



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

SEP 10 2013

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

David Montgomery Moore
Balch & Bingham LLP
30 Ivan Allen Jr. Boulevard, N.W. Suite 700
Atlanta, Georgia 30308-3036

Re: Consent Agreement and Final Order
Midroc Operating Company
Docket No. CWA-04-2013-5131(b)

Dear Mr. Moore:

Enclosed is a copy of the fully executed Consent Agreement and Final Order (CA/FO) as filed with the Regional Hearing Clerk (RHC) in the above referenced matter. The CA/FO was effective upon filing with the RHC and payment of the civil penalty is to be paid within thirty (30) calendar days of the effective date of the CA/FO.

Also enclosed is a copy of a document titled "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings." This document puts Midroc Operating Company on notice of its potential duty to disclose to the Securities and Exchange Commission any environmental actions taken by the EPA.

If you have any questions, please feel free to contact Raj Aiyar of my staff at (404) 562-8993.

Sincerely,

A handwritten signature in black ink, appearing to read "G. Alan Farmer".

G. Alan Farmer
Director
RCRA Division

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF

Midroc Operating Company
P.O. Box 191407
Dallas, Texas 75219

Respondent

)
) CWA SECTION 311 CLASS II
) CONSENT AGREEMENT AND
) FINAL ORDER
) UNDER 40 C.F.R. § 22.13(b)
)
)
)
) Docket No. CWA-04-2013-5131(b)
)

RECEIVED
EPA REGION IV
2013 SEP 10 AM 9:15
HEARING CLERK

I. 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 by Section 311(b)(6)(B)(ii) of the Clean Water Act (“CWA”), 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 C.F.R. §§ 22.13(b) and 22.18(b)(2). The Administrator has delegated these authorities to the Regional Administrator of EPA, Region 4, who has in turn delegated these authorities to the Director, RCRA Division pursuant to EPA Region 4 Clean Water Act Delegation 2-52-A (“Complainant”).

II. CONSENT AGREEMENT

2. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to settle this action. Accordingly, before any testimony has been taken upon the pleadings and without any admission of violation or adjudication of any issue of fact or law and in accordance with 40 C.F.R. § 22.13(b), Complainant and Respondent have agreed to the execution of this Consent Agreement and Final Order (CA/FO), and Respondent hereby agrees to comply with the terms of this CA/FO. For purposes of this CA/FO and settlement of this action, Respondent admits to the jurisdictional statements contained herein.

III. STIPULATIONS

The parties, in their own capacity or by their attorneys or other authorized representatives, hereby stipulate:

3. Respondent, Midroc Operating Company, is a Corporation based in Dallas, Texas and authorized to do business in Alabama. Respondent is a “person” within the meaning of Section 311(a)(7) of the CWA, 33 U.S.C. § 1321(a)(7).

4. The Respondent is the “owner” and “operator,” as defined in Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6)), of the Oliver 20-15 Oil Well Site (the “Facility), located near Castleberry, Conecuh County, Alabama. The Facility is located approximately 560 feet uphill of Feagin Creek.

5. The Facility is an “onshore facility,” as defined in Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10).

6. Feagin Creek is a perennial, sandy bottom, first order stream that flows approximately five miles south into Cedar Creek, which flows five miles southwest into Murder Creek, which flows approximately 6 miles before reaching the Conecuh River.

7. Feagin Creek is a navigable water as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and 40 C.F.R. § 110.1, and is therefore subject to the jurisdiction of Section 311 of the CWA, 33 U.S.C. § 1321.

8. The crude oil discharged from the Facility constitutes “oil” within the meaning of Section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1).

9. Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), prohibits the discharge of oil into or upon the navigable waters of the United States or adjoining shorelines in such quantities that have been determined may be harmful to the public health or welfare or environment of the United States.

10. Pursuant to Section 311(b)(4) of the CWA, 33 U.S.C. § 1321 (b)(4), the determination of the quantity of oil that may be harmful and is thereby prohibited under Section 311(b)(3), 33 U.S.C. § 1321 (b)(3), is defined at 40 C.F.R. § 110.3 to include discharges of oil that (1) violate applicable water

quality standards or (2) cause a film or a sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon the adjoining shorelines.

