

FILED UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

2014 JAN 27 AM 9:38

REGION 6

REGIONAL ADMINISTRATOR
EPA REGION VI

IN THE MATTER OF

**Dune Operating Company
Garden Island Bay
Plaquemines Parrish, LA**

Respondent

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

Docket No. CWA-06-2013-4854

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)(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 CFR §§ 22.13(b) and 22.18(b)(2). The Administrator has delegated these authorities to the Regional Administrator of EPA, Region 6, Delegation No. 2-52-A, dated May 11, 1994 and Delegation No. R6-2-52-A, dated January 31, 2008 ("Complainant").

CONSENT AGREEMENT

Stipulations

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

2. Respondent is a firm conducting business in the State of Arkansas with a place of business located at 777 Walker Street Suite 2300 Houston Texas 77002. 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 CFR § 112.2.

3. 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 the Garden Island Bay, located in Plaquemines Parish, Louisiana (“the facility”). Drainage from the facility flows to the Mississippi Delta; thence, to the Gulf of Mexico.

4. The Mississippi Delta and the Gulf of Mexico are navigable waters of the United States as defined in Section 502(7) of the Act, 33 U.S.C. §1362(7), and 40 CFR §110.1.

5. 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.

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 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 7-9.

7. On January 6, 2013, Respondent discharged approximately 450 barrels 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 the Mississippi Delta and its adjoining shorelines.

8. Respondent's January 6, 2013, discharge of oil from its facility caused a sheen upon or discoloration of the surface of the Mississippi Delta, 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.

9. Respondent's January 6, 2013, discharge of oil from its facility into or upon the Mississippi Delta 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

10. Respondent waives the right 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 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.

Penalty

11. The Complainant proposes, and Respondent consents to, the assessment of a civil penalty of **\$83,150.00**.

Payment Terms

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

12. The Respondent shall submit this Consent Agreement and Final Order, with original signature to:

OPA Enforcement Coordinator
U. S. Environmental Protection Agency

Region 6 (6SF-PC)
1445 Ross Avenue
Dallas, Texas 75202-2733

13. The Respondent shall pay to the United States a civil penalty in the amount of **\$83,150.00**, to settle the violations as alleged in the CAFO, in accordance with 40 C.F.R. 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).

- **Penalty Payment:** If you are paying by check, pay the check to "Environmental Protection Agency," noting on the check "**OSTLF-311**" and docket number **CWA-06-2013-4854**. 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
314-418-1028

- The Respondent shall submit copies of the check to the OPA Enforcement Coordinator, at the address above as well as:

Lorena Vaughn
Regional Hearing Clerk (6RC)
U.S. Environmental Protection Agency
Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

14. Failure by the Respondent to pay any portion of the penalty assessed by the Final Order in 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

15. Complainant reserves the right, pursuant to 40 CFR § 22.45(c)(4)(ii), to withdraw this Consent Agreement and proposed Final Order within 15 days of receipt of a Commenter's petition requesting, pursuant to 40 CFR § 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.

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

17. 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.

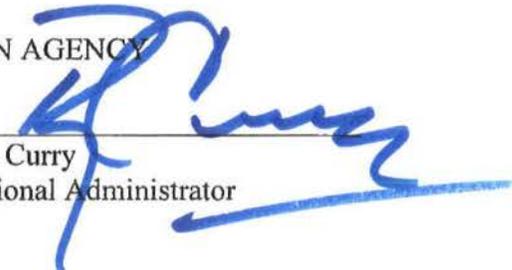
Dune Operating Company

Date: Sept 5, 2013


Hal Bettis, Executive Vice President

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 11/1/2013


Ron Curry
Regional Administrator

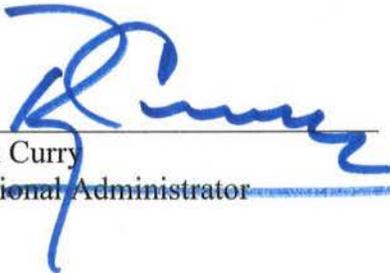
FINAL ORDER

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:

1/21/2014



Ron Curry
Regional Administrator

Docket No. CWA-06-2013-4854

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 January 27, 2014, with the Regional Hearing Clerk, U.S. EPA Region 6, 1445 Ross Avenue, Dallas, TX 75202-2733; 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:

7012 3460 0002 4060 6775

NAME: Hal Bettis
ADDRESS: Dune Energy
777 Waller Street, Suite 2450
Houston, Texas 77002



Frankie Markham
OPA Enforcement Administrative Assistant