

**FILED**

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

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**REGION 6**

REGIONAL HEARING CLERK  
EPA REGION VI

**IN THE MATTER OF**

**Formosa Plastics Corporation, Texas  
Calhoun County  
TX**

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

Respondent.

Docket No. **CWA-06-2023-4810**

**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 Texas, with a place of business located at 201 Formosa Drive, Point Comfort, TX 77978, 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 Diesel, Naptha, Wash Oil, Pygas, Mineral Oil, and Transformer Oil storage facility, located in Calhoun County, TX (the facility). The approximate coordinates of the facility are 28.682269° N and -96.55296° W. Drainage from most of the facility drains into Cox Creek, thence to Cox Bay, thence south into Lavaca Bay. Drainage from Respondent's EG2/CFB units and port operations drains directly into Lavaca Bay.

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 76,501,625 gallons.

9. Cox Creek, Cox Bay and Lavaca Bay are navigable waters 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 a non-transportation-related facility within the meaning of 40 CFR

§ 112.2 Appendix A, as incorporated by reference within 40 CFR § 112.2.

12. The facility is an onshore 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 A.

13. 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).

14. 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**

15. Paragraphs 1 through 14 above are re-stipulated as though fully set forth herein.

16. 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.

17. On March 14, 2023, EPA inspected the facility and has alleged that Respondent had failed to develop and implement an SPCC plan for the facility as follows:

- a. Respondent failed to adequately address in the plan discharge prevention measures, including procedures for routine handling of products (loading, unloading, and facility transfers, etc.). Specifically, respondent failed to address the actual transfer procedures followed during loading and unloading of oil products at the facility in accordance with 40 CFR § 112.7(a)(3)(ii).
- b. Respondent failed to address in the plan a prediction of the direction, rate of flow, and total quantity of oil that could be discharged from the facility as a result of each type of major equipment failure where experience indicates a reasonable potential for equipment failure in accordance with 40 CFR § 112.7(b).
- c. Respondent failed to describe in the SPCC plan appropriate containment and/or diversionary structures or equipment for the Mobile/portable

containers, Oil-filled operational equipment, Piping and related appurtenances, and Transfer areas, equipment, and activities to prevent a discharge from the facility in accordance with 40 CFR § 112.7(c).

- d. Respondent failed to describe in the SPCC plan specific inspection procedures. Additionally, respondent failed to discuss whether record of inspections or tests are signed by supervisor or inspector and kept with the SPCC Plan for a period of three years as required in 40 CFR § 112.7(e).
- e. Respondent failed to include in the SPCC plan a complete discussion of conformance with the applicable requirements and other effective discharge prevention and containment procedures or any applicable more stringent State rules, regulations, and guidelines in accordance with 40 CFR § 112.7(j).
- f. Respondent failed to discuss in the plan whether materials and construction for oil storage containers are compatible with the material stored and conditions of storage such as pressure and temperature in accordance with 40 CFR § 112.8(c)(1).
- g. The facility conducts drainage from the Shore Tank Farm to an open watercourse, however, respondent failed to state in the SPCC plan whether Bypass valve is opened and resealed under responsible supervision as required in 40 CFR § 112.8(c)(3).
- h. The facility SPCC Plan and/or field operations failed to adequately address the following specific discharge prevention and containment procedures:
  - Test or inspect each aboveground container for integrity on a regular schedule and whenever material repairs are made
  - Identify and assess, in accordance with industry standards, the appropriate qualifications for personnel performing tests and inspections.
  - Document the frequency and type of testing and inspections in accordance with industry standards, taking into account container size, configuration and design; and
  - Maintain records of all inspections and tests, as required in 40 CFR § 112.8(c)(6).
- i. Respondent failed to address in the SPCC plan whether mobile or portable containers (excluding mobile refuelers and other non-transportation-related tank trucks) have secondary containment with sufficient capacity to contain the largest single compartment or container and sufficient freeboard to contain precipitation as required in 40 CFR § 112.8(c)(11).

**Waiver of Rights**

18 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**

19. The Complainant proposes, and Respondent consents to, the assessment of a civil penalty of **\$29,200**.

**Payment Terms**

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

20. Within thirty (30) days of the effective date of the Final Order, the Respondent shall pay the amount of **\$29,200.00** 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 via Mail and E-Mail to:

Energy Sector Compliance Section  
U. S. Environmental Protection Agency  
Region 6 (6ECD-WE)  
1201 Elm Street  
Dallas, TX 75270-2102  
[johnbull.enoch@epa.gov](mailto:johnbull.enoch@epa.gov)



- If you are paying by check, pay the check to "Environmental Protection Agency," noting on the check "OSTLF-311" and docket number CWA-06-2023-4810. If you use the U.S. Postal Service, address the payment to:

U.S. Environmental Protection Agency, Fines & Penalties  
P.O. Box 979078, 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

21. 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**

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

23. 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 facts stipulated to and the violations alleged herein.

FORMOSA PLASTICS CORPORATION, TEXAS

Date: 9/26/2023

*Hi Shown Jon*  
*for*  
*Ken Mounger*

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Ken Mounger  
Executive Vice President  
Formosa Plastics Corporation, Texas

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: October 10, 2023

*Bryant Smalley*  
\_\_\_\_\_  
Bryant Smalley  
Chief  
Water Enforcement Branch



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 facts stipulated to and the violations alleged herein.

FORMOSA PLASTICS CORPORATION, TEXAS

*Win Shown Jon*  
*for*  
*Ken Mounger*

Date: 09-26-23

\_\_\_\_\_  
Ken Mounger  
Executive Vice President  
Formosa Plastics Corporation, Texas

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: \_\_\_\_\_

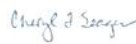
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Bryant Smalley  
Chief  
Water Enforcement Branch

**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 and solely for the purposes of this Final Order.

The Respondent is ordered to comply with the terms of the Consent Agreement.

Date: October 12, 2023



Digitally signed by CHERYL  
SEAGER  
Date: 2023.10.12 11:10:29 -05'00'

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Cheryl T Seager, Director  
Enforcement and  
Compliance Assurance Division

Docket No. CWA-06-2023-4810

**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 12, 2023, 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 Sent by E-mail:

NAME: Mr. JP Murray  
ADDRESS: 201 Formosa Drive  
Point Comfort, TX 77978

**ENOCH  
JOHNBULL**

Digitally signed by  
ENOCH JOHNBULL  
Date: 2023.10.13  
10:54:46 -05'00'

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Enoch Johnbull  
OPA Enforcement Officer