BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of: WASHINGTON STATE DEPARTMENT OF CORRECTIONS, MCNEIL ISLAND CORRECTIONS CENTER McNeil Island, Washington Respondent.	DOCKET NO. CWA-10-2025-0156 **CONSENT AGREEMENT** Proceedings Under Section 311(b)(6) of the Clean Water Act, 33 U.S.C. § 1321(b)(6)

I. STATUTORY AUTHORITY

1.1. This Consent Agreement is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by Section 311(b)(6) of the Clean Water Act (CWA), 33 U.S.C. § 1321(b)(6).

1.2. Pursuant to CWA Section 311(b)(6)(A), the EPA is authorized to assess a civil penalty against any owner, operator, or person in charge of an onshore facility from which oil or a hazardous substance is discharged in violation of CWA Section 311(b)(3), 33 U.S.C. § 1321(b)(3), and/or who fails or refuses to comply with any regulation issued under CWA Section 311(j), 33 U.S.C. § 1321(j).

1.3. CWA Section 311(b)(6)(B), 33 U.S.C. § 1321(b)(6)(B), authorizes the administrative assessment of Class II civil penalties in an amount not to exceed $10,000 per day for each day during which the violation continues, up to a maximum penalty of $125,000. Pursuant to the 2015 amendments to the Federal Civil Penalty Inflation Adjustment Act, 28 U.S.C. § 2461, and 40 C.F.R. Part 19, the administrative assessment of Class II civil penalties may not exceed $23,647 per day for each day during which the violation continues, up to a maximum penalty of $295,564. *See also* 90 Fed. Reg. 1375 (January 8, 2025) (2025 Civil Monetary Penalty Inflation Adjustment Rule).

1.4. Pursuant to CWA Section 311(b)(6)(A) and (b)(6)(B), 33 U.S.C. § 1321(b)(6)(A) and (B), and in accordance with Section 22.18 of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties," 40 C.F.R. Part 22, the EPA issues, and the Washington State Department of Corrections ("Respondent") agrees to issuance of, the Final Order attached to this Consent Agreement.

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this Consent Agreement commences this proceeding, which will conclude when the Final Order becomes effective.

2.2. The Administrator has delegated the authority to sign consent agreements between the EPA and the party against whom a penalty is proposed to be assessed pursuant to CWA Section 311(b)(6), 33 U.S.C. § 1321(b)(6), to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Director of the Enforcement and Compliance Assurance Division, EPA Region 10 ("Complainant").

2.3. Part III of this Consent Agreement contains a concise statement of the factual and legal basis for the alleged violations of the CWA together with the specific provisions of the CWA and the implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

Statutory and Regulatory Framework

3.1. The objective of the CWA is "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters." 33 U.S.C. § 1251(a).

3.2. CWA Section 311(j), 33 U.S.C. § 1321(j), provides for the regulation of onshore facilities to prevent or contain discharges of oil. CWA Section 311(j)(l)(C), 33 U.S.C. § 1321(j)(l)(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 facilities ... and to contain such discharges . . .."

3.3. Initially by Executive Order 11548 (July 20, 1970), 35 Fed. Reg. 11677 (July 22, 1970), and most recently by Section 2(b)(l) of Executive Order 12777 (October 18, 1991), 56 Fed. Reg. 54757 (October 22, 1991), the President delegated to the EPA his Section 311(j)(1)(C) authority to issue the regulations referenced in the preceding Paragraph for non-transportation related onshore facilities.

3.4. Pursuant to these delegated statutory authorities and pursuant to its authorities under the CWA, 33 U.S.C. § 1251 *et seq.,* to implement Section 31l(j), the EPA promulgated the Oil Pollution Prevention regulations in 40 C.F.R. Part 112, which set forth procedures, methods and equipment and other requirements to prevent the discharge of oil from non-transportation-related onshore facilities into or upon the navigable waters of the United States or adjoining shorelines, including requirements for preparation and implementation of a Spill Prevention Control and Countermeasure (SPCC) Plan and a Facility Response Plan (FRP).

3.5. The 40 C.F.R. Part 112 requirement to prepare an SPCC Plan applies to owners and operators of non-transportation-related onshore facilities engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using or consuming oil or oil products, which due to their location, could reasonably be expected to discharge oil in quantities that may be harmful into or upon the navigable waters of the United States or adjoining shorelines. 40 C.F.R. § 112.1.

3.6. The regulations define "onshore facility" to mean any facility of any kind located in, on, or under, any land within the United States other than submerged lands. 40 C.F.R. § 112.2.

3.7. In the case of an onshore facility, the regulations define "owner or operator" to include any person owning or operating such onshore facility. 40 C.F.R. § 112.2.

