

FILED UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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REGIONAL OFFICE
EPA REGION VI

REGION 6

IN THE MATTER OF

H.R.C. Production Company
Whitney Lease Tank Battery
Pontotoc County, OK
Respondent.

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

Docket No. CWA-06-2014-4806

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

SPCC Stipulations

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

2. 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"

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 facilities.

4. 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 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").

5. In promulgating 40 CFR § 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.

6. Respondent is a Corporation conducting business in the State of Oklahoma with a place of business located at 5100 East Skelly Drive Suite 650 Tulsa, Oklahoma 74135. 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.

7. As a result of a transaction that closed on December 29, 2013, Energyquest II, LLC, or one or more of its affiliates, now own and operate the facility (define below).

8. Respondent was 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 an onshore oil production facility, the Whitney Lease Tank Battery, which is located in Pontotoc County, Oklahoma ("the facility") at the time of the violations stipulated to and alleged herein. Drainage from the facility flows, to unnamed tributary to the Canadian River.

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

10. The Canadian River is a navigable waters of the United States as defined in Section 502(7) of the Act, 33 U.S.C. §1362(7), 40 CFR §110.1 and 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 onshore facility within the meaning of Section 311(a)(10) of the Act, 33 U.S.C. § 1321(a)(10), and 40 CFR § 112.2.

14. 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 ("an SPCC-regulated facility").

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

16. The facility began operating prior to August 16, 2002. According to information provided, the facility began operating in the early 1970s.

SPCC 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 June 2, 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 develop a SPCC Plan in accordance with 40 CFR § 112.3.
- b. Facility failed to provide adequate secondary containment in accordance with 40 CFR § 112.7(c).
- c. Facility failed to conduct inspections and tests as required by written procedures, failed to have record of inspections or test signed in the field by supervisor or inspector and failed to keep with plan for at least 3 years in accordance with 40 CFR § 112.7(e).
- d. Facility failed to train oil-handling personnel in operation and maintenance of equipment to prevent discharges; discharge procedure protocols applicable pollution control laws, rules and regulations; general facility operations; and contents of SPCC Plan in accordance with 40 CFR § 112.7(f)(1).
- e. Facility failed to include in plan and assign a designated person accountable for discharge prevention at the facility that reports to facility

management in accordance with 40 CFR § 112.7(f)(2).

- f. Facility failed to document in plan and implement at facility, conducting briefings on discharge prevention at least once a year for oil handling personnel to assure adequate understanding of the SPCC Plan. The facility needs to conduct the training and list in the plan the frequency that the training is provided in accordance with 40 CFR § 112.7(f)(3).

Spill Stipulations

19. 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.

20. 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.

Spill Allegations

21. On June 1, 2013, Respondent discharged approximately 73 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, a portion of which was discharged into or upon unnamed tributary to the Canadian River and its adjoining shorelines.

22. Respondent's June 1, 2013, discharge of oil from its facility caused a sheen upon or discoloration of the surface of unnamed tributary and the Canadian River, 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.

23. Respondent's June 1, 2013, discharge of oil from its facility into or upon the unnamed tributary and the Canadian River 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.

24. A final walk-through inspection with the designated Federal On-Scene Coordinator (U.S. EPA Region 6), the U.S. Fish and Wildlife Service, and the Oklahoma Corporation Commission occurred on September 3, 2013 and it was determined that Respondent's corrective actions for active oilfield response had been completed.

Waiver of Rights

25. 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

26. The Complainant proposes, and Respondent consents to, the assessment of a civil penalty of **\$19,240.00**.

Payment Terms

Based on the forgoing, the parties, in their own capacity or by their attorneys or authorized

representatives, hereby agree that:

27. 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.

28. The Respondent shall pay to the United States a civil penalty in the amount of **\$19,240.00**, 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-06-2014-4806**. 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

29. 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

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

31. 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.

H.R.C. Production Company

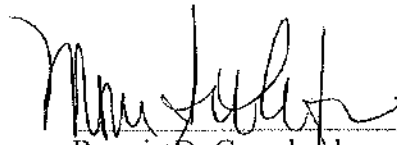
Date: 5/8/14



Jim Stubbs
Vice President

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 5/13/14

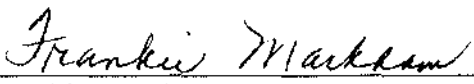


Ronnie D. Crossland
Associate Director
Prevention & Response Branch
Superfund Division

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 5/14, 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:

NAME: Jim Stubbbs
ADDRESS: 5100 East Skelly Drive, Suite 600
Tulsa, OK 74135



Frankie Markham
OPA Enforcement Administrative Assistant