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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGIONAL HEARING CLERK
EPA REGION VI

REGION 6

IN THE MATTER OF

Tarwater Oil & Gas, LLC
Okmulgee County, OK

Respondent.

CWA SECTION 311 CLASS II
CONSENT AGREEMENT
AND FINAL ORDER

Docket No. CWA-06-2009-4853

CONSENT AGREEMENT

Stipulations

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

1. 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 . . ."

2. 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.

CWA-06-2009-4853

3. EPA subsequently promulgated the 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 facility which, 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").

4. 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.

5. Respondent is a corporation doing business in the State of Oklahoma with a place of business located at P.O. Box 130, Bull Shoals, AR 72619. 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.

6. Respondent is the owner and 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 an Oil Production Company with the following two facilities: 1) The Bartolina Lease, which was at the time of the inspection, located

in the SE 1/4 of the NW 1/4 of Section 22, Township 12N, Range 13E, on the Deep Fork NWR, in Okmulgee County, Oklahoma, drainage from the facility flows Northwest approximately 150 feet into Deep Fork River. 2) The Doneghy Lease, which is located in the NW 1/4 of the SW 1/4 of Section 22, Township 12N, Range 13E, on the Deep Fork NWR, in Okmulgee County, Oklahoma, drainage from the facility flows Southwest approximately 800 feet into an unnamed tributary of Coal Creek; thence approximately two miles South to Coal Creek; thence approximately two and a half miles North to Deep Fork River ("the facilities").

7. Each 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.

8. Coal Creek and the Deep Fork River are navigable waters of the United States within the meaning of 40 CFR § 112.2, and Section 502(7) of the Act, 33 U.S.C. § 1362(7).

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

10. Each 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.

11. Each 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.

12. Each 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").

13. Pursuant to the Act, E.O. 12777, and 40 CFR § 112.1 Respondent, as the owner and/or operator of an SPCC-regulated facility, is subject to the SPCC regulations.

14. Respondent is the owner and/or operator of an onshore facility within the meaning of Section 311(a)(10) of the Act, 33 U.S.C. §1321(a)(10), which is located in Section 22, Township 12N, Range 13E, on the Deep Fork NWR, in Okmulgee County, Oklahoma ("facility").

15. Section 311(b)(3) of the Act 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 environment of the United States.

16. 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 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.

17. On September 18, 2009, the Acting Regional Administrator, for EPA Region 6 ("Complainant") issued an Administrative Complaint pursuant to Section 311(b)(6)(B)(ii) of the Clean Water Act ("Act"), 33 U.S.C. §1321(b)(6)(B)(ii), **Docket No. CWA-06-2009-4853**, alleging that the Respondent was in violation of the SPCC regulations and proposing a civil penalty in an amount not to exceed \$16,000 per violation, up to a maximum of \$177,500. As set

forth in the Administrative Complaint and below, Complainant alleges and Respondent neither admits or denies that:

ALLEGATIONS

COUNT 1: Bartolina Lease Tank Battery; Failure to prepare an adequate SPCC plan in accordance with 40 CFR § 112.3(a)

18. Paragraphs 1 through 17 above are hereby incorporated by reference.

19. 40 CFR § 112.3 requires that the owner or operator of an SPCC-regulated facility must prepare a written SPCC plan in accordance with 40 CFR § 112.7 and any other applicable section of 40 CFR Part 112.

20. On October 31, 2007 and December 19, 2008, EPA inspected the facility and found that Respondent had prepared an SPCC plan that was not in accordance with 40 CFR § 112.7.

Specific inadequacies are described below:

- a). No management approval of the plan, as required in 40 CFR § 112.7.
- b). Inadequate information and procedures for reporting discharges, as required in 40 CFR § 112.7(a)(4).

21. Respondent's failure to prepare an SPCC plan for the facility in accordance with 40 CFR § 112.7 violated 40 CFR § 112.3. Respondent has violated these requirements for each day, at least 1759 days, during the period from November 5, 2004 through present, in violation of 40 CFR § 112.3.

22. As alleged in the preceding Paragraph, and pursuant to Section 311(b)(6)(B)(ii) of the Act and 40 CFR § 19.4, the Respondent is liable for civil penalties of up to \$16,000 per day for each day during which the violation continues, up to a maximum of \$177,500.