3.8. The regulations define "person" to include any individual, firm, corporation,

association, or partnership. 40 C.F.R. § 112.2.

3.9. "Non-transportation-related," as applied to an on-shore facility, is defined to include oil storage facilities, including all equipment and appurtenances related thereto, as well as public facilities which use and store oil, but excluding any terminal facility, unit or process integrally associated with the handling or transferring of oil in bulk to or from a vessel. 40 C.F.R § 112 App. A.

3.10. The regulations define "oil" to mean oil of any kind or in any form, including, but not limited to, vegetable oils, petroleum, fuel oil, sludge, synthetic oils, oil refuse, and oil mixed with wastes other than dredged spoil. 40 C.F.R. § 112.2.

3.11. Section 311(b)(3) authorizes the President to determine such quantities as may be harmful under paragraph (4) of this subsection. The President delegated to the EPA the section 311(b)(3) and (4) authorities to determine the "the quantities of oil … the discharge of which may be harmful to the public health of welfare or the environment." By promulgating 40 C.F.R. § 110.3, which implements section 311(b)(4), the EPA has determined that discharges of oil that may be harmful 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.

3.12. CWA § 502(7) defines "navigable waters" as "the waters of the United States, including the territorial seas." 33 U.S.C. § 1362(7).

3.13. Owners or operators of onshore facilities that have an aboveground storage capacity of more than 1,320 gallons of oil, and due to their location could reasonably be expected to discharge oil in harmful quantities into or upon the navigable waters of the United States or adjoining shorelines, must prepare an SPCC Plan in writing, certified by a licensed Professional Engineer, and in accordance with the requirements of 40 C.F.R. § 112.7.

3.14. Owners or operators of onshore facilities must further develop a Facility Response Plan if the discharge of oil into or upon the navigable waters of the United States or adjoining shorelines could reasonably be expected to cause substantial harm to the environment. 40 C.F.R. § 112.20(a). A facility could, because of its location, reasonably be expected to cause substantial harm to the environment by discharging oil into or upon the navigable waters or adjoining shorelines, if it transfers oil over water to or from vessels and has a total oil storage capacity greater than or equal to 42,000 gallons. 40 C.F.R. § 112.20(f)(1)(i).

General Allegations

3.15. The fuel operations at the McNeil Island Corrections Center are owned and operated by the Washington State Department of Corrections. Respondent is a "person" under CWA Sections 311(a)(7), 33 U.S.C. §§ 1321(a)(7), and 40 C.F.R. § 112.2.

3.16. At all times relevant to this Consent Agreement, Respondent was the "owner or operator," within the meaning of 40 C.F.R. § 112.2 and Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6), of the fuel operations at the McNeil Island Corrections Center.

3.17. On October 25, 2022, an authorized EPA representative inspected the Facility to determine compliance with Section 311(j) of the CWA and the requirements of 40 C.F.R. Part 112 ("Inspection" and/or "2022 Inspection").

3.18. At the time of the Inspection, the Facility, which is located on the southeast section of McNeil Island, used diesel fuel for heat, power, and the fueling of marine vessels and support vehicles. Fuel was stored in several locations; however, the primary locations were a transfer pipe and pump station and a tank farm. The Facility also operated a transfer pipe and pump station on a pier located over Puget Sound. A tank farm, which consisted of diesel fuel tanks and a used oil tank, was located on the west side of the Facility. The tank farm was fueled by tanker trunk. Transfers of fuel from the tank farm for facility operations occurred continuously. Diesel fuel was also transferred from the tank farm to the pier via a steel pipeline

that runs over Puget Sound.

3.19. The Facility is "non-transportation-related" within the meaning of 40 C.F.R. § 112.2.

3.20. At the time of the Inspection, Respondent was engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using or consuming oil or oil products as described in 40 C.F.R. § 112.1(b).

3.21. At the time of the Inspection, the Facility had an aggregate, above-ground storage capacity greater than 1,320 gallons of oil in containers, each with a shell capacity of at least 55 gallons.

3.22. McNeil Island is located in Puget Sound. Puget Sound, which is a large inland estuary that is connected to the Pacific Ocean via the Strait of Juan de Fuca, is tidal and was and is used in interstate and foreign commerce. As such, Puget Sound is a "water of the United States" and a navigable water within the meaning of CWA § 507(7), 33 U.S.C. § 1362(7).

3.23. Accordingly, the Facility is a non-transportation-related, onshore facility that, due to location, could reasonably have been expected, at the time of the Inspection, to discharge oil into or upon the navigable waters of the United States or adjoining shorelines in harmful quantities. The Facility is therefore subject to the regulations at 40 C.F.R. Part 112.

