

FIL UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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REGION 6

REGIONAL HEARING CLERK
EPA REGION VI

IN THE MATTER OF

**AMRECO LLC
(Martin Berry Lease)
Union County, Arkansas**

Respondent.

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

Docket No. CWA-06-2007-4810

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:

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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 vessels and from onshore facilities and offshore 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 or off-shore 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").

6. 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.

7. Respondent is a limited liability company conducting business in Union County, Arkansas, 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.

8. 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 Martin and Berry Lease Tank Battery, located in Union County, Arkansas ("the facility"). Drainage from the facility flows South approximately 3000 feet to Smackover Creek.

9. 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.

10. Smackover Creek is a navigable water of the United States within the meaning of 40 CFR § 112.2.

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

12. 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.

13. 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

14. 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").

15. 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.

16. The facility began operations, and the Respondent began operating the facility at an unknown date prior to August 16, 2002.

Allegations

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

COUNT 1: Failure to prepare a written SPCC plan in accordance with 40 CFR § 112.7 and any other applicable section of 40 CFR Part 112, as required in 40 CFR § 112.3

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

18. 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.

19. On March 26, 2007, EPA inspected the facility and found that Respondent had an SPCC plan for the facility that was not in accordance with the requirements of 40 CFR § 112.7 and other applicable sections of 40 CFR Part 112. Specifically, Respondent's SPCC plan was not certified by a professional engineer in accordance with 40 CFR § 112.3(d);

20. Respondent's failure to prepare an adequate SPCC plan for the facility violated 40 CFR § 112.3, and impacted its ability to prevent a spill.

COUNT 2: Failure to prepare a written SPCC plan in accordance with 40 C.F.R. § 112.7 and any other applicable section 40 CFR Part 112, as required by 40 CFR § 112.3, to wit: Failure to document five-year review of the plan pursuant to 40 CFR § 112.5(b).

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

22. 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.

23. On March 26, 2007, EPA inspected the facility and found that Respondent had an SPCC plan for the facility that was not in accordance with the requirements of 40 CFR § 112.7 and any other applicable section of 40 CFR Part 112. Specifically, there is no documentation of a five-year review of the SPCC plan in accordance with 40 CFR § 112.5(b).

24. Respondent's failure to prepare an SPCC plan for the facility in accordance with the requirements of 40 CFR § 112.7 violated 40 CFR § 112.3.

Waiver of Rights

25. 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

26. The Complainant proposes, and Respondent consents to, the following:
- a. Submit within thirty (30) days after the effective date of this Final Order a Report with accompanying documentation detailing the measures taken to address the violations listed above. Such documentation shall include but not be limited to plans, receipts (such as receipts for the purchase and/or rental of equipment), affidavits from any employees or contractors hired to perform work to address the violations, log books of work performed to address the violations, photographs of the facility taken within thirty (30) days after the

effective date of this Final Order, and any other documentation detailing the measures taken to address the violations. The Report and accompanying documentation shall be submitted to Bryant Smalley at the U.S. EPA Region 6, 6SF-PE, 1445 Ross Ave., Dallas, TX 75202 along with a certification that states as follows:

“Under penalty of law, I certify that to the best of my knowledge, after appropriate inquiries of all relevant persons, if any, involved in the preparation of the Report, the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

- b. When EPA determines, after EPA’s review of the Report and accompanying documentation, that Respondent has corrected each of the violations listed above, EPA will provide written notice to Respondent.
- c. Within thirty (30) days after EPA’s notice of determination that Respondent has corrected each of the violations listed above, Respondent consents to the assessment and payment of a civil penalty of **\$17,000.00**.
- d. If Respondent fails to submit the Report and accompanying documentation within thirty (30) days after the effective date of this Final Order or within any extension of time granted by EPA to submit such Report and documentation, or if the EPA, in its sole discretion after review of the Report and documentation, determines that Respondent has failed to correct each of the violations listed

above, Respondent consents to the assessment and payment of a civil penalty of \$32,500.00.

Payment Terms

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

27. Within thirty (30) days after receipt of EPA's notice of its determination that each violation has been corrected, Respondent shall pay the amount of \$17,000.00 by means of a cashier's or certified check, or by electronic funds transfer (EFT). If Respondent fails to submit the Report and documentation within thirty (30) days after the effective date of this Final Order or within the time prescribed pursuant to any extension of time granted by EPA, or if EPA determines, in its sole discretion after review of the Report and documentation that Respondent has failed to correct each violation listed above, Respondent shall pay the amount of \$32,500.00 no later than thirty (30) days after receipt of EPA's notice that Respondent either failed to submit the Report and documentation or failed to correct each of the violations listed above. The Respondent shall submit this Consent Agreement and Final Order, with original signature, as well as future penalty payment documentation 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-06-2010-4811. 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

28. 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

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

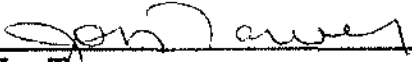
30. The Final Order does not constitute a waiver, suspension or modification of the requirements of Section 311 of the Act, 33 USC §1321, or any regulations promulgated thereunder, and does not affect the right of the Administrator or the United States to pursue any

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.


AMRECO, LLC

Date: Sept 23, 2011


Jon Tarver

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 10/12/2011



Robert R. Broyles
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: 10/11/11

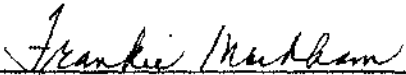

Samuel Coleman, P.E.
Director
Superfund Division

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 7 day in Nov., 2011, by certified mail, return receipt requested, to:

Certified Mail #:

Mr. Jon Tarver
AMRECO, LLC
P.O. Box 541
El Dorado, AR 71731



Frankie Markham