March 23, 2019

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EPA REGION VI

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY, REGION 6

IN THE MATTER OF **Intercontinental Terminals Company LLC** Respondent **Harris County, Texas**	**CWA SECTION 311 ADMINISTRATIVE ORDER** Docket No. CWA _____

I. JURISDICTION AND GENERAL PROVISIONS

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).

2. This Order pertains to the discharge of hazardous substances from Intercontinental Terminals Company LLC's ("ITC" or "Respondent") petrochemicals facility that includes a tank farm at or near the City of Deer Park, Harris County, Texas. This Order requires ITC to conduct the actions described below to abate or mitigate an imminent and substantial threat to the public health or welfare of the United States that may be presented by the discharge or substantial threat of a discharge of hazardous substances from the above listed facility into or upon the navigable waters or adjoining shorelines of the United States.

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

II. PARTIES BOUND

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4. This Order applies to and is binding upon Respondent and Respondent's heirs, directors, officers, employees, agents, receivers, trustees, successors and assigns. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall in no way alter Respondent's responsibilities under this Order.

5. Respondent shall ensure that its contractors, subcontractors, and representatives receive a copy of this Order and comply with this Order. Respondent shall be responsible for any noncompliance with this Order.

III. FINDINGS OF FACT

6. ITC is the owner, operator or person in charge of an onshore petrochemicals and tank farm facility located at or near the City of Deer Park in Harris County, Texas.

7. On or about March 17, 2019, the ITC facility experienced a fire, resulting in the continued use of firefighting water and foam needed to extinguish the fire. The resulting firefighting wastewater and foam collected in a tank farm's secondary containment within ITC's facility. On or about March 22, 2019, the secondary containment breached, resulting in an ongoing discharge of an unknown quantity of wastewater that includes, but is not limited to, the following hazardous substances: toluene, benzene, xylene, naphthalene, ethylbenzene, and styrene, among others. The discharge went into Tucker Bayou, and from there reached Buffalo Bayou, also known as the Houston Ship Channel, a navigable water of the U.S.

8. ITC's response to the discharge currently includes, in part, the use and application of booms.

9. At this time, the federal On-Scene Coordinator ("OSC") for this response operation, in accordance with 40 CFR Part 300, is Adam Adams of the EPA. A Declaration of OSC Adam Adams is attached and incorporated herein as Appendix 2.

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10. The EPA has determined, pursuant to CWA 311(e), 33 U.S.C. 1321(e), that there may be an imminent and substantial threat to the public health or welfare of the United States because of an actual or threatened discharge of a hazardous substance from a facility in violation of Section 311(b).

IV. CONCLUSIONS OF LAW

11. The ITC facility is an "onshore facility" as defined in Section 311(a)(11) of the CWA, 33 U.S.C. § 1321(a)(11).

12. Respondent is a "person" as defined by Sections 311(a)(7) and 502(5) of the CWA, 33 U.S.C. §§ 1321(a)(7) and 1362(5).

13. The ITC facility's discharge of hazardous substances constitutes a "discharge" as defined in Section 311(a)(2) of the CWA, 33 U.S.C. § 1321(a)(2), into or upon the navigable waters or the adjoining shorelines to the navigable waters, into or upon the waters of the exclusive economic zone, or that may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States, including the inland zone.

14. The quantity of hazardous substances which Respondent's facility has discharged is a quantity that is harmful within the meaning of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3).

15. The Respondent's discharge poses an imminent and substantial threat to the public health or welfare of the United States, including fish, shellfish, wildlife, public and private property, shoreline, beaches, habitat, and/or living and nonliving natural resources.

16. The actions required by this Order are necessary to protect the public health and welfare of the United States, including fish, shellfish, wildlife, public and private property, shoreline, beaches, habitat, and/or living and nonliving natural resources.

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17. The actions required by this Order are in accordance with the National Contingency Plan ("NCP") and are authorized by the EPA pursuant to the authority granted in Sections 311(c), (e) and (m) of the CWA, 33 U.S.C. §§ 1321(c), (e) and (m), as delegated by the President in Executive Order 12777..

V. ORDER

18. Based upon the FINDINGS OF FACT and CONCLUSIONS OF LAW set forth above, the EPA hereby orders Respondent to comply with all requirements of this Order, specifically perform the actions described in the Statement of Work, attached and incorporated herein by reference as Appendix 1, and comply and maintain compliance with the Statement of Work, immediately upon receipt of this Order.