3.24. In accordance with 40 C.F.R. § 112.3, Respondent developed an SPCC Plan dated June 30, 2003 ("SPCC Plan").

3.25. At the time of the Inspection, the Facility also transferred oil over water to or from vessels and had a total oil storage capacity greater than or equal to 42,000 gallons.

3.26. Accordingly, the Facility is an onshore facility that, due to location, could reasonably be expected, at the time of the Inspection, to cause substantial harm to the environment through the discharge of oil into or upon the navigable waters of the United States or adjoining shorelines. The Facility is therefore further subject to the regulations at 40 C.F.R.

§ 112.20.

3.27. In accordance with 40 C.F.R. § 112.20(a), Respondent developed a Facility Response Plan that was reviewed and updated in 2010 ("FRP").

3.28. The violations and penalty are based on the 2022 Inspection, the 2003 SPCC Plan, and the 2010 FRP.

SPCC Plan Violations

Violation 1 – Failure to Amend SPCC Plan

3.29. SPCC Plans must be amended "when there is a change in the facility design, construction, operation, or maintenance that materially affects its potential for a discharge." 40 C.F.R. § 112.5(a). In 2008, the Facility's fuel delivery transitioned from barge bulk fuel delivered at the pier to barged tanker truck deliveries at the tank farm. While the Facility acknowledged this change in a 2010 letter that conveyed the FRP, it never updated the SPCC Plan with this information. The change from transferring oil from a barge at the pier to transferring oil from a tanker truck at the tank farm is a "change in facility design, construction, operation, or maintenance that materially affects its potential for a discharge." The Facility's failure to update the SPCC Plan when this change occurred is a violation of 40 C.F.R. § 112.5(a).

Violation 2 – Failure to Review SPCC Plan Every Five Years

3.30. 40 C.F.R. § 112.5(b) requires "a review and evaluation of the SPCC Plan at least once every five years," as well as documentation of such review.

3.31. At the time of the Inspection, the Facility did not produce any documentation or other information indicating that it had conducted any five-year reviews of the 2003 SPCC Plan. The Facility's failure to conduct and maintain documentation of five-year reviews is a violation of 40 C.F.R. § 112.5(b).

Violation 3 – Failure to Identify Mobile and Portable Oil Storage Containers

3.32. For mobile or portable containers (e.g., 55-gallon drums), SPCC Plans must

"either provide the type of oil and storage capacity for each container or provide an estimate of the potential number of mobile or portable containers, the types of oil, and anticipated storage capacities." 40 C.F.R. § 112.7(a)(3)(i).

3.33. The Facility has mobile and/or portable oil storage containers but the 2003 SPCC Plan does not identify and discuss them, which is a violation of 40 C.F.R. § 112.7(a)(3)(i).

3.34. SPCC Plans must also include a diagram that identifies, *inter alia*, "[s]torage areas where mobile or portable containers are located." 40 C.F.R. § 112.7(a)(3).

3.35. The 2003 SPCC Plan Facility diagram does not identify any accumulation or storage areas for mobile and/or portable oil containers, which is a violation of 40 C.F.R. § 112.7(a)(3).

Violation 4 – Failure to Identify Unloading Transfer Procedures

3.36. SPCC Plans must address "[d]ischarge prevention measures, including procedures for routine handling of products (loading, unloading, and facility transfers, etc.)." 40 C.F.R. § 112.7(a)(3)(ii).

3.37. The 2003 SPCC Plan does not address transfer procedures for the tanker trucks that unload fuel to the above-ground storage tanks within the tank farm, in violation of 40 C.F.R. § 112.7(a)(3)(ii).

Violation 5 – Failure to Ensure Oil Water Separators Function Appropriately as Secondary Containment

3.38. 40 C.F.R. § 112.7(c) requires facilities to provide "[a]ppropriate containment and/or diversionary structures or equipment … to prevent a discharge." "The entire containment system, including walls and floors, [must be] capable of containing oil and … constructed to prevent escape of a discharge from the containment system before cleanup occurs." *Id.*

3.39. Oil water separators (OWSs) are part of the secondary containment system in several locations at the Facility, meaning that they retain oil and prevent it from being

discharged. The 2003 SPCC Plan does not, however, discuss how much oil the OWSs can retain; how and when the OWSs are inspected and maintained; and when any retained oil, sludges, or sediment will be removed to ensure that the OWSs function properly. Without information about their capacity and proper maintenance and inspection, it is unclear whether the OWSs can contain oil to prevent a discharge as designed, in violation of 40 C.F.R. § 112.7(c).

