

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103**

In the Matter of:	:
	:
MarkWest Liberty Midstream & Resources, L.L.C.	: U.S. EPA Docket No. CWA-03-2022-0013
	:
1515 Arapahoe Street, Tower 1	: Proceeding under Sections 311(j) and
Suite 1600	: 311(b)(6)(B)(ii) of the Clean Water Act,
Denver, Colorado 80202	: 33 U.S.C. §§ 1321(j) and 1321(b)(6)(B)(ii)
	:
Respondent.	:
	:
MarkWest Liberty Midstream & Resources, L.L.C.	:
	:
Houston Gas Plant	:
	:
800 Western Avenue	:
	:
Washington, Pennsylvania 15301	:
	:
Facility.	:

CONSENT AGREEMENT

PRELIMINARY STATEMENT

1. This Consent Agreement is entered into by the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region III (“Complainant”) and MarkWest Liberty Midstream & Resources, L.L.C. (“Respondent”) (collectively the “Parties”), pursuant to Section 311(b)(6)(B)(ii) of the Clean Water Act (“CWA” or “Act”), as amended, 33 U.S.C. § 1321(b)(6)(B)(ii), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits (“Consolidated Rules of Practice”), 40 C.F.R. Part 22. Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6) authorizes the Administrator of the U.S. Environmental Protection Agency to assess penalties and undertake other actions required by this Consent Agreement. The Administrator has delegated this authority to the Regional Administrator who, in turn, has delegated it to the Complainant. This Consent Agreement and the attached Final Order (hereinafter jointly referred to as the “Consent Agreement and Final Order”) resolve Complainant’s civil penalty claims against Respondent under the CWA for the violations alleged herein.
2. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant hereby simultaneously commences and resolves this administrative proceeding.

JURISDICTION

3. The U.S. Environmental Protection Agency (“EPA”) has jurisdiction over the above-captioned matter, as described in Paragraph 1, above.
4. The Consolidated Rules of Practice govern this administrative adjudicatory proceeding pursuant to 40 C.F.R. § 22.1(a)(6).

GENERAL PROVISIONS

5. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this Consent Agreement and Final Order.
6. Except as provided in Paragraph 5, above, Respondent neither admits nor denies the specific factual allegations set forth in this Consent Agreement.
7. Respondent agrees not to contest the jurisdiction of EPA with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of this Consent Agreement and Final Order.
8. For purposes of this proceeding only, Respondent hereby expressly waives its right to contest the allegations set forth in **this Consent Agreement and Final Order** and waives its right to appeal the accompanying Final Order.
9. Respondent consents to the assessment of the civil penalty stated herein, to the issuance of any specified compliance order herein, and to any conditions specified herein.
10. Respondent shall bear its own costs and attorney’s fees in connection with this proceeding.
11. Pursuant to 40 C.F.R. § 22.45(b)(1), this Consent Agreement and Final Order shall be issued after a 40-day public notice period is concluded.

EPA’s FINDINGS OF FACT AND CONCLUSIONS OF LAW

12. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant alleges and adopts the Findings of Fact and Conclusions of Law set forth immediately below.
13. Section 311(a)(1) of the Act, 33 U.S.C. § 1321(a)(1), defines “oil” as “oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil.”
14. In Section 311(j)(1)(C) of the CWA, 33 U.S.C. § 1321(j)(1)(C), Congress required the President to promulgate regulations which would, among other things, establish

