

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 7

901 NORTH FIFTH STREET  
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF	)	
	)	
	)	<b>CLEAN WATER ACT SECTION 311</b>
	)	<b>CLASS II</b>
	)	<b>CONSENT AGREEMENT</b>
Magellan Pipeline Company, L.P.	)	<b>AND FINAL ORDER</b>
1120 S. Meridian, Valley Center, KS	)	
	)	
	)	
Respondent.	)	Docket No. CWA-07-2010-0076
_____	)	

The United States Environmental Protection Agency (EPA), Region VII (Complainant) and Magellan Pipeline Company, L.P. (Respondent) have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of 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 (Consolidated Rules), 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

**A. FINDINGS OF VIOLATIONS**

**Jurisdiction**

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 311 of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act (CWA), 33 U.S.C. § 1321, and in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/ Termination or Suspension of Permits, 40 C.F.R. Part 22.

2. This Consent Agreement and Final Order serves as notice that the United States Environmental Protection Agency (EPA) has reason to believe that Respondent has violated Sections 311(b)(3) and 311(j) of the CWA, 33 U.S.C. § 1321(b)(3) and (j), and regulations promulgated thereunder.

### **Parties**

3. The authority to take action under Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6), is vested in the Administrator of EPA. The Administrator has delegated this authority to the Regional Administrator, EPA, Region VII, who in turn has delegated it to the Director of the Air and Waste Management Division of EPA, Region VII (Complainant).

4. Respondent Magellan Pipeline Company, L.P. is a corporation registered under the laws of Delaware and authorized to conduct business in the State of Kansas.

### **Statutory and Regulatory Framework**

#### **Prohibition on Discharges of Oil**

5. Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), and the regulations set forth in 40 C.F.R. Part 110, prohibit 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 of the United States.

6. For purposes of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), 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 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 adjoining shorelines.

#### **Facility Response Plan Requirements**

7. Section 311(j) of the Clean Water Act (CWA), 33 U.S.C. § 1321(j), provides for the regulation of onshore facilities to prevent or contain discharges of oil. Section 311(j) of the CWA, 33 U.S.C. § 1321(j), provides in part that the President shall issue regulations “establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil and hazardous substances from vessels and from onshore facilities and offshore facilities, and to contain such discharges.”

8. To implement Section 311(j), 33 U.S.C. § 1321(j), EPA promulgated regulations to prevent oil pollution. These regulations, codified at 40 C.F.R. Part 112, set forth the requirements for the preparation and implementation of Spill Prevention Control and Countermeasure Plans (“SPCC Plans”).

9. Under the authority of Section 311(j) of the CWA, 33 U.S.C. § 1321(j), 40 C.F.R. Part

112 establishes procedures, methods and equipment and other requirements to prevent the discharge of oil from non-transportation-related onshore facilities into or upon the navigable waters of the United States or adjoining shorelines.

10. The requirements of 40 C.F.R. Part 112 apply to owners and operators of non-transportation-related onshore facilities engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using or consuming oil or oil products, which due to their locations, could reasonably be expected to discharge oil in quantities that may be harmful into or upon the navigable waters of the United States or adjoining shorelines.

11. Sections 311(j)(5) of the Act, 33 U.S.C. § 1321(j)(5), provides that the President shall issue regulations requiring the owner or operator of "an onshore facility that, because of its location, could reasonably be expected to cause substantial harm to the environment by discharging into or upon the navigable waters [or] adjoining shorelines" 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."

12. Under the authority of Section 311(j)(5) of the Act, Subparts A and D of 40 C.F.R. Part 112 ("the Facility Response Plan" or "FRP regulations") require FRP-regulated facilities to prepare a Facility Response Plan as specified in 40 C.F.R. § 112.20(h), and to develop and implement a facility response training program and a drill/exercise program that satisfies the requirements of the regulations (40 C.F.R. § 112.21(a)).

13. Specifically, 40 C.F.R. 112.20(h)(8) requires a facility to have and maintain a FRP and to maintain a checklist and record of inspections for tanks, secondary containment, and response equipment.

14. 40 C.F.R. 112.21 requires a facility to be able effectively deploy a containment boom within one hour of the required response time.

#### **Factual Background**

15. Respondent is a person within the meaning of Sections 311(a)(7) and 502(5) of the CWA, 33 U.S.C. §§ 1321(a)(7) and 1362(5), and 40 CFR §112.2.

#### **March 15, 2010 Oil Spill near Milford Iowa**

16. On or about March 14, 2010, Respondent reported a release of #2 diesel oil that resulted from a failure of a threaded gauge fitting at its pipeline terminal near 2451 Highway 71, Milford, Iowa. Respondent reported the release had flowed into a nearby unnamed creek. The unnamed creek is a tributary to the Little Sioux River.

17. Magellan's staff with the assistance of the the local fire department attempted to contain the migration of the released oil within the creek by deployment of booms. The quantity released was subsequently estimated as 5,000 gallons or approximately 119 barrels (42 gallon).

