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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGIONAL HEARING CLERK
EPA REGION VI

REGION 6

IN THE MATTER OF

**Blackwater New Orleans LLC
Westwego Terminal
Jefferson Parish, LA**

Respondent

**CWA SECTION 311 CLASS I
CONSENT AGREEMENT
AND FINAL ORDER**

UNDER 40 CFR § 22.13(b)

Docket No. **CWA-06-2014-4819**

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 Associate Director Prevention and Response Branch in Region 6, Delegation No. R6-2-51, dated February 13, 2008 ("Complainant").

CONSENT AGREEMENT

Stipulations

The parties, in their own capacity or by their attorneys or other authorized representatives, hereby stipulate:

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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. Through Executive Order 12777 (October 18, 1991), 56 Fed. Reg. 54757 (October 22, 1991), the President delegated to DOI, responsibility for spill prevention and control, contingency planning, and equipment inspection activities associated with offshore facilities. Subsequently, pursuant to section 2(i) of E.O. 12777, the Secretary of the Interior re-delegated, and the Administrator of EPA agreed to assume (MOU published as Appendix B to 40 CFR Part 112), responsibility for non-transportation-related offshore facilities located landward of the coast line.

5. 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 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”).

6. 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.

7. Respondent is a firm conducting business in the State of Louisiana, with a place of business located at 660 LaBauve Drive Westwego, LA 70094 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.

8. 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 an oil production facility Westwego Terminal, located in Jefferson Parish, Louisiana (“the facility”). The approximate coordinates of the facility are 29.9111° N and -90.14166° W. Drainage from the facility travels to the Mississippi River.

9. 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 1,000,000 gallons.

10. The Mississippi River is a navigable waters of the United States within the meaning of 40 CFR § 112.2.

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

12. 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.

13. The facility is an offshore 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 B.

14. The facility is therefore a non-transportation-related offshore 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").

15. 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.

16. The facility began operating on or prior to November 10, 2011.

Allegations

17. 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.

18. On May 15, 2014 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 provide in plan a licensed Professional Engineer to review and certify the Plan for it to be effective to satisfy attestation from P.E. for procedures for required inspections and testing that have been established and the adequately for the facility. Specifically, the P.E. certification is missing to attest to requirements of plan and therefore not in accordance with 40 CFR § 112.3(d).
- b. Facility failed to discuss in plan the physical layout of the facility and include a facility diagram that identifies location, storage area, buried tanks transfer stations and connecting pipes in accordance with 40 CFR § 112.7(a)(3).
- c. Facility failed to address in plan the discharge prevention measures, including procedures for routine handling of products, discharge or drainage controls such as secondary containment around contains and

other structures for the control of discharge, countermeasures for discharge discovery, response and cleanup, methods of disposal of recovered materials, and a contact list and phone numbers for the facility response coordinator National Response Center, cleanup contractor with an agreement for response and all Federal, State and local agencies who must be contacted in case of discharge in accordance with 40 CFR § 112.7(a)(3)(ii-vi).

- d. Facility failed to discuss in plan 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 plan does not provide a detailed discussion on the secondary containment for the totes and drums that are maintained on site regarding how the facility meets general secondary containment and therefore not in accordance with 40 CFR § 112.7(c).
- e. Facility failed to discuss in plan and implement inspections and tests conducted in accordance with written procedure, records of inspections or test signed by supervisor or inspector, and keep with plan for at least 3 years. Specifically, the plan does not state the frequency that inspections are conducted and failed to use an inspection form that do not include for all tanks at the facility and therefore not in accordance with 40 CFR § 112.7(e).
- f. Facility failed include in plan person designated as accountable for discharge prevention at the facility and reports to facility management; and failed to include in plan discharge briefing once a year. Specifically, the records provided failed to demonstrate that all oil handling employees received the annual spill briefings and trainings in accordance with 40 CFR § 112.7(f)(2) and 112.7(f)(3).
- g. Facility failed to describe in plan how to secure and control access to the oil handling, processing and storage areas, secure master flow and drain valves, prevent unauthorized access to starter controls on oil pumps, secure out of service and loading/unloading connections of oil; pipelines; and address the appropriateness of security lighting to both prevent acts of vandalism and assist in the discovery of oil discharges accordance with 40 CFR § 112.7(g).
- h. Facility failed to discuss in plan the correct description of loading/unloading rack drainage flow into a catchment basin or treatment facility designed to handle discharges, use a quick drainage system for tank car or tank loading/unloading racks And failed to discuss containment system maximum capacity of the largest single compartment of a tank

