

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6

FILED
2013 JUL 23 AM 8:18
REGIONAL ADMINISTRATOR
EPA REGION VI

IN THE MATTER OF

**Dune Operating Company
Bateman Lake
St. Mary Parish, LA**

Respondent

**CWA SECTION 311 CLASS I
CONSENT AGREEMENT
AND FINAL ORDER**

UNDER 40 CFR § 22.13(b)

Docket No. **CWA-06-2013-4813**

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)(i) of the Clean Water Act ("Act"), 33 U.S.C. § 1321(b)(6)(B)(i), 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, who has in turn delegated them to the Director of the Superfund Division of EPA, Region 6, who has, by his concurrence, re-delegated the authority to act as Complainant to the Associate Director Prevention and Response Branch in Region 6, Delegation No. R6-2-51, dated February 13, 2008 ("Complainant").

CONSENT AGREEMENT

Stipulations

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

Docket No. CWA-06-2013-4813

2. Section 311(j)(1)(C) of the Act, 33 USC § 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 or offshore vessels and from onshore or offshore facilities, and to contain such discharges."

3. 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 and offshore facilities.

4. Through Executive Order 12777 (October 18, 1991), 56 Fed. Reg. 54757 (October 22, 1991), the President delegated to DOI, responsibility for spill prevention and control, contingency planning, and equipment inspection activities associated with offshore facilities. Subsequently, pursuant to section 2(i) of E.O. 12777, the Secretary of the Interior re-delegated, and the Administrator of EPA agreed to assume (MOU published as Appendix B to 40 CFR Part 112), responsibility for non-transportation-related offshore facilities located landward of the coast line.

5. EPA promulgated the Spill Prevention Control & Countermeasure (SPCC) regulations pursuant to delegated statutory authorities, and pursuant to its authorities under the Clean Water Act, 33 USC § 1251 *et seq.*, which established certain procedures, methods and other requirements upon each owner and operator of a non-transportation-related onshore or off-shore 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 CFR § 110.3 may be harmful to the public health or welfare or the environment of the United States (“harmful quantity”).

6. In promulgating 40 CFR § 110.3, which implements Section 311(b)(4) of the Act, 33 USC § 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.

7. Respondent is a firm conducting business in the State of Louisiana, with a place of business located at 298 Bateman Road Berwick, Louisiana 70342, and 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.

8. Respondent is the owner within the meaning of Section 311(a)(6) of the Act, 33 USC § 1321(a)(6), and 40 CFR § 112.2 of an oil production facility, Bateman Lake, located in St. Mary Parish, Louisiana (“the facility”). The approximate coordinates of the facility are 29.6583° N and -91.2483° W. Drainage from the facility travels directly into the Atchafalaya River.

9. The facility has an aggregate above-ground storage capacity greater than 1320 gallons of oil in containers each with a shell capacity of at least 55 gallons. Facility capacity is approximately 220,752 gallons.

10. The Atchafalaya River is a navigable waters of the United States within the meaning of 40 CFR § 112.2.

11. Respondent is engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using or consuming oil or oil products located at the facility.

12. The facility is a non-transportation-related facility within the meaning of 40 CFR § 112.2 Appendix A, as incorporated by reference within 40 CFR § 112.2.

13. The facility is an offshore facility within the meaning of Section 311(a)(10) of the Act, 33 USC § 1321(a)(11), 40 CFR § 112.2, and 40 CFR § 112 Appendix B.

14. The facility is therefore a non-transportation-related offshore 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").

15. Pursuant to Section 311(j)(1)(C) of the Act, E.O. 12777, and 40 CFR § 112.1 Respondent, as the owner of an SPCC-regulated facility, is subject to the SPCC regulations.

16. The facility began operating on or prior to November 10, 2011.

Allegations

17. 40 CFR § 112.3 requires that the owner or operator of an SPCC-regulated facility must prepare a SPCC plan in writing, and implement that plan in accordance with 40 CFR § 112.7 and any other applicable section of 40 CFR Part 112.

18. On January 30, 2013, EPA inspected the facility and found that Respondent had failed to fully implement its SPCC plan for the facility. Respondent failed to fully implement such an SPCC plan for the facility as follows:

- a. Facility failed to discuss in plan a prediction of the direction, rate of flow, and total quantity of oil that could be discharged for each type of major equipment failure where experience indicates a reasonable potential for equipment failure in accordance with 40 CFR § 112.7(b);
- b. Facility failed to adequately discuss in plan appropriate containment and or diversionary structures or equipment which are provided to prevent discharges. Specifically, it was noted during the inspection that the berm is made of soil that is covered with gravel. The plan needs to be updated to reflect the noted materials used to construct the berm in accordance

with 40 CFR § 112.7(c);

