BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:	DOCKET NO. CWA-10-2020-0066
EMERALD SERVICES, INC.	**CONSENT AGREEMENT**
Tacoma, Washington	
Respondent.	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), 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 $19,277 per day for each day during which the violation continues, up to a

maximum penalty of $240,960. *See also* 85 Fed. Reg. 1751 (January 13, 2020) (2020 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, EPA issues, and Emerald Services, Inc. ("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 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 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.

3.5. The requirements of 40 C.F.R. Part 112 apply 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.

3.6. Further, under 40 C.F.R. Part 112, 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 a SPCC Plan in writing, certified by a licensed Professional Engineer, and in accordance with the requirements of 40 C.F.R. § 112.7.

3.7. A facility's SPCC Plan shall be prepared "in accordance with good engineering practices" and have the full approval of management with authority to commit the necessary resources to implement the plan. 40 C.F.R. § 112.7.

General Allegations

3.8. Respondent is a corporation organized under the laws of the State of Washington and is a "person" under CWA Section 311(a)(7) and 502(5), 33 U.S.C. §§ 1321(a)(7), 1362(5), and 40 C.F.R. § 112.2.

3.9. 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 facility located at 1825 East Alexander Avenue in Tacoma, Washington ("Facility").

3.10. The Facility is an "onshore facility" within the meaning of Section 311(a)(10) of the Act, 33 U.S.C. § 1321(a)(10), and 40 C.F.R. § 112.2.

3.11. On March 29, 2017, authorized EPA representatives inspected the Facility to determine compliance with Section 311(j) of the Act, and in particular with the requirements of 40 C.F.R. Part 112.

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

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

3.14. At the time of 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.

3.15. Respondent has developed three versions of its SPCC Plan that are relevant to the alleged violations. The relevant versions of the SPCC Plan were dated February 2013, December 2015, and January 2018 (collectively referred herein as "SPCC Plans").

3.16. Respondent's SPCC Plans indicate an approximate distance of "a few hundred feet" between the Facility and Blair Waterway. Blair Waterway is a part of Commencement Bay. Commencement Bay is a navigable water within the meaning of CWA § 502(7), 33 U.S.C. § 1362(7).

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

3.18. Under 40 C.F.R. § 112.3, the owner or operator of an SPCC-regulated facility that was in operation on or before August 16, 2002, shall have prepared and implemented a written SPCC Plan that complies with 40 C.F.R. § 112.3 and other applicable sections of 40 C.F.R. Part 112.

3.19. The Facility began operating before August 16, 2002.

Alleged Violations

3.20. The regulation at 40 C.F.R. § 112.3 requires that the owner or operator of an onshore facility must prepare in writing and implement a SPCC Plan in accordance with 40

C.F.R. § 112.7. The regulation at 40 C.F.R. § 112.7(a)(3) requires that the SPCC Plan describe the physical layout of the facility and include a facility diagram, which must mark the location and contents of each fixed oil storage container.

3.21. The regulation at 40 C.F.R. § 112.7(a)(3)(i) requires that the SPCC Plan address the type of oil in each fixed container and its storage capacity. For mobile or portable containers, the Plan must 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.

3.22. The regulation at 40 C.F.R. § 112.7(a)(3)(iii) requires that the SPCC Plan address discharge or drainage control such as secondary containment around containers and other structures, equipment, and procedures for the control of a discharge.

3.23. Respondent's 2013 and 2015 SPCC Plans failed to address the following oil storage containers in its 2013 and 2015 SPCC Plans, in violation of 40 C.F.R. § 112.7.3, 112.7(a)(3), 112.7(a)(3)(i), and 112.7(a)(3)(iii):

Container ID	Storage Capacity (gallons)	Contents	Location
PT-5	2,500	Wash Water	Glycol Tanks Containment Area
D-502	9,500	Dangerous Waste	Tank Area 3
D-100	3,600	Dangerous Waste	Tank Area 1
D-300	10,000	Dangerous Waste	Tank Area 2
D-301	10,000	Dangerous Waste	Tank Area 2
D-302	6,250	Dangerous Waste	Process Area 2
C-100	6,000	Solvent	Tank Area 1
C-101	965	Solvent	Tank Area 1
C-102	4,800	Solvent	Process Area 2
C-103	1,400	Solvent	Process Area 2
C-105	3,200	Solvent	Production Pad 3
C-801	5,000	Solvent	Tank Area 1
C-802	7,500	Solvent	Tank Area 1
GenSet	600	Diesel	SW Corner of Facility
W-922	20,000	Oily Water	Load/Unload Area 2
W-924	2,500	Oily Water	Re-Refinery Cooling Tower Area

