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REGION 6

REGIONAL HEA SUPERVISOR
EPA REGION VI

IN THE MATTER OF

**Dune Operating Company
Galveston County, TX**

Respondent.

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

Docket No. CWA-06-2013-4851

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)(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 CFR §§ 22.13(b) and 22.18(b)(2). The Administrator has delegated these authorities to the Regional Administrator of EPA, Region 6, Delegation No. 2-52-A, dated May 11, 1994 and Delegation No. R6-2-52-A, dated January 31, 2008 ("Complainant").

CONSENT AGREEMENT

SPCC Stipulations

The parties, in their own capacity or by their attorneys or other authorized representatives, 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 promulgated the Spill Prevention Control & Countermeasure (SPCC) regulations pursuant to delegated statutory authorities, and pursuant to its authorities under the Clean Water Act, 33 USC § 1251 *et seq.*, which established certain procedures, methods and other requirements upon 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 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 Corporation conducting business in the State of Texas with a place of business located at 777 Walker Street Suite 2300, Houston, Texas 77002. 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 onshore oil production facility, the Huff "A" Tank Battery, which is located in Galveston County, Texas ("the facility"). Drainage from the facility flows, North and West, to Highland Bayou; thence to Jones Bay.

8. The facility has an aggregate above-ground storage capacity of greater than 1320 gallons (approx. 144,270 gallons) of oil in containers each with a shell capacity of at least 55 gallons.

9. Highland Bayou and Jones Bay are navigable waters of the United States as defined in Section 502(7) of the Act, 33 U.S.C. §1362(7), 40 CFR §110.1 and 40 CFR §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. According to information provided, the facility began operating in the early 1960s.

SPCC Allegations

16. 40 CFR § 112.3 requires that the owner or operator of an SPCC-regulated facility must prepare a SPCC plan in writing, and implement that plan in accordance with 40 CFR § 112.7 and any other applicable section of 40 CFR Part 112.

17. On March 23, 2012, EPA inspected the facility and found that Respondent had failed to fully implement its SPCC plan for the facility. Respondent failed to fully implement such an SPCC plan for the facility as follows:

- a. Plan does not discuss facility's reportable discharge in accordance with 40 CFR § 112.4(a)(c).
- b. Plan does not follow sequence of the rule or is not an equivalent Plan meeting all applicable rule requirements and does not include an adequate cross reference of provisions; specifically plan did not address sections 112.3-112.5 in accordance with 40 CFR § 112.7.
- c. Facility diagram does not adequately address the location or identification of key pieces of facility equipment in accordance with 40 CFR § 112.7(a)(3).
- d. Facility failed to conduct inspections and tests as required by written procedures, failed to have record of inspections or test signed in the field by supervisor or inspector and failed to keep with plan for at least 3 years in accordance with 40 CFR § 112.7(e).
- e. Plan does not discuss conformance with applicable more stringent State rules regulations and guidelines and containment procedures in accordance with 40 CFR § 112.7(j).
- f. Inspections for flow through processing vessels and associated components are not periodically scheduled for visual inspections nor are they tested for leaks, corrosion or other conditions in accordance with 40 CFR § 112.9(c)(5)(i).
- g. Produced water containers and associated piping were not visually inspected on a regular bases for leaks, corrosion, or other condition in accordance with 40 CFR § 112.9(c)(6)(ii).

Spill Stipulations

18. 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.

19. 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

20. On March 21, 2012, Respondent discharged approximately 228 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 Highland Bayou and its adjoining shorelines.

21. Respondent's March 21, 2012, discharge of oil from its facility caused a sheen upon or discoloration of the surface of Highland Bayou, and therefore, was in a quantity that has been determined may be harmful under 40 CFR§110.3, which implements Sections 311(b)(3) and (b)(4) of the Act.

22. Respondent's March 21, 2012, discharge of oil from its facility into or upon Highland Bayou 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

23. Respondent admits the jurisdictional allegations set forth above and neither admits nor denies the other specific violations alleged above. Respondent waives the right to a hearing under Section 311(b)(6)(B)(i) of the Act, 33 U.S.C. § 1321(b)(6)(B)(i), 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

24. The Complainant proposes, and Respondent consents to, the assessment of a civil penalty of **\$41,000.00**.

Payment Terms

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

25. 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.

26. The Respondent shall pay to the United States a civil penalty in the amount of **\$41,000.00**, to settle the violations as alleged in the CAFO, in accordance with 40 C.F.R. 22.18(c). Payment must be made within thirty (30) days after the effective date of this CAFO, 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-06-2013-4851. 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

27. Failure by the Respondent to pay any portion of the penalty assessed by the Final Order in 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

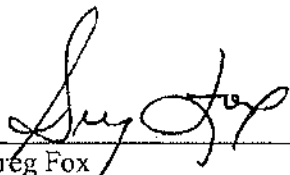
28. Complainant reserves the right, pursuant to 40 CFR § 22.45(c)(4)(iii), to withdraw this Consent Agreement and proposed Final Order within 15 days of receipt of a Commenter's petition requesting, pursuant to 40 CFR § 22.45(c)(4)(ii), that the Regional Administrator set aside the Consent Agreement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

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

30. 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.

DUNE OPERATING COMPANY

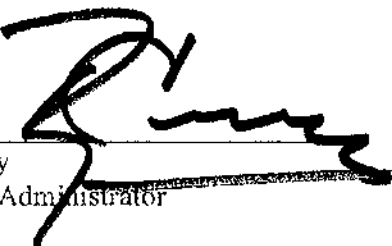
Date: 1/17/13



Greg Fox
Senior V.P. Operations

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 2/12/13



Ron Curry
Regional Administrator

FINAL ORDER

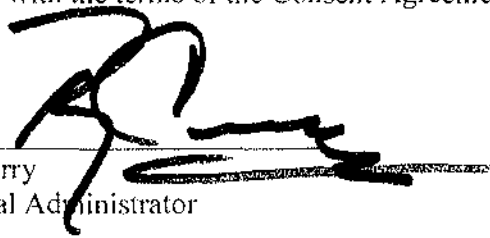
Pursuant to Section 311(b)(6) of the Act, 33 U.S.C. §1321(b)(6) and the delegated authority of the undersigned, and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, 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 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:

4/5/2013

Ron Curry
Regional Administrator




Docket No. CWA-06-2013-4851

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 April 8, 2013, 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:
7009 1680 0002 2886 9578

NAME: Greg Fox
ADDRESS: Dune Energy
777 Walker Street, Suite 2300
Houston, Texas 77702


Frankie Markham
OPA Enforcement Administrative Assistant