

2. The Respondent, at all times relevant to this Consent Agreement and Final Order, was the 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 an oil production facility (“the facility”) located near Baxterville, Mississippi.

3. The facility is an onshore facility within the meaning of Section 311(a)(10) of the Act, 33 U.S.C. § 1321(a)(10).

4. 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.

5. 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 the environment of the United States are defined in 40 C.F.R. § 110.3(b) to include discharges of oil that (1) violate applicable water quality standards or (2) cause a film or 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.

6. Respondent, solely for purposes of this Consent Agreement, does not contest the jurisdictional statements contained herein.

Allegations

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

7. On February 20, 2007, Respondent discharged 26,250 GALLONS (625 barrels) of 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 its facility that entered into or upon Middle Fork Creek and/or its adjoining shorelines.

8. Middle Fork Creek is a water body 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.

9. Respondent's February 20, 2007, discharge of oil from its facility caused a sheen upon or discoloration of the surface of Middle Fork Creek and/or upon the adjoining shorelines, 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, 33 U.S.C. § 1321(b)(3).

Waiver of Rights

10. 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.

11. 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

12. The Complainant proposes, and Respondent consents to, the assessment of a civil penalty of \$156,357.80.

Payment Terms

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

13. No later than 30 days after the effective date of the Final Order, the Respondent shall pay the amount of \$156,357.80 by means of a corporate cashier's or certified check, or by electronic funds transfer (EFT). If paying by check, the Respondent shall submit a corporate cashier's 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 \$156,357.80 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.

14. 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
SNAFC
61 Forsyth Street, SW
Atlanta, GA 30303

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

15. 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

16. 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.

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

18. 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.

19. Other than the issues that Respondent has agreed not to contest solely for this Consent Agreement and this incident, Respondent does not waive, and specifically reserves, its right to contest EPA's assertion of jurisdiction or determination as to any issue concerning the facility or Middle Fork Creek and its tributaries, including but not limited to any rights or defenses related to jurisdiction under or a determination of navigable waters under 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.

20. 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.

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

Bonnie Sawyer
Associate Regional Counsel
United States Environmental Protection Agency, Region 4
Sam Nunn Atlanta Federal Center,
61 Forsyth Street, SW
Atlanta, Georgia 30303
(404) 562-9539
Sawyer.Bonnie@epa.gov

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

Joan B. Sasine, Esq.
Powell Goldstein LLP
1201 West Peachtree Street, NW
Atlanta, Georgia 30309
404-572-6647

Effective Date

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

For TELLUS OPERATING GROUP, LLC:

Date: 10/15/08

Signature:



Thomas E. Wofford
Chief Financial Officer

For U.S. ENVIRONMENTAL PROTECTION AGENCY:

Date: 10/21/08

Signature:



G. Alan Farmer
Director
RCRA Division

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 Tellus Operating Group, LLC, Docket No. CWA-04-2008-5150(b), on the parties listed below in the manner indicated:

Bonnie Sawyer
Office of Environmental Accountability
U.S. EPA, Region 4
61 Forsyth Street
Atlanta, Georgia 30303

(Via EPA's internal mail)

Randy G. Jackson
RCRA & OPA Enforcement and Compliance Branch
U.S. EPA, Region 4
61 Forsyth St., S.W.
Atlanta, Georgia 30303

(Via EPA's internal mail)

Joan B. Sasine, Esq.
Powell Goldstein LLP
1201 West Peachtree Street, NW
Atlanta, Georgia 30309
404-572-6647

(Via Certified Mail)

Dated this 18 day of December, 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