Container ID	Storage Capacity (gallons)	Contents	Location
W-925	2,500	Oily Water	Re-Refinery Cooling Tower Area
Drums	29,590 – 40,810	Dangerous Waste	Dangerous Waste Storage Area
Drums/Totes	15,000	Solvent Product	Load/Unload Area 1
Drums/Totes	4,840	Oily Water	Load/Unload Area 2
Drums/Totes	20,000	Recycled Solvent Product	Product Storage Area 3

3.24. The regulation at 40 C.F.R. § 112.7(e) requires that the Facility conduct inspections and tests in accordance with written procedures that the Facility or the certifying engineer develop for the Facility. The regulation at 40 C.F.R. § 112.8(c)(6) requires that the Facility test or inspect each aboveground container for integrity on a regular schedule. The Facility must 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.

a. Respondent failed to include in the 2013 and 2015 SPCC Plans inspection procedures and schedules for the containers listed in Paragraph 3.23, in violation of 40 C.F.R. §§ 112.7(e) and 112.8(c)(6).

b. The regulation at 40 C.F.R. § 112.7(a)(2) provides that an SPCC Plan may deviate from certain inspection requirements if the Facility provides equivalent protection by some other means of spill prevention, control, or countermeasure. If the SPCC Plan deviates, the Facility must state the reasons for nonconformance and describe in detail alternative methods and how it will achieve equivalent environmental protection. Respondent's integrity inspection procedures and schedule in Section 4.2.6, Table 4-2 of the 2018 SPCC Plan deviated from industry standards; however, Respondent failed to include an environmental equivalency evaluation, in violation of 40 C.F.R. § 112.7(a)(2) and 112.8(c)(6).

3.25. The regulation at 40 C.F.R. § 112.7(b) requires that, where experience indicates a reasonable potential for equipment failure, the Facility must include in its SPCC Plan a prediction of the direction, rate of flow, and total quantity of oil which could be discharged from the Facility as a result of each type of major equipment failure.

a. Table 3-1 of Respondent's 2018 SPCC Plan identified areas with a reasonable potential for discharge that were not identified in Table 3-1 of Respondent's 2013 and 2015 SPCC Plans. Respondent's 2013 and 2015 SPCC Plans failed to include a major equipment failure analyses for all areas with a reasonable potential for discharge in violation of 40 C.F.R. § 112.7(b).

b. Respondent's 2013 and 2015 SPCC Plans failed to include site-specific predictions of rate of flow and oil quantity in violation of 40 C.F.R. § 112.7(b).

c. Respondent's 2018 SPCC Plan failed to include site-specific predictions of rate of flow and oil quantity in violation of 40 C.F.R. § 112.7(b).

3.26. The regulation at 40 C.F.R. 112.5(a) requires that the Facility amend its SPCC Plan in accordance with § 112.7 when there is a change in the facility design, construction, operation, or maintenance that materially affects its potential for a discharge. The amendment must be prepared within six months, and implemented as soon as possible, but not later than six months following preparation of the amendment. The de-ash containers DA-1, DA-2 and DA-3 were installed in September 2013, but Respondent failed to amend its SPCC Plan to include these containers until December 2015, in violation of 40 C.F.R. 40 C.F.R. § 112.5(a).

3.27. The regulation at 40 C.F.R. 112.7(a)(4) requires that the Facility provide information and procedures in its SPCC Plan to enable a person reporting a discharge to relate information on the exact address or location and phone number of the Facility; the date and time of the discharge, the type of material discharges; estimates of the total quantity discharged; the

source of the discharge; a description of all affected media; the cause of the discharge; any damages or injuries caused by the discharge; actions being used to stop, remove, and mitigate the effects of the discharge; whether an evacuation may be needed; and, the names of individuals and/or organizations who have also been contacted. Respondent's 2013 and 2015 SPCC Plans' Appendix I – Discharge Notification Form failed to include information to enable a person to identify the cause of a discharge, in violation of 40 C.F.R. § 112.7(a)(4).

3.28. The regulation at 40 C.F.R. § 112.8(c)(2) requires that the Facility construct all bulk storage tank installations so that it provides a secondary means of containment for the entire capacity of the largest single container and sufficient freeboard to contain precipitation. Respondent failed to provide adequate secondary containment for containers W-924 and W-925, in violation of 40 C.F.R. § 112.8(c)(2).

