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REGIONAL ADMINISTRATOR CLERK  
EPA REGION VI

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6

IN THE MATTER OF

The Continental Oil & Refining Company  
Redleaf Lease Tank Battery  
Osage County, Oklahoma

Respondent.

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

Docket No. CWA-06-2019-4808

**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. Pursuant to the April 17, 2019 Region 6 Realignment: General Delegation Memo (General Delegation Memo), the Regional Administrator delegated these authorities to the successor Division Director or Office Director in accordance with the Region 6 2019 reorganization, to wit: the Enforcement and Compliance Assurance Division of EPA, Region 6. The General Delegation Memo has, in turn, further redelegated these authorities to the comparable official subordinate to the Enforcement and Compliance Assurance Division Director, to wit: the Branch Chief, Water Enforcement Branch in Region 6.

## **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 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 facilities.

4. EPA subsequently 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").

5. 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.

6. Respondent is a firm conducting business in the State of Oklahoma, with a place of business located Off County Road 5257 Hominy, OK 74035, 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.

7. 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 a crude oil and condensate storage facility, located in Osage County, Oklahoma (“the facility”). The approximate coordinates of the facility are 36.491443° N and -96.389363° W. Drainage from the facility flows west to Little Hominy Creek.

8. 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 35,868 gallons.

9. Little Hominy Creek is a navigable water of the United States within the meaning of 40 CFR § 112.2.

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

11. 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").

12. 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.

### **SPCC Allegations**

13. Paragraphs 6 through 12 above are re-stipulated as though fully set forth herein.

14. 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 sections of 40 CFR Part 112.

15. On February 6, 2019 EPA inspected the facility and found that Respondent had failed to develop and implement an SPCC plan for the facility as follows:

- a. Respondent failed to amend and fully implement a plan for the facility by November 10, 2011 in accordance with 40 CFR § 112.3(a).
- b. Respondent failed to provide a plan, certified by a licensed Professional Engineer, that attests to all the required elements. Specifically, respondent failed to establish procedures for required inspections and testing and certify that the plan is adequate for the facility in accordance with 40 CFR § 112.3(d).
- c. Respondent failed to address in the plan and implement at the facility a multitude of regulatory changes as well as significant physical changes including tank replacement. Specifically, respondent failed to amend and implement the SPCC plan for changes in the facility design, construction, operation, or maintenance that materially affects its potential for a discharge as required in 40 CFR § 112.5(a)

- d. Respondent failed to review, evaluate, and amend the facility's SPCC plan and implement the amendment(s) as required in 40 CFR § 112.5(b). The facility has not reviewed and evaluated the SPCC Plan within the last five (5) years.
- e. Respondent failed to include in the plan a description of the physical layout of the facility and a diagram that identifies all the required elements in accordance with 40 CFR § 112.7(a)(3).
- f. The SPCC plan does not identify and describe two new tanks that were installed in 2015. Specifically, respondent failed to address in the plan the type of oil and storage capacity for each fixed container in accordance with 40 CFR § 112.7(a)(3)(i).
- g. Respondent failed to implement discharge or drainage controls at the facility, such as secondary containment around containers and other structures, equipment, and procedures for the control of a discharge in accordance with 40 CFR § 112.7(a)(3)(iii).
- h. Respondent failed to include in the plan and maintain at the facility appropriate containment and/or diversionary structures or equipment for the Bulk Storage Containers, piping and related appurtenances, and transfer areas, equipment or activities that are not listed above to prevent a discharge from the facility in accordance with 40 CFR § 112.7(c).
- i. Respondent failed to implement adequate personnel, training, and oil discharge prevention procedures at the facility. Additionally, respondent failed to conduct discharge prevention briefings, at least, once a year for oil handling personnel to assure adequate understanding of the Plan in accordance with 40 CFR § 112.7(f)(3).
- j. Respondent failed to address at the facility whether drains for dikes or equivalent measures are closed and sealed except when draining uncontaminated rain water. Respondent must remove accumulated oil from the containment and then return it to storage or dispose in accordance with legally approved methods. Specifically, facility failed to install adequate drain valves at the facility and maintain adequate records of drainage in accordance with 40 CFR § 112.9(b)(1).
- k. Respondent failed to provide adequately sized facility secondary containment to hold the capacity of the largest single container and sufficient freeboard for precipitation for all tank battery, separation, and treating facility installations in accordance with 40 CFR § 112.9(c)(2).
- l. Respondent failed to include in the plan an oil spill contingency plan in