COUNT 2: Bartolina Lease Tank Battery; Failure to amend SPCC plan as required in 40 CFR § 112.5(a)

23. Paragraphs 1 through 17 above are hereby incorporated by reference.

24. 40 CFR § 112.5(a) requires the owner or operator of an SPCC-regulated facility to amend the SPCC plan in accordance with the general requirements of 40 CFR § 112.7 and with any specific section of the SPCC regulations applicable to the facility within six months following a change in the facility's design, construction, operation or maintenance which materially affects its potential for a discharge as described in 40 CFR § 112.1(b).

25. Between the dates of November 5, 2004 and October 31, 2007, Respondent changed the facility's operation, and/or maintenance in a manner which materially affected its potential for a discharge as described in 40 CFR § 112.1(b) by changing the owner/operator and responsible official, through purchase of the company. The changes caused the information and procedures in the SPCC Plan no longer relevant and seriously impacted the ability to prevent or respond to a discharge.

26. On October 31, 2007 and December 19, 2008, EPA inspected the facility and found that Respondent had failed to amend the SPCC plan in accordance with the general requirements

of 40 CFR § 112.7 and with any specific section of the SPCC regulations applicable to the facility within six months following this change.

27. Respondent's failure to amend the SPCC plan in accordance with the general requirements of 40 CFR § 112.7 and with any specific section of the SPCC regulations applicable to the facility within six months following this change violated 40 CFR § 112.5(a). Respondent has violated these requirements for each day, at least 670 days, during the period from October 31, 2007, to present in violation of 40 CFR § 112.5(a).

28. As alleged in the preceding Paragraph, and pursuant to Section 311(b)(6)(B)(ii) of the Act and 40 CFR § 19.4, the Respondent is liable for civil penalties of up to \$16,000 per day for each day during which the violation continues, up to a maximum of \$177,500.

COUNT 3: Bartolina Lease Tank Battery; Failure to implement the SPCC Plan in accordance with 40 CFR § 112.7 and any other applicable section under 40 CFR Part 112, as required by 40 CFR § 112.3

29. Paragraphs 1 through 17 are hereby incorporated by reference.

30. 40 CFR § 112.3 requires that the owner or operator of an SPCC-regulated facility must have fully implemented their SPCC plan in accordance with 40 CFR § 112.7 and any other applicable section of 40 CFR Part 112.

31. During the October 31, 2007 and December 19, 2008, inspections, EPA found that Respondent had also failed to adequately implement its SPCC Plan for the facility by:

- a). failing to remove accumulated oil on the rainwater and return it to storage or dispose of it in accordance with legally approved methods in accordance with 40 CFR 112.9(b);
- b). failing to regularly inspect field drainage systems and/or promptly remove oil in accordance with 40 CFR § 112.9(b);
- c). failing to conduct inspections and maintain documentation of required inspections of the tanks, piping, valves, supports, and other facility equipment, in accordance with written procedures developed for the facility, as required at 40 CFR § 112.7(c) and 112.9(d);
- d). failing to provide required training and discharge prevention procedures for oil handling personnel, as required at 40 CFR § 112.7(f);
- e). failing to implement the required Flowline Maintenance program, as required at 40 CFR § 112.9(d)(3);
- f). failing to provide dikes, berms, or retaining walls (secondary containment) sufficiently impervious to contain oil, as required by 40 CFR § 112.7(c)(1)(i).

32. Respondent's failure to fully implement its SPCC plan for the facility, as described in the preceding Paragraphs, violated 40 CFR § 112.3. Respondent has violated these requirements for each day, at least 670 days, during the period from October 31, 2007, through present, in violation of 40 CFR § 112.3.

33. As alleged in the preceding Paragraph, and pursuant to Section 311(b)(6)(B)(ii) of the Act and 40 CFR § 19.4, the Respondent is liable for civil penalties of up to \$16,000 per day for each day during which the violation continues, up to a maximum of \$177,500.

COUNT 4: Doneghy Lease Tank Battery; Failure to prepare an adequate SPCC plan in accordance with 40 CFR § 112.3(a)

34. Paragraphs 1 through 17 above are hereby incorporated by reference.

35. 40 CFR § 112.3 requires that the owner or operator of an SPCC-regulated facility must prepare a written SPCC plan in accordance with 40 CFR § 112.7 and any other applicable section of 40 CFR Part 112.

36. On October 31, 2007 and December 19, 2008, EPA inspected the facility and found that Respondent had prepared an SPCC plan that was not in accordance with 40 CFR § 112.7. Specific inadequacies are described below:

- a). No management approval of the plan, as required in 40 CFR § 112.7.
- b). Inadequate information and procedures for reporting discharges, as required in 40 CFR § 112.7(a)(4).