Violation 6 – Failure to Provide Adequate Secondary Containment for Used/Waste Oil Tank

3.40. 40 C.F.R. § 112.7(c) requires facilities to provide "[a]ppropriate containment and/or diversionary structures or equipment … to prevent a discharge." "The entire containment system, including walls and floors, [must be] capable of containing oil and … constructed to prevent escape of a discharge from the containment system before cleanup occurs." *Id.* For bulk storage tank installations (except mobile refuelers and other non-transportation-related tank trunks), the secondary containment must retain the entire capacity of the largest single container and sufficient freeboard to contain precipitation. 40 C.F.R. § 112.8(c)(2).

3.41. According to the 2003 SPCC Plan, the Facility has a 5,000-gallon used/waste oil tank with a pipe located in the center of the tank that is connected to an oil filter drain box on top of the berm for the secondary containment area of the tank farm. The pipe does not have a manual or check valve, which means that filling the tank to its 5,000-gallon capacity would automatically result in used oil flowing to and out of the drain box, and out of the secondary containment area of the tank farm. Failure to provide secondary containment for the 5,000-gallon used/waste oil tank that is sufficient to contain the entire capacity of the tank and sufficient freeboard to contain precipitation is a violation of 40 C.F.R. §§ 112.7(c) and 112.8(c)(2).

Violation 7 – Failure to Appropriately Develop Inspection Forms and Maintain Inspection Records

3.42. Facilities must "[c]onduct inspections and tests . . . in accordance with written procedures that [the Facility] or the certifying engineer develop for the [F]acility." 40 C.F.R.

§ 112.7(e). Records of conducted inspections and tests must be signed by the appropriate supervisor or inspector and kept for three years. *Id*.

3.43. While the Facility has procedures for inspections and tests, the Facility does not have inspection forms that match several of these procedures, in violation of 40 C.F.R. § 112.7(e). For example, Section 3.9.1 of the SPCC Plan has a checklist for tank inspections, including foundations and associated piping, and Section 3.9.3 of the SPCC Plan has a checklist for inspecting the main dock area and first landside valve. Yet, these checklists are not incorporated into inspection forms. At the time of the Inspection, the Facility did not appear to be inspecting tanks and the main dock area for the items identified in the Section 3.9.1 and 3.9.3 checklists, in violation of 40 C.F.R. § 112.7(e). In addition, several of the checklist forms in Appendix E of the 2003 SPCC Plan do not include space for the required signature and date, in violation of 40 C.F.R. § 112.7(e). The Facility also does not have records of any completed inspections, in violation of 40 C.F.R. § 112.7(e).

Violation 8 – Failure to Designate An Employee Accountable For Discharge Prevention

3.44. Facilities must "[d]esignate a person . . . who is accountable for discharge prevention and who reports to facility management." 40 C.F.R. § 112.7(f)(2).

3.45. At the time of the inspection, the Facility had not identified anyone who is accountable for discharge prevention, in violation of 40 C.F.R. § 112.7(f)(2).

Violation 9 – Failure to Train Oil-Handling Personnel

3.46. Facilities must train personnel that handle oil "in the operation and maintenance of equipment to prevent discharges; discharge procedure protocols; application pollution control laws, rules, and regulations; general facility operations; and the contents of the [F]acility's SPCC Plan." 40 C.F.R. § 112.7(f)(1). Oil-handling personnel must be trained at least annually to ensure that they understand the SPCC Plan, and are aware of known discharges or failures, malfunctioning components, and any recently developed precautionary measures. 40 C.F.R.

§ 112.7(f)(3).

3.47. At the time of the Inspection, the Facility could not provide any training records demonstrating that it has trained oil-handling personnel as required by 40 C.F.R. § 112.7(f)(1),(3).

Violation 10 – Failure to Ensure Adequate Secondary Containment for Loading/Unloading Rack

3.48. Loading and unloading racks must "hold at least the maximum capacity of any single component of a tank car or tank truck loaded or unloaded at the [F]acility." 40 C.F.R. § 112.7(h)(1).

3.49. The tanker truck that unloads at the Facility has a 400-gallon and 1,600-gallon compartment. The 2003 SPCC Plan does not contain sufficient information demonstrating that the secondary containment for the loading and unloading rack has a capacity of at least 1,600 gallons, in violation of 40 C.F.R. § 112.7(h)(1).

Violation 11 – Failure to Provide Loading/Unloading Transfer Procedures and Appropriate Training

3.50. Before and after filling at the loading/unloading rack, personnel must "closely inspect for discharges the lowermost drain and all [tank truck outlets], and if necessary, ensure that they are tightened, adjusted, or replaced to prevent liquid discharge while in transit." 40 C.F.R. § 112.7(h)(3).

