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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGIONAL HEARING CLERK
EPA REGION VI

REGION 6

IN THE MATTER OF

Buckeye Texas Processing, LLC
Corpus Christi
Nueces County, Texas

Respondent.

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

Docket No. CWA-06-2017-4809

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, 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 Branch Chief Emergency Management Branch (formerly identified as 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 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. 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 7209 Up River Road, Corpus Christi, Texas 78469, 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 petroleum storage and splitting facility, located in Nueces County, Texas ("the facility"). The approximate coordinates of the facility are 27.815316° N and -97.505492° W. Drainage from the facility flows into Tule Lake which connects to the Corpus Christi Ship Channel.

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 80,153,110 gallons.

9. Tule Lake 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.

13. The facility began operating before August 16, 2002.

SPCC Allegations

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 June 14, 2017 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 include in 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).
- b. Facility failed to discuss the use of valves of manual, open-and- closed design, for the drainage of diked areas. Specifically, the facility failed to provide a discussion based on site specific information and therefore not in accordance with 40 CFR § 112.8(b)(2).
- c. Respondent failed to include in plan a discussion of the appropriate drainage system for drainage of uncontaminated rainwater from the diked areas and an adequate record of drainage are not kept in accordance with 40 CFR § 112.8(c)(3).
- d. Respondent failed to reference the appropriate container integrity testing standard in the plan. Specifically, the plan identified STI-SPO01 as the standard for integrity testing instead of API-653 which is currently being followed at the facility. Additionally, qualifications for personnel performing tests and inspections are not identified in plan, the frequency

22. The facility has a total oil storage capacity of greater than or equal to 42,000 gallons and transfers oil over water to or from vessels.

23. The facility is therefore a non-transportation related, onshore facility within the meaning of 40 CFR § 112.2 that, because of its location, could reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters or adjoining shorelines, within the meaning of Section 311(j)(5)(B)(iii) of the Act, 33 U.S.C. § 1321(j)(5)(B)(iii), and 40 CFR § 112.20(f)(1) (“an FRP-regulated facility”).

24. Therefore, Respondent, as the owner/operator of a FRP-regulated facility, is subject to the FRP regulations found at 40 CFR. § 112.20.

25. The facility began operation before February 18, 1993.

26. It is stipulated that pursuant to Section 311(j)(5) of the Act and 40 CFR § 112.20, the owner or operator of an FRP-regulated facility in operation on or before February 18, 1993, must no later than that date submit a Facility Response Plan (FRP) that satisfies the requirements of Section 311(j)(5).

FRP Allegations

27. On June 14, 2017, EPA inspected the facility and found that Respondent had failed to properly develop and implement an FRP plan in accordance with 40 CFR § 112.20, as follows:

- g. Respondent failed to provide a complete Emergency Response Action Plan (ERAP). Additionally, respondent did not provide sufficient Emergency Response Information and also failed to provide adequate plans for evacuation of the facility and refer to community evacuation plans, as appropriate, in accordance with 40 CFR § 112.20(h)(1) and (h)(3)

- h. Respondent failed to provide in plan a complete discussion of hazard evaluation, discharge scenarios, and worst case discharge scenarios. Specifically, respondent failed to include in the plan the normal daily throughput and the actual training scenarios in accordance with 40 CFR § 112.20(h)(4) and (h)(5).
 - i. Respondent failed to describe in the plan the measures to provide adequate containment and drainage of discharged oil in accordance with 40 CFR § 112.20(h)(7).
 - j. Respondent failed to provide in the plan sufficient evidence of adequate Self-inspection and drills/exercises in accordance with 40 CFR § 112.20(h)(8).
 - k. Respondent failed to include in the plan a completed Response Plan Cover Sheet containing all the requirements in 40 CFR § 112 Appendix F in accordance with 40 CFR § 112.20(h)(11).
28. Respondent's failure to properly develop and implement an FRP violates the requirements of Section 311(j)(5) of the Act and 40 CFR § 112.20.

Waiver of Rights

29. 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

30. The Complainant proposes, and Respondent consents to, the assessment of a civil penalty of **\$18,247.00**.

Payment Terms

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

31. Within thirty (30) days of the effective date of the Final Order, the Respondent shall pay the amount of **\$18,247.00** 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-EO)
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-06-2017-4809**.

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
1445 Ross Avenue
Dallas, TX 75202-2733

32. 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

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

34. 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.

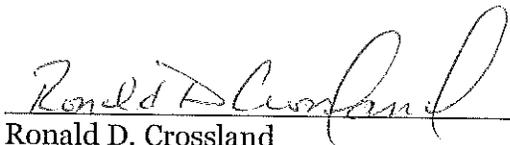
Buckeye Texas Processing, LLC

Date: 1/11/18


Kevin Burke
Senior Operations Director
Buckeye Texas Processing, LLC

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 1/24/18


Ronald D. Crossland
Branch Chief
Emergency Management Branch
U.S. EPA Region 6

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: _____

1/24/18



Carl E. Edlund, P.E.
Director
Superfund Division

Docket No. CWA-06-17-4809

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 1-25, 2018, 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:
7016 2070 0000 8417 3594

NAME: Mr. Jon Kiggans
ADDRESS: 7209 Up River Road
Corpus Christi, TX 78469



Frankie Markham
OPA Enforcement Administrative Assistant