

NO. 2011-08694

MARCO QUINTANILLA,

Plaintiff,

v.

ENTERPRISE PRODUCTS PARTNERS,
LP,

Defendant.

§ IN THE DISTRICT COURT OF

§ HARRIS COUNTY, TEXAS

§ 270TH JUDICIAL DISTRICT

P-9
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DIRX

**TEMPORARY INJUNCTION AND ORDER
APPROVING EVIDENCE AND SITE CONTROL AGREEMENT**

After reviewing the "Evidence and Site Control Agreement" between the U.S. Occupational Safety and Health Administration ("OSHA") and Enterprise Products Operating L.L.C. ("Enterprise") relating to an incident that occurred at Enterprise's Mont Belvieu West Termination in Mont Belvieu, Texas on February 8, 2011, a copy of which is attached hereto as Exhibit A (hereinafter "Agreement"), and hearing the arguments of counsel relative to Plaintiff's request for a temporary injunction, the Court hereby orders as follows:

1. The Court has reviewed the agreement referred to as the Evidence and Site Control Agreement ("Agreement"). The Court hereby Orders Enterprise to comply with the Agreement.

2. The Court orders Enterprise to provide Plaintiff with copies of any notices provided to OSHA under the Agreement. Said provision to Plaintiff shall be reasonably concurrent with the provision to OSHA.

3. The Court acknowledges that the site still needs to be cleared of hydrocarbons and made safe (planned incident response activities under the Agreement). Enterprise is authorized the carry out such activities provided it complies with the Agreement. Plaintiff may be on site,

but not in the exclusion zone during these activities to minimize nonessential personnel in exclusion zone during these activities.

4. The Court orders Enterprise to provide Plaintiff with access to the site for inspection after the site is made safe but before evidence collection under Section B of the Agreement begins.

5. The Court orders Enterprise to provide Plaintiff any and all protocols developed with OSHA under the Agreement.

6. The Court orders Enterprise to allow Plaintiff's consultants and experts within the exclusion zone to observe activities being carried out under the Agreement (under the planned incident response activities). Plaintiff's consultants or experts must undergo site safety orientation, be properly trained, wear all necessary and appropriate personal protective equipment ("PPE"), and not interfere with the work and follow site safety rules and procedures. The Court understands and orders that the number of experts be limited to a minimum for the observation activity.

7. The Court orders Enterprise to provide to Plaintiff all documents required to be created and/or maintained under the Agreement. The Court further orders Enterprise to maintain copies of all documents provided and submitted to OSHA and/or any other investigating agency or organization as a part of any such agency's investigation(s).

8. To the extent notice is required under this Order, it may be given to the Plaintiff by providing notice to the following:

Vuk S. Vujasinovic
Vujasinovic & Beckom, P.L.L.C.
1001 Texas Ave., Suite 1020
Houston, Texas 77002

9. Notice to the Defendant may be given by giving notice to:

Otway B. Denny, Jr.
Fulbright & Jaworski L.L.P.
1301 McKinney, Suite 5100
Houston, Texas 77010-3095

10. Upon entry of this order, the Court's prior Temporary Restraining Order is dissolved.

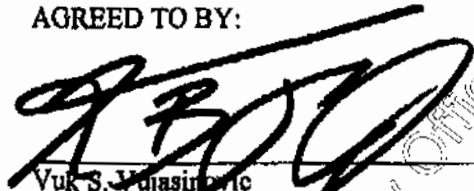
11. All other relief not granted herein is DENIED.

SIGNED this the 24 day of February, 2011.

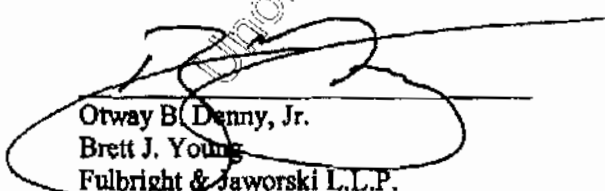


JUDGE PRESIDING

AGREED TO BY:



Vuk S. Vujasinovic
Kenneth Fenelon
Vujasinovic & Beckom, P.L.L.C.
1001 Texas Ave., Suite 1020
Houston, Texas 77002
FOR PLAINTIFF



Otway B. Denny, Jr.
Brett J. Young
Fulbright & Jaworski L.L.P.
1301 McKinney, Suite 5100
Houston, Texas 77010-3095
FOR ENTERPRISE PRODUCTS OPERATING L.L.C.

EVIDENCE AND SITE CONTROL AGREEMENT

The parties to this Agreement shall be the Occupational Safety & Health Administration ("OSHA") and Enterprise Products Operating LLC ("Enterprise"). Other parties may also become signatories to this Agreement with the written concurrence of OSHA and Enterprise.

OSHA initiated an investigation into an incident that occurred at Enterprise Mont Belvieu West Terminal in Mont Belvieu, Texas on February 8, 2011. OSHA is investigating pursuant to the statutory authority of 29 U.S.C. § 657. Nothing in this Agreement confers or admits the jurisdiction of OSHA or waives Enterprise's right to challenge such jurisdiction. The parties enter into this agreement with the intent to ensure the prompt and orderly preservation, collection, and availability for testing of potentially relevant evidence, so that the parties may conduct thorough and complete investigations.