3.51. While the 2003 SPCC Plan provides, in general terms, that the truck driver should inspect the truck for any leaks or discharges prior to filling, after loading, and prior to departure, the language cited above from 40 C.F.R. § 112.7(h)(3) should be incorporated into the SPCC Plan because it is more comprehensive. In addition, staff should be trained to ensure that they adequately inspect the lowermost drain and all tank truck outlets. Failure to have personnel adequately inspect the loading/unloading rack and tank truck prior to filling and departure is a violation of 40 C.F.R. § 112.7(h)(3).

Violation 12 – Failure to Assess Drainage from Undiked Areas

3.52. 40 C.F.R. § 112.8(b)(3) and (4) require that facilities assess drainage from undiked areas with a potential for discharge ("such as where piping is located outside containment walls or where tank truck discharges may occur outside the loading area") and ensure that uncontrolled discharges will be retained.

3.53. There are numerous undiked areas with a potential for discharge at the Facility, including the above-ground storage tanks located at the fire station, emergency generator, and powerhouse. Section 4.2 of the 2003 SPCC Plan does not describe and assess drainage from all of the undiked areas with a potential for discharge at the Facility, in violation of 40 C.F.R. § 112.8(b).

Violation 13 – Failure to Ensure Adequate Secondary Containment for Tank Farm

3.54. 40 C.F.R. § 112.8(c)(2) requires facilities to "[c]onstruct all bulk storage tank installations (except mobile refuelers and other non-transportation-related tank trucks) so that [they] provide a secondary means of containment for the entire capacity of the largest single container and sufficient freeboard to contain precipitation." Diked areas must also be "sufficiently impervious to contain discharged oil." *Id.*

3.55. While the 2003 SPCC Plan discusses the total volume of the tank farm's secondary containment, it does not discuss the net volume, accounting for precipitation and other factors such as displacement caused by objects within the secondary containment. As a result, it is unclear whether the tank farm's secondary containment can contain the entire capacity of the largest single container together with sufficient freeboard to contain precipitation, in violation of 40 C.F.R. § 112.8(c)(2).

3.56. It is also unclear whether the tank farm's secondary containment is sufficiently impervious to contain discharges of oil. For example, the 2003 SPCC Plan does not provide

supporting technical explanation or narrative about the Professional Engineer's determination that the secondary containment for the tank farm is sufficiently impervious to contain a discharge. In addition, current practices do not appear to be consistent with inspection protocols requiring, for example, that weeds and grasses not be allowed to grow within the tank farm's secondary containment. Failure to ensure that the tank farm's secondary containment is sufficiently impervious to contain discharges of oil is a violation of 40 C.F.R. § 112.8(c)(2).

Violation 14 – Failure to Keep Adequate Records of Rainwater Drainage

3.57. 40 C.F.R. § 112.8(c)(3) only allows drainage of untreated, uncontaminated rainwater from secondary containment in specific circumstances: (1) the bypass valve is normally closed; (2) the rainwater is inspected to ensure its drainage will not cause a discharge of oil; (3) the bypass valve is opened and resealed following drainage under responsible supervision; and (4) adequate records of drainage events are kept.

3.58. The 2003 SPCC Plan states that the Facility will keep records of drainage events for at least three years.

3.59. At the time of the Inspection, the Facility did not retain any records of the discharge of untreated, uncontaminated rainwater from the tank farm's secondary containment, in violation of 40 C.F.R. § 112.8(c)(3).

Violation 15 – Failure to Follow Regulations for Integrity Testing

3.60. Facilities must "[t]est or inspect each aboveground container for integrity on a regular schedule and whenever [they] make material repairs." Facilities must further "determine, in accordance with industry standards, the appropriate qualifications for personnel performing tests and inspections, the frequency and type of testing and inspections, which take into account container size, configuration, and design (such as containers that are: shop-built, field-erected, skid-mounted, elevated, equipped with a liner, double-walled, or partially buried)." 40 C.F.R. § 112.8(c)(6). 40 C.F.R. § 112.8(c)(6) also requires facilities to keep comparison records.

3.61. The 2003 SPCC Plan does not, on a tank-by-tank basis, identify and apply a specific industry standard and schedule for routine integrity testing, in violation of 40 C.F.R. § 112.8(c)(6). The 2003 SPCC Plan also does not identify the appropriate qualifications for personnel performing tests and inspections, in violation of 40 C.F.R. § 112.8(c)(6). Finally, the Facility does not keep comparison records of aboveground storage tank integrity testing and inspections, which would allow it to identify changing container conditions, in violation of 40 C.F.R. § 112.8(c)(6).

