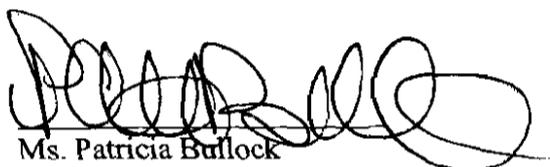
I hereby certify that I have this day served a true and correct copy of the Foregoing Consent Agreement and Final Order, in the matter of BWI Companies, Inc., Docket No. CWA-4-2009-5140(b) on the parties listed below in the manner indicated:

Susan Capel (Via EPA's internal mail)
Office of Environmental Accountability
U.S. EPA, Region 4
61 Forsyth Street
Atlanta, Georgia 30303

Randy Jackson (Via EPA's internal mail)
RCRA & OPA Enforcement and
Compliance Branch
U.S. EPA, Region 4
61 Forsyth St., S.W.
Atlanta, Georgia 30303

Robert Bunch (Via Certified Mail)
BWI Companies, Inc.
6013 North Raven Road
Jackson, Mississippi 39289

Dated this 10 day of march, 2008.



Ms. Patricia Bullock
Regional Hearing Clerk
U.S. EPA - Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, Georgia 30303-8960