- procedures, methods, and other requirements for preventing discharges of oil from onshore facilities into navigable waters and for containing such discharges.
15. By Executive Order 12777, the President delegated the authority to promulgate regulations under Section 311(j) of the CWA to EPA for non-transportation-related onshore and offshore facilities.
 16. EPA promulgated the Spill Prevention, Control, and Countermeasure (“SPCC”) regulations at 40 C.F.R. §§ 112.1-12 (the “SPCC Regulations”). Pursuant to 40 C.F.R. § 112.1(b), the Regulations apply to any owner or operator of a non-transportation-related onshore or offshore facility engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using, or consuming oil or oil products, which due to its location, could reasonably be expected to discharge oil in quantities that may be harmful into or upon the navigable waters of the United States or adjoining shorelines. Pursuant to 40 C.F.R. § 112.1(d), the Regulations do not apply to any owner or operator of a facility with an aggregate aboveground oil storage capacity of 1,320 gallons or less.
 17. Pursuant to 40 C.F.R. § 110.3, discharges of oil in such quantities that the Administrator has determined may be harmful to the public health or welfare or the environment of the United States include discharges of oil that cause a film or 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 adjoining shoreline.
 18. Pursuant to 40 C.F.R. § 112.3, an owner or operator subject to the SPCC Regulations must prepare in writing and implement an SPCC plan, in accordance with § 112.7 and any other applicable section.
 19. Pursuant to Section 311(j)(1)(C) and (j)(5)(A) of the CWA and the President’s delegation of authority, in 1994 the Administrator of EPA amended 40 C.F.R. Part 112 by promulgating the Facility Response Plan (“FRP”) regulations, codified at 40 C.F.R. §§ 112.20-21, and effective on August 30, 1994 (the “FRP Regulations”). These spill response regulations require owners or operators of non-transportation-related substantial-harm facilities to, inter alia, develop and implement an FRP, an oil spill response training program, and a program of oil spill response drills/exercises.
 20. Pursuant to 40 C.F.R. § 112.20(a), the owner or operator of a non-transportation-related onshore facility 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 shall prepare and submit to EPA an FRP.
 21. As prescribed in 40 C.F.R. § 112.20(f)(1)(i-ii), a facility could, because of its location, reasonably be expected to cause substantial harm to the environment if: (1) the facility transfers oil over water to or from vessels and has a total oil storage capacity greater than or equal to 42,000 gallons; or (2) the facility’s total oil storage capacity is greater than or equal to 1,000,000 gallons and one of the following is true: (a) the facility does not have sufficient secondary containment to contain the capacity of the largest above-ground oil

- storage tank plus freeboard for precipitation within each storage area; (b) the facility is located at a distance (as calculated from the appropriate formula in 40 C.F.R. Part 112, Appendix C) such that a discharge from the facility could cause injury to fish and wildlife and sensitive environments; (c) the facility is located at a distance (as calculated from the appropriate formula in 40 C.F.R. Part 112, Appendix C) such that a discharge from the facility would shut down a public drinking water intake; or (d) the facility has had a reportable oil spill of at least 10,000 gallons within the last five years.
22. To meet the requirements of 40 C.F.R. § 112.20(h), an FRP shall follow the format of the model facility-specific response plan included in Appendix F to 40 C.F.R. Part 112, unless an equivalent response plan acceptable to the EPA Regional Administrator has been prepared to meet State or other Federal requirements.
 23. The FRP Regulations also require the owner or operator of a substantial-harm facility to develop and implement a program of facility response drills/exercises for oil spill response. 40 C.F.R. § 112.21(a).
 24. A program of oil spill drills/exercises must follow either the National Preparedness for Response Exercise Program Guidelines (“PREP Guidelines,”), or an alternative program approved by the Administrator of the applicable EPA Region. 40 C.F.R. § 112.21(c).
 25. For violations of Section 311(j) of the CWA, 33 U.S.C. § 1321(j), EPA has authority, under Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6), as amended by the Debt Collection Improvement Act and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, and implemented by 40 C.F.R. Part 19, Adjustment of Civil Monetary Penalties for Inflation, to file an Administrative Complaint seeking a civil penalty of \$19,505 per violation, or seeking \$19,505 per day for each day during which a violation continues, up to a maximum of \$243,808 for violations occurring after November 2, 2015 and penalties assessed after December 23, 2020.
 26. Respondent is a Delaware limited liability company headquartered at 1515 Arapahoe Street, Tower 1, Suite 1600, Denver, Colorado 80202.
 27. Respondent is a person within the meaning of Sections 311(a)(7) and 502(5) of the CWA, 33 U.S.C. §§ 1321(a)(7) and 1362(5), and 40 C.F.R. § 112.2.
 28. Respondent is the owner and operator of a natural gas processing facility known as the Houston Gas Plant, located at 800 Western Avenue, Washington, Pennsylvania 15301 (the “Facility”).
 29. Respondent is, and has been at all times relevant to this CAFO, the owner and/or operator of the Facility within the meaning of Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6), and 40 C.F.R. § 112.2.
 30. According to Respondent’s current SPCC plan, the Facility has a total above-ground oil storage capacity of approximately 2 million gallons.