Violation 16 – Failure to Develop Procedures to Promptly Correct Discharges

3.62. 40 C.F.R. § 112.8(c)(10) requires facilities to "[p]romptly correct visible discharges which result in a loss of oil from the container, including but not limited to seams, gaskets, piping, pumps, valves rivets and bolts." Facilities must also "promptly remove any accumulations of oil in diked areas." *Id.*

3.63. The 2003 SPCC Plan does not have procedures requiring the Facility to promptly correct visible discharges and to promptly remove accumulations of oil from secondary containment, in violation of 40 C.F.R. § 112.8(c)(10).

Violation 17 – Failure to Provide Adequate Secondary Containment for Mobile and Portable Oil Storage Containers

3.64. 40 C.F.R. § 112.7(c) requires facilities to provide "[a]ppropriate containment and/or diversionary structures or equipment … to prevent a discharge." "The entire containment system, including walls and floors, [must be] capable of containing oil and … constructed to prevent escape of a discharge from the containment system before cleanup occurs." *Id.* 40 C.F.R. § 112.8(c)(11) requires that, except for mobile refuelers and other non-transportation-related tank trucks, facilities provide secondary containment for mobile and portable oil storage containers that is sufficient to contain the capacity of the largest single compartment or container with sufficient freeboard to contain precipitation. 40 C.F.R. § 112.7(a)(1) requires that SPCC Plans

discuss conformance with these requirements.

3.65. The Facility has mobile or portable oil storage containers, such as 55-gallon drums, in, for example, the diesel shop and motor pool. While the EPA observed oil storage containers on spill pallets in the diesel shop and motor pool, the 2003 SPCC Plan does not describe how the Facility provides secondary containment for mobile and/or portable oil storage containers, in violation of 40 C.F.R. § 112.7(a)(1), 40 C.F.R. § 112.7(c), and 40 C.F.R. § 112.8(c)(11).

Violation 18 – Failure of the 2003 SPCC Plan to Address Buried Piping

3.66. 40 C.F.R. § 112.8(d)(1) outlines required procedures for buried piping installed or replaced after August 16, 2002, including cathodic protection.

3.67. The 2003 SPCC Plan discusses the main fuel transfer line from the tank farm to the pier. The 2003 SPCC Plan does not, however, with the exception of discussion related to cathodic protection for this main fuel transfer line, address the requirements found in 40 C.F.R. § 112.8(d)(1) for buried oil piping.

Violation 19 – Failure to Develop Procedures For and Conduct Aboveground Piping Inspections

3.68. 40 C.F.R. § 112.8(d)(4) requires facilities to "[r]egularly inspect all aboveground valves, piping, and appurtenances." Specifically, facilities "must assess the general condition of items, such as flange joints, expansion joints, valve glands and bodies, catch pans, pipeline supports, locking of valves, and metal surfaces." *Id.*

3.69. The 2003 SPCC Plan does not include the requirements for inspections of aboveground piping. While the Daily Inspection Form for the tank farm includes reference to inspecting aboveground valves, piping, and appurtenances, this form is limited to the tank farm and is not inclusive of other areas at the Facility that have aboveground piping. In addition, at the time of the Inspection, the Facility did not have any records indicating that it was conducting

inspections of aboveground piping. The failure to develop sufficient procedures for and actually regularly inspect all aboveground valves, piping, and appurtenances is a violation of 40 C.F.R. § 112.8(d)(4).

Violation 20 – Failure to Develop Procedures For and Conduct Inspections of Buried Piping

3.70. 40 C.F.R. § 112.8(d)(4) requires facilities to "conduct integrity and leak testing of buried piping at the time of installation, modification, construction, relocation, or replacement."

3.71. The 2003 SPCC Plan does not have procedures for required integrity and leak testing of buried piping. In addition, at the time of the Inspection, the Facility did not have any records indicating that it had conducted any integrity and leak testing of buried piping. The failure to develop sufficient procedures for and actually conduct required integrity and leak testing of buried piping is a violation of 40 C.F.R. § 112.8(d)(4).

FRP Violations

Violation 21 – Failure to Have an Oil Spill Response Organization

3.72. FRPs must include the "identity of individuals or organizations to be contacted in the event of a discharge so that immediate communications … [with] the persons providing response personnel and equipment can be assured." 40 C.F.R. § 112.20(h)(1)(ii). FRPs must also include the "identity of private personnel and equipment necessary" to respond to discharges of oil and substantial threats of a worst-case discharge. 40 C.F.R. § 112.20(h)(3)(i). Information necessary to identify such personnel and equipment includes "[e]vidence of contracts or other approved means for ensuring the availability of such personnel and equipment." 40 C.F.R. § 112.20(h)(3)(ii).

