

FILED

2010 NOV 22 AM 9:34

REGIONAL HEARING CLERK
EPA REGION VI

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6

Spill Case

IN THE MATTER OF

XTO Energy, Inc.
Lincoln Parish, Louisiana

Respondent.

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

Docket No. CWA-06-2010-4817

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 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,

CWA-06-2010-4817

hereby stipulate:

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 and 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 C.F.R. § 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 corporation conducting business under the laws of Louisiana with a place of business located in Dubach, Louisiana. 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 CFR § 112.2.

7. Respondent is the owner within the meaning of Section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6), and 40 CFR § 112.2 of an oil production facility associated with the Smith Estate No. 1 lease, located in Lincoln Parish, Louisiana ("facility"). Drainage from the facility flows into Buck Branch.

8. The facility has an aggregate above-ground storage capacity of greater than 1320 gallons (25,516 gallons) of oil in containers each with a shell capacity of at least 55 gallons.

9. Buck Branch flows to Lake Dubach and is a navigable water of the United States within the meaning of 40 C.F.R. § 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 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 to 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 C.F.R. § 112.1

Respondent, as the owner of an SPCC-regulated facility, is subject to the SPCC regulations.

15. The facility began operating prior to August 16, 2002.

SPCC Allegations

COUNT 1: Failure to fully implement an SPCC plan in accordance with 40 CFR § 112.3(b)

16. 40 CFR § 112.3(b) requires that the owner or operator of an SPCC-regulated facility that began operations prior to August 16, 2002, shall have fully implemented an SPCC plan that is in accordance with applicable sections of 40 CFR § 112 not later than one year after the facility began operations.

17. EPA determined during a March 9, 2010 inspection of the subject facility, that the Respondent had failed to fully implement an SPCC Plan for the facility as follows:

- a) Respondent failed to conduct inspections in accordance with written procedures developed for the facility as required at 40 CFR 112.7(e);
- b) Respondent failed to provide personnel training for oil handling personnel as required at 40 CFR 112.7(f);
- c) Respondent failed to provide containers with materials and construction compatible with the oil stored and conditions of storage as required at 40 CFR

112.9(c)(2);

- d) Respondent failed to provide adequate secondary containment for bulk storage containers at the facility as required at 40 CFR 112.9(c)(3).

18. Respondent's failure to fully implement an SPCC plan for the facility, violated 40 CFR § 112.3.

Spill Stipulations

19. Section 311(b)(3) of the Act prohibits the discharge of oil or a hazardous substance 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 environment of the United States.

20. 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 CFR §110.3 to include discharges of oil that violate applicable water quality standards or 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.

Spill Allegations

21. On or about March 3, 2010, Respondent discharged approximately 110 barrels of oil

as defined in Section 311(a)(1) of the Act, 33 U.S.C. §1321(a)(1), and 40 CFR §110.1, from its facility into or upon Buck Branch and its adjoining shorelines.

22. Respondent's March 3, 2010, discharge of oil from its facility caused a sheen upon or discoloration of the surface of Buck Branch, and therefore, was in a quantity that has been determined may be harmful under 40 C.F.R §110.3, which implements Sections 311(b)(3) and (b)(4) of the Act.

23. Respondent's March 3, 2010, discharge of oil from its facility into or upon Buck Branch and adjoining shorelines in a quantity that has been determined may be harmful under 40 CFR §110.3 violated Section 311(b)(3) of the Act.

Waiver of Rights

24. 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

25. The Complainant proposes, and Respondent consents to, the assessment of a civil penalty of \$27,560.00.

Payment Terms

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

12. The Respondent shall submit this Consent Agreement and Final Order, with original signature to:

OPA Enforcement Coordinator
U. S. Environmental Protection Agency
Region 6 (6SF-PC)
1445 Ross Avenue
Dallas, Texas 75202-2733.

13. Within thirty (30) days of the effective date of the Final Order, the Respondent shall pay the amount of \$27,560.00 by means of a cashier's or certified check, or by electronic funds transfer (EFT).

- **Penalty Payment:** If you are paying by check, pay the check to "Environmental Protection Agency," noting on the check "OSTLF-311" and docket number **CWA-06-2010-4817**. 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
Government Lockbox 979077 US EPA Fines & Penalties
1005 Convention Plaza, Mail Station SL-MO-C2GL
St. Louis, MO 63101
314-418-1028

- The Respondent shall submit copies of the check to the OPA Enforcement Coordinator, at the address above as well as:

Lorena Vaughn
Regional Hearing Clerk (6RC)
U.S. Environmental Protection Agency

Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

14. 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

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

16. 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.

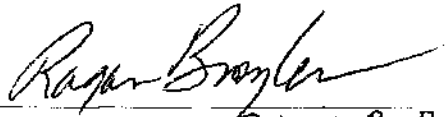
XTO Energy, Inc.

Date: 10/22/2010


Jeff Best
EH&S Coordinator, N. I.A

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 11/2/2010

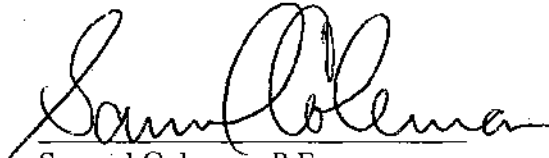

~~Mark A. Hansen~~ Robert R. Broyles
Acting Associate Director
Prevention & Response Branch
Superfund Division
USEPA Region 6 (6SF-P)
1445 Ross Avenue
Dallas, Texas 75202-2733

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: 18 Nov 2010



Samuel Coleman, P.E.
Director
Superfund Division

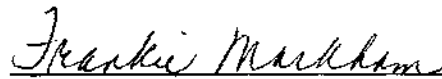
Docket No. CWA-06-2010-4817

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 11-22, 2010, 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:

NAME: Jeff Best
ADDRESS: 5660 Highway 822
Dubach, Louisiana 71235



Frankie Markham
OPA Enforcement Administrative Assistant