18. The nearby creek and Little Sioux River are navigable waters of the United States within the meaning of 40 C.F.R. § 112.2.

19. Respondent's terminal is an "onshore facility" within the meaning of Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10), and 40 C.F.R. § 112.2.

### **Wichita Facility**

20. Respondent was at all relevant times the "owner or operator," within the meaning of Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6) and 40 C.F.R. § 112.2, of the bulk oil storage facility addressed at 1120 S. Meridian, Valley Center, Kansas, adjacent to Wichita, Kansas (the "Wichita facility," or "Facility").

21. The Wichita facility is approximately ½ mile from the Little Arkansas River and is used for the storage and distribution of gasoline and diesel fuel.

22. The Facility has an above ground tank storage capacity of 7,738,500 gallons. Product released from a spill at the facility could potentially enter an adjacent storm sewer and reach the Little Arkansas River.

23. The Little Arkansas River is a navigable water of the United States within the meaning of 40 C.F.R. § 112.2.

24. Respondent's Wichita facility is an "onshore facility" within the meaning of Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10), and 40 C.F.R. § 112.2.

25. Respondent's Wichita facility is a "non-transportation-related facility" as defined by Appendix A to 40 C.F.R. Part 112, as incorporated by reference within 40 C.F.R. § 112.2.

26. Diesel fuel and gasoline are each forms of oil as defined by Section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1) and 40 C.F.R. § 112.2.

27. The Wichita 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").

28. Pursuant to the CWA and 40 C.F.R. § 112.1 Respondent, as the owner and operator

of an SPCC and FRP regulated facility, is subject to the SPCC and FRP regulations.

29. On May 7, 2009, EPA conducted an unannounced inspection at the Wichita facility. This inspection was conducted pursuant to the authority of Section 308 of the CWA, 33 U.S.C. § 1318 and in accordance with the FRP requirements of 40 CFR 112.20(h)(8). The purpose of EPA's inspection was to require Magellan to perform a field deployment drill of its FRP.

30. The May 2009 field deployment exercise initiated by EPA consisted of a response designed to contain a simulated small product spill (2,100 gallons) from that had exited the storm sewer culvert into the Little Arkansas River until tanker trucks could arrive.

31. EPA's inspector observed that the Respondent's facility personnel were unable to implement its FRP plan and failed to effectively deploy a containment boom at the designated response location within the one hour required response time, as required by 40 C.F.R. 112.21. The facility was also unable to provide required documentation of periodic inspections of response equipment, as required by 40 C.F.R 112.20(h)(8).

#### **Discharge of Oil in Harmful Quantities**

32. The facts stated in paragraphs A.15 through A.19, above, are hereby realleged and incorporated herein by reference.

33. Respondent's discharge of oil from its facility on or about March 15, 2010, caused a sheen upon or discoloration of the water within the tributary to the nearby creek, a tributary of the Little Sioux River, and its adjoining shorelines, and therefore was in a quantity that has been determined may be harmful under 40 C.F.R. § 110.3, and therefore violated Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3).

#### **Count 2**

#### **(Failure to Implement FRP and/or Effectively Deploy Boom)**

34. The facts stated in paragraphs A.20 though A.31, above, are hereby incorporated by reference.

35. Respondent's failure to maintain a checklist and record of inspections of response equipment, and to effectively deploy a containment boom at the designated response location within the one hour required response time, are violations of 40 C.F.R. 112.20 and 21, and Section 311(j).

**Relief**

36. Based on the foregoing Findings of Violation, and pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), EPA, Region VII hereby proposes to issue a Final Order assessing an administrative penalty against the Respondent, for the violations cited above, in the amount of \$46,200.

**B. CONSENT AGREEMENT**

1. Respondent and EPA agree to the terms of this Consent Agreement and Final Order and Respondent agrees to comply with the terms of this Consent Agreement and Final Order.
2. Respondent admits the jurisdictional allegations of this Consent Agreement and Final Order and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of this Consent Agreement and Final Order.
3. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this Consent Agreement and Final Order.
4. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above, and its right to appeal this Consent Agreement and Final Order.
5. Respondent and Complainant agree to conciliate the matters set forth in this Consent Agreement and Final Order without the necessity of a formal hearing and agree to each bear their own costs and attorney's fees incurred as a result of this action.
6. This Consent Agreement and Final Order addresses all civil and administrative claims for the CWA violations identified above. Complainant reserves the right to take any enforcement action with respect to any other violations of the CWA or any other applicable law.
7. Nothing contained in this Consent Agreement and Final Order shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state and local environmental statutes and regulations and applicable permits.
8. The undersigned representative of the Respondent certifies that he or she is fully authorized to enter the terms and conditions of this Consent Agreement and Final Order and to execute and legally bind the Respondent to the terms contained herein.
9. Respondent Magellan Pipeline Company, L.P., certifies, that as of the date that it executes this Consent Agreement and Final Order, it has taken steps to address the violations cited in Count I, above, by conducting spill response exercises at its Wichita facility and maintaining proper records of required FRP related inspections at the Wichita facility, and is in compliance with the cited requirements of 40 C.F.R. 112.20, 112.21, and Section 311(j) of the

CWA, 33 U.S.C. §§ 1321.