19. Within 12 hours of receipt of this Order, unless an extension is received and approved, Respondent shall provide the EPA On-Scene Coordinator ("OSC"), Adam Adams, a Work Plan and Quality Assurance and Quality Control ("QA/QC") Plan describing in detail Respondent's implementation of and compliance with this Order and the Statement of Work.

VI. RECORD RETENTION

20. Respondent shall preserve all documents and information relating to work performed under this Order, or relating to the hazardous substances found on or discharged from its facility, for six (6) years following completion of the actions required by this Order. At the end of this six-year period and 60 days before any document or information is destroyed, Respondent shall notify the EPA OSC that such documents and information are available for inspection, and upon request, shall provide the originals or copies of such documents and information to the EPA OSC. In addition, Respondent shall provide documents and information retained under this Section at any time before expiration of the six-year period upon the written

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request of the EPA.

21. Respondent may assert a business confidentiality claim pursuant to 40 C.F.R. § 2.203(b) with respect to part or all of any information submitted to the EPA pursuant to this Order, provided such claim is allowed by Section 308(b)(2) of CWA, 33 U.S.C. § 1318(b)(2). The EPA shall only disclose information covered by a business confidentiality claim to the extent permitted by, and by means of the procedures set forth at 40 C.F.R. Part 2, Subpart B. If no such claim accompanies the information when it is received by the EPA, the EPA may make it available to the public without further notice to Respondent.

22. Respondent may assert that certain documents, records and other information requested are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Respondent asserts such a privilege in lieu of providing documents, Respondent shall provide the EPA with the following:

(1) the title of the document, record, or information;
(2) the date of the document, record, or information;
(3) the name and title of the author of the document, record, or information;
(4) the name and title of each addressee and recipient;
(5) a description of the contents of the document, record, or information; and
(6) the privilege asserted by Respondent.

However, no documents, reports or other information created or generated pursuant to the requirements of the Order shall be withheld on the grounds that they are privileged.

VII. ENFORCEMENT: PENALTIES FOR NONCOMPLIANCE

23. Violation of, or failure to comply with any of the provisions of the foregoing Order (including, but not limited to failure to follow the Statement of Work, the Work Plan and QA/QC Plan, failure to provide sampling data to the EPA, may subject Respondent to civil penalties of up to $47,357 per day of violation as a result of such failure pursuant to Sections 309 and

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311(b)(7) of the Act, 33 U.S.C. §§ 1319 and 1321(b)(7) and 40 C.F.R. Part 19, and to criminal fines pursuant to Section 309 of the Act, 33 U.S.C. § 1319.

24. Violation of, or failure to comply with any provision of this Order, may also subject Respondent to the loss of any defense to liability in accordance with 33 U.S.C. Section 2703(c)(3), and may also subject Respondent to the loss of any limits to liability in accordance with 33 U.S.C. Section 2704(c)(2)(C).

25. Violation of, or failure to comply with any provision of this Order, the Statement of Work, the Work Plan or the QA/QC Plan, shall not be construed in any way to limit the authority of the EPA OSC to take, direct, or order all actions, including an order to cease and desist any and all actions, under this Order.

26. Information submitted pursuant to this Order must include the following Statement of Certification signed by a knowledgeable representative who is authorized by ITC to certify the truthfulness, accuracy and completeness of the response on behalf of ITC as well as the signing representative:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on any personal knowledge I may have and my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The signed and dated Statement of Certification certifies, among other things, that the response is

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complete and contains all information and documentation available to ITC or its representatives, or developed by ITC or its representatives, pursuant to this Order.

27. If Respondent is unable to comply with the requirements of this Order by the due dates specified above, Respondent shall notify the EPA OSC at (214) 665-2779 within 24 hours of becoming aware of such inability and no later than the due date specified above.

VIII. RESERVATION OF RIGHTS

28. 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. The 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 the future or past violations of the CWA.

29. Except as specifically provided in this Order, nothing herein shall limit the power and authority of the EPA or the United States to take, direct, or order all actions necessary to protect public health or welfare of the United States, or to prevent, abate, or minimize an actual or substantial threat of a discharge of oil, hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, from or outside the facility. Further, nothing herein shall prevent the EPA from seeking legal or equitable relief to enforce the terms of this Order, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring the Respondent in the future to perform additional activities pursuant to CWA or any other applicable law. The United States reserves the right to bring an action against Respondent under Section 311(f) of CWA, 33 U.S.C. §1321(f), and/or Sections 1002 and 1015 of Oil Pollution Act, 33 U.S.C. §§ 2702 and 2715, for recovery of any costs incurred by the United States related to this Order and not reimbursed by Respondent. Response costs shall include, but are not limited to, past costs, direct costs, indirect costs, costs of monitoring, oversight costs and accrued interest

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as provided in Section 311(f) of CWA, 33 U.S.C. §1321(f), and §1005 of OPA, 33 U.S.C. Section 2705.

