

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 7  
11201 RENNER BOULEVARD  
LENEXA, KANSAS 66219

2016 AUG 22 AM 9:21

BEFORE THE ADMINISTRATOR

IN THE MATTER OF	)	
	)	
	)	COMPLAINT,
	)	CONSENT AGREEMENT
Hartman Oil Company, Inc.	)	AND
Tector Lease, located in	)	FINAL ORDER
McPherson County, Kansas	)	
	)	
	)	Docket No. CWA-07-2016-0072
Respondent.	)	
_____	)	

The U.S. Environmental Protection Agency, Region 7 (EPA or Complainant), and Hartman Oil, Inc. (Respondent) have agreed to a settlement of this action before filing a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b), 22.18(b)(2), and 22.18(b)(3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b), 22.18(b)(2), and 22.18(b)(3).

**COMPLAINT**

**Jurisdiction**

1. This is an administrative action for the assessment of a Class I civil penalty instituted pursuant to Section 311(b)(6) of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act (CWA or the Act), 33 U.S.C. § 1321(b)(6), and in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, (Administrative Proceedings Not Governed by Section 554 of the Administrative Procedures Act), 40 C.F.R. Part 22, Subpart I.

2. This Complaint and Consent Agreement/Final Order serves as notice that EPA has reason to believe that Respondent has violated Sections 311(b)(3) and 311(j) of the CWA, 33 U.S.C. §§ 1321(b)(3) and 1321(j), and regulations promulgated thereunder.

### Parties

3. The Respondent is Hartman Oil, Inc., who operates from offices addressed at 10500 East Berkeley Square Parkway, Suite 100, Wichita, Kansas 67206.

4. The authority to take action under Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6), is vested in the Administrator of the EPA. The Administrator has delegated this authority to the Regional Administrator, EPA, Region 7, who in turn has delegated it to the Director of the Air and Waste Management Division of EPA, Region 7.

### Statutory and Regulatory Framework

5. Section 311(j)(1)(C) of the Act, 33 U.S.C. § 1321(j)(1)(C), provides that the President shall issue regulations “establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil . . . from onshore . . . facilities, and to contain such discharges . . . .”

6. Section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3), prohibits the discharge of oil or hazardous substances into or upon the navigable waters of the United States or adjoining shorelines in such quantities that have been determined may be harmful to the public health or welfare or environment of the United States.

7. Section 311(a)(1) of the Act, 33 U.S.C. § 1321(a)(1), defines "oil" as "oil of any kind or in any form, including, but not limited to, petroleum [or] fuel oil.. .."

8. For purposes of Section 311(b)(3) and (b)(4) of the Act, 33 U.S.C. § 1321(b)(3) and (b)(4), discharges of oil into or upon the navigable waters and adjoining shorelines of the United States in such quantities that have been determined may be harmful to the public health or welfare or environment of the United States are defined in 40 C.F.R. § 110.3 to include discharges of oil that violate applicable water quality standards or cause a film or a sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon the adjoining shorelines.

9. EPA promulgated the Spill Prevention Control and Countermeasure (SPCC) regulations pursuant to these delegated statutory authorities, and pursuant to its authorities under the CWA, 33 U.S.C. § 1251 *et seq.*, which established certain procedures, methods and requirements upon each owner and operator of a non-transportation-related onshore facility if such facility, due to its location, could reasonably be expected to discharge oil into or upon the navigable waters of the United States and their adjoining shorelines in such quantity as EPA has determined in 40 C.F.R. § 110.3 may be harmful to the public health or welfare or the environment of the United States (“harmful quantity”).

10. In promulgating 40 C.F.R. § 110.3, which implements Section 311(b)(4) of the Act, 33 U.S.C. § 1321(b)(4), EPA has determined that discharges of harmful quantities include oil discharges that cause either (1) a violation of applicable water quality standards, or (2) a film, sheen upon, or discoloration of the surface of the water or adjoining shorelines, or (3) a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

### **General Allegations**

11. Respondent is a corporation organized under the laws of Kansas. Respondent is a person within the meaning of Sections 311(a)(7) and 502(5) of the Act, 33 U.S.C. §§ 1321(a)(7) and 1362(5), and 40 C.F.R. § 112.2.