3.29. The regulation at 40 C.F.R. § 112.8(d)(2) requires that the Facility cap or blank-flange the terminal connection at the transfer point or mark it as to origin when piping is not in service or is in standby service of an extended time. Respondent's SPCC Plans failed to address this provision in violation of 40 C.F.R. § 112.8(c)(2).

3.30. Respondent's failure to comply with the requirements of 40 C.F.R. Part 112 subjects it to civil penalties pursuant to Section 311(b)(6)(B)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(ii).

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), 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, EPA has determined that an appropriate penalty to settle this action is $93,151.

4.4. Respondent consents to the assessment of the civil penalty set forth in Paragraph 4.3 and agrees to pay the total civil penalty within 30 days of the effective date of the Final Order.

4.5. Payment under this Consent Agreement and the Final Order may be paid by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at: http://www2.epa.gov/financial/makepayment. Payments made by a cashier's check or certified check must be payable to the order of "Treasurer, United States of America" and delivered to the following address:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Respondent must note on the check the title and docket number of this action.

4.6. Respondent must serve photocopies of the check, or proof of other payment method described in Paragraph 4.5, on the Regional Hearing Clerk and EPA Region 10 Compliance Officer at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, Mail Stop 11-C07
1200 Sixth Avenue, Suite 155
Seattle, WA 98101
Young.Teresa@epa.gov

Rick Cool, Compliance Officer
U.S. Environmental Protection Agency
Region 10, Mail Stop 20-C04
1200 Sixth Avenue, Suite 155
Seattle, WA 98101
Cool.Richard@epa.gov

4.7. If Respondent fails to pay the penalty assessed by this Consent Agreement and the Final Order in full by its due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. Such failure may also subject Respondent to a civil action to collect the assessed penalty under the CWA, together with interest, fees, costs, and additional penalties described below. In any collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

a. Interest. Pursuant to CWA Section 311(b)(6)(H), 33 U.S.C. § 1321(b)(6)(H), any unpaid portion of the assessed penalty shall bear interest at a rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the Final Order provided, however, that no interest shall be payable on any portion of the assessed penalty that is paid within 30 days of the effective date of the Final Order.

b. Attorneys Fees, Collection Costs, Nonpayment Penalty. Pursuant to CWA Section 311(b)(6)(H) of the CWA, 33 U.S.C. § 1321(b)(6)(H), if Respondent fails to pay on a timely basis the penalty set forth in Paragraph 4.3, Respondent shall pay (in addition to any assessed penalty and interest) attorneys fees and costs for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount

equal to 20% of the aggregate amount of Respondent's penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.

4.8. The penalty described in Paragraph 4.3, including any additional costs incurred under Paragraph 4.7 above, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.9. 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.

4.10. 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.

4.11. Except as described in Subparagraph 4.7.b, above, each party shall bear its own costs in bringing or defending this action.

4.12. 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.

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

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

DATED:

July 6, 2020

FOR RESPONDENT:

WILLIAM CONNORS
Senior Vice President, Compliance
Emerald Services, Inc.

DATED:

FOR COMPLAINANT:

EDWARD KOWALSKI
Digitally signed by EDWARD KOWALSKI
Date: 2020.08.13 09:43:03 -07'00'

EDWARD J. KOWALSKI
Director
Enforcement and Compliance Assurance Division
EPA Region 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:	DOCKET NO. CWA-10-2020-0066
EMERALD SERVICES, INC.	**FINAL ORDER**
Tacoma, WA	
Respondent.	Proceedings Under Section 311(b)(6) of the Clean Water Act, 33 U.S.C. § 1321(b)(6)

1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of the U.S. Environmental Protection Agency (EPA) Region 10, who has in turn delegated this authority to the Regional Judicial Officer in EPA Region 10.

2. The terms of the foregoing Consent Agreement are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

3. The Consent Agreement and this Final Order constitute a settlement by EPA of all claims for civil penalties pursuant to the Clean Water Act (CWA) for the violations alleged in Part III of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(a), nothing in this Final Order shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of the CWA and regulations promulgated or permits issued thereunder.

4. This Final Order shall become effective upon filing.

SO ORDERED this _____ day of _____, 2020.

RICHARD MEDNICK
Digitally signed by RICHARD MEDNICK
Date: 2020.08.13 17:55:40 -07'00'

RICHARD MEDNICK
Regional Judicial Officer
EPA Region 10