3.73. At the time of the Inspection, the Facility realized that it did not have an Oil Spill Response Organization (OSRO) to respond to discharges of oil and substantial threats of a worst-case discharge. Indeed, the Facility's contract for an OSRO had not been effective since 2008.

The failure to include an OSRO in the FRP is a violation of 40 C.F.R. § 112.20(h)(1), (3).

Violation 22 – Failure to Update FRP Following Material Changes

3.74. FRPs must be revised and resubmitted within 60 days of a material change that may affect the response to a worst-case discharge, including, *inter alia*, "[a] material change in capabilities of the oil spill removal organizations(s) that provide equipment and personnel to respond to discharges of oil." 40 C.F.R. § 112.20(d)(1)(iii).

3.75. The Facility was required to update its FRP within 60 days of its OSRO contract lapsing because this lapse is a material change that may affect the Facility's response to a worst-case discharge. The Facility's failure to update the FRP for over 15 years after the OSRO contract lapsed is a violation of 40 C.F.R. § 112.20(d)(1)(iii).

3.76. In addition, the Facility switched its security classification from a Level 1 to a Level 4 in 2008, meaning that it moved from the lowest security classification to the highest. The additional security measures that come with a Level 4 facility are a material change that may affect the response to a worst-case discharge. The failure of the Facility to update the FRP within 60 days of its change in security classification is a violation of 40 C.F.R. § 112.20(d)(1)(iii).

Violation 23 – Failure to Implement and Maintain Logs of Training Sessions and Drills/Exercises

3.77. Facilities that are required to prepare FRPs are also required to "develop and implement a facility response training program and a drill/exercise program." 40 C.F.R. § 112.21(a). "[P]ersonnel involved in oil spill response activities" must be trained "to respond to discharges of oil and in applicable oil spill response laws, rules, and regulations." 40 C.F.R. § 112.21(b). Facilities must also "develop a program of facility response drills/exercises, including evaluation procedures," such as a program that follows the National Preparedness for Response Exercise Program (PREP). 40 C.F.R. § 112.21(c).

3.78. Facilities must document the drill/exercise program and the training program

developed pursuant to 40 C.F.R. § 112.21 in their FRP. 40 C.F.R. § 112.20(h)(8)(ii),(iii). FRPs must further include, as an annex to their FRP, "[l]ogs of discharge prevention meetings, training sessions, and drills/exercises." 40 C.F.R. § 112.20(h)(8)(iv).

3.79. At the time of the Inspection, the Facility was not conducting any regular drill/exercise and/or training program except for regular boom deployment exercises. The Facility was also unable to produce any logs of any drills/exercises or training sessions, including boom deployment exercises. Failure to carry out a drill/exercise program and a training program is a violation of 40 C.F.R. § 112.21. Failure to maintain logs of training sessions and drills/exercises is a violation of 40 C.F.R. § 112.20(h)(8)(iv).

Violation 24 – Failure to Conduct and Maintain Records of Inspections of Tanks, Secondary Containment, and Response Equipment

3.80. FRPs must include "[a] checklist and record of inspections for tanks, secondary containment, and response equipment." 40 C.F.R. § 112.20(h)(8)(i).

3.81. At the time of the Inspection, the Facility was unable to produce any records of inspections for tanks, secondary containment, and response equipment, in violation of 40 C.F.R. § 112.20(h)(8)(i).

IV. TERMS OF SETTLEMENT

4.1. Respondent admits the jurisdictional allegations of this Consent Agreement.

4.2. Respondent neither admits nor denies the specific factual allegations contained in this Consent Agreement.

4.3. As required by CWA Section 311(b)(8), 33 U.S.C. § 1321(b)(8), the EPA has taken into account the seriousness of the alleged violations; Respondent's economic benefit of noncompliance; the degree of culpability involved; any other penalty for the same incident; any history of prior violations; the nature, extent, and degree of success of any efforts of the violator to minimize or mitigate the effects of the discharge; the economic impact of the penalty on the

violator; and any other matters as justice may require. After considering all of these factors, the EPA has determined that an appropriate penalty to settle this action is $140,000 ("Assessed Penalty").

4.4. Respondent consents to the assessment of the Assessed Penalty set forth in Paragraph 4.3 and agrees to pay the total Assessed Penalty within 30 days after the date of the Final Order ratifying this Agreement is filed with the Regional Hearing Clerk ("Filing Date").

