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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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REGION 6

REGIONAL HEARING CLERK  
EPA REGION VI

IN THE MATTER OF

HollyFrontier Tulsa Refining LLC  
and Holly Energy Partners -  
Operating, L.P.  
Tulsa County, OK

Respondents.

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

Docket No. CWA-06-2022-4803

**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. Pursuant to the April 17, 2019 Region 6 Realignment: General Delegation Memo (General Delegation Memo), the Regional Administrator delegated these authorities to the successor Division Director or Office Director in accordance with the Region 6 2019 reorganization, to wit: the Enforcement and Compliance Assurance Division of EPA, Region 6. The General Delegation Memo has, in turn, further re delegated these authorities to the comparable official subordinate to the Enforcement and Compliance Assurance Division Director, to wit: the Branch Chief, Water Enforcement Branch in Region 6.

**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 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 or offshore vessels and from onshore or 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 subsequently 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).

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. Respondents are firms conducting business in the State of Oklahoma, with a place of business located at 1700 South Union Avenue, Tulsa, OK 74017, and are persons 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. Respondents are the owners within the meaning of Section 311(a)(6) of the Act, 33 USC § 1321(a)(6), and 40 CFR § 112.2 of a crude oil, gasoline, diesel, and asphalt storage facility, located at 902 West 25<sup>th</sup> Street in Tulsa County, Tulsa OK (the Facility). The approximate coordinates of the Facility are 36.122295° N and -95.999999° W. Drainage from the Facility drains into Cherry Creek, thence Southeast into the Arkansas 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 188,596,868 gallons.

9. Arkansas River is a navigable water of the United States within the meaning of 40 CFR § 112.2.

10. Respondents are engaged in storing and refining oil or oil products located at the Facility.

11. 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).

12. Pursuant to Section 311(j)(1)(C) of the Act, E.O. 12777, and 40 CFR § 112.1 Respondents, as the owners of an SPCC-regulated Facility, are subject to the SPCC regulations.

#### **SPCC Allegations**

13. Paragraphs 6 through 12 above are re-stipulated as though fully set forth herein.

14. 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.

15. On October 13, 2021, EPA inspected the Facility and found that Respondents had failed to develop and implement an SPCC plan for the Facility as follows:

- a. Respondents failed to implement the SPCC plan for changes in the Facility design, construction, operation, or maintenance that materially affects its potential for a discharge. Specifically, respondents failed to implement all the changes to the secondary containment areas within six months of the Plan amendment as required in 40 CFR § 112.5(a).
- b. Respondents failed to provide appropriate containment and/or diversionary structures or equipment for the Bulk Storage Containers to prevent a discharge from the Facility. Specifically, respondents failed to provide secondary containment for the aboveground oil storage tanks within Secondary Containment Areas 1, 3, and 11 as required in 40 CFR § 112.7(c).
- c. Respondents failed to provide sufficient secondary containment for the Facility secondary containment areas and aboveground storage tank installations, that can hold the entire capacity of the single largest container and sufficient freeboard for precipitation in accordance with 40 CFR § 112.8(c)(2).

16. Respondents' failure to fully develop and implement their SPCC plan for the Facility violated 40 CFR § 112.3 and impacted their ability to prevent an oil spill.

**FRP Stipulations**

17. Paragraphs 6 through 12 above are re-stipulated as though fully set forth herein.
18. 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.
19. The Facility is an onshore facility within the meaning of Section 311(a)(10) of the Act, 33 USC § 1321(a)(11), 40 CFR § 112.2, and 40 CFR § 112 Appendix B.
20. 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."
21. 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.
22. 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.
23. The Facility has a total oil storage capacity of at least one (1) million U.S. gallons and the Facility is located at a distance such that a discharge could cause injury to fish and wildlife and sensitive environments.
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, Respondents, as the owners/operators of an FRP-regulated Facility, are subject to the FRP regulations found at 40 CFR. § 112.20.

