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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7

901 NORTH FIFTH STREET
KANSAS CITY, KANSAS 66101

ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF

Tanco Kansas City, LLC

Kansas City, Kansas

Respondent.

ADMINISTRATIVE ORDER ON
CONSENT

Docket No. CWA-07-2010-00-0109

1. This Order is issued pursuant to the authority vested in the U. S. Environmental Protection Agency ("EPA") by Sections 311(c), (e) and (m) of the Clean Water Act ("CWA"), 33 U.S.C. §§ 1321(c), (e) and (m) and Section 308 of the CWA, 33 U.S.C. § 1318. This Order pertains to a substantial threat of a discharge of oil from the Tanco Kansas City, LLC ("Respondent") facility located at 10520 Wolcott Drive Kansas City, Kansas 66109 ("Facility"). Respondent is engaged in storing, processing, and distributing "oil" or oil products (including asphalt) at the Facility.

2. EPA has notified the State of Kansas of this action pursuant to Section 311(e)(1)(B) of the CWA, 33 U.S.C. § 1321(e)(1)(B).

PARTIES

3. The authority to take action under Sections 311(c) and (e) of the CWA, 33 U.S.C. § 1321(c) and (e) is vested in the Administrator of EPA. The Administrator has delegated this authority to the Regional Administrator, EPA, Region 7, who in turn has delegated the authority to the Directors of the Superfund and Air and Waste Management Divisions of EPA, Region 7 (Complainants).

4. Respondent Tanco Kansas City LLC is a limited liability corporation registered and authorized to conduct business in the State of Kansas.

STATUTORY AND REGULATORY FRAMEWORK

Section 311 of the CWA

5. Section 311(j) of the CWA, 33 U.S.C. § 1321(j), provides for the regulation of onshore facilities to prevent or contain discharges of oil. Section 311(j) of the CWA, 33 U.S.C. § 1321(j), provides in part that the President shall issue regulations “establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil and hazardous substances from vessels and from onshore facilities and offshore facilities, and to contain such discharges.”

6. To implement Section 311(j), 33 U.S.C. § 1321(j), EPA promulgated regulations to prevent oil pollution. These regulations, codified at 40 C.F.R. Part 112, set forth the requirements for the preparation and implementation of Spill Prevention Control and Countermeasure Plans (“SPCC Plans”).

7. The requirements of 40 C.F.R. Part 112 apply to owners and operators of non-transportation-related onshore facilities engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using or consuming oil or oil products, which due to their locations, could reasonably be expected to discharge oil in quantities that may be harmful into or upon the navigable waters of the United States or adjoining shorelines.

8. Sections 311(j)(5) of the CWA, 33 U.S.C. § 1321(j)(5), provides that the President shall issue regulations requiring the owner or operator of “an onshore facility that, because of its location, could reasonably be expected to cause substantial harm to the environment by discharging into or upon the navigable waters [or] adjoining shorelines” 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.”

9. Under the authority of Section 311(j)(5) of the CWA, Subparts A and D of 40 C.F.R. Part 112 (“the Facility Response Plan” or “FRP regulations”) require FRP-regulated facilities to prepare a Facility Response Plan as specified in 40 C.F.R. § 112.20(h), and to develop and implement a facility response training program and a drill/exercise program that satisfies the requirements of the regulations (40 C.F.R. § 112.21(a)).

10. Section 311(c) of the CWA provides authority, delegated to EPA, to “direct ... private actions to remove the discharge or to mitigate or prevent the threat of the discharge...” of oil. Section 311(e) of the CWA also provides authority, delegated to EPA, to issue “administrative orders that may be necessary to protect the public health and welfare.”

FINDINGS OF FACT

11. Between 2006 and the present, Respondent was at all relevant times the "owner or operator," within the meaning of Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6) and 40 C.F.R. § 112.2, of a bulk terminal storage facility addressed at 10520 Wolcott Drive, Kansas City, Kansas 66109 (the "Tanco facility," or "Facility").