30. Notwithstanding any other provision of this Order, at any time during the performance of the activities required by this Order, the EPA reserve the right to perform their own studies, take over and/or complete the activities (*or any portion of the activities*) under this Order, and seek reimbursement from Respondent for their costs, or seek any other appropriate relief.

31. Nothing in this Order shall preclude the EPA from taking any additional enforcement actions, including modification of this Order or issuance of additional Orders, and/or additional activities or response actions as the EPA may deem necessary, or from requiring Respondent in the future to perform additional activities pursuant to the Resource Conservation and Recovery Act ("RCRA") as amended by the Hazardous and Solid Waste Act ("HSWA"), the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), the Clean Water Act ("CWA"), the Oil Pollution Act ("OPA"), or any other applicable law. Nothing in this Order shall preclude any other federal agency from taking additional enforcement actions, including any enforcement action taken by the U.S. Coast Guard, under any other applicable federal statutes.

32. Pursuant to Section 311(c) of the Clean Water Act, 33 U.S.C. § 1321(c), the USCG and the EPA and their agents are authorized to perform the activities necessary to assess the source, nature and extent of the discharge or threatened discharge at the facility and to remove the discharge or to prevent threatened discharges of oil or hazardous substances. Notwithstanding any provision of this Order, the United States hereby reserves all of its information-gathering, inspection and all enforcement authorities and rights under all applicable

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statutes and regulations. The United States expressly reserves all rights it has to issue additional Orders or to take any other action it deems necessary to protect the public health or welfare of the United States.

33. Notwithstanding any provision of this Order, the EPA reserve the right to assess an administrative penalty pursuant to Section 311(b)(6) of CWA, 33 U.S.C. § 1321(b)(6), and/or to seek a civil penalty pursuant to Section 311(b)(7), 33 U.S.C. §1321(b)(7).

34. Nothing in this Order shall limit the authorities of the On-Scene Coordinator as outlined in the National Contingency Plan.

35. If a court issues an Order that invalidates any provision of this Order or finds that Respondent has sufficient cause not to comply with one or more provisions of this Order, Respondent shall remain bound to comply with all provisions of this Order not invalidated by such court's Order.

IX. MODIFICATIONS

36. Modifications to any plan or schedule (or the attached Statement of Work) required by this Order, may be made in writing by the EPA OSC. If the EPA OSC makes an oral modification, it will be memorialized in writing within ten (10) working days, provided, however, that the effective date of the modification shall be the date of the EPA OSC's oral direction. Modifications to any portion of the Order, other than plans or schedules, may only be made in writing under signature of the EPA Region 6 Superfund Division Director.

37. If Respondent seeks permission to deviate from any approved plan or schedule (or the attached Statement of Work), Respondent shall submit a written request to the EPA OSC for approval outlining the proposed modification and its basis.

38. No informal advice, guidance, suggestion, or comment by the EPA regarding

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reports, plans, specifications, schedules, or any other writing submitted by the Respondent shall relieve the Respondent of its obligations to obtain such formal approval as may be required by this Order, and to comply with all requirements of this Order unless it is formally modified.

X. EFFECTIVE DATE

39. This order shall be effective upon receipt by the Respondent.

Ronald D Curnsland Date: 3/23/19

for Carl Edlund, P.E.
Director
Superfund Division
U.S. EPA Region 6
Dallas, TX 75202

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Appendix 1 of the Clean Water Act Section 311 Order

Statement of Work

The Respondent shall:

1. Secure the remaining material in the tanks by any means necessary as to prevent a release of hazardous substances, pollutants or contaminants, or a discharge of oil or hazardous substances. Options to secure the material include, but are not limited to, pumping, transfer, isolating, placing barriers, cooling, etc.;
2. Remove the remaining material in secondary containment, including oil, hazardous substances, and firefighting foam and dispose of according to state and federal regulations;
3. Remove the spilled material, including oil, hazardous substances, and fire fighting foam from the facility ditch, downstream waters and shoreline such as Tucker and Buffalo Bayous, and the Houston Ship Channel. Install the necessary barriers to prevent these materials from migrating further downstream;
4. Prevent the release of air emissions that will exceed concentrations harmful to human health and the surrounding environment;
5. Dispose of all waste in accordance with all State and Federal requirements;
6. Continue air monitoring activities to determine if a release of a hazardous substance that could be harmful to human health has occurred. If such a release has been detected, immediately notify the appropriate federal, state, and local agencies, so appropriate measures can be taken to protect the surrounding communities;
7. Conduct surface water sampling to evaluate the levels of contaminants released into Tucker Bayou and Buffalo Bayou. This shall include Per- and Polyfluoroalkyl Substances (PFAS).
8. Secure the necessary resources to accomplish the tasks described above, and,
9. Implement any additional response actions as deem necessary by the Federal On-Scene Coordinator.

DRAFT - March 23, 2019

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY, REGION 6

IN THE MATTER OF **Intercontinental Terminals Company** Respondent **Harris County, Texas**	DECLARATION OF ADAM ADAMS IN SUPPORT OF ADMINISTRATIVE ORDER

DECLARATION OF ADAM ADAMS

I certify under penalty of perjury that the following is, to the best of my knowledge and belief, true and accurate:

1. My name is Adam Adams. I am an employee of the U. S. Environmental Protection Agency ("EPA"). I have been continuously employed by the EPA as an On-Scene Coordinator ("OSC") since September 16, 2007. I am the OSC assigned to the response for the Intercontinental Terminals Company LLC ("ITC") fire incident that began at its Deer Park, Harris County facility on or about March 17, 2019 and which continued for several days.

2. My duties as an OSC include directing and coordinating response actions under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S. Code Section 9601, *et. seq.*, and for the removal of a discharge of hazardous substances from waters of the U.S. under Section 311 of the Clean Water Act ("CWA"), 33 U.S. Code Section 1321. These include emergency response actions as the circumstances dictate.

3. Part of my duties as an OSC also include directing the mitigation or prevention of a substantial threat of a discharge of hazardous substances into waters of the U.S.

4. On March 17, 2019, I deployed to the ITC petrochemical and tank farm facility in Deer Park,

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Harris County, Texas as a result of a fire at its facility. Once deployed, I arrived at the Unified Command at ITC's facility, which includes representatives from the U.S. Coast Guard, Harris County, the Texas Commission on Environmental Quality ("TCEQ") and ITC, to direct the emergency response to the March 17, 2019 incident.

5. Part of my duties with the response include the deployment of air monitors throughout the area to monitor for elevated levels of contaminants, including hazardous substances, in the air. One such monitor detected a low-level amount of benzene near the facility.

6. During the response, firefighting efforts involved the use of water and firefighting foam from multiple agencies and from multiple locations to extinguish the fire or cool nearby facility tanks, piping, etc. in the tank farm. Foam was applied almost continuously as it was available up until March 20, 2019, at which point the initial fire was suppressed. Afterwards, foam was utilized intermittently to suppress vapor emissions. Due to the volume of fire water and foam utilized and the limited capacity of the tank farm secondary containment, the fire liquids have been observed draining from the tank farm to the ditch to the west into Tucker Bayou and then into Buffalo Bayou, also known as the Houston Ship Channel.

7. On March 22, 2019, an EPA airplane designed to detect hazardous substances in the air flew overhead and took aerial photographs of the ground underneath, including the ITC facility, Tucker Bayou and the Houston Ship Channel. The Houston Ship Channel is a large waterway that has a direct connection to the Gulf of Mexico that is used by very large commercial vessels to transport goods. Two of these photographs depict a sheen flowing from the ITC facility and into Tucker Bayou and the Houston Ship Channel, also known as Buffalo Bayou.

8. The two photographs mentioned in Paragraph 7 are attached and incorporated by reference herein to my affidavit. I have looked at these two photographs, and they accurately depict an aerial view of the sheen and discharge into the Houston Ship Channel.

9. I have also personally observed a sheen and foamy, chemical-looking substance on the surface of the Houston Ship Channel in the same area depicted in the photographs.

10. On or about March 22, 2019 I discovered that the secondary containment breached, discharging its contents into Tucker Bayou and the Houston Ship Channel.

11. EPA contractors took samples of the contents discharging from the secondary containment's outfall. Sampling analyses identified hazardous substances including but not limited to the following: toluene, benzene, xylene, and styrene.

12. The amount discharged is unknown at the time, but it is a large amount involving hundreds, if not thousands, of gallons of firefighting wastewater.