The purpose of this Agreement shall be to ensure that the parties: (1) each have the opportunity to access the physical evidence and accident site itself in its original condition; (2) agree in advance to an orderly effort by which evidence will be collected, stored, and preserved for additional documentation, testing, and analysis; and (3) to establish basic principles for testing, subject to the development of specific protocols.

This Agreement shall not be construed, either expressly or impliedly, to limit the lawful authority of OSHA to conduct a full and thorough investigation as authorized through its enabling legislation, nor to abrogate or waive any rights of Enterprise, including its property rights, except as set forth in this Agreement.

Terms and Conditions

The parties mutually understand and agree as follows:

A. Site Preservation

1. Other than as provided elsewhere in this Agreement, or unless subsequently agreed to in writing by the parties to this Agreement, the parties shall not intentionally move, alter, destroy, rearrange, or otherwise tamper with any evidence that has potential relevance to OSHA and/or Enterprise investigations. The parties may agree at any time that specific areas, equipment, systems and materials in the exclusion zone described below are not evidence and may be removed, repaired, discarded, etc. by Enterprise as part of necessary demolition and rebuild activities. By agreeing to this paragraph, OSHA does not waive any rights it may have under statute.
 - a. Unless otherwise provided for in this Agreement, the parties agree that the exclusion zone defined in drawing "West Storage" mark-up dated 2/11/11 (the "Exclusion Zone") shall remain in an "as is" state, except for planned incident response activities or in the case of an emergency, as those terms are defined below, until such time that the parties agree to changes and actions permissible under this Agreement.
 - b. By mutual written agreement of the parties, the Exclusion Zone, equipment and systems under restriction may be modified as the situation at the site evolves and the investigations progress.
 - c. Outside the Exclusion Zone, normal plant operations may resume immediately.

2. For the purposes of this agreement, "planned incident response activities" are the actions being taken or to be taken by Enterprise that are reasonably necessary to address a risk of serious harm to life, property, or the environment in the Exclusion Zone and systems referenced above in Paragraph "A.1.a."
 - a. Enterprise shall provide reasonable advance notice to OSHA, which shall include, whenever possible, at least twenty-four (24) hours advance notice of all such planned incident response activities.
 - b. Whenever OSHA does not participate in or observe changes required by these activities, Enterprise shall document all such changes, including but not limited to changes to equipment, such as to valves, made to the "as-is" state of the area and systems in the course of carrying out such activities and provide the documentation of changes to OSHA.
 - c. During planned incident response activities, Enterprise shall not physically remove materials, equipment, valves, instruments, or piping in the Exclusion Zone or systems described in paragraph "A.1.a" from their as-found locations unless there is no alternative method to safely accomplish the planned activities. If removal is necessary, Enterprise shall document the pre-removal condition, which shall include, at a minimum, photographs or videotape of the pre and post-removal conditions; retain the removed items in a secure location; and provide the documentation, and access to the items, to OSHA. Any items removed from the area shall be stored according to the terms of paragraph "B.7.e" of this Agreement.
3. For the purposes of this agreement, an "emergency" is a situation (other than planned incident response activities) that poses an imminent threat of harm to life, property, or the environment, or threatens to cause a violation of federal, state, or local law.
 - a. In the event Enterprise must move or alter some or all of the physical evidence at issue due to an emergency, Enterprise shall notify OSHA by telephone or, if feasible, by written notification as quickly as possible, and if possible prior to moving or altering the evidence, in order to allow OSHA the opportunity to comment on the proposed alteration or to further document the evidence/site.
 - b. If such notice is not possible, Enterprise must provide written notice to OSHA as soon as possible thereafter, which includes the following information: (a) a complete explanation as to why notice could not be provided prior to moving or altering the evidence; (b) a complete description of all actions taken to rectify the emergency; (c) a timeline of events; and (d) photographic or video evidence, or other documentation that shows the change in the evidence and/or site.
 - c. When the emergency has ended, any actions that can change or modify evidence or the accident site itself must cease.
4. Enterprise shall continue to be responsible for the continued security and protection of its own site, and any real or personal property therein, as well as any physical or documentary evidence present on its premises or under the control of its officers, employees, attorneys, agents, or contractors.

5. All notifications shall be made by facsimile, email and/or personal delivery. Until further notice is provided, notices shall be sent to the parties as follows:

a. OSHA: Mhekeba Hager
hager.mhekeba@dol.gov
(281) 286-0583 x 222 (phone)
(281) 286-6352 (fax)

Mark Briggs
briggs.mark@dol.gov
(281) 286-5922 (phone)
(281) 286-6352 (fax)

b. Enterprise: Bill Gibson
bgibson@cpwd.com
(281) 424-6855 (phone)
(281) 424-6817 (fax)

Mark Farley
mark.farley@pillsburylaw.com
(713) 276-7615 (phone)
(713) 276-7673 (fax)

6. This Agreement does not relieve Enterprise of its rights or obligations under any other federal, state or local law.

B. Evidence Collection & Storage

7. All participating parties will have an opportunity to identify and request items and samples they wish to be collected and retained and to have the opportunity to be present for such collection. The parties may agree to conduct joint evidence identification walk through(s) at mutually acceptable date(s) and time(s).