37. Respondent's failure to prepare an SPCC plan for the facility in accordance with 40 CFR § 112.7 violated 40 CFR § 112.3. Respondent has violated these requirements for each day, at least 1590 days, during the period from November 5, 2004 through March 30, 2009, in violation of 40 CFR § 112.3.

38. As alleged in the preceding Paragraph, and pursuant to Section 311(b)(6)(B)(ii) of the Act and 40 CFR § 19.4, the Respondent is liable for civil penalties of up to \$16,000 per day for each day during which the violation continues, up to a maximum of \$177,500.

COUNT 5: Doneghy Lease Tank Battery; Failure to amend SPCC plan as required in 40 CFR § 112.5(a)

39. Paragraphs 1 through 17 above are hereby incorporated by reference.

40. 40 CFR § 112.5(a) requires the owner or operator of an SPCC-regulated facility to amend the SPCC plan in accordance with the general requirements of 40 CFR § 112.7 and with any specific section of the SPCC regulations applicable to the facility within six months following a change in the facility's design, construction, operation or maintenance which materially affects its potential for a discharge as described in 40 CFR § 112.1(b).

41. Between the dates of November 5, 2004 and October 31, 2007, Respondent changed the facility's operation, and/or maintenance in a manner which materially affected its potential for a discharge as described in 40 CFR § 112.1(b) by changing the owner/operator and responsible official, through purchase of the company. The changes caused the information and procedures in the SPCC Plan no longer relevant and seriously impacted the ability to prevent or respond to a discharge.

42. On October 31, 2007 and December 19, 2008, EPA inspected the facility and found that Respondent had failed to amend the SPCC plan in accordance with the general requirements of 40 CFR § 112.7 and with any specific section of the SPCC regulations applicable to the facility within six months following this change.

43. Respondent's failure to amend the SPCC plan in accordance with the general requirements of 40 CFR § 112.7 and with any specific section of the SPCC regulations applicable to the facility within six months following this change violated 40 CFR § 112.5(a). Respondent has violated these requirements for each day, at least 454 days, during the period from October 31, 2007, to March 30, 2009, in violation of 40 CFR § 112.5(a).

44. As alleged in the preceding Paragraph, and pursuant to Section 311(b)(6)(B)(ii) of the Act and 40 CFR § 19.4, the Respondent is liable for civil penalties of up to \$16,000 per day for each day during which the violation continues, up to a maximum of \$177,500.

COUNT 6: Doneghy Lease Tank Battery; Failure to implement the SPCC Plan in accordance with 40 CFR § 112.7 and any other applicable section under 40 CFR Part 112, as required by 40 CFR § 112.3

45. Paragraphs 1 through 17 are hereby incorporated by reference.

46. 40 CFR § 112.3 requires that the owner or operator of an SPCC-regulated facility must have fully implemented their SPCC plan in accordance with 40 CFR § 112.7 and any other applicable section of 40 CFR Part 112.

47. During the October 31, 2007 and December 19, 2008, inspections, EPA found that Respondent had also failed to adequately implement its SPCC Plan for the facility by:

- a). failing to remove accumulated oil on the rainwater and return it to storage or dispose of it in accordance with legally approved methods in accordance with 40 CFR 112.9(b);
- b). failing to regularly inspect field drainage systems and/or promptly remove oil in accordance with 40 CFR § 112.9(b);
- c). failing to conduct inspections maintain documentation of required inspections of the tanks, piping, valves, supports, and other facility equipment, in accordance with written procedures developed for the facility, as required at 40 CFR § 112.7(e) and 112.9(d);
- d). failing to provide required training and discharge prevention procedures for oil handling personnel, as required at 40 CFR § 112.7(f);
- e). failing to implement the required Flowline Maintenance program, as required at 40 CFR § 112.9(d)(3);

f). failing to provide dikes, berms, or retaining walls (secondary containment) sufficiently impervious to contain oil, as required by 40 CFR § 112.7(c)(1)(i).

48. Respondent's failure to fully implement its SPCC plan for the facility, as described in the preceding Paragraphs, violated 40 CFR § 112.3. Respondent has violated these requirements for each day, at least 454 days, during the period from October 31, 2007, through March 31, 2009, in violation of 40 CFR § 112.3.

49. As alleged in the preceding Paragraph, and pursuant to Section 311(b)(6)(B)(ii) of the Act and 40 CFR § 19.4, the Respondent is liable for civil penalties of up to \$16,000 per day for each day during which the violation continues, up to a maximum of \$177,500.

COUNT 7: Discharge of Oil into or upon Waters of the US and its adjoining shoreline.

50. Paragraphs 1 through 17 are hereby incorporated by reference.

51. On October 27, 2007, Respondent discharged 1 barrel 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 a wetland area immediately adjacent to the Deep Fork of the Canadian River and adjoining shorelines.

52. The Deep Fork of the Canadian River is a water body 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 CFR §110.1.

53. Respondent's October 27, 2007, discharge of oil from its facility caused a sheen upon or discoloration of the surface of the wetland area immediately adjacent to the Deep Fork of the Canadian River and 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.

54. As alleged in the preceding Paragraph, and pursuant to Section 311(b)(6)(B)(ii) of the Act and 40 CFR § 19.4, the Respondent is liable for civil penalties of up to \$11,000 per day, up to a maximum of \$157,500.

COUNT 8: Discharge of Oil into or upon Waters of the US and its adjoining shoreline.

55. Paragraphs 1 through 17 are hereby incorporated by reference.

56. On March 14, 2009, Respondent discharged 5 barrel 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 Coal Creek and adjoining shorelines.

57. Coal Creek is a perennial water body 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 CFR §110.1.

58. Respondent's March 14, 2009, discharge of oil from its facility caused a sheen upon or discoloration of the surface of Coal Creek and 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.

59. As alleged in the preceding Paragraph, and pursuant to Section 311(b)(6)(B)(ii) of the Act and 40 CFR § 19.4, the Respondent is liable for civil penalties of up to \$16,000 per day, up to a maximum of \$177,500.

Waiver of Rights

60. The Respondent waives the right to a hearing under Section 311(b)(6)(B)(ii) of the Act, 33 U.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 consents to the issuance of a Final Order without further adjudication.

Penalty

61. Respondent consents to the assessment of a civil penalty of **\$24,000.00**.

Payment Terms

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

62. The Respondent shall pay to the United States a civil penalty in the amount of **\$24,000.00**, to settle the violations as alleged in the CAFO, in accordance with 40 C.F.R. 22.18(c). The Respondent shall make monthly installment payments of **\$1,010.45** per month, which includes principle and interest, for 24 months. The first payment must be made within thirty (30) days after the effective date of this CAFO, and each subsequent payment will be due on the 15th day of each month. The Respondent shall submit this Consent Agreement and Final Order, with original signature, and documentation of the initial penalty payment to:

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

63. The payments shall be made by a cashier's or certified check, or by an electronic funds transfer (EFT). If you are paying by check, pay the check to "Environmental Protection Agency," noting on the check "OSTLF-311" and docket number **CWA-06-2009-4853**. 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, 1005 Convention Plaza, Mail Station SL-MO-C2GL, St. Louis, MO 63101" The Respondent shall submit copies of the checks to the following person:

Lorena Vaughn
Regional Hearing Clerk (6RC)
U.S. Environmental Protection Agency
Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

64. Failure by the Respondent to pay any portion of the penalty assessed by the Final Order, 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


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

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

67. 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 alleged in the Administrative Complaint.

TARWATER OIL & GAS, LLC

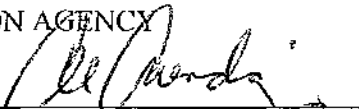
Date: 3/23/10


William F. Elder
Manager

Date: _____

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 4/13/2010


Al Armendariz
Regional Administrator

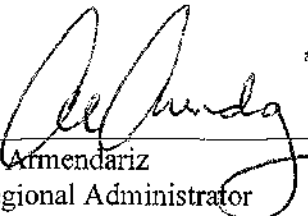
FINAL ORDER

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 the 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:

4/13/2010



Al Armendariz
Regional Administrator

CERTIFICATE OF SERVICE

I certify that the original and one true and correct copy of the foregoing "Consent Agreement and Final Order" issued pursuant to 40 CFR 22., was sent on this 14 day in April, 2010, by certified mail, return receipt requested, to:

Certified Mail Number:

7009 1682 0002 2887 1236

William F. Elder
Manager
Tarwater Oil and Gas, LLC
P.O. Box 130
Bull Shoals, AR 72619

Certified Mail Number:


7009 1682 0002 2887 1243

Clifford K. Cate, Jr., P.C.
Attorney
P.O. Box 2669
Muskogee, OK 74402-2669

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Frankie Markham