

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6

FILED

2019 OCT -5 10:08

Am JSJ

REGIONAL HEARING CLERK  
EPA REGION VI

IN THE MATTER OF

**Total Petrochemical USA, Inc.  
Port Arthur Refinery  
Jefferson County, Texas**

Respondent.

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

Docket No. **CWA-06-2019-4809**

**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 Division of EPA, Region 6. The General Delegation Memo has, in turn, further redelegated these authorities to the comparable official subordinate to the Enforcement Division Director, to wit: the Branch Chief, Water Enforcement Branch in Region 6 (“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 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 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 offshore 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 1201 Louisiana Street, Suite 1800, Houston, TX 77002, 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 bulk storage facility (facility is a petrochemical refinery), the Port Arthur Refinery, located in Jefferson County, Texas ("the facility"). The approximate coordinates of the facility are 29.964103° N and -93.887297° W. Drainage from the facility travels to the Neches River

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 411,506,000 gallons.

9. The Neches River 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. Paragraph 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 section of 40 CFR Part 112.

15. On December 11, 2018 EPA inspected the facility and found the following deficiencies in the Respondent's SPCC plan for the facility as follows:

- a. Respondent's plan failed to follow the sequence of the rule or failed as an equivalent plan that meets all applicable rule requirements, including cross referencing as required at 40 CFR § 112.7.
- b. Respondent's plan failed to include 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 as required at 40 CFR § 112.7(b).
- c. Respondent failed to discuss in the plan the appropriate containment and or diversionary structures or equipment to prevent a discharge. Specifically, for it failed to discuss in the plan appropriate containment or diversionary structures or equipment to prevent a discharge from bulk storage containers, mobile and portable containers, oil-filled operational equipment, and piping and related appurtenances and transfer areas as required at 40 CFR § 112.7(c).
- d. Respondent failed to adequately address in the plan the impracticability of secondary containment as required at 40 CFR § 112.7(d).
- e. Respondent failed to discuss in the plan and failed to implement inspections and tests conducted in accordance with written procedures and records of inspections or tests signed by a supervisor or inspector. In addition, respondent failed to maintain inspection records for three years

as required at 40 CFR § 112.7(e).

- f. Respondent failed to discuss in the plan the use of valves of manual, open-and-closed design, for drainage of diked areas as required at 40 CFR § 112.8(b)(2).
- g. Respondent's plan failed to adequately discuss drainage from undiked areas with a potential for discharge to flow into ponds, lagoons, catchment basins to retain oil or return oil to the facility as required at 40 CFR § 112.8(b)(3).
- h. Respondent failed to construct all bulk storage tank installations with secondary containment to hold the capacity of the largest container and provide sufficient freeboard for precipitation. The facility also failed to provide an adequate discussion in its plan for secondary containment as required at 40 CFR § 112.8(c)(2).
- i. Respondent failed to discuss in its plan the testing or inspection of each aboveground container for integrity on a regular schedule, and whenever material repairs occur, and failed to discuss in its plan the appropriate qualifications for personnel performing tests and inspections in accordance with industry standards. Also, the plan failed to adequately discuss the frequency and type of testing and inspections documented and in accordance with industry standards and failed to discuss the keeping of comparison records of aboveground container integrity testing and all records of all inspections and tests as required at 40 CFR § 112.8(c)(6).
- j. Respondent failed to discuss in its plan 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 are promptly corrected and oil in diked areas is promptly removed as required at 40 CFR § 112.8(c) (10).
- k. Respondent failed to address in its plan how mobile or portable containers are positioned to prevent a discharge and have secondary containment with sufficient capacity to contain the largest single compartment or container and sufficient freeboard to contain precipitation as required at 40 CFR § 112.8(c)(11).
- l. Respondent failed to inspect and adequately address in its plan aboveground valves, piping, and appurtenances such as flange joints, expansion joints, valve glands and bodies, catch pans, pipeline supports, locking of valves, and metal surfaces on a regular basis to assess their

general condition as required at 40 CFR § 112.8(d)(4).

16. Respondent's deficiencies in its SPCC plan for the facility violated 40 CFR § 112.3, and impacted its ability to prevent an oil spill.

**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 **\$36,431.00**.

**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 **\$36,431.00** 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, Suite 500

Dallas, Texas 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-06-2019-4809. 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, Suite 500  
Dallas, TX 75720-2102

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.

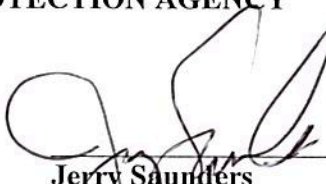
**Total Petrochemical USA, Inc.**

Date: 9-24-19

  
\_\_\_\_\_  
Tommy Chavez, General Manager

**U.S. ENVIRONMENTAL PROTECTION AGENCY**

Date: 10-4-2019

  
\_\_\_\_\_  
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: 10/8/19



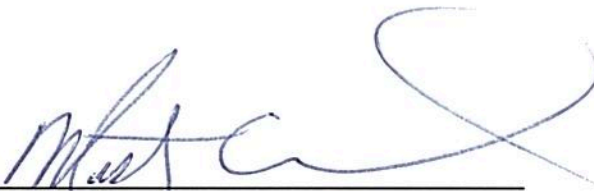
---

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 10/9, 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:

NAME: Mrs. Allana Sager  
ADDRESS: PO Box 849  
Port Arthur, TX 77641-0849

A handwritten signature in blue ink, appearing to read 'Misty Ward', is written over a horizontal line.

Misty Ward  
OPA Enforcement Administrative Assistant