- a. A sketch of the evidence location will be completed where appropriate including measurement to nearby landmark and reference points.
- b. When an item is identified, it will be affixed with a durable tag. The tag will be assigned a unique alpha numeric indicator. The item will be recorded in an "evidence log" that will contain information regarding the date, tag number, description of the item, name of the individual who recovered the evidence and the party that requested that the item be preserved. The location of where evidence was found will also be marked on a drawing of the area. The item will be photographed before and after tagging.
- c. If a tagged item is not attached to another piece of equipment and can be easily removed, it will be removed from the incident area and transported to the storage area(s) identified below in paragraph "B.7.e."
- d. If a tagged item is attached to another piece of equipment and cannot be easily removed, the dismantling process will be photographed or video taped. When dismantling is necessary, the party that identified the item for retention will first notify OSHA, and the parties will attempt to reach mutual agreement on a protocol for the dismantling process. OSHA shall not unreasonably withhold consent to such a protocol.

- e. All of the evidence will be secured in a storage area(s) on the grounds of the Enterprise facility agreed upon by the parties. Access to the storage area will be controlled. Any party that will be entering the storage area will provide reasonable advance notice to all the other parties of any such entry. Any party may be present to observe the entry of any other party into the evidence storage area. Access by any parties to the physical evidence in this case shall be documented in an "evidence control log," annotating who accessed what evidence, the purpose of the visit and the duration of each visit.
- f. Enterprise shall keep and maintain the evidence log and evidence control log and shall provide them to the other parties upon request. Enterprise shall inform OSHA within 24 hours of any entries to the logs.

C. Testing

- 8. All parties desiring to perform non-destructive testing of the evidence covered by this agreement shall first notify all parties and attempt to obtain the mutual agreement of all parties to protocols for removal, chain-of-custody, preservation, and testing. The parties shall not unreasonably withhold consent.
 - a. If the parties reach agreement on such protocols, any party planning to conduct non-destructive testing shall provide at least 24-hours notice to the other parties in accordance with paragraph "A.5" of this Agreement, including the time and place of such testing. Any party may be present to observe and document non-destructive testing conducted by any other party. Any party may seek a protective order to prohibit evidence testing. Nothing in this paragraph represents an admission by Enterprise that OSHA has legal authority to require such testing.
 - b. If the parties cannot reach an agreement on the non-destructive testing of the evidence, OSHA may seek to compel the production of evidence as provided under 29 U.S.C. § 657(b).
- 9. Any destructive testing shall be covered in a separate protocol. All parties desiring to perform destructive testing of the evidence covered by this agreement shall first notify all parties and attempt to obtain the mutual agreement of all parties to protocols for removal, chain-of-custody, preservation, and testing. The parties shall not unreasonably withhold consent.

D. Samples and Sampling

- 10. The parties may identify relevant samples, as they deem necessary and appropriate, in furtherance of their respective investigations, that they request be preserved for collection and analysis. Sample collection shall follow the evidence collection procedures provided in section "B," except that the samples do not have to be photographed or videotaped subsequent to tagging. If the parties determine that the available amount of a particular material is insufficient to allow a split sample and testing of the same by multiple parties is required or requested, all parties shall be notified and a joint sampling and testing protocol will be developed for that particular material.

E. General Terms


- 11. Any terms or conditions contained within this Agreement apply to the parties themselves, as well as their officers, employees, agents, attorneys, contractors, successors in interest,

and subrogates, as well as all such personnel employed by any other related business entities, including but not limited to parent companies, holding companies, subsidiaries, and business partners of any sort.

12. This Agreement shall be effective on the date it is executed by all parties. This Agreement shall remain in effect until such time as the parties mutually agree that it is no longer necessary, or until a party gives written notice to all other parties that it no longer intends to be bound by such Agreement. This Agreement cannot be changed, modified, or supplemented except as mutually agreed in writing by the parties hereto.
13. This Agreement constitutes the entire agreement between the OSHA and Enterprise and merges any and all prior discussions and negotiations. Any prior understandings or representations of any kind preceding the date of this Agreement shall not be binding on either party except as incorporated in this Agreement itself, except that this Agreement shall not apply to any actions or events occurring prior to execution of the Agreement. Specifically, OSHA and Enterprise, through their respective authorized signatories, each acknowledge that it is not relying on any promises, oral or written, other than those terms and conditions contained in this Agreement. Except as expressly set forth herein, this Agreement is not intended to confer any rights on third parties and is not enforceable by third parties.


Mhekeba Hager
Occupational Safety & Health Administration

2/16/2011
Date


Graham Bacon
Enterprise Products Operating LLC

2/16/2011
Date

Unofficial Copy Office of Chris Palmer, Chief