12. Respondent is the owner and/or operator within the meaning of Section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6), and 40 C.F.R. § 112.2, of an oil lease known as the Tector Lease (“Tector Lease facility”, or “facility”), located in McPherson County, Kansas, at the following approximate location:

Latitude/Longitude: 38.501106°, -97.420248° located north of  
Canton, Kansas, south of Rainbow Road and east of 27th Avenue  
in McPherson County, Kansas.

13. The Tector Lease facility includes production wells, oil bulk storage tanks, produced water tanks and other oil filled equipment. The Tector Lease facility has an estimated aggregate above-ground storage capacity of 37,000 gallons of oil and produced water.

14. Respondent’s facility is located adjacent to Gypsum Creek with surface drainage towards Gypsum Creek. Gypsum Creek is a navigable water of the United States within the meaning of 40 C.F.R. § 112.2 and Section 502(7) of the Act, 33 U.S.C. § 1362(7).

15. Respondent is engaged in storing, processing, using or consuming oil or oil products located at the facility.

16. The Tector Lease facility is a non-transportation-related facility within the meaning of 40 C.F.R. § 112 Appendix A, as incorporated by reference within 40 C.F.R. § 112.2.

17. The Tector Lease 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.

18. The Tector Lease facility is a non-transportation-related onshore facility which, due to its location, could reasonably be expected to discharge oil to a navigable water of the United States or its adjoining shorelines in a harmful quantity and “an SPCC-regulated facility”.

19. Pursuant to Section 311(j)(1)(C) of the Act, Executive Order 12777, and 40 C.F.R. § 112.1 Respondent, as the owner and/or operator of an SPCC-regulated facility, is subject to the SPCC regulations.

20. In June 2012, a discharge of approximately 100 gallons of oil and 1,000 gallons of salt/produced water to Gypsum Creek occurred from Respondent's facility, in violation of Section 311(b)(3) of the CWA. Respondent Hartman Oil previously paid a civil administrative penalty of \$3,000 for the June 2012 discharge through an expedited settlement in June of 2013, (EPA Docket No. CWA-07-2013-0040).

21. On July 4-5, 2014, another discharge of oil to Gypsum Creek occurred from the Tector Lease. In response to the July 2014 spill, EPA response personnel visited the facility and documented the impact of the spill and sheen on Gypsum Creek.

22. On or about December 18, 2014, EPA personnel again visited the facility and conducted an inspection to determine compliance with the SPCC requirements of the CWA.

23. EPA's December 2014 inspection documented significant non-compliance with the SPCC regulations at the facility. A copy of EPA's inspection report was transmitted to Respondent on or about January 28, 2015.

24. On April 28, 2015, EPA transmitted to Respondent a Request for Information, issued pursuant to the authority of Section 308 of the CWA, 33 U.S.C. 1318, that requested information regarding the history of spills from the facility and compliance with the SPCC program of the CWA. Hartman's response to the Request for Information was received by EPA on June 1, 2015. The parties commenced negotiations to resolve this matter in April 2016 which have resulted in this Consent Agreement and Final Order.

### **Alleged Violations**

#### **Count 1: Prohibited Discharge of Oil**

25. Complainant hereby incorporates the allegations contained in Paragraphs 1 through 24 above, as if fully set forth herein.

26. Respondent's discharge on July 4-5, 2014 from its Tector Lease facility caused a film or sheen upon the surface of Gypsum Creek, and, therefore, was in a quantity that has been determined may be harmful under 40 C.F.R. § 110.3, which implements Section 311(b)(3) and (b)(4) of the Act, 33 U.S.C. § 1321(b)(3) and (b)(4).

27. Respondent's July 4-5, 2014 discharge from the Tector Lease facility into or upon Gypsum Creek in a quantity that has been determined may be harmful under 40 C.F.R. § 110.3, violated Section 311 (b)(3) of the Act, 33 U.S.C. § 1321(b)(3).

28. In accordance with Section 311(b)(6)(A)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(A)(ii), EPA may assess a civil penalty to any owner or operator in charge of any onshore facility who fails to comply with Section 311(b)(3) of CWA, 33 U.S.C. § 1321(b)(3).

**Count 2:  
Violations of SPCC Program**

29. Complainant hereby incorporates the allegations contained in Paragraphs 1 through 24 above, as if fully set forth herein.

30. Based on information gathered during EPA's December 2014 Inspection and EPA's review of Respondent's response to the April 2015 Request for Information, at the time of EPA's December 2014 inspection, and thereafter, Respondent failed to fully prepare and implement a SPCC Plan