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REGIONAL HEARING CLERK  
EPA REGION VI

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6

IN THE MATTER OF

**JBS Shrimp Company**  
Aransas Pass, Texas

Respondent.

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

Docket No. CWA-06-2007-4807

### 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 Superfund Division Director of EPA, Region 6, who has, by his concurrence, re-delegated the authority to act as Complainant to the Response and Prevention Branch Chief in Region 6 Delegation No. R6-2-51, dated February 10, 1997. ("Complainant").

### CONSENT AGREEMENT

#### Stipulations and Allegations

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

**COUNT 1: SPCC Requirements, 40 CFR §112**

2. 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 . . . ."

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 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 upon each owner and operator of a non-transportation-related onshore 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 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.

6. Respondent is a company doing business in or near the City of Aransas Pass, Aransas County, Texas with its main place of business located at 420 Bigelow, Aransas Pass, Texas. As such, Respondent is a person within the meaning of Section 311(a)(7) of the Act, 33 U.S.C. §1321(a)(7), and 40 CFR §112.2.

7. Respondent is the owner/operator within the meaning of Section 311(a)(6) of the Act, 33 U.S.C. §1321(a)(6), and 40 CFR §112.2 of a shrimping operation located at 420 Bigelow, Aransas Pass, Texas ("the facility"). Drainage from the facility flows North-Northwest approximately 300 feet to Conn Brown Harbor, thence the Gulf of Mexico, in Aransas County, Texas.

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.

9. Conn Brown Harbor and the Gulf of Mexico are navigable waters within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 CFR 112.2.

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

11. 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.

12. The facility is an onshore facility within the meaning of Section 311(a)(10) of the Act, 33 U.S.C. § 1321(a)(10), and 40 CFR § 112.2.

13. The facility is therefore a non-transportation-related onshore facility which, due to its location, could reasonably be expected to discharge oil into a navigable water of the United States or its adjoining shorelines in a harmful quantity ("an SPCC-regulated facility").

14. Pursuant to Section 311(j)(1)(C) of the Act, E.O. 12777, and 40 CFR § 112.1, Respondent, as the operator of an SPCC-regulated facility, is subject to the SPCC regulations found at 40 CFR § 112.

15. The facility began operation before August 16, 2002.

16. 40 CFR § 112.3 requires that the owner or operator of an SPCC-regulated facility must have developed and fully implemented their SPCC plan in accordance with 40 CFR § 112.7 and any other applicable section of 40 CFR Part 112.

#### **SPCC Allegations**

17. On June 29, 2006, EPA inspected the facility and found that Respondent had failed to develop an SPCC plan in accordance with 40 CFR § 112.7 and any other applicable section of 40 CFR Part 112, for the facility. The deficiencies in the respondents SPCC Plan are as follows:

- a. Respondent's plan failed to follow the sequence of the rule and no cross reference was provided, as required at 40 CFR § 112.7.
- b. Respondent's plan failed to designate a person accountable for discharge prevention, as required at 40 CFR § 112.7(f)(2).
- c. Respondent's plan failed to provide adequate discussion of facility drainage from diked or undiked areas, as required at 40 CFR § 112.8(b)&(c).
- d. Respondent's plan failed to adequately address corrosion protection for the buried piping at the facility, as required at 40 CFR § 112.8(d). In addition, the Plan has no discussion regarding pipe supports, periodic integrity testing of buried piping, and warning to vehicle traffic at transfer areas. These items must also be implemented at the facility.

18. Respondent's failure to develop an adequate SPCC plan violated 40 CFR § 112.3.

**COUNT 2: FRP Requirements, 40 CFR §112.20**

19. 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."

20. 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.

21. 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.

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

23. The facility has a total oil storage capacity of greater than or equal to 42,000 gallons and transfers oil over water to or from vessels. Therefore, the facility is located at a distance such that a discharge from the facility would reasonably be expected to cause substantial harm to the environment.

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. The respondent began operating the facility before June 2002.

27. 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 that commenced operation after August 30, 1994, must submit a facility response plan ("FRP") that satisfies the requirements of Section 311(j)(5) prior to the start of operations.

#### FRP Allegations

28. EPA alleges and Respondent neither admits nor denies that Respondent failed to fully develop an adequate FRP as follows:

- a. Respondent failed to provide evidence of adequate response training (no log of deployment, training, or drills) in accordance with 40 CFR § 112.20(h)(8).
- b. Respondent failed to provide discussion of the worst case discharge (WCD) response planning in accordance with 40 CFR § 112.20(h)(5).
- c. Respondent failed to conduct a vulnerability analysis of sensitive environments in accordance with 40 CFR § 112.20(h)(4).
- d. Respondent failed to provide a site plan diagram and a drainage plan diagram in accordance with 40 CFR § 112.20(h)(9).

29. Respondent's failure to develop an adequate FRP violates the requirements of Section 311(j)(5) of the Act and 40 CFR §112.20.

#### Waiver of Rights

30. Respondent waives the right to a hearing under Section 311(b)(6)(B)(i) of the Act 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 **\$4,848.00**

**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 **\$4,848.00** by means of a cashier's or certified check, or by electronic funds transfer (EFT). If paying by check, the Respondent shall submit a cashier's or certified check, payable to "Environmental Protection Agency," and bearing the notation "OSLTF - 311." If the 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 the 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

Payments by Wire transfer should be directed to:

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 "  
CWA-06-2007-4807

Payments by Automated Clearinghouse (ACH), "also known as REX or remittance express" should follow the procedure laid out below:

ACH for receiving US currency

PNC Bank

ABA = 051036706

Environmental Protection Agency

Account 310006

CTX Format

Transaction Code 22 - checking

808 17th Street NW

Washington DC 20074

Contact = Jesse White 301-887-6548

33. If paying by check, the Respondent shall note on the penalty payment check the title and docket number of this case. 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

34. 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 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**

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

36. 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.

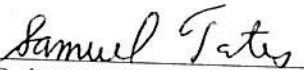
JBS SHRIMP COMPANY

Date: 8-23-07

  
Vernon Bates  
Operations Manager

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 8/28/07

  
Robert R. Broyles  
Chief, Response and Prevention Branch  
Superfund Division

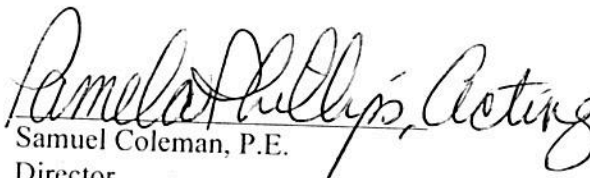
**FINAL ORDER**

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 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:

8/29/07



Samuel Coleman, P.E.  
Director  
Superfund Division