- c. Facility failed to discuss in plan the record of inspections or test being signed by supervisor or inspector. Specially, the plan does not state that inspections need to be signed by the inspector or supervisor in accordance with 40 CFR § 112.7(e)(2);
- d. Facility failed to discuss in plan the conformance with applicable more stringent State rules, regulations, and guidelines and other effective discharge prevention and containment procedures in accordance with 40 CFR § 112.7(j);
- e. Facility failed to discuss in plan, providing adequately sized sump and drains and make available a spare pump to remove liquid from the sump and assure that oil does not escape. Additionally, the plan must include a regularly scheduled preventive maintenance inspection and testing program to assure reliable operation of liquid removal system and pump start-up device and incorporate in plan whether redundant automatic sump pump and control devices are installed if deemed necessary. Specifically, the plan does not discuss why the sumps are considered adequate, there are multiple separate sump set ups at the facility that were not included in plan and location was not included in plan discussed in accordance with 40 CFR § 112.11(c);
- f. Facility failed to discuss in plan piping appurtenant to the facility is protected from corrosion, such as with protective coatings or cathodic protection. Specifically, the facility plan does not discuss the plastic coatings that the facility uses on the piping in accordance with 40 CFR § 112.11(n);
- g. Facility failed to discuss in plan and conduct periodic regular testing of sub-marine piping appurtenant to ensure good operating condition and the facility failed to discuss and keep documentation of inspection or test at facility in accordance with 40 CFR § 112.11(p);
- h. Facility failed to discuss in plan drainage of uncontaminated rainwater from diked areas into a storm drain or open watercourse and further where applicable failed to discuss if bypass valve is being sealed closed, inspecting retained rainwater to ensure its presence will not cause a discharge, ensuring supervision for open bypass valve and reseal following drainage, and keeping adequate records of such events in accordance with 40 CFR § 112.8(c)(3);
- i. Facility failed to discuss in plan and failed to inspect each aboveground

container for integrity on a regular schedule and whenever materials repairs are made. The facility must determine in accordance with industry standards, the appropriate qualifications for personnel performance test and inspections, the frequency and type of testing and inspections which take into account container size configuration and design. Additionally, the facility failed to discuss in the plan record keeping comparisons of aboveground container integrity testing, ensure that container supports and foundations are regularly inspected, ensure frequent inspection for the outside of the container for deterioration, discharges, or accumulation of oil inside diked areas and ensure records are kept of inspections and test kept under usual and customary business practices in accordance with 40 CFR § 112.8(c)(6);

- j. Facility failed to discuss in plan the prompt handling of visible discharges which result in a loss of oil from the container including but not limited to seams, gaskets, piping, pumps, valves, rivets, and bolts and in diked areas in accordance with 40 CFR § 112.8(c)(10);
- k. Facility failed to adequately discuss in plan the means of ensuring drains for dikes are closed and sealed except when draining uncontaminated rainwater at tank batteries, separation and treating areas where there is a reasonable possibility of a discharge. Also facility failed to discuss in plan the handling of accumulated oil on rain water removed and then returned to storage or disposed of in accordance with 40 CFR § 112.9(b)(1);

19. Respondent's failure to fully implement its SPCC plan for the facility violated 40 CFR § 112.3, and impacted its ability to prevent an oil spill.

Waiver of Rights

20. Respondent admits the jurisdictional allegations set forth above and neither admits nor denies the other specific violations alleged above. Respondent waives the right to a hearing under Section 311(b)(6)(B)(i) of the Act, 33 U.S.C. § 1321(b)(6)(B)(i), and to appeal any Final Order in this matter under Section 311(b)(6)(G)(i) of the Act, 33 U.S.C. § 1321(b)(6)(G)(i), and consents to the issuance of a Final Order without further adjudication.

Penalty

21. The Complainant proposes, and Respondent consents to, the assessment of a civil

penalty of **\$12,030.00**.

Payment Terms

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

21. Within thirty (30) days of the effective date of the Final Order, the Respondent shall pay the amount of **\$12,030.00** by means of a cashier's or certified check, or by electronic funds transfer (EFT). The Respondent shall submit this Consent Agreement and Final Order, with original signature, along with documentation of the penalty payment to:

OPA Enforcement Coordinator
U. S. Environmental Protection Agency
Region 6 (6SF-PC)
1445 Ross Avenue
Dallas, Texas 75202-2733

- If you are paying by check, pay the check to "Environmental Protection Agency," noting on the check "OSTLF-311" and docket number CWA-06-2013-4813. 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
1005 Convention Plaza, Mail Station SL-MO-C2GL
St. Louis, MO 63101

- The Respondent shall submit copies of the check (or, in the case of an EFT transfer, copies of the EFT confirmation) to the following person:

Lorena Vaughn
Regional Hearing Clerk (6RC)

U.S. Environmental Protection Agency
Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

22. Failure by the Respondent 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 USC §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.

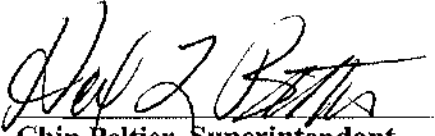
General Provisions

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

24. The Final Order does not constitute a waiver, suspension or modification of the requirements of Section 311 of the Act, 33 USC §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

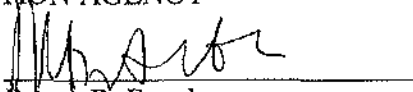
Date: 7/8/13


Chip Peltier, Superintendent

HAL BETTS, EXECUTIVE VICE PRESIDENT

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 7/22/13


Ragan R. Broyles
Associate Director
Prevention & Response Branch
Superfund Division

FINAL ORDER

Pursuant to Section 311(b)(6) of the Act, 33 USC §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:

7/22/13



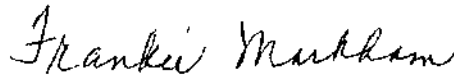
Carl Edlund, P.E.
Director
Superfund Division

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 7-23, 2013, 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:
7009 1680 0002 2886 9622

NAME: Mr. Chip Peltier
ADDRESS: 777 Walker Street, Suite 2450
Houston, TX 77002



Frankie Markham
OPA Enforcement Administrative Assistant