

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

IN THE MATTER OF:

Journey Operating, LLC  
14090 Southwest Freeway  
Suite 30  
Sugarland, Texas 77478

Respondent.

CWA SECTION 311 CLASS I  
CONSENT AGREEMENT  
AND FINAL ORDER  
UNDER 40 C.F.R. § 22.13(b)

Docket No. CWA-04-2007-5178(b)

HEARING CLERK

2007 SEP 17 AM 10:45

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EPA REGION IV

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 C.F.R. § 22.13(b) and 22.18(b)(2). The Administrator has delegated these authorities to the Regional Administrator of EPA, Region 4, who has in turn delegated these authorities through the Director, RCRA Division, to the Chief, RCRA and OPA Enforcement and Compliance Branch, RCRA Division (“Complainant”).

**CONSENT AGREEMENT**

**Stipulations**

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

1. Journey Operating, LLC (“Respondent”) is a limited liability corporation organized under the laws of Texas with a place of business located at Yeadiss, Kentucky. 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 C.F.R. § 110.1.

2. Respondent was the owner and operator within the meaning of Section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6), and 40 C.F.R. § 110.1, of an oil production and distribution facility (“the facility”), including the oil transfer line from Well K-632 to the Cook Heirs Tank Battery, located west of Yeadiss in Leslie County, Kentucky.

3. The facility is an onshore facility within the meaning of Section 311(a)(10) of the Act, 33 U.S.C. § 1321(a)(10).

4. Double Rock Branch, which flows into Wolf Creek, is a navigable water subject to the jurisdiction of Section 311 of the Act as defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 110.1.

5. Section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3), prohibits the discharge of oil 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 the environment of the United States.

6. 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 C.F.R. § 110.3 to include discharges of oil that (1) violate applicable water quality standards or (2) 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.

### **Allegations**

Complainant alleges, and Respondent neither admits nor denies, that:

7. On March 7, 2007, Respondent discharged 210 gallons of oil as defined in Section 311(a)(1) of the Act, 33 U.S.C. § 1321(a)(1), and 40 C.F.R. § 110.1, from its facility into or upon Double Rock Branch and/or its adjoining shorelines. A portion of Respondent's March 7, 2007, discharge flowed into or upon Double Rock Branch and its adjoining shorelines.

8. Respondent's March 7, 2007, discharge of oil from its facility caused a film or sheen upon or discoloration of the surface of Double Rock Branch and its adjoining shorelines, and, therefore, was in a quantity that has been determined may be harmful under 40 C.F.R. § 110.3, in violation of Section 311(b)(3) of the Act.

### **Waiver of Rights**

9. Respondent waives the right to contest the allegations contained herein, to a hearing under Section 311(b)(6)(B)(i) of the Act, 33 U.S.C. § 1321(b)(6)(B)(i), 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.

10. For purposes of this Consent Agreement and Final Order, Respondent admits the jurisdictional statements set out in the stipulations above pursuant to Section 311 of the CWA, 33 U.S.C. § 1321.

11. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during any discussions with, or to be served with and reply to, any memorandum or communication addressed to EPA officials where the purpose of such discussion, memorandum or communication is to persuade such official to accept and issue this Consent Agreement or the Final Order.

**Penalty**

12. The Complainant proposes, and Respondent consents to, the assessment of a civil penalty of \$1,600.

**Payment Terms**

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

13. No later than 30 days after the effective date of the Final Order, Respondent shall pay the amount of \$1,600 by means of a cashier's or certified check, or by electronic funds transfer (EFT). If paying by check, Respondent shall submit a cashier's or certified check, payable to "Environmental Protection Agency," and bearing the notation "OSLTF-311." If Respondent sends payment by the U.S. Postal Service, the payment shall be addressed to:

U.S. Environmental Protection Agency  
P.O. Box 371099M  
Pittsburgh, PA 15251

If Respondent sends payment by a private delivery service, the payment shall be addressed to:

Mellon Client Service Center  
ATTN: Shift Supervisor  
Lockbox 371099M Account 9109125  
500 Ross Street  
Pittsburgh, PA 15262-0001

If paying by EFT, Respondent shall transfer \$1,600 to:

Mellon Bank  
ABA 043000261  
Account 9109125  
22 Morrow Drive  
Pittsburgh, PA 15235

In the case of an international transfer of funds, Respondent shall use SWIFT address MELNUS3P.

14. If paying by check, Respondent shall note on the penalty payment check the title and docket number of this case. Respondent shall submit copies of the check (or, in the case of an EFT transfer, copies of the EFT confirmation) to the following people:

Ms. Patricia Bullock  
Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 4  
Sam Nunn Atlanta Federal Center  
61 Forsyth Street, S.W.  
Atlanta GA 30303-8960

Mr. Doug C. McCurry, Chief  
North Enforcement and Compliance Section  
RCRA and OPA Enforcement and Compliance Branch  
RCRA Division  
U.S. Environmental Protection Agency  
Region 4  
Sam Nunn Atlanta Federal Center  
61 Forsyth Street, S.W.  
Atlanta GA 30303-8960

15. Respondent's failure 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, attorneys' 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**

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

17. The undersigned representative of Respondent hereby certifies that she is fully authorized to enter into the terms and conditions of this Consent Agreement and attached Final Order and to execute and legally bind Respondent to this Consent Agreement and attached Final Order.

18. 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 alleged herein and facts stipulated to and/or alleged herein. Except as otherwise set forth herein, compliance with this Consent Agreement shall resolve the allegations of violations contained herein.


**Effective Date**

19. This Consent Agreement and Final Order is effective upon the filing of the Final Order with the Regional Hearing Clerk.

In the matter of Journey Operating, LLC, Docket No. CWA-04-2007-5178(b).

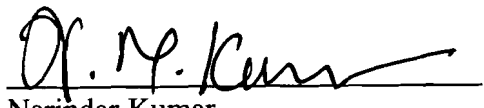
JOURNEY OPERATING, LLC

Date: 9.11.07

  
Gregory A. Stockley  
Vice President – Appalachian Region

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 9/12/07

  
Narindar Kumar  
Chief, RCRA and OPA Enforcement and  
Compliance Branch  
RCRA Division

**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 C.F.R. 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.

Journey Operating, the Respondent is ordered to comply with the terms of the Consent Agreement, Docket No. CWA-04-2007-5178(b).

Date: Sept. 17, 2007

Susan B. Schub  
Honorable Susan Schub  
Regional Judicial Officer  
U.S. Environmental Protection Agency  
Region 4



CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing five (5) Consent Agreements and Final Orders, in the Matter of Journey Operating, LLC, Docket Nos. CWA-04-2007-5178(b); 5179(b); 5180(b); 5181(b); and 5182(b), on the parties listed below in the manner indicated:

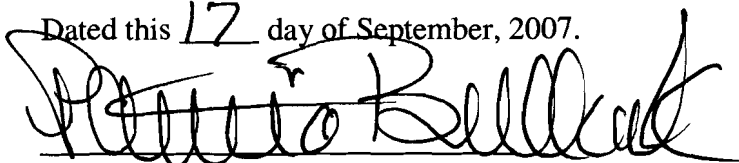
Vera Kornylak (Via EPA Internal Mail)  
Office of Environmental Accountability  
U.S. Environmental Protection Agency - Region 4  
61 Forsyth Street  
Atlanta, GA 30303

Doug C. McCurry, Chief (Via EPA Internal Mail)  
North Enforcement and Compliance Section  
RCRA and OPA Enforcement and Compliance Branch  
U.S. Environmental Protection Agency  
Region 4  
Sam Nunn Atlanta Federal Center  
61 Forsyth Street, S.W.  
Atlanta GA 30303-8960

Bryan Reynolds (Via Certified Mail)  
Sullivan, Mountjoy, Stainback, & Miller, PSC  
110 St. Ann Building  
P.O. Box 727  
Owensboro, Kentucky 42303-0727

Gregory A. Shockley (Via Certified Mail)  
Vice President – Appalachian Region  
Journey Operating, LLC  
P.O. Drawer 1796  
Clarksburg, WV 26302-1796

Dated this 17 day of September, 2007.



Ms. Patricia Bullock  
Regional Hearing Clerk  
U.S. Environmental Protection Agency - Region 4  
61 Forsyth Street  
Atlanta, GA 30303