FILED UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

2010 JUN 30 AM 10: 01

REGIONAL HEARING CLERK
EPA REGION VI

REGION 6

IN THE MATTER OF **LPD Energy Company, L.L.C.** **Creek County, Oklahoma** Respondent.	**CWA SECTION 311 CLASS I CONSENT AGREEMENT AND FINAL ORDER UNDER 40 CFR § 22.13(b)** Docket No. **CWA-06-2010-4807**

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 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

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 USC § 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 USC § 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 USC § 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 Limited Liability Company conducting business in the State of Oklahoma, with a place of business located at 1743 East 71st Street, Tulsa, Oklahoma 74136-5108, and 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 USC § 1321(a)(6), and 40 CFR § 112.2 of an onshore oil production facility, the Baby Crow/Shelton Ponder Dutcher Sand Unit, located in Section 34, Township 17N, Range 10E, Creek County, Oklahoma ("the facility"), drainage travels approximately 500 feet to the West where it enters an unnamed tributary of Polecat Creek; thence to Polecat Creek; thence to the Arkansas River; thence to the Verdigris River.

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. Facility capacity is approximately 94,752 gallons.

9. Polecat Creek, the Arkansas River & the Verdigris River are navigable waters of the United States within the meaning of 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 USC § 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 CFR § 112.1 Respondent, as the owner of an SPCC-regulated facility, is subject to the SPCC regulations.

15. The facility began operating before August 16, 2002. Information provided indicates the facility began operation in 1980.

Allegations

EPA alleges and Respondent admits the jurisdictional allegations set forth and neither admits nor denies that:

COUNT 1: Failure to prepare a SPCC plan that meets the requirements of 40 CFR § 112.7 and other applicable section, as required in 40 CFR § 112.3

16. Paragraphs 1 through 15 above are hereby incorporated by reference.

17. 40 CFR § 112.3 requires that the owner or operator of an SPCC-regulated facility must prepare a SPCC plan in writing, and in accordance with 40 CFR § 112.7 and any other applicable section of 40 CFR Part 112.

18. On December 17, 2009, EPA inspected the facility and found that Respondent had failed to prepare a SPCC plan that was fully in accordance with 40 CFR § 112.7 and other applicable sections, for the facility. Respondent's SPCC plan deficiencies are as follows:

a. **The SPCC Plan had an inadequate description of all the storage tanks and the type of oil in each. Specifically, the plan did not include an adequate description of the gun barrel/separator or the "French Drain" system, in accordance with 40 CFR § 112.7(a)(3).**

b. The Plan has inadequate discussion of Inspections and Tests required by 40 CFR § 112, in accordance with 40 CFR § 112.7(e). Specifically, the plan lacked record retention requirement.

c. The Plan has inadequate discussion of oil production facilities, in accordance with 40 CFR § 112.7(j), and as required by with 40 CFR § 112.9(d)(2). Specifically, the plan did not adequately address the adjacent salt water disposal well and requisite inspection protocol.

d. The Plan has inadequate flow line maintenance program, as required by with 40 CFR § 112.9(d)(3).

19. Respondent's failure to fully implement their SPCC plan for the facility violated 40 CFR § 112.3, and impacted their ability to prevent a spill.

COUNT 2: Failure to fully implement their SPCC plan as required in 40 CFR § 112.3

20. Paragraphs 1 through 15 above are hereby incorporated by reference.

21. 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.

22. On December 17, 2009, EPA inspected the facility and found that Respondent had failed to fully implement their SPCC plan for the facility. Respondent failed to fully implement such an SPCC plan for the facility as follows:

a. Respondent failed to adequately inspect containers, including tank foundations and supports, for deterioration and maintenance needs, as well as saltwater disposal facilities, on a periodic and regularly scheduled basis, as required at 40 CFR § 112.9(c)(3) & 40 CFR § 112.9(d)(2).

b. Respondent failed to maintain the requisite inspection documentation, in accordance with written procedures developed for the facility, as required at 40 CFR § 112.7(e).

23. Respondent's failure to fully implement their SPCC plan for the facility violated 40 CFR § 112.3, and impacted their ability to prevent a spill.

Waiver of Rights

28. 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

29. The Complainant proposes, and Respondent consents to, the assessment of a civil penalty of **$2,250.00**.

Payment Terms

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

30. Within thirty (30) days of the effective date of the Final Order, the Respondent shall pay the amount of **$2,250.00** by means of a cashier's or certified check, or by electronic funds transfer (EFT). The Respondent shall submit this Consent Agreement and Final Order, with original signature, along with documentation of the penalty payment to:

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

- If you are paying by check, pay the check to "Environmental Protection Agency," noting on the check **"OSTLF-311"** and docket number **CWA-06-2010-4807**. 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 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

31. 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 USC §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

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

33. The Final Order does not constitute a waiver, suspension or modification of the requirements of Section 311 of the Act, 33 USC §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.

LPD Energy Company, LLC

Date: 6-21-10

Phil Williams

Phil Williams
Operations Manager

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 6-29-10

Mark A. Hansen
Acting Associate Director
Prevention & Response Branch
Superfund Division

FINAL ORDER

Pursuant to Section 311(b)(6) of the Act, 33 USC §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: 6/29/10

Pamela Phillips, Acting
Samuel Coleman, P.E.
Director
Superfund Division

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 22.13(b), was sent on this 29 day in June 2010, by certified mail, return receipt requested, to:

Certified Mail #:

Mr. Phil Williams
Operations Manager
LPD Energy Company, L.L.C.
Southbridge Office Park
1743 East 71st Street
Tulsa, Oklahoma 74136-5108

Frankie Markham
Frankie Markham