31. The Facility is located on a hill approximately 800 feet upgradient of Chartiers Run, which is a tributary to Chartiers Creek.
32. Due to its location, the Facility could reasonably be expected to discharge oil in harmful quantities, as defined by 40 C.F.R. § 110.3, into Chartiers Run and Chartiers Creek.
33. Chartiers Creek is a navigable water of the United States within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7).
34. The Facility is an onshore facility within the meaning of Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10), and 40 C.F.R. § 112.2.
35. The Facility is a non-transportation-related facility within the meaning of 40 C.F.R. § 112.2 and Appendix A of 40 C.F.R. Part 112, as incorporated by reference within 40 C.F.R. § 112.2.
36. Pursuant to 40 C.F.R. § 112.1, Respondent, as the owner and operator of the Facility, is subject to the SPCC Regulations codified at 40 C.F.R. Part 112.
37. Pursuant to 40 C.F.R. § 112.3, Respondent was required to prepare in writing and implement an SPCC plan, in accordance with 40 C.F.R. § 112.7 and any other applicable section.
38. The Facility is a “substantial harm” facility pursuant to 40 C.F.R. § 112.20(f)(1) because the Facility’s total oil storage capacity is greater than or equal to 1,000,000 gallons and the Facility is located at a distance (as calculated from the appropriate formula in 40 C.F.R. Part 112, Appendix C) such that a discharge from the facility could cause injury to fish and wildlife and sensitive environments.
39. The Facility’s FRP follows the PREP Guidelines for its facility response drills and exercise program.
40. EPA conducted an inspection of the Facility on July 24, 2019 to evaluate Respondent’s compliance with the CWA and the Regulations (the “Inspection”).

Count I

Failure to Include Required Information in SPCC Plan Facility Diagram

41. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
42. 40 C.F.R. § 112.7(a)(3) requires owners or operators to include a facility diagram in the facility’s SPCC plan that marks the location of the storage area where mobile or portable oil storage containers are located and include all transfer stations and connecting pipes.

43. Upon review of the Facility’s SPCC plan during the Inspection, EPA inspectors observed that the diagrams in the Facility’s SPCC plan omitted the Facility’s natural gasoline railcar loading rack and belowground pipelines associated with the natural gasoline tank truck loading area and railcar loading rack.
44. EPA alleges that by omitting the Facility’s natural gasoline railcar loading rack, belowground pipelines associated with the natural gasoline tank truck loading area and railcar loading rack from the Facility’s SPCC plan diagrams, Respondent violated 40 C.F.R. § 112.7(a)(3).
45. By failing to comply with 40 C.F.R. § 112.7(a)(3), Respondent is subject to the assessment of penalties under Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6).

Count II
Failure to Include Required Information Relating to Portable Oil Storage Containers in SPCC Plan

46. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
47. In relevant part, 40 C.F.R. § 112.7(a)(3)(i) requires an owner or operator to provide in the SPCC plan either the type of oil and storage capacity for each mobile or portable container or provide an estimate of the potential number of mobile or portable containers, the types of oil, and anticipated storage capacities.
48. During the Inspection, EPA inspectors observed that the approximately 20 waste oil drums and thermol totes stored within the De-ethanizer Plant’s “New Barrel Building” were not included in the container inventory of the Facility’s SPCC plan.
49. EPA alleges that by failing to include all of the Facility’s portable oil storage containers in the container inventory of the Facility’s SPCC plan, Respondent failed to provide the required information. Respondent therefore failed to comply with 40 C.F.R. § 112.7(a)(3)(i).
50. By failing to comply with 40 C.F.R. § 112.7(a)(3)(i), Respondent is subject to the assessment of penalties under Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6).

