

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
FILED

2016 FEB -4 PM 6:21

REGION 6

RECORDS MANAGEMENT
EPA REGION 6

IN THE MATTER OF

**McGowan Working
Partners Holly Ridge Field
Penrod Jurden T
Tensas Parish, LA**
Respondent.

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

Docket No. CWA-06-2015-4851

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)(ii) of the Clean Water Act ("Act"), 33 U.S.C. § 1321(b)(6)(B)(ii), 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, Delegation No. 2-52-A, dated May 11, 1994 and Delegation No. R6-2-52-A, dated January 31, 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"

Docket No. CWA-06-2015-4851

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 Louisiana with a place of business located at 1837 Crane Ridge Drive, Jackson MS 39296. 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. Respondent is 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 Holly Ridge Field Penrod Jurden Tank Battery, which is located in Tenasas Parish, Louisiana ("the facility"). Drainage from the facility flows, Big Choctaw Bayou.

8. The facility has an aggregate above-ground storage capacity of greater than 1320 gallons (approx. 144,270 gallons) of oil in containers each with a shell capacity of at least 55 gallons.

9. The Big Choctaw 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.

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 U.S.C. § 1321(a)(10), and 40 CFR § 112.2.

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 C.F.R. § 112.1 Respondent, as the owner of an SPCC-regulated facility, is subject to the SPCC regulations.

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

SPCC Allegations

Respondent admits the jurisdictional allegations set forth above for the purpose of this Consent Agreement and neither admits nor denies the violations alleged.

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 April 24, 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 amend the plan when there was a change at the facility design, construction, operation or maintenance that materially affects its potential for a discharge. Specifically, the plan was rewritten and certified in 2013 instead of modifying the old plan and therefore not in accordance with 40 CFR § 112.5(a).
- b. Facility failed to implement at facility discharge or drainage controls such as secondary containment around containers, and other structures equipment and procedures for the control of a discharge and countermeasures for discharge discovery, response and cleanup. Specifically, the facility failed to implement an adequate method for drainage of the secondary containment and did not implement adequate reporting procedures for reporting a discharge and

therefore not in accordance with 40 CFR § 112.7(a)(3)(iii) and 112.7(a)(3)(iv).

- c. Facility to discuss and implement the appropriate containment and/or diversionary structures or equipment to prevent a discharge. The entire containment system, including walls and floors, must be capable of containing oil and must be constructed so that any discharge from a primary containment system. Specifically, the facility failed to implement adequate containment for bulk storage containers as the containment has a low spot and will not be able to hold largest capacity. The plan failed to reflect what was actual in the field (i.e. the plan states there is containment for the separators when they were removed in 2013 and the plan states there is a drip bucket but it was not present during inspection) and therefore not in accordance with 40 CFR § 112.7(c).
- d. Facility failed to discuss in plan inspections and tests conducted in accordance with written procedure, records and test signed by supervisor or inspector and kept with plan for at least 3 years in accordance with 40 CFR § 112.7(e).
- e. Facility failed to designate a person as accountable for discharge prevention at the facility that reports to facility management and failed to conduct discharge prevention briefings highlighting and describing known discharges as described or failures, malfunction components and any recent development precautionary measure in accordance with 40 CFR § 112.7(f)(1) and (f)(3).
- f. Facility failed to include in plan a discussion of conformance with applicable more stringent State rules, regulations, and guidelines and other effective discharge prevention and containment procedures in accordance with 40 CFR § 112.7(j).
- g. Facility failed to implement secondary containment for all tank battery separation and treating facilities sized to hold the capacity of largest single container and sufficient freeboard for precipitation in accordance with 40 CFR § 112.9(c)(2).
- h. Facility failed to implement flow-through process vessels and produced water containers, periodically and upon a regular schedule, visually inspect containers for deterioration and maintenance needs, including foundation and supports of each container on or above the surface of the ground in

accordance with CFR § 112.9(c)(3).

