UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6

IN THE MATTER OF VLS Recovery Services Port Arthur Facility Jefferson County, TX Respondent.	CWA SECTION 311 CLASS I CONSENT AGREEMENT AND FINAL ORDER UNDER 40 CFR § 22.13(b) **Docket No. CWA-06-2022-4805**

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 redelegated 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. Respondent is a firm conducting business in the State of Texas, with a place of business located at 19500 Highway 249, Suite 440, Houston, TX 77070, 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.

7. 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 a crude oil, gasoline, diesel fuel, asphalt, and jet fuel storage facility, located in Jefferson County, TX (the facility). The approximate coordinates of the facility are 29.961025° N and -93.86112° W. Drainage from the facility drains into the Sabine Neches Ship Channel.

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 600,000 gallons.

9. The Sabine Neches Ship Channel is a navigable water of the United States within the meaning of 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 therefore a non-transportation-related onshore facility which, due to its location, could reasonably be expected to discharge oil to a navigable waters 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 Respondent, as the owner of an SPCC-regulated facility, is 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 December 7, 2021, EPA inspected the facility and found that Respondent had failed to develop and implement an SPCC plan for the facility as follows:

a. Respondent failed to provide in the plan a description of the physical layout of the facility and a diagram that identifies all the required elements in accordance with 40 CFR § 112.7(a)(3).

b. Respondent failed to address in the plan discharge prevention measures, including procedures for routine handling of products (loading, unloading, and facility transfers, etc.) in accordance with 40 CFR § 112.7(a)(3)(ii).

c. Respondent failed to address in the plan adequate discharge or drainage controls, such as secondary containment around containers and other structures, equipment, and procedures for the control of a discharge in accordance with 40 CFR § 112.7(a)(3)(iii).

d. Respondent failed to adequately discuss in the plan countermeasures for discharge discovery, response, and cleanup as required in 40 CFR § 112.7(a)(3)(iv).

e. Respondent failed to address in the plan the methods of disposal of recovered materials in accordance with applicable legal requirements as required in 40 CFR § 112.7(a)(3)(v).

f. Respondent failed to address in the plan a prediction of the direction, rate of flow, and total quantity of oil that could be discharged from the facility as a result of each type of major equipment failure where experience indicates a reasonable potential for equipment failure in accordance with 40 CFR § 112.7(b).

g. Respondent failed to maintain at the facility appropriate containment and/or diversionary structures or equipment for the Bulk Storage Containers. Specifically, respondent failed to provide secondary containment for multiple frac tanks as required in 40 CFR § 112.7(c).

h. Respondent failed to discuss in the plan the procedures to restrain drainage from diked storage areas by valves to prevent a discharge into the drainage system or facility effluent treatment system, except where facility systems are designed to control such discharge. Specifically, the facility failed to provide adequate discussion based on site specific information and therefore not in accordance with 40 CFR § 112.8(b)(1).

i. Respondent failed to discuss in the plan whether bulk storage container materials and construction are compatible with material stored and conditions of storage (such as pressure and temperature) as required in 40 CFR § 112.8(c)(1).

j. Respondent failed to provide secondary containment for all the bulk storage tank installations at the facility. Specifically, respondent failed to provide adequate secondary containment for multiple frac tanks at the facility, 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).

k. Respondent failed to address in the plan the standard for testing or inspection of each aboveground container for integrity on a regular schedule and whenever material repairs are made and the appropriate qualifications for personnel performing tests and inspections as required in 40 CFR § 112.8(c)(6).

l. Respondent failed to discuss in the plan the specific liquid level sensing devices used to prevent discharges from each container as required in 40 CFR § 112.8(c)(8).

m. Respondent failed to adequately describe how visible discharges at the facility which result in a loss of oil from the container and other pertinent parts (seams, gaskets piping, pumps, valves, rivets, and blots) are promptly corrected and how oil in diked areas is promptly removed as required in 40 CFR § 112.8(c)(10).

16. Respondent's failure to fully develop and implement its SPCC plan for the facility violated 40 CFR § 112.3 and impacted its 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 transfers oil over water to or from vessels and has a total oil storage capacity greater than or equal to 42,000 U.S. gallons.

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 an FRP-regulated facility, is 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 December 7, 2021, EPA inspected the facility and found that Respondent had failed to properly develop and implement an FRP plan in accordance with 40 CFR § 112.20, as follows:

a. Respondent failed to prepare a Facility Response Plan (FRP) for the facility in accordance with 40 CFR § 112.20.

29. Respondent's 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. Respondent admits the jurisdictional allegations set forth above and neither admits nor denies the other specific violations alleged 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 **$33,100.00**.

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 Respondent shall pay the amount of **$33,100.00** by means of a cashier's or certified check, or by electronic funds transfer (EFT). The Respondent 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
blaha.michael@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-06-2022-4805**. 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
1201 Elm Street
Dallas, TX 75270-2102

33. 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

34. The Final Order shall be binding upon Respondent and Respondent's 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 Respondent's liability for federal civil penalties for the violations and facts stipulated to and alleged herein.

VLS Recovery Services

Date: 2/25/2022

Randy Cooper
Director of Risk Management
VLS Recovery Services

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 2/28/2022

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Bryant Smalley
Chief
Water Enforcement Branch

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: March 1, 2022

Cheryl T. Seager

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Cheryl T Seager, Director
Enforcement and
Compliance Assurance Division

Docket No. CWA-06-2022-4805

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 March 3, 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 by certified mail,
return receipt requested:

NAME: Mr. Randy Cooper
ADDRESS: 19500 Highway 249, Suite 440
Houston,
TX 77070

MICHAEL BLAHA

Digitally signed by MICHAEL BLAHA
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Michael Blaha
OPA Enforcement Officer