IV. ALLEGATIONS

Complainant alleges, and Respondent neither admits nor denies, that:

11. On or about February 5, 2010, Respondent discharged approximately 115 barrels of crude oil, which is considered oil as defined in Section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1), from its Facility uphill of a small tributary leading into Feagin Creek. The discharge occurred because of a faulty insulating flange on the power oil injection line for the Oliver 20-15 wellhead. Approximately five to ten barrels of crude oil reached Feagin Creek after travelling approximately 560 feet down the hill side, primarily through a natural drainage feature, into a low lying area and finally into the small tributary leading into Feagin Creek. After reaching Feagin Creek, the oil flowed approximately 1.6 miles before being contained with booms. The discharged oil impacted wetland areas, as identified by the National Wetlands Map for Nymph, Alabama.

12. Respondent's February 5, 2010, discharge of oil from the Facility caused a sheen upon and discoloration of the surface of Feagin Creek and its adjoining shoreline and, therefore, was in a quantity that has been determined may be harmful under 40 C.F.R. § 110.3, in violation of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3).

13. Accordingly, Respondent violated Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3).

V. WAIVER OF RIGHTS

14. Solely for the purpose of this Consent Agreement, Respondent waives the right to contest the allegations contained herein, to a hearing under Section 311(b)(6)(B)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(ii), to appeal any Final Order in this matter under Section 311(b)(6)(G)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(G)(ii), and consents to the issuance of a Final Order without further adjudication.

15. Complainant reserves the right, pursuant to 40 C.F.R. § 22.45(c)(4)(iii), to withdraw from this Consent Agreement and proposed Final Order within fifteen (15) calendar days of receipt of a commenter's petition requesting, pursuant to 40 C.F.R. § 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.

16. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during any discussions with, or to be served with and reply to, any memorandum or communication addressed to EPA officials where the purpose of such discussion, memorandum, or communication is to persuade such official to accept and issue this CA/FO.

17. Respondent waives its right to challenge the validity of this CA/FO and the settlement of the matters addressed in this CA/FO based on any issue related to the Paperwork Reduction Act, 44 U.S.C. § 3501 *et seq.*

18. The Final Order does not constitute a waiver, suspension or modification of the requirements of Section 311 of the CWA, 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.

VI. PAYMENT OF CIVIL PENALTY

19. Respondent consents to the payment of a civil penalty in the amount of TWENTY SEVEN THOUSAND DOLLARS (\$27,000), which is to be paid within thirty (30) calendar days of the effective date of this CA/FO.

20. Payment shall be made by a corporate/cashier's or certified check, by electronic funds transfer (EFT), or on-line. If paying by check, Respondent shall submit a corporate/cashier's or certified check, payable to the "Environmental Protection Agency." The check shall bear the notation "OSLTF – 311" and Respondent shall reference the title and docket number of this case on the face of the check.

If Respondent sends payment by the U.S. Postal Service, the payment shall be sent to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
Post Office Box 979077
St. Louis, Missouri 63197-9000

If Respondent sends payment by an overnight commercial delivery service such as DHL, FedEx, or UPS, the payment shall be sent to:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, Missouri 63101
(314) 418-1028

If Respondent sends payment by wire transfer, the wire transfer should be directed to the Federal Reserve Bank of New York:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, New York 10045

The Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency."

Respondent may also elect the On-Line Payment Option, available through the Department of Treasury. This payment option can be accessed at www.pay.gov. Enter sfo 1.1 in the search field and then open the form and complete required fields.

21. Respondent shall submit copies of each check (or, in the case of a wire transfer or on-line payment, a copy of the wire transfer or on-line confirmation) to the following people:

Patricia Bullock
Regional Hearing Clerk
U.S. EPA, Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, Georgia 30303-8960

and to:

Raj Aiyar
North Compliance and Enforcement Section
RCRA and OPA Enforcement and Compliance Branch
RCRA Division, US EPA Region IV
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8909

22. Penalties paid pursuant to this CA/FO are not deductible for federal purposes under 26 U.S.C. § 162(f).

23. Respondent's failure 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 CWA, 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.

VII. GENERAL PROVISIONS

24. Pursuant to Section 311(b)(6)(C) of the CWA, 33 U.S.C. § 1321(b)(6)(C), and 40 C.F.R. § 22.45, Complainant will provide public notice of and reasonable opportunity to comment on this Consent Agreement and proposed Final Order.

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

26. No change in ownership, partnership, corporate, or legal status relating to the Facility will in any way alter Respondent's obligations and responsibilities under this CA/FO.