- i. Facility failed to discuss in plan and implement periodically and upon a regular schedule, visually inspect and/or test for leaks, corrosion, or other conditions that could lead to a discharge. Specifically, there are no inspection records could not be located for containers and is therefore not in accordance with CFR § 112.9(c)(5)(i).
- j. Facility failed to implement corrective actions or repairs that have been made to flow-through process vessels and any associated components as indicated by regularly scheduled visual inspections, test, or evidence of an oil discharge in accordance with CFR § 112.9(c)(5)(ii).
- k. Facility failed to implement aboveground valves and piping associated with transfer operations are inspected periodically and upon a regular schedule to determine their general conditions. Including the general condition of flanges joints, vales glands and bodies drip pans, pipe supports pumping well polish rod stuffing boxes, bleeder and gauge valves, and other such items in accordance with CFR § 112.9(d)(1).
- l. Facility failed to inspect saltwater disposal facilities often to detect possible system upsets capable of causing a discharge particularly following a sudden change in atmospheric temperature in accordance with CFR § 112.9(d)(2).
- m. Facility failed to adequately address in plan and failed to adequately implement a flowline/intra-facility gathering line maintenance program to prevent discharges. Specifically, the plan/implementation needs to state how the facility meets the regulation requirements and inspections or records need to be conducted and kept with flowline maintenance program in accordance with 40 CFR § 112.9(d)(4)(i-iii).

Spill Stipulations

18. 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.

19. 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

Respondent admits the jurisdictional allegations set forth above for the purpose of this Consent Agreement and neither admits nor denies the violations alleged.

20. On March 14, 2014, EPA alleges that Respondent discharged approximately 389 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 into or upon Big Choctaw Bayou and its adjoining shorelines.

21. EPA alleges that Respondent's March 14, 2014, discharge of oil from its facility caused a sheen upon or discoloration of the surface of Big Choctaw Bayou, 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.

22. EPA alleges that Respondent's March 20, 2014, discharge of oil from its facility into or upon the Choctaw Bayou 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.

Waiver of Rights

23. Respondent waives the right to a hearing under Section 311(b)(6)(B)(ii) of the Act, 33 U.S.C. § 1321(b)(6)(B)(ii), and to appeal any Final Order in this matter under Section 311(b)(6)(G)(ii) of the Act, 33 U.S.C. §1321(b)(6)(G)(ii), and consents to the issuance of a Final Order without further adjudication .

Penalty

24. The Complainant proposes, and Respondent consents to, the assessment of a civil penalty of **\$49,907.00**.

Payment Terms

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

25. 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

26. The Respondent shall pay to the United States a civil penalty in the amount of **\$49,907.00**, 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-06-2015-4851. 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

27. 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

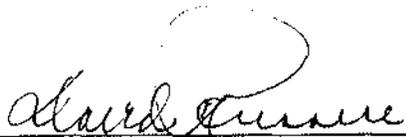
28. Complainant reserves the right, pursuant to 40 CFR § 22.45(c)(4)(ii), to withdraw this Consent Agreement and proposed Final Order within 15 days of receipt of a Commenter's petition requesting, pursuant to 40 CFR § 22.45(c)(4)(ii), that the Regional Administrator set aside the Consent Agreement and proposed Final Order on the basis that material evidence was not considered.

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

30. The Final Order does not constitute a waiver, suspension or modification of the requirements of Section 311 of the Act, 33 U.S.C. §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.

McGowan Working Partners, Inc.

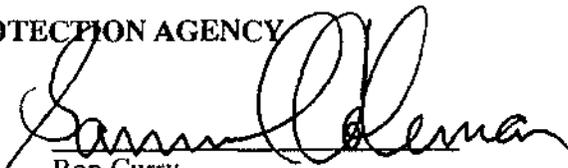
Date: 9/8/15



David Russell
President

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 10/23/15



for Ron Curry
Regional Administrator

FINAL ORDER

Pursuant to Section 311(b)(6) of the Act, 33 U.S.C. §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:

02/02/2016

Ron Curry

Regional Administrator

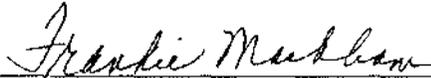
A handwritten signature in black ink, appearing to read "Ron Curry", is written over a horizontal line. The signature is stylized and cursive.

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 4 Feb., 2016, 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:
7012 3460 0002 4060 8601

NAME: Mr. Keith W. Turner
ADDRESS: Watkins & Eager PLLC
400 East Capitol Street
Jackson, MS 39201



Frankie Markham
OPA Enforcement Administrative Assistant