26. It is stipulated that pursuant to Section 311(j)(5) of the Act and 40 CFR § 112.20, the owner or operator of an FRP-regulated facility in operation on or before February 18, 1993, must no later than that date submit a Facility Response Plan (FRP) that satisfies the requirements of Section 311(j)(5).

#### **FRP Allegations**

27. Paragraphs 6 through 12 and 18 through 26 above are re-stipulated as though fully set forth herein.

28. On October 13, 2021, EPA inspected the Facility and found that Respondents had failed to properly develop and implement an FRP plan in accordance with 40 CFR § 112.20, as follows:

- d. Respondents failed to provide in the FRP an adequate Emergency Response Action Plan (ERAP) as required in 40 CFR § 112.20(h)(1).

29. Respondents' failure to properly develop and implement an FRP violates the requirements of Section 311(j)(5) of the Act and 40 CFR § 112.20.

#### **Waiver of Rights**

30. Respondents admit the jurisdictional allegations set forth above and neither admit nor deny the other specific violations alleged above. Respondents waive 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 consent to the issuance of a Final Order without further adjudication.

**Penalty**

31. The Complainant proposes, and Respondents consent to, the assessment of a civil penalty of **\$17,900.00**.

**Payment Terms**

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

32. Within thirty (30) days of the effective date of the Final Order, the Respondents shall pay the amount of **\$17,900.00** by means of a cashier's or certified check, or by electronic funds transfer (EFT). The Respondents shall submit this Consent Agreement and Final Order, with original signature, along with documentation of the penalty payment via Mail and E-Mail to:

Energy Sector Compliance Section  
U. S. Environmental Protection Agency  
Region 6 (6ECD-WE)  
1201 Elm Street  
Dallas, TX 75270-2102  
[johnbull.enoch@epa.gov](mailto:johnbull.enoch@epa.gov)

- If you are paying by check, pay the check to "Environmental Protection Agency," noting on the check "**OSTLF-311**" and docket number **CWA-06-2022-4803**. 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 Respondents 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  
1201 Elm Street  
Dallas, TX 75270-2102

33. Failure by the Respondents to pay the penalty assessed by the Final Order in full by its due date may subject Respondents 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**

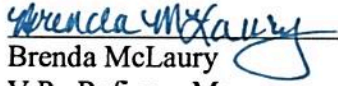
34. The Final Order shall be binding upon Respondents and Respondents' officers, directors, agents, servants, employees, and successors or assigns.

35. 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 Respondents' liability for federal civil penalties for the violations and facts stipulated to and alleged herein.



HOLLYFRONTIER TULSA REFINING LLC and  
HOLLY ENERGY PARTNERS-OPERATING, L.P.

Date: 02-14-2022

  
Brenda McLaury  
V.P., Refinery Manager  
HollyFrontier Tulsa Refining LLC and  
Holly Energy Partners-Operating, L.P

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 2/15/2022

  
Bryant Smalley  
Chief  
Water Enforcement Branch

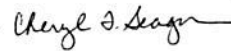
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cn=BRYANT SMALLEY,  
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**FINAL ORDER**

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 Respondents are ordered to comply with the terms of the Consent Agreement.

Date: February 15, 2022



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email=Seager.Cheryl@epa.gov  
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Cheryl T Seager, Director  
Enforcement and  
Compliance Assurance Division

Docket No. CWA-06-2022-4803

**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 February 16, 2022, with the Regional Hearing Clerk, U.S. EPA Region 6, 1201 Elm Street, Dallas, TX 75270-2102; and that on the same date a copy of the same was sent to the following, in the manner specified below:

Copy Sent Via E-MAIL

NAME: Mr. Brian Moore  
ADDRESS: 1700 South Union Avenue  
Tulsa, OK 74107

ENOCH  
JOHNBULL

Digitally signed by ENOCH JOHNBULL  
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ou=Environmental Protection Agency,  
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Enoch Johnbull  
OPA Enforcement Officer