27. Compliance with this CA/FO resolves Respondent's liability for federal civil penalties for the violations and facts stipulated to and alleged herein.

28. The undersigned representative of Respondent hereby certifies that he or she is fully authorized to enter into and execute this Consent Agreement and to legally bind Respondent to the terms and conditions of this Consent Agreement and the attached Final Order.

29. A copy of any documents that Respondent files in this action shall be sent to the following attorney who represents the EPA in this matter and who is authorized to receive service for the EPA in this proceeding:

Marirose J. Pratt
Assistant Regional Counsel
Office of Environmental Accountability
U.S. Environmental Protection Agency, Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, Georgia 30303-8960
(404) 562-9023
pratt.marirose@epa.gov

30. A copy of any documents that Complainant files in this action shall be sent to the following individuals who represent Respondent in this matter and who are to receive service for Respondent in this proceeding:

David Montgomery Moore
Balch & Bingham LLP
30 Ivan Allen Jr. Boulevard, N.W. Suite 700
Atlanta, GA 30308-3036
dmoore@balch.com

and

Tom Watson
William T. Watson, LLC
1651 McFarland Blvd. North
Tuscaloosa, AL 35406-2212
twatson@wdhllp.com

31. By executing this CA/FO, Respondent certifies that all violations alleged herein, which are neither admitted nor denied, have been corrected.

VIII. SEVERABILITY

32. It is the intent of the parties that the provisions of this CA/FO are severable. If any provision or authority of this CA/FO or the application of this CA/FO to any party or circumstance is held by any judicial or administrative authority to be invalid or unenforceable, the application of such provisions to

other parties or circumstances and the remainder of the CA/FO shall remain in force and shall not be affected thereby.

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IX. EFFECTIVE DATE

33. This CA/FO is effective when the Final Order is filed with the Regional Hearing Clerk.

In the matter of Midroc Operating Company, Docket No. CWA-04-2013-5131(b):

CONSENTED AND AGREED TO:


Date: 6/18/13



Donald Clark, President
Midroc Operating Company

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 7/2/13



G. Alan Farmer
Director
RCRA Division

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4


IN THE MATTER OF)	
)	CWA SECTION 311 CLASS II
Midroc Operating Company)	CONSENT AGREEMENT AND
P.O. Box 191407)	FINAL ORDER
Dallas, Texas 75219)	UNDER 40 C.F.R. § 22.13(b)
)	
Respondent)	Docket No. CWA-04-2013-5131(b)
_____)	

FINAL ORDER

Pursuant to Section 311(b)(6) of the Clean Water 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 and the Revocation/Termination or Suspension of Permits*, codified at 40 C.F.R. Part 22, the foregoing 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.

Midroc Operating Company, the Respondent, is ordered to comply with the terms of the Consent Agreement, Docket No. CWA-04-2013-5131(b).

Date: AUG 29 2013

Signature: 
A. Stanley Meiburg
Acting Regional Administrator

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing Consent Agreement and Final Order, in the matter of Midroc Operating Company Docket No. CWA-04-2013-5131(b), on the parties listed below in the manner indicated:

Marirose J. Pratt (Via EPA's Electronic Mail)
Assistant Regional Counsel
Office of Environmental Accountability
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street SW
Atlanta, Georgia 30303

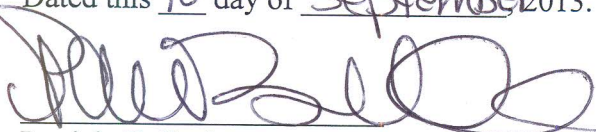
Quantindra Smith (Via EPA's Electronic Mail)
RCRA and OPA Enforcement and Compliance Branch
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street SW
Atlanta, Georgia 30303

Raj Aiyar (Via EPA's Electronic Mail)
RCRA and OPA Enforcement and Compliance Branch
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street SW
Atlanta, Georgia 30303

David Montgomery Moore (Via Certified Mail)
Balch & Bingham LLP
30 Ivan Allen Jr. Boulevard, N.W. Suite 700
Atlanta, GA 30308-3036

Tom Watson (Via Certified Mail)
William T. Watson, LLC
1651 McFarland Blvd. North
Tuscaloosa, AL 35406-2212

Dated this 10 day of September 2013.



Patricia Bullock
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street SW
Atlanta, Georgia 30303