4.5. Respondent shall pay the Assessed Penalty and any interest, fees, and other charges due using any method, or combination of appropriate methods, as provided on the EPA website: https://www.epa.gov/financial/makepayment. For additional instructions see: https://www.epa.gov/financial/additional-instructions-making-payments-epa.

4.6. When making a payment, Respondent shall:

4.6.1. Identify every payment with Respondent's name and the docket number of this Agreement, CWA-10-2025-0156,

4.6.2. Concurrently with any payment or within 24 hours of any payment, Respondent shall serve proof of payment electronically to the following person(s):

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101
R10_RHC@epa.gov

Kate Spaulding, Compliance Officer
U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101
spaulding.kate@epa.gov

and

U.S. Environmental Protection Agency
Cincinnati Finance Center
Via electronic mail to:

CINWD_AcctsReceivable@epa.gov

"Proof of payment" means, as applicable, a copy of the check, confirmation of credit card or debit card payment, or confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with the appropriate docket number and Respondent's name.

4.7. Interest, Charges, and Penalties on Late Payments. Pursuant to 33 U.S.C. § 1321(b)(6)(H), 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to timely pay any portion of the Assessed Penalty per this Agreement, the entire unpaid balance of the Assessed Penalty and all accrued interest shall become immediately due and owing, and the EPA is authorized to recover the following amounts.

4.7.1. Interest. Interest begins to accrue from the Filing Date. If the Assessed Penalty is paid in full within thirty (30) days, interest accrued is waived. If the Assessed Penalty is not paid in full within thirty (30) days, interest will continue to accrue until the unpaid portion of the Assessed Penalty as well as any interest, penalties, and other charges are paid in full. Interest will be assessed at prevailing rates, per 33 U.S.C. § 1321(b)(6)(H). The rate of interest is the IRS standard underpayment rate.

4.7.2. Handling Charges. The United States' enforcement expenses including, but not limited to, attorneys' fees and costs of collection proceedings.

4.7.3. Late Payment Penalty. A twenty percent (20%) quarterly non-payment penalty.

4.8. Late Penalty Actions. In addition to the amounts described in the prior Paragraph, if Respondent fails to timely pay any portion of the Assessed Penalty, interest, or other charges and penalties per this Consent Agreement, the EPA may take additional actions. Such actions the EPA may take include, but are not limited to, the following.

4.8.1. Refer the debt to a credit reporting agency or a collection agency, per 40 C.F.R. §§ 13.13 and 13.14.

4.8.2. Collect the debt by administrative offset (i.e., the withholding of money payable by the United States government to, or held by the United States government for, a person to satisfy the debt the person owes the United States government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, per 40 C.F.R. Part 13, Subparts C and H.

4.8.3. Suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with the EPA or engaging in programs the EPA sponsors or funds, per 40 C.F.R. § 13.17.

4.8.4. Request that the Attorney General bring a civil action in the appropriate district court to recover the full remaining balance of the Assessed Penalty, in addition to interest and the amounts described above, pursuant to 33 U.S.C. § 1321(b)(6)(H). In any such action, the validity, amount, and appropriateness of the Assessed Penalty shall not be subject to review.

4.9. Allocation of Payments. Pursuant to 31 C.F.R. § 901.9(f) and 40 C.F.R. § 13.11(d), a partial payment of debt will be applied first to outstanding handling charges, second to late penalty charges, third to accrued interest, and last to the principal that is the outstanding Assessed Penalty amount.

4.10. Tax Treatment of Penalties. Penalties, interest, and other charges paid pursuant to this Agreement shall not be deductible for purposes of federal taxes.

4.11. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this Consent Agreement and to bind Respondent to this document.

4.12. The undersigned representative of Respondent also certifies that, as of the date of

Respondent's signature of this Consent Agreement, Respondent has corrected the violation(s) alleged in Part III above.

4.13. Except as described in Subparagraph 4.7.2, above, each party shall bear its own fees and costs in bringing or defending this action.

4.14. For the purposes of this proceeding, Respondent expressly waives any affirmative defenses and the right to contest the allegations contained in the Consent Agreement and to appeal the Final Order. By signing this Consent Agreement, Respondent waives any rights or defenses that Respondent has or may have for this matter to be resolved in federal court, including but not limited to any right to a jury trial, and waives any right to challenge the lawfulness of the final order accompanying the Consent Agreement.

4.15. The provisions of this Consent Agreement and the Final Order shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.16. The above provisions are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

FOR RESPONDENT:

_____

Chris Idso, Director of Capital Planning and Development
Washington State Department of Corrections

FOR COMPLAINANT:

_____

Edward J. Kowalski
Director
Enforcement and Compliance Assurance Division
EPA Region 10