12. The Tanco facility is directly adjacent to Island Creek which flows directly into the Missouri River.

13. The Facility has a documented storage capacity of 7,424,320 gallons, including an estimated 6,100,000 gallons in tank capacity used for the storage of liquid asphalt, with the remaining capacity divided between storage of sulfuric acid and calcium chloride. Product released from a spill at the facility could reach Island Creek and the Missouri River.

14. On May 12, 2009, EPA conducted a SPCC inspection of the facility. EPA representatives inspected, and/or obtained information about the Facility and observed or concluded that the Facility was not in full compliance with the SPCC and/or FRP regulations at 40 C.F.R. Part 112.

15. During EPA's inspection, EPA documented the following observations of Respondent's non-compliance with SPCC requirements at the facility:

- a. Respondent's SPCC Plan failed to have secondary containment and diversionary structures designed to contain a discharge of the capacity of the largest container plus precipitation, as required by 40 C.F.R. 112.8(c)(2), and 112.12(c)(2);
- b. Respondent's SPCC Plan failed to designate a person as accountable for discharge prevention, as required by 40 C.F.R. 112.7(f)(2);
- c. Respondent failed to conduct integrity testing and/or "brittle fracture evaluation" of tanks after repairs/alterations of such tanks, as required by 40 C.F.R. 112.71(i) and 112.8(c)(6); and
- d. Respondent failed to have each bulk storage tank equipped with a liquid level sensing alarm, as required by 40 C.F.R. 112.12(c)(8).

16. During EPA's inspection, EPA documented the following observations of Respondent's non-compliance with FRP requirements at the facility:

- a. Respondent failed to have an approved FRP, amended and submitted to EPA for approval to reflect Tanco ownership and operation of the facility, as required by 40 C.F.R. 112.20(d)(1).
- b. Respondent failed to have documentation of effective contracts for Oil Spill Removal Organizations (OSRO), as required by as required by 40 C.F.R. Part 112, Appendix E, Section 5.8.

- c. Respondent's facility manager stated Respondent had failed conduct annual spill response drills, as required by 40 C.F.R. 112.21.

17. On or about, January 5, 2010, Respondent submitted an amended FRP to EPA for approval. On or about January 29, 2010, EPA provided comments to Respondent on the amended FRP. On or about April 14, 2010, Respondent submitted a revised FRP to EPA. On July 20, 2010, EPA provided comments on the revised FRP and stated that if the comments were addressed a conditional approval of the FRP would be granted while facility changes were being implemented.

EPA's CONCLUSIONS OF LAW

18. Respondent is a person within the meaning of Sections 311(a)(7) and 502(5) of the CWA, 33 U.S.C. §§ 1321(a)(7) and 1362(5), and 40 CFR §112.2.

19. Island Creek and the Missouri River are each navigable waters of the United States within the meaning of 40 C.F.R. § 112.2.

20. Respondent's Facility is an "onshore facility" within the meaning of Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10), and 40 C.F.R. § 112.2.

21. Respondent's Facility is a "non-transportation-related facility" as defined by Appendix A to 40 C.F.R. Part 112, as incorporated by reference within 40 C.F.R. § 112.2.

22. Asphalt is a form of oil as defined by Section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1) and 40 C.F.R. § 112.2.

23. As the owner and operator of a non-transportation-related facility 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, Respondent is subject to Section 311(j)(5) of the CWA and the SPCC and FRP regulations at 40 C.F.R. Part 112.

24. As evidenced by the absence of full compliance by Respondent's facility with the SPCC and FRP regulations, there exists a substantial threat of a potential "discharge" as defined in Section 311(a)(2) of the CWA, 33 U.S.C. § 1321(a)(2), and 40 C.F.R. § 112.2, into navigable waters of the United States in violation of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3).

25. The substantial threat of a potential discharge from the Facility may pose an imminent and substantial threat to public health or welfare of the United States, including fish and other wildlife, public and private property, shorelines, habitat, and other living and nonliving natural resources under the jurisdiction and control of the United States.

26. The actions required by this Order are necessary to protect the public health and welfare of the United States, including fish and other wildlife, public and private property, shorelines, habitat, and other living and nonliving natural resources under the jurisdiction and control of the United States.