Count III
Failure to Implement the Facility’s FRP Drills and Exercises Program

51. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
52. 40 C.F.R. 112.21(a) requires an owner or operator required to prepare an FRP to develop and implement a program of drills and exercises that satisfies the requirements of 40

- C.F.R. Part 112, Subpart D. The drill/exercise program must be described in the FRP.
53. 40 C.F.R. 112.21(c) requires that a drills and exercises program that follows the PREP Guidelines is deemed satisfactory for compliance with 40 C.F.R. Part 112, Subpart D, and that an alternative program can also be acceptable subject to the approval of the Regional Administrator.
 54. Respondent did not propose an alternative program for the approval of the Regional Administrator, and Respondent's FRP indicated that Respondent would implement the drills and exercises program that follows the PREP Guidelines.
 55. Section 4.1 of the PREP Guidelines requires a Facility to conduct quarterly Qualified Individual ("QI") notification exercises.
 56. Section 4.3 of the PREP Guidelines requires a Facility to conduct annual tabletop exercises.
 57. Section 2.3.7.1 of the PREP Guidelines requires a Facility to conduct annual unannounced exercises.
 58. According to EPA's review of Respondent's drills and exercises records during the Inspection, Respondent conducted one QI notification exercise in each of 2016, 2017, and 2018.
 59. According to EPA's review of Respondent's drills and exercises records during the Inspection, EPA alleges that Respondent did not conduct annual tabletop exercises and annual unannounced exercises in 2016, 2017, and 2019.
 60. EPA alleges that by failing to implement a drills and exercises program that follows the PREP Guidelines, Respondent failed to comply with 40 C.F.R. § 112.21(a).
 61. By failing to comply with 40 C.F.R. § 112.21(a), Respondent is subject to the assessment of penalties under Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6).

Count IV

Failure to Include Information Required by 40 C.F.R. § 112.20(h) in the FRP

62. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
63. Pursuant to 40 C.F.R. § 112.20(h), an FRP must follow the format of the model facility-specific response plan included in Appendix F of 40 C.F.R. Part 112 unless the owner or operator has prepared an equivalent response plan acceptable to the Regional Administrator to meet State or other Federal requirements. Respondent has not submitted an equivalent response plan to the Regional Administrator for acceptance.

64. EPA's review of Respondent's FRP for the Facility indicated that it did not follow the format of the model facility-specific response plan included in Appendix F of 40 C.F.R. Part 112 in the following ways:
- a. 40 C.F.R. § 112.20(h)(1) and 40 C.F.R. Part 112 Appendix F, Section 1.1 require an FRP to include an emergency response action plan that includes, in relevant part, (i) the identity of a qualified individual ("QI") having full authority to implement removal actions; and (2) the identity of individuals to be contacted in the event of a discharge to ensure communications between the QI and appropriate federal officials and response personnel. Respondent's FRP listed the names of people who no longer work at the Facility, and thus cannot perform the functions required by Respondent's FRP.
 - b. 40 C.F.R. Part 112 Appendix F, Section 1.3.1 requires an FRP to include the phone number of spill response contractors and area hospitals. Respondent's FRP did not include these items.
 - c. 40 C.F.R. Part 112 Appendix F, Section 1.3.4 requires an FRP to include the date(s) and type(s) of response training undertaken by Respondent's emergency response personnel, as well as the names, phone numbers, and response times of emergency response contractors. Respondent's FRP did not include these items.
 - d. 40 C.F.R. Part 112 Appendix F, Section 1.4 requires an FRP to include certain information regarding storage tanks including an inventory listing all oil storage containers located at the Facility, the storage capacity of each tank, the installation year of each tank, the secondary containment volume associated with each tank, and a discussion of the loading and unloading of transportation vehicles. The tank inventory included with Respondent's FRP did not include all the tanks located at the Facility. The storage capacity and the secondary containment volume of each tank listed in Respondent's FRP conflicted with the same information listed in Respondent's SPCC plan, and therefore appeared to be incorrect. Respondent's FRP did not include the installation year of each tank nor any discussion of loading and unloading of transportation vehicles.
 - e. 40 C.F.R. Part 112 Appendix F, Section 1.5.2 requires an FRP to identify the worst-case discharge volume at the Facility. Respondent's FRP listed the worst-case discharge volume at the Facility to be 420,000 gallons, which is incorrect. The actual worst-case discharge volume at Respondent's Facility is the volume of its largest tank, which is 444,066 gallons.
 - f. 40 C.F.R. Part 112 Appendix F, Section 1.6 requires an FRP to include a detailed description of the procedures and equipment used to detect discharges. A section on discharge detection by personnel and a discussion of automated discharge detection, if applicable, shall be included for both regular operations and after-hours operations. In addition, the FRP shall discuss how the reliability of any automated system will be checked and how frequently the system will be

inspected. Respondent's FRP did not include a discussion of the automatic spill detection equipment in use at the Facility, nor did the FRP discuss how the reliability of Respondent's automatic spill detection equipment is checked or how frequently the system is inspected.

