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REGIONAL HEARING CENTER  
EPA REGION VI

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6

IN THE MATTER OF  
  
**Stolthaven New Orleans, L.L.C.  
Plaquemines, LA**  
  
Respondent.

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

Docket No. CWA-06-2015-4853

**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 Louisiana with a place of business located at 2444 English Turn Road, Braithwaite, Louisiana 70040. 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 bulk liquid terminal facility, Stolthaven New Orleans, L.L.C., which is located in Plaquemines Parish, Louisiana ("the facility"). On the eastern banks of the Mississippi River.

8. The facility has an aggregate above-ground storage capacity of greater than 1320 gallons (approx. 418,236 gallons) of oil in containers each with a shell capacity of at least 55 gallons.

9. The Mississippi River is 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 January 2001.

**COUNT 1: SPCC Allegations. 40 § CFR 112**

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.

**SPCC Allegations**

17. On November 15, 2012, EPA inspected the facility and found that Respondent had failed to comply with SPCC requirements for the facility as follows:

- a. Respondent's plan failed to adequately provide the type of oil for each fixed container in accordance with 40 CFR § 112.7(a)(3)(i);
- b. Respondent's plan failed to provide a description of discharge prevention measures in accordance with 40 CFR § 112.7(a)(3)(ii);
- c. Respondent's plan does not discuss the specific direction, rate of flow, or quantity of oil that could be discharged for each type of major discharge in accordance with 40 CFR § 112.7(b);
- d. Respondent failed to conduct facility inspections and tests in accordance with written procedures in accordance with 40 CFR § 112.7(e);
- e. Respondent's plan failed to address brittle fracture in accordance with 40 CFR § 112.7(i);
- f. Respondent's plan does not address and the facility does not inspect drainage released directly to a watercourse in accordance with 40 CFR § 112.8(b)(2);
- g. Respondent failed to inspect retained rainwater to ensure that its presence will not cause a discharge in accordance with 40 CFR § 112.8(c)(3);

- h. Respondent's plan does not address and failed to have bypass valve opened and resealed under responsible supervision in accordance with 40 CFR § 112.8(c)(3);
- i. Respondent fail to address in plan and fail to maintain adequate records of drainage in accordance with 40 CFR § 112.8(c)(3);
- j. Respondent's plan fail to discuss the testing and inspection of each aboveground container for integrity on a regular schedule and whenever material repairs are made in accordance with 40 CFR § 112.8(c)(6);
- k. Respondent's plan fail to discuss inspections of aboveground valves, piping, and appurtenances in accordance with 40 CFR § 112.8(d)(4);
- l. Respondent's plan failed to reference the schedule for testing of each tank in accordance with 40 CFR § 112.8(c)(6);
- m. Respondent's plan fail to address if container supports and foundations are inspected regularly in accordance with 40 CFR § 112.8(c)(6);
- n. Respondent's plan fail to discuss heating coils in accordance with 40 CFR § 112.8(c)(7);
- o. Respondent's plan fail to discuss mobile and portable tanks that are located at facility in accordance with 40 CFR § 112.8(c)(11);
- 18. Respondent's failure to adequately develop and fully implement its SPCC plan for the facility violated 40 CFR § 112.3(b).

**Count 2: FRP Stipulations, 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 1 million gallons and the facility is located at a distance (as calculated using the appropriate formula in 40 CFR § 112, Appendix C or a comparable formula) such that a discharge from the facility would significantly impact the Mississippi River.

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 facility began operation after August 30, 1994.

27. It is stipulated that pursuant to Section 311(j)(5) of the Act and 40 CFR § 112.20(a)(2)(ii), the owner or operator of an FRP-regulated facility in operation after August 30, 1994, must prepare and submit a facility response plan (FRP) that satisfies the requirements



of Section 311(j)(5) prior to the start of operations.

**FRP Allegations**

28. On November 15, 2012, EPA inspected the facility and found that Respondent had failed to comply with FRP requirements for the facility as follows:

- a. Respondent failed to provide a response plan cover sheet in accordance with 40 CFR § 112.20(h)(11);
- b. Respondent failed to provide an emergency response action plan (ERAP) in accordance with 40 CFR § 112.20(h)(1);
- c. Respondent failed to provide an evacuation plan in accordance with 40 CFR § 112.20(h)(3)(vii);
- d. Respondent failed to conduct a vulnerability analysis of sensitive environments in accordance with 40 CFR § 112.20(h)(4);
- e. Respondent failed to provide discussion of the worst case discharge (WCD) response planning in accordance with 40 CFR § 112.20(h)(5);
- f. Respondent failed to provide discussion on discharge detection systems in accordance with 40 CFR § 112.20(h)(1);

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

**Waiver of Rights**

30. Respondent admits the jurisdictional allegations set forth above and neither admits nor denies the specific violations alleged in Paragraphs 17-18 and 28-29 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**

31. The Complainant proposes, and Respondent consents to, the assessment of a civil penalty of **\$60,000.00**.

**Payment Terms**

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

32. 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.

33. The Respondent shall pay to the United States a civil penalty in the amount of **\$60,000.00**, 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-06-2015-4853**. 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  
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

34. 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**

35. 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.

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

37. 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.

**Stolthaven New Orleans, L.L.C.**

Date: 3/23/16

  
\_\_\_\_\_  
Captain Phillip Watt  
Terminal Manager

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 4/22/2016

  
\_\_\_\_\_  
Ron Curry  
Regional Administrator



**FINAL ORDER**

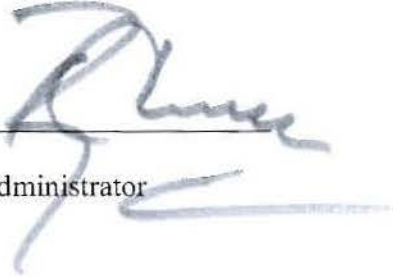
Pursuant to Section 311(b)(6) of the Act, 33 U.S.C. §1321(b)(6) and the delegated authority of the undersigned, and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation,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

6/13/2016

\_\_\_\_\_  
Ron Curry  
Regional Administrator

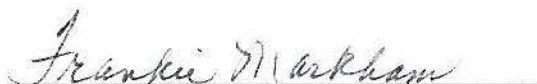


**CERTIFICATE OF SERVICE**

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 6-14, 2016, 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:  
7012 3460 0002 4092 8754

NAME: Captain Phillip Watt  
ADDRESS: 2444 English Turn Road  
Braithwaite, LA 70040



Frankie Markham  
OPA Enforcement Administrative Assistant