10. The effect of settlement described in Paragraph B.6, above, is conditional upon the accuracy of the Respondent's representations to EPA, as memorialized in Paragraph B.9, above, of this Consent Agreement and Final Order.

11. Respondent agrees that, in settlement of the claims alleged in this Consent Agreement and Final Order, Respondent shall pay a penalty of \$46,200, as set forth in Paragraph C.1 of the Final Order.

12. Respondent understands that failure to pay any portion of the civil penalty on the date the same is due may result in the commencement of a civil action in Federal District Court to collect said penalty, along with interest thereon at the applicable statutory rate.

### **C. FINAL ORDER**

#### **Payment Procedures**

Pursuant to the authority of Section 311 of the CWA, 33 U.S.C. § 1321, and according to terms of this Consent Agreement and Final Order, IT IS HEREBY ORDERED THAT:

1. Respondent shall pay a total mitigated civil penalty of Forty Six Thousand, Two Hundred Dollars (\$46,200) within thirty (30) days of the effective date of this Consent Agreement and Final Order.

2. Payment of the penalty shall be by cashier or certified check made payable to the "United States Treasury" and remitted to:

U.S. Environmental Protection Agency  
P.O. Box 979077  
St. Louis, MO 63197-9000

The payment shall identify the Respondent by name and docket number (CWA-07-2010-0076). Copies of the check shall be mailed to:

Howard C. Bunch  
Sr. Assistant Regional Counsel  
U.S. Environmental Protection Agency - Region VII  
901 North 5th Street  
Kansas City, Kansas 66101

and

Kathy Robinson  
Regional Hearing Clerk  
U.S. Environmental Protection Agency - Region VII  
901 North 5th Street  
Kansas City, Kansas 66101.

3. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Consent Agreement and Final Order shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

#### **Parties Bound**

4. This Consent Agreement and Final Order shall apply to and be binding upon Respondents and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.

#### **General Provisions**

5. Notwithstanding any other provision of this Consent Agreement and Final Order, EPA reserves the right to enforce the terms of this Consent Agreement and Final Order by initiating a judicial or administrative action pursuant to Section 311 of the CWA, 33 U.S.C. § 1321, and to seek penalties against Respondent, or to seek any other remedy allowed by law.

6. Complainant reserves the right to take enforcement action against Respondent for any past or future violations of the CWA and its implementing regulations and to enforce the terms and conditions of this Consent Agreement and Final Order.

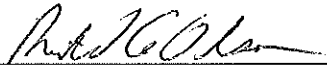
7. This Order shall be entered and become effective after the conclusion of the period of public notice and comment required pursuant to Section 311() of the CWA, 33 U.S.C. § 1321(g)(4), and 40 C.F.R. § 22.45. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

8. Respondent and Complainant shall each bear their respective costs and attorney's fees.

9. The headings in this Consent Agreement and Final Order are for convenience of reference only and shall not affect interpretation of this Consent Agreement and Final Order.



**For the Respondent Magellan Pipeline Company, L.P.:**

  
Printed Name: Richard A. Olson  
Title: Sr. Vice President


4-30-10  
Date



**For the Complainant:**  
The United States Environmental Protection Agency

  
Howard C. Bunch  
Sr. Assistant Regional Counsel

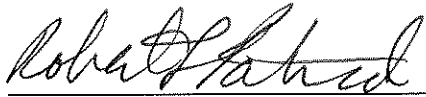
7/12/2010  
Date

  
Becky Weber, Director  
Air, Waste Management Division

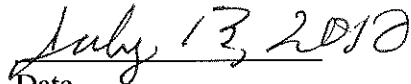
5/20/10  
Date

*In the matter of  
Magellan Pipeline Company, L.P.  
Consent Agreement and Final Order  
Page 10 of 10*

IT IS SO ORDERED. This Final Order shall become effective immediately.



Robert Patrick  
Regional Judicial Officer

  
Date

IN THE MATTER OF Magellan Pipeline Company, L.P., Respondent  
Docket No. CWA-07-2010-0076

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy hand delivered to  
Attorney for Complainant:

Howard Bunch  
Senior Assistant Regional Counsel  
Region 7  
United States Environmental Protection Agency  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Paul E. Pratt  
Associate General Counsel  
Magellan Midstream Partners, L.P.  
One Williams Center, Suite 200  
Tulsa, Oklahoma 74121-2186

Dated: 7/14/10



Kathy Robinson  
Kathy Robinson  
Hearing Clerk, Region 7