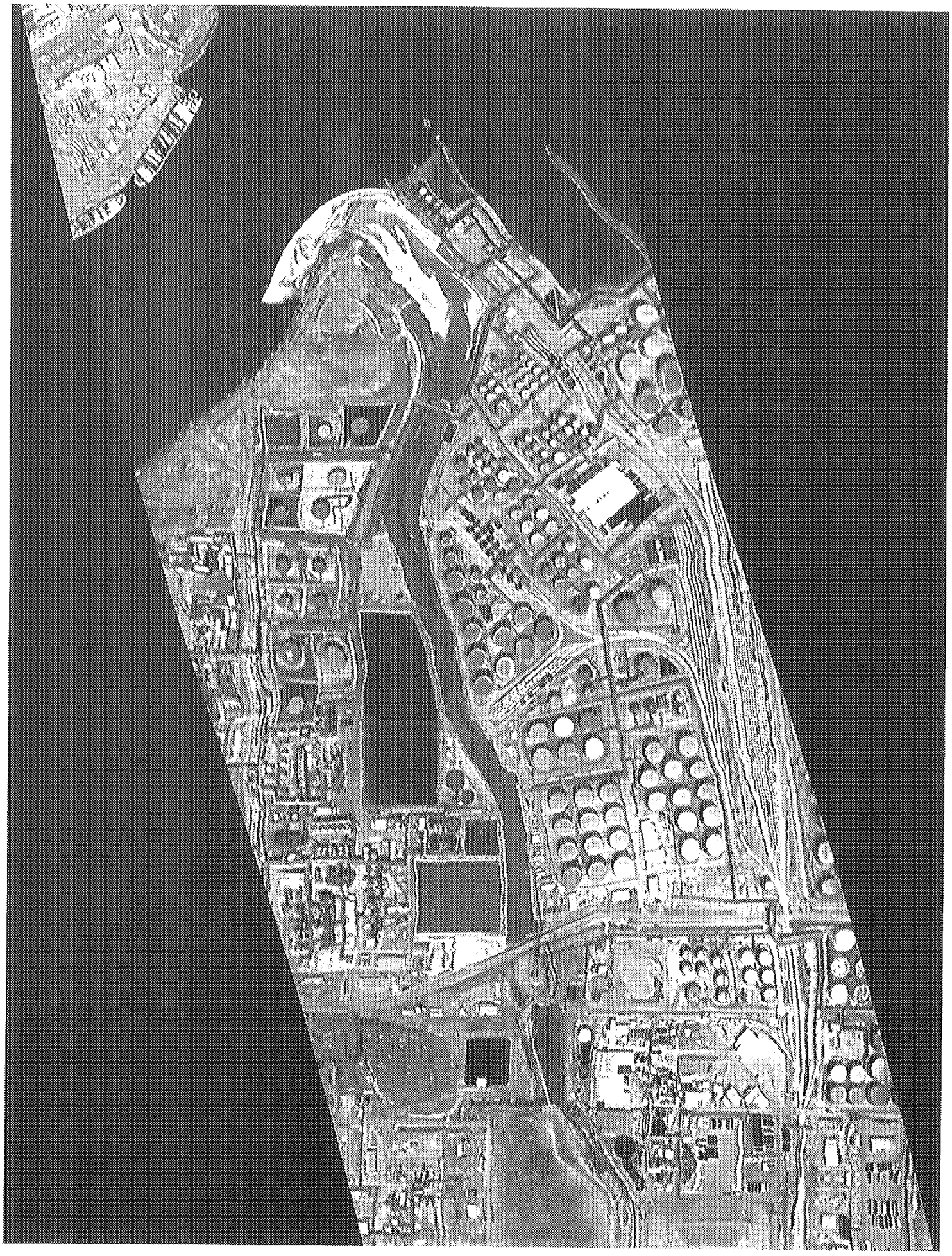
13. ITC has placed booms in the Houston Ship Channel to recover and remove the contaminated firefighting wastewater from the surface. However, the water column underneath the booms is not being addressed.

14. The firefighting wastewater contents within the secondary containment at the ITC facility are not being addressed. The contents are not being removed and properly disposed of.

15. On or about March 22 and March 23 I orally directed representative of ITC to take actions to mitigate the release of hazardous substances. ITC has failed to take adequate actions as of the signing of this statement.

16. The conditions I've described above constitute an imminent and substantial threat and endangerment to public health and welfare and the environment.

Date: 03/23/2019

Adam Adams, EPA On-Scene Coordinator

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