27. The actions required by this Order are in accordance with the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP") and are authorized by EPA pursuant to the authority granted in Section 311(c) and (e) of the CWA, 33 U.S.C. § 1321(c) and (e).

ORDER

28. Based upon the Findings of Fact and Conclusions of Law set forth above, EPA hereby orders and Respondent hereby agrees to comply with all requirements of this Order and the SPCC and FRP regulations at 40 C.F.R. Part 112, promulgated under Section 311 of the federal CWA, 33 U.S.C § 1321, and to specifically perform the following actions:

29. By September 15, 2010, Tanco shall submit documentation of the results of a re-survey of the volume within the secondary containment at the facility, and actions taken to achieve the secondary containment required by the SPCC regulations.

30. Tanco shall incorporate and address EPA's comments on the facility's FRP, and shall resubmit the revised FRP to EPA in accordance with the instructions in EPA's July 20, 2010 comment letter.

31. By October 1, 2010, Tanco shall install liquid level sensing alarms on tank numbers 7701, 7702, 7705, 7709, and 7716.

32. Tanco shall conduct tank inspections on the following schedule:

- a. By September 1, 2010, Tanco will complete an API 653 inspection on Tank No. 7705.
- b. By September 1, 2010, Tanco will complete an API 653 inspection on Tank No. 7706.
- c. By September 1, 2010, Tanco will complete an API 653 inspection on Tank No. 7707.
- d. By December 31, 2010, Tanco will complete an API 653 inspection on Tank No. 7708.
- e. By December 31, 2010, Tanco will complete an API 653 inspection on Tank No. 7710.
- f. By December 31, 2010, Tanco will complete an API 653 inspection on Tank No. 7717.
- g. By July 1, 2011, Tanco will complete an STI SPOO 1 inspection on Tank No. 7701.
- h. By July 1, 2011, Tanco will complete an STI SPOO 1 inspection on Tank No. 7702.

- i. By July 1, 2011, Tanco will complete an API 653 inspection on Tank No. 7704.
- j. By December 31, 2011, Tanco will complete an API 653 inspection on Tank No. 7711.
- k. By December 31, 2011, Tanco will complete an API 653 inspection on Tank No. 7716.

MODIFICATIONS

33. If Respondent seeks permission to deviate from this Order, Respondent shall submit a written request to EPA for approval, outlining the proposed modification and its basis. Such written request may be submitted by fax to Ms. Higbee at 913-551-7028. Such written request must also be mailed to:

Ms. Paula Higbee
U.S. Environmental Protection Agency - Region 7
901 North 5th Street
Kansas City, Kansas 66101.

34. Approval of non-material modifications to any portion of the Order may be made in writing under signature of the Branch Chief, Storage Tank Oil Pollution Branch; Air and Waste Management Division, Region 7.

35. Respondent shall submit quarterly progress reports by the first day of each calendar quarter (July 1, October 1, January 1, and April 1) to EPA that describe the performance and status of all work performed under this Order. These quarterly progress reports shall be submitted to:

Susan Fisher
On-Scene Coordinator
U.S. Environmental Protection Agency - Region 7
901 North 5th Street
Kansas City, Kansas 66101.

ENFORCEMENT: PENALTIES FOR NONCOMPLIANCE

36. Violation of or failure to comply with any of the provisions of the foregoing Order may subject Respondent to civil penalties of up to \$37,500 per day of violation or an amount up to three times the costs incurred by the Oil Spill Liability Trust Fund pursuant to Section 311(b)(7) of the CWA, 33 U.S.C. § 1321(b)(7) and 40 C.F.R. Part 19.

37. If any event delays or prevents, or is expected to delay or prevent, the performance or completion of the actions required by this Administrative Order on Consent, Respondent shall notify Ms. Higbee at EPA at 913-551-7028 within 24 hours of becoming aware of such event and shall notify EPA in writing not more than 10 days

after the event or Respondent's knowledge of the event, whichever is earlier. The notice shall describe in detail the expected length of delay or non-completion, the cause(s) of the delay or non-completion, the measures taken or planned to be taken by Respondent to prevent or minimize the delay or non-completion, and the timetable for implementing these measures.