accordance with 40 CFR § 112.9(d)(3)(i).

- m. Respondent failed to prepare and implement a written maintenance program at the facility for flowlines/intra-facility gathering lines that addresses the following elements in 40 CFR § 112.9(d)(4)(i-iv):
- (i) Ensures that flowlines and intra-facility gathering lines and associated valves and equipment are compatible with the type of production fluids, their potential corrosivity, volume, and pressure, and other conditions expected in the operational environment;
  - (ii) Visually inspect and/or test flowlines and intra-facility gathering lines and associated appurtenances on a periodic and regular schedule for leaks, oil discharges, corrosion, or other conditions that could lead to a discharge. For flowlines and intra-facility gathering lines that are not provided with secondary containment the frequency and type of testing must allow for the implementation of a contingency plan as described under part 109 of this chapter;
  - (iii) Take corrective action or make repairs to any flowlines and intra-facility gathering lines and associated appurtenances as indicated by regularly scheduled visual inspections, tests, or evidence of a discharge; and
  - (iv) Promptly remove or initiate actions to stabilize and remediate any accumulations of oil discharges associated with flowlines, intra-facility gathering lines, and associated appurtenances.

16. Respondent's failure to properly develop and implement an adequate SPCC plan for the facility violated the requirements of 40 CFR § 112.3.

### **Waiver of Rights**

17. 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**

18. The Complainant proposes, and Respondent consents to, the assessment of a civil penalty of **\$7,000.00**.

**Payment Terms**

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

19. Within thirty (30) days of the effective date of the Final Order, the Respondent shall pay the amount of **\$7,000.00** 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:

Energy Sector Compliance Section Chief  
U. S. Environmental Protection Agency  
Region 6 (6ECD-WE)  
1201 Elm Street  
Dallas, TX 75270-2102

- If you are paying by check, pay the check to "Environmental Protection Agency," noting on the check "**OSTLF-311**" and docket number **CWA-06-2019-4808**.

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  
1201 Elm Street  
Dallas, TX 75270-2102

20. 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**

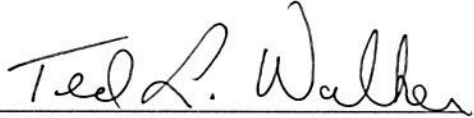
21. The Final Order shall be binding upon Respondent and Respondent's officers, directors, agents, servants, employees, and successors or assigns.

22. 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.



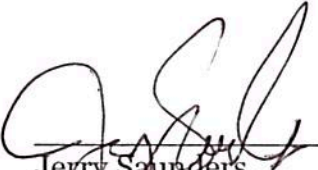
The Continental Oil & Refining Company

Date: Oct. 23, 2019

  
Ted L. Walker  
President  
The Continental Oil & Refining Company

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: Oct. 29, 2019


  
Jerry Saunders  
Chief  
Water Enforcement Branch

**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: 10/29/19

  
Cheryl T Seager, Director  
Enforcement and  
Compliance Assurance 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 October 31, 2019, with the Regional Hearing Clerk, U.S. EPA Region 6, 1201 Elm Street, Dallas, TX 75270-2102; 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:  
7005 1820 0003 7455 3208

NAME: Mr. Ted L. Walker  
ADDRESS: P. O. Box 831  
Catoosa, OK 74015



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Enoch Johnbull  
OPA Enforcement Officer