car/truck loaded/unloaded at the facility. Specifically, the plan does not explain the sized requirement for their rail car loading rack and therefore not in accordance with in accordance with 40 CFR § 112.7(h)(1).

- i. Facility failed to provide a detail discussion of conformance with applicable more stringent State rules, regulations, and guidelines and other effective discharge prevention and containment procedures listed. Specifically the plan did not provide a detail discussion on conformance with applicable State rules and therefore not in accordance with 40 CFR § 112.7(j).
- j. Facility failed to discuss in plan for bulk storage tanks the installation with secondary containment to hold capacity of the largest container and sufficient freeboard for precipitation. Ensure that dike areas are sufficiently impervious to contain discharged oil or alternatively any discharge trench system will be safely confined in a facility catchment basin or holding pond. Specifically, the plan does not state that the containment is impervious and therefore not in accordance with 40 CFR § 112.8(c)(2).
- k. Facility failed to provide in plan measures that discuss the provision of uncontaminated rainwater from the diked area into storm drain or discharge of an effluent into an open watercourse. And the plan failed to discuss the containment utilized as impervious regarding bypass valves that should be normally closed and bypass valves that are open and resealed under responsible supervision. Specifically, the plan is missing a detailed description of how the facility actually conducts draining events and therefore not in accordance with 40 CFR § 112.8(c)(3).
- l. Facility failed to discuss in plan each aboveground container for integrity on regular schedule and whenever materials repairs are made. The facility must determine in accordance with industry standards, the appropriate qualifications for personnel performance frequency and type of testing and inspections, comparison records of aboveground container integrity testing, container supports and foundations regularly inspected, inspection of outside of containers and records of all inspection and test maintenance. Specifically, the plan's integrity testing section is missing a discussion on several required elements and therefore not in accordance with 40 CFR § 112.8(c)(6).
- m. Facility failed to discuss in plan engineering or updating of each container installation in accordance with good engineering practice to avoid discharges by providing one type of liquid level sensing in accordance with 40 CFR § 112.8(c)(8).
- n. Facility failed to discuss in plan details on compliance for regular

inspections of all 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. Specifically, the plan does not give the frequency in which the written inspections are conducted and therefore not in accordance with 40 CFR § 112.8(d)(4).

19. Respondent's failure to fully implement its SPCC plan for the facility violated 40 CFR § 112.3, and impacted its ability to prevent an oil spill.

Waiver of Rights

20. 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

21. The Complainant proposes, and Respondent consents to, the assessment of a civil penalty of **\$10,921.00**.

Payment Terms

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

21. Within thirty (30) days of the effective date of the Final Order, the Respondent shall pay the amount of **\$ 10,921.00** 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-PC)
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-06-2014-4819. 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

22. 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

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

24. 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.

Blackwater New Orleans LLC

Date: 12/29/14



Dale Chatagnier
Chief Operating Officer

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 1/22/15


for _____
Ronnie D. Crossland
Associate Director
Prevention & Response Branch
Superfund Division

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: _____

1/22/15

Handwritten signature of Sam Phillips, Acting for Carl Edlund, P.E.

Carl Edlund, P.E.
Director
Superfund 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 1-26, 2015, 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 8922

NAME: Mr. Dale Chatagnier
ADDRESS: 660 LaBauve Drive
Westwego, LA 70094



Frankie Markham
OPA Enforcement Administrative Assistant