- g. 40 C.F.R. 112.20(h)(9) and Appendix F, Section 1.9 requires an FRP to include a site plan diagram, a site drainage diagram, and a site evacuation plan diagram.
 - i. In relevant part, the site plan diagram is required to include the entire facility to scale, structures where hazardous materials are stored, and the location of communication and emergency response equipment. Respondent's FRP site plan diagram omitted the Facility's De-ethanizing Plant, the rail car loading rack, the structures where hazardous materials are stored, the location of communication and emergency response equipment, and the location of oil-filled operational equipment.
 - ii. In relevant part, the site drainage plan diagram is required to include shut-off valves, firefighting water sources, and the direction of discharge flow from discharge points. Respondent's FRP site drainage plan diagram omitted secondary containment shut-off valves, firefighting water sources, and the direction of flow from discharge points.
 - iii. In relevant part, the site evacuation plan diagram is required to include evacuation routes and the location of evacuation regrouping areas. Respondent's FRP omitted evacuation routes and the location of evacuation regrouping areas.
- h. 40 C.F.R. 112.20(h)(11) and Appendix F, Section 2.1 require an FRP to include a response plan cover sheet. In relevant part, the response plan cover sheet is required to include the Facility's largest oil storage tank capacity, the Facility's maximum oil storage capacity, the number of oil storage tanks located at the Facility, and the worst case discharge amount from the Facility. Based on information listed in Respondent's SPCC plan, Respondent's FRP listed inaccurate data as follows:
 - i. Respondent's FRP listed 420,000 gallons as its largest oil storage tank capacity. The correct volume of its largest oil storage tank capacity is 444,066 gallons.
 - ii. Respondent's FRP listed 1,850,000 gallons as its maximum oil storage capacity. The correct maximum oil storage capacity is 2,056,624 gallons.
 - iii. Respondent's FRP stated that the Facility had 19 oil storage tanks. The actual number of oil storage tanks located at the Facility is 54.
 - iv. Respondent's FRP listed 420,000 gallons as the worst-case discharge volume. The correct volume is 444,066 gallons.

65. EPA alleges that by failing to follow the format of the model facility-specific response plan included in Appendix F of 40 C.F.R. Part 112 and not preparing an equivalent response plan acceptable to the Regional Administrator to meet State or other Federal requirements, Respondent failed to comply with 40 C.F.R. § 112.20(h).
66. By failing to comply with 40 C.F.R. § 112.20(h), Respondent is subject to the assessment of penalties under Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6).

CIVIL PENALTY

67. In settlement of EPA's claims for civil penalties for the violations alleged in this Consent Agreement, Respondent consents to the assessment of a civil penalty in the amount of seventy-five thousand dollars (\$75,000), which Respondent shall be liable to pay in accordance with the terms set forth below.
68. The civil penalty is based upon EPA's consideration of a number of factors, including the penalty criteria ("statutory factors") set forth in Section 311(b)(8) of the CWA, 33 U.S.C. § 1321(b)(8), including, the following: the seriousness of the violation; the economic benefit to the violator, if any; the degree of culpability; any other penalty for the same incident; history of prior violations, if any; the nature, extent, and degree of success of the violator's mitigation efforts; the economic impact of the penalty on the violator; and other matters as justice may require. These factors were applied to the particular facts and circumstances of this case with specific reference to EPA's *Civil Penalty Policy for Section 311(b)(3) and Section 311(j) of the Clean Water Act* (August 1998), which reflects the statutory penalty criteria and factors set forth at Section 311(b)(8) of the CWA, 33 U.S.C. § 1321(b)(8), the appropriate *Adjustment of Civil Monetary Penalties for Inflation*, pursuant to 40 C.F.R. Part 19, and the applicable EPA memoranda addressing EPA's civil penalty policies to account for inflation.
69. Payment of the civil penalty amount, and any associated interest, administrative fees, and late payment penalties owed, shall be made by either cashier's check, certified check or electronic wire transfer, in the following manner:
 - a. All payments by Respondent shall include reference to Respondent's name and address, and the Docket Number of this action, *i.e.*, **CWA-03-2022-0013**;
 - b. All checks shall be made payable to "**Environmental Protection Agency,**" and **bearing the notation "OSLTF-311"**.
 - c. All payments made by check and sent by regular mail shall be addressed and mailed to:

U.S. Environmental Protection Agency
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

- d. For additional information concerning other acceptable methods of payment of the civil penalty amount see:

<https://www.epa.gov/financial/makepayment>

- e. A copy of Respondent's check or other documentation of payment of the penalty using the method selected by Respondent for payment shall be sent simultaneously by email to:

Mark Bolender
Senior Assistant Regional Counsel
bolender.mark@epa.gov

and

U.S. EPA Region III Regional Hearing Clerk
R3_Hearing_Clerk@epa.gov

70. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment of the penalty as specified herein shall result in the assessment of late payment charges including interest, penalties and/or administrative costs of handling delinquent debts.
71. Payment of the civil penalty is due and payable immediately upon the effective date of this Consent Agreement and Final Order. Receipt by Respondent or Respondent's legal counsel of such copy of the fully executed Consent Agreement and Final Order, with a date stamp indicating the date on which the Consent Agreement and Final Order was filed with the Regional Hearing Clerk, shall constitute receipt of written initial notice that a debt is owed as of the effective date of this Consent Agreement and Final Order by Respondent in accordance with 40 C.F.R. § 13.9(a).
72. INTEREST: Interest on the civil penalty assessed in this Consent Agreement and Final Order will begin to accrue on the effective date of this Consent Agreement and Final Order. However, EPA will not seek to recover interest on any amount of the civil penalties that is paid within thirty (30) calendar days after the effective date of this Consent Agreement and Final Order. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R § 13.11(a).
73. ADMINISTRATIVE COSTS: The costs of the EPA's administrative handling of overdue debts will be charged and assessed monthly throughout the period a debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives – Case Management*, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first

thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.

74. LATE PAYMENT PENALTY: A late payment penalty of six percent per year will be assessed monthly on any portion of the civil penalty that remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).
75. Respondent agrees not to deduct for federal tax purposes the civil penalty assessed in this Consent Agreement and Final Order.

GENERAL SETTLEMENT CONDITIONS

76. By signing this Consent Agreement, Respondent acknowledges that this Consent Agreement and Final Order will be available to the public and represents that, to the best of Respondent's knowledge and belief, this Consent Agreement and Final Order does not contain any confidential business information or personally identifiable information from Respondent.
77. Respondent certifies that any information or representation it has supplied or made to EPA concerning this matter was, at the time of submission true, accurate, and complete and that there has been no material change regarding the truthfulness, accuracy or completeness of such information or representation. EPA shall have the right to institute further actions to recover appropriate relief if EPA obtains evidence that any information provided and/or representations made by Respondent to the EPA regarding matters relevant to this Consent Agreement and Final Order, **including information about respondent's ability to pay a penalty**, are false or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action that EPA may have, civil or criminal, under law or equity in such event. Respondent and its officers, directors and agents are aware that the submission of false or misleading information to the United States government may subject a person to separate civil and/or criminal liability.

CERTIFICATION OF COMPLIANCE

78. Respondent certifies to EPA, upon personal investigation and to the best of its knowledge and belief, that it currently is in compliance with regard to the violations alleged in this Consent Agreement.

OTHER APPLICABLE LAWS

79. Nothing in this Consent Agreement and Final Order shall relieve Respondent of its obligation to comply with all applicable federal, state, and local laws and regulations, nor shall it restrict EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on the validity of any federal, state or local permit. This Consent Agreement and Final Order does not constitute a waiver,

suspension or modification of the requirements of the CWA, or any regulations promulgated thereunder.

RESERVATION OF RIGHTS

80. This Consent Agreement and Final Order resolves only EPA’s claims for civil penalties for the specific violations alleged against Respondent in this Consent Agreement and Final Order. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. This settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice, 40 C.F.R. § 22.18(c). EPA reserves any rights and remedies available to it under the CWA, the regulations promulgated thereunder and any other federal law or regulation to enforce the terms of this Consent Agreement and Final Order after its effective date.

EXECUTION /PARTIES BOUND

81. This Consent Agreement and Final Order shall apply to and be binding upon the EPA, the Respondent and the officers, directors, employees, contractors, successors, agents and assigns of Respondent. By his or her signature below, the person who signs this Consent Agreement on behalf of Respondent is acknowledging that he or she is fully authorized by the Respondent to execute this Consent Agreement and to legally bind Respondent to the terms and conditions of this Consent Agreement and Final Order.

EFFECTIVE DATE

82. Pursuant to 40 C.F.R. § 22.45(b), this Consent Agreement and Final Order shall be issued only after a 40-day public notice and comment period is concluded. This Consent Agreement and Final Order will become final and effective thirty (30) days after having been signed by the Regional Administrator or his delegate, the Regional Judicial Officer, and filed with the Regional Hearing Clerk.

ENTIRE AGREEMENT

83. This Consent Agreement and Final Order constitutes the entire agreement and understanding between the Parties regarding settlement of all claims for civil penalties pertaining to the specific violations alleged herein and there are no representations, warranties, covenants, terms, or conditions agreed upon between the Parties other than those expressed in this Consent Agreement and Final Order.

For Respondent:

MarkWest Liberty Midstream & Resources, L.L.C.

Date: 10/15/2021

By: _____

Jonathan C. Jackson
Senior Vice President of Operations

For the Complainant:

After reviewing the Consent Agreement and other pertinent matters, I, the undersigned Director of the Enforcement & Compliance Assurance Division of the United States Environmental Protection Agency, Region III, agree to the terms and conditions of this Consent Agreement and recommend that the Regional Administrator, or his/her designee, the Regional Judicial Officer, issue the attached Final Order.

Date: _____

By: _____

Karen Melvin, Director
Enforcement & Compliance Assurance Division
U.S. EPA – Region III
Complainant

Attorney for Complainant:

Date: _____

By: _____

Mark Bolender
Senior Assistant Regional Counsel
U.S. EPA – Region III

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103

In the Matter of:

MarkWest Liberty Midstream &
Resources, L.L.C.
1515 Arapahoe Street, Tower 1, Suite
1600
Denver, Colorado 80202

U.S. EPA Docket No. CWA-03-2022-0013

Proceeding under Sections 311(j) and
311(b)(6)(B)(ii) of the Clean Water Act,
33 U.S.C. §§ 1321(j) and 1321(b)(6)(B)(ii)

Respondent.

MarkWest Liberty Midstream &
Resources, L.L.C.
Houston Gas Plant
800 Western Avenue
Washington, Pennsylvania 15301

Facility.

FINAL ORDER

Complainant, the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region III, and Respondent, MarkWest Liberty Midstream & Resources, L.L.C., have executed a document entitled “Consent Agreement,” which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules of Practice”), 40 C.F.R. Part 22 (with specific reference to Sections 22.13(b) and 22.18(b)(2) and (3)). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.

Based upon the representations of the parties in the attached Consent Agreement, the penalty agreed to therein is based upon consideration of, *inter alia*, EPA’s *Civil Penalty Policy for Section 311(b)(3) and Section 311(j) of the Clean Water Act (August 1998)* and the statutory factors set forth in Section 311(b)(8) of the Clean Water Act (“CWA”), 33 U.S.C. § 1321(b)(8).

NOW, THEREFORE, PURSUANT TO Section 311(b)(6)(B)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(ii), and Section 22.18(b)(3) of the Consolidated Rules of Practice, **IT IS HEREBY ORDERED** that Respondent pay a civil penalty in the amount of **SEVENTY FIVE THOUSAND DOLLARS (\$75,000)**, in accordance with the payment provisions set forth in the Consent Agreement and in 40 C.F.R. § 22.31(c), and comply with the terms and conditions of the Consent Agreement.

This Final Order constitutes the final Agency action in this proceeding. This Final Order shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief, or criminal sanctions for any violations of the law. This Final Order resolves only those causes of action alleged in the Consent Agreement and does not waive, extinguish or otherwise affect Respondent’s obligation to comply with all applicable provisions of CWA and the regulations promulgated thereunder.

The effective date of the attached Consent Agreement and this Final Order is thirty (30) days after the Final Order, having been signed by the Regional Administrator or his delegate, the Regional Judicial Officer, is filed with the Regional Hearing Clerk.

Date: _____

By: _____
Joseph J. Lisa
Regional Judicial and Presiding Officer
U.S. EPA Region III