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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGIONAL HEARING CLERK  
EPA REGION VI

REGION 6

IN THE MATTER OF

Calumet Refining, LLC  
Elmendorf Terminal  
Bexar County, Texas

Respondent.

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

Docket No. CWA-06-2018-4803

#### **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 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 1 BDA Crossing, Suite 100, Brooks City-Base, Texas 78235, 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 Crude oil storage facility, located in Bexar County, Texas ("the facility"). The approximate coordinates of the facility are 29.211116° N and -98.405563° W. Drainage from the facility flows into a roadside ditch which flows to the East and discharges into a short tributary which drains into the San Antonio 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 8,566,950 gallons.

9. San Antonio 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. Paragraphs 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 February 21, 2018 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 address in the plan the required contact list and phone numbers in accordance with 40 CFR § 112.7(a)(vi).
- b. Respondent failed to maintain a containment system, including walls and floor, that is capable of containing oil and is constructed so that any discharge from a primary containment system, such as a tank, will not escape the containment system before cleanup. Sections of the curbing around the truck loading area has gaps and appear bowed, allowing water to run under the curbing. Specifically, respondent failed to provide appropriate containment and/or diversionary structures or equipment to prevent a discharge from the facility in accordance with 40 CFR § 112.7(c).
- c. Respondent failed to include in the 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).

- d. Respondent failed to address in the plan whether diked areas are sufficiently impervious to contain discharged oil in accordance with 40 CFR § 112.8(c)(2).
- e. Respondent identified in the plan API-653 as the integrity testing standard being followed at the facility. However, respondent failed to include in the plan the testing or inspection of each above ground container for integrity on a regular schedule and whenever material repairs are made. Additionally, respondent failed to include in the plan qualifications for personnel performing tests and inspections, frequency and type of testing and inspections, comparison records of aboveground container integrity testing, inspection of the container's supports and foundations, frequency of inspection of the outside of the containers for signs of deterioration, discharges, or accumulation of oil inside diked areas, and records of all inspections and tests in accordance with 40 CFR § 112.8(c)(6).

16. 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.

#### **FRP Stipulations**

17. Paragraphs 6 through 12 above are re-stipulated as though fully set forth herein.

18. 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.

19. 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 B.

20. Section 311(j)(5)(A) of the Act, 33 U.S.C. § 1321(j)(5)(A), provides that the President shall issue regulations requiring each owner or operator of certain facilities to "submit to the President a plan for responding, to the maximum extent practicable, to a worst case discharge, and to a substantial threat of such a discharge, of oil or a hazardous substance."

21. By Section 2(d)(1) of Executive Order 12777 (October 18, 1991), the President delegated to the Administrator of EPA the authorities under Section 311(j)(5)(A) of the Act.

22. The Administrator of EPA promulgated regulations, codified within Subparts A and D of 40 CFR Part 112 (“the [Facility Response Plan] FRP regulations”), implementing these delegated statutory authorities.

23. The facility has a total oil storage capacity of at least one (1) million U.S. gallons and the facility is located at a distance such that a discharge could cause injury to fish and wildlife and sensitive environments.

24. 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”).

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

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. Paragraphs 6 through 12 and 18 through 26 above are re-stipulated as though fully set forth herein.

28. On February 21, 2018, 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:

- f. Respondent failed to provide a complete Emergency Response Action Plan (ERAP) and Emergency Response Information in accordance with 40 CFR § 112.20(h)(1)(i-viii) and (h)(3).
- g. Respondent failed to include in the plan all the required facility information such as county and description of specific response training experience in accordance with 40 CFR § 112.20(h)(2).
- h. Respondent failed to adequately discuss in plan hazard evaluation, reportable oil spill history, discharge scenarios, and vulnerability analysis in accordance with 40 CFR § 112.20(h)(4).
- i. Respondent failed to provide a complete discussion of specific planning scenarios for the worst case discharge from the facility in accordance with 40 CFR § 112.20(h)(5).
- j. Respondent failed to include in plan description of the procedures and equipment used to detect discharges in accordance with 40 CFR § 112.20(h)(6).
- k. Respondent failed to include in plan a discussion of the facility layout, site plan diagram and a drainage plan diagram in accordance with 40 CFR § 112.20(h)(9).
- l. Respondent failed to include in plan a discussion of site security system in accordance with 40 CFR § 112.20(h)(10).
- m. Respondent failed to provide a Facility Response Plan that meets the requirements of 40 CFR § 112 Appendix F in accordance with 40 CFR § 112.20(h)(11).

29. 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**

30. 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**

31. The Complainant proposes, and Respondent consents to, the assessment of a civil penalty of **\$26,027.00**.

**Payment Terms**

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

32. Within thirty (30) days of the effective date of the Final Order, the Respondent shall pay the amount of **\$26,027.00** 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:

Oil Spill & Response Team Leader  
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-06-2018-4803**.

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

33. 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**

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

35. 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.

Calumet Refining, LLC

Date: 06/06/2018

Onofre M. Garza James Kelly  
Onofre Garza  
Environmental Manager  
Calumet Refining, LLC  
James Kelly  
Refinery Manager  
Calumet Refining

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 6/15/2018

for J. Chris Petersen  
Ronald D. Crossland  
Branch Chief  
Emergency Management 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: June 18, 2018

*for* Ronald D. Constant  
Carl E. Edlund, P.E.  
Director  
Superfund Division

Docket No. CWA-06-18-4803

**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 6-18, 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:  
7004 1350 0003 4884 6333

NAME: Mr. Onofre Garza  
ADDRESS: 1 BDA Crossing, Suite 100  
Brooks City-Base, TX 78235



Frankie Markham  
OPA Enforcement Administrative Assistant