

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4

IN THE MATTER OF

East Kentucky  
Power Cooperative, Inc.  
Spurlock Station  
Maysville, Kentucky

Respondent

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

Docket No. CWA-04-2009-5142(b)

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MAYSVILLE, KY

**LEGAL AUTHORITY**

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 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 of the RCRA Division of EPA Region 4, pursuant to EPA Region 4 Clean Water Act Delegation 2-52-A ("Complainant").

**CONSENT AGREEMENT**

**Stipulations**

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

1. Respondent is East Kentucky Power Cooperative, Inc., a corporation organized under the laws of Kentucky with a place of business at 4775 Lexington Road, Winchester, Kentucky. The 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).

2. Respondent was at all times relevant to this Consent Agreement and "owner or operator" of an "onshore facility" within the meanings of Sections 311(a)(6) and (10) of the Act, 33 U.S.C. §§ 1321(a)(6) and (10), which included a 10,000 gallon (approximated) transformer containing oil operating at its Spurlock Station in Maysville, Kentucky (the "Facility").

3. The mineral oil used in the transformer is "oil" within the meaning of Section 311(a)(1) of the Act, 33 U.S.C. § 1321(a)(1).

4. 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 . . . ."

5. 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.

6. EPA subsequently promulgated the Spill Prevention Control and Countermeasures (SPCC) regulations pursuant to these delegated statutory authorities and pursuant to its

authorities under the Clean Water Act, 33 U.S.C. § 1251, *et seq.*, which established certain procedures, methods, and requirements for 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 C.F.R. § 110.3 may be harmful to the public health or welfare or the environment of the United States (“harmful quantity”).

7. In promulgating 40 C.F.R. § 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.

8. The Facility is upgradient of a drainage ditch that leads to the Ohio River, which is located less than a half of a mile from the Facility.

9. The Ohio River is a navigable water as that term is defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 112.2 and is therefore subject to the jurisdiction of Section 311 of the Act.

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

11. The Facility has an aggregate above-ground storage capacity greater than 1,320 gallons of oil in containers each with a shell capacity of at least 55 gallons and, therefore, does not qualify for the exemption under 40 C.F.R. § 112.1(d)(2).

12. The Facility is a non-transportation-related facility within the meaning of 40 C.F.R. § 112.2 as described in 40 C.F.R. Part 112, Appendix A.

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 and is, as such, an SPCC-regulated facility.

### **Allegations**

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

14. Respondent began operating the facility in 1977.

15. 40 C.F.R. § 112.3 requires that the owner or operator of an SPCC-regulated facility must prepare a written SPCC plan in compliance with 40 C.F.R. § 112.7 and any other applicable section of 40 C.F.R. Part 112 and to implement the plan.

16. On August 12, 2007, Respondent's 10,000 gallon transformer at the H. L. Spurlock Generating Station exploded, discharging approximately 6,000 gallons of mineral oil from its Facility into or upon the Ohio River and its adjoining shorelines.

17. On December 18, 2007, EPA conducted an investigation of the Facility to determine the Facility's compliance with the requirements of 40 C.F.R. Part 112.

18. Although Respondent had an SPCC plan (The plan), the plan did not meet the requirements of 40 C.F.R. §§ 112.7 and 112.8 because, among other deficiencies, EPA determined that it had not been updated to reflect the addition of new equipment installed by the Facility. Specifically, during the inspection, EPA found the following SPCC violations:

- The plan did not include management approval at a level of authority to commit the necessary resources to fully implement the plan.
- The Professional Engineer's certification statement did not include all of the attestations required by the rule.
- The Facility failed to submit SPCC reporting information to the Regional Administrator as required by 40 C.F.R. § 112.4(a) after the release of approximately 10,000 gallons of mineral oil on August 12, 2007.
- The plan did not follow the sequence of the rule nor did it provide a cross reference of requirements in the plan with the rule.
- The plan did not include a diagram with the location and contents of all regulated containers, transfer stations, and connecting pipes.
- The plan did not include a prediction of the direction, rate of flow, and total quantity of oil that could be discharged from major equipment failures.
- The plan did not include discussions on secondary containment and/or undiked area drainage controls in the tanker truck loading/unloading areas.
- The plan did not include discussions on discharge prevention briefings for oil handling personnel.
- The plan did not include discussions on the security of container valves nor offloading/unloading connections of facility piping.
- The plan did not address brittle fracture evaluation of field constructed tanks.
- The plan did not adequately address dike drainage procedures.
- The plan did not adequately address undiked area drainage controls in areas with a potential for discharge.
- The plan did not discuss container compatibility.
- The plan did not adequately discuss secondary containment for bulk storage containers. The plan must include volumes of the secondary containment structures and discuss that such systems are sufficiently impervious to contain discharged oil;
- The plan did not include adequate discussions on the inspection and testing of aboveground bulk storage containers.
- The plan did not discuss liquid level sensing devices for all bulk storage containers.
- The plan did not discuss that visible discharges are promptly corrected and that accumulations of oil in diked areas are promptly removed.
- The plan did not discuss secondary containment for mobile/portable containers.
- The plan did not discuss facility transfer operations, pumping, and facility processes.
- The Facility did not implement the SPCC Plan, as required by 40 C.F.R. § 112.3(a), in accordance with the guidelines for plan implementation at 40 C.F.R. §§ 112.7 and/or 112.8.
- The Facility did not confirm that oil handling personnel had received training on the following: operation of equipment to prevent discharges, discharge procedure protocols, applicable pollution control laws, rules, and regulations, and the contents of the SPCC plan.
- The Facility could not confirm that discharge prevention briefings were occurring on an annual basis.

- At the time of the August 11, 2007, discharge event, oil filled operational equipment (example: transformers) did not have adequate secondary containment and/or undiked area drainage controls.
- Records of dike drainage events were not available.
- No records were available to indicate that the facility was conducting inspections and integrity tests of aboveground bulk storage containers.
- No records were available to indicate that the facility was conducting inspections of valves, piping, and other appurtenances.
- The Facility did not post signs or provide any other warnings for vehicles of the presence of aboveground piping and other oil transfer operations.

19. In addition, the Respondent failed to provide containment as necessary to comply with requirements of 40 C.F.R. Part 112 for its oil containing equipment.

#### **Waiver of Rights**

20. Respondent waives the right to contest the allegations contained herein, to a hearing under Section 311(b)(6)(B)(ii) of the Act, 33U.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 40 C.F.R. § 22.18(b)(2) and consents to the issuance of a Final Order without further adjudication.

21. 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**

22. The Complainant proposes, and Respondent consents to, the assessment of a civil penalty of Ninety-Three Thousand, Nine Hundred Thirty-Six Dollars (\$93,936) for all SPCC violations that were discovered by EPA on December 18, 2007, and described above.

**Payment Terms**

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

23. Respondent consents and agrees to the payment of the civil penalty no later than thirty (30) calendar days after the effective date of the Final Order.

24. Respondent shall make payment of the penalty by a corporate/cashier's check or certified check or by electronic funds transfer (EFT). If paying by check, the Respondent shall submit a corporate/cashier's check or certified check, payable to "Environmental Protection Agency," and bearing the notation "OSLTF - 311." Respondent shall reference the facility name and the docket number for this matter on the face of the check, and the check shall be tendered, if by U.S. Postal Service, to:

United States Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
PO Box 979077  
St. Louis, Missouri 63197-9000

or if by commercial express delivery service to:

U.S. Bank  
Government Lockbox 979077  
US EPA Fines & Penalties  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, Missouri 63101

If paying by EFT, Respondent shall transfer \$93,936 to [www.pay.gov](http://www.pay.gov). Enter SFO1.1 into the "search public forms" field. Open the form and enter the requested information. If paying by wire transfer, the payment shall be addressed to the Federal Reserve Bank of New York.