38. A "force majeure event" is defined as an event arising from circumstances entirely beyond Respondent's control that delays or prevents the performance or completion of actions required by this Administrative Order on Consent, despite Respondent's best efforts to avoid or minimize such delay or non-completion. Force majeure events shall not include unexpected or increased costs, changed financial circumstances, change of ownership of Respondent, or financial inability of Respondent to meet any requirement of the Administrative Order on Consent.

39. If EPA determines that the actual or expected delay in performing the actions required by this Administrative Order on Consent or the actual or expected non-completion of the actions required by this Administrative Order on Consent, has been or will be caused by a force majeure, the time for performance or completion of the actions shall be extended for a period no longer than the delay resulting from the event. EPA will provide any extension in writing to Respondent.

40. If EPA does not agree that the actual or expected delay in performing the actions required by this Administrative Order on Consent, or the actual or expected non-completion of the actions required by this Administrative Order on Consent, has been or will be caused by a force majeure event, EPA will notify Respondent in writing of its decision, and any delays in the performance or completion of the upgrades and/or corrective actions shall not be excused.

41. Nothing in this Order shall be construed to relieve Respondent of the requirements of the CWA or any other applicable requirements under federal, state or local law. EPA reserves the right to take, direct, or order all actions as necessary as authorized by law for any violation of this Order, and for future or past violations of the CWA.

EFFECTIVE DATE

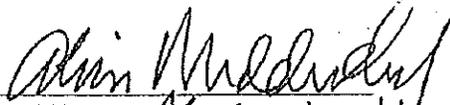
42. This Order shall be effective upon receipt of a fully executed copy by the Respondent.

SIGNATORIES

43. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this Order. Respondent admits the jurisdictional allegations of this Order and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of this Order.

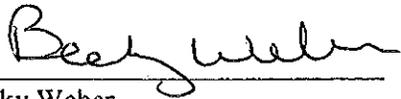
44. The undersigned representative of the Respondent is fully authorized to bind Respondent to the terms and conditions of this Order.

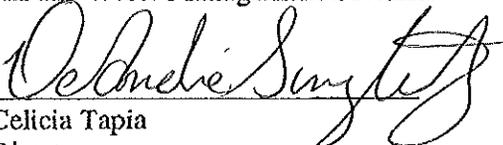
For the Respondent Tanco Kansas City, LLC.:


 Printed Name: Alvin Middendorf Date August 04, 2010
 Title: Manager

For the United States Environmental Protection Agency:


 Howard C. Bunch
 Sr. Assistant Regional Counsel
 Date 8/9/2010


 Becky Weber
 Director
 Air and Waste Management Division
 Date 8/31/10


 for Celicia Tapia
 Director
 Superfund Division
 Date 9/1/2010

CERTIFICATE OF SERVICE

I certify that on the date noted below I filed the original and one true and correct copy of the signed original Administrative Order on Consent for Compliance with the Regional Hearing Clerk, U.S. Environmental Protection Agency Region VII, 901 North Fifth Street, Kansas City, Kansas 66101.

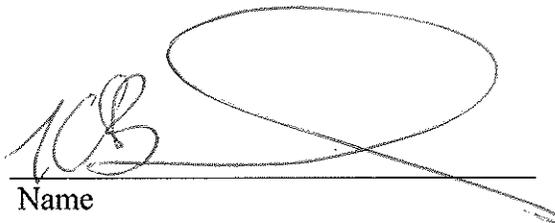
I further certify that on the date noted below I sent by certified mail, return receipt requested, a true and correct copy of the signed original Administrative Order on Consent for Compliance to the designated representatives of Tanco Kansas City, LLC.

Robert J. Brundage
Newman, Comley & Ruth, P.C.
601 Monroe St., Suite 301
P.O. Box 537
Jefferson City, MO 65102-0537

Date

9/3/10

Name

A handwritten signature in black ink, appearing to be 'RJB', written over a horizontal line. The signature is stylized and includes a large, sweeping loop that extends to the right.