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, NY 10045

Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency

25. Respondent shall submit a copy of the check or, in the case of an EFT transfer or wire transfer, a copy of the EFT or wire confirmation to the following addressees:

Patricia Bullock  
Regional Hearing Clerk  
U.S. EPA - Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

and to:

Doug McCurry, Chief  
North Enforcement & Compliance Section  
RCRA/OPA Enforcement and Compliance Branch  
RCRA Division  
U.S. EPA - Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

26. 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, 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**

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

28. The Final Order shall be binding upon Respondent and Respondent's successors or assigns.

29. 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.

30. The undersigned representative of Respondent hereby certifies that he/she is fully authorized to enter into the terms and conditions of this Consent Agreement and to execute and

legally bind Respondent to this Consent Agreement.

31. The following attorney represents EPA in this matter and is authorized to receive service for EPA in the proceeding:

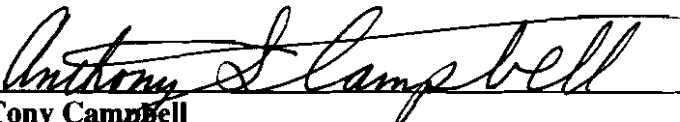
Susan Capel  
Associate Regional Counsel  
United States Environmental Protection Agency, Region 4  
Sam Nunn Atlanta Federal Center,  
61 Forsyth Street, SW  
Atlanta, Georgia 30303  
(404) 562-9566  
capel.susan @epa.gov

**Effective Date**

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

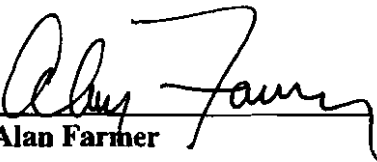
For EAST KENTUCKY POWER COOPERATIVE, INC.

Date: Aug. 31, 2009

  
\_\_\_\_\_  
Tony Campbell  
President  
East Kentucky Power Cooperative, Inc.

For U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 10/21/09

  
\_\_\_\_\_  
G. Alan Farmer  
Director  
RCRA Division

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4

IN THE MATTER OF

East Kentucky  
Power Cooperative, Inc.  
Spurlock Station  
Maysville, Kentucky

Respondent

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

Docket No. CWA-04-2009-5142(b)

**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 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.

East Kentucky Power Cooperative, Inc., the Respondent, is ordered to comply with the terms of the Consent Agreement, Docket No. CWA-04-2009-5142(b).

Date:

10/21/09

  
A. Stanley Meiburg  
Acting Regional Administrator

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the Foregoing Consent Agreement and Final Order, in the matter of East Kentucky Power Cooperative, Inc., Docket No. CWA-04-2009-5142(b), on the parties listed below in the manner indicated:

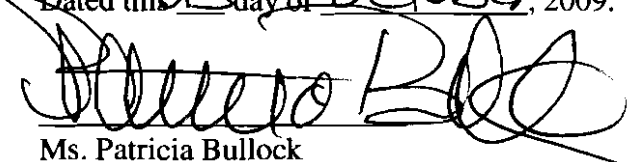
Susan Capel (Via EPA's internal mail)  
Office of Environmental Accountability  
U.S. EPA, Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303

John C. Goodwin (Via EPA's internal mail)  
RCRA & OPA Enforcement and Compliance Branch  
U.S. EPA, Region 4  
61 Forsyth St., S.W.  
Atlanta, Georgia 30303

Tony Campbell (Via Certified Mail)  
President  
East Kentucky Power Cooperative, Inc.  
4775 Lexington Road  
P.O. Box 707  
Winchester, Kentucky 40391

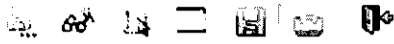
Carolyn M. Brown (Via Certified Mail)  
Greenbaum Doll and McDonald PLLC  
300 Vine Street, Suite 1100  
Lexington, Kentucky 40507-1665

Dated this 23 day of October, 2009.

  
Ms. Patricia Bullock  
Regional Hearing Clerk  
U.S. EPA - Region 4  
Sam Nunn Atlanta Federal Center  
61 Forsyth Street, SW  
Atlanta, Georgia 30303-8960

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Division:  Floor:

Building:  Unit:

Alternate:  Alternate Ext:

(LastName, FirstName Middle Initial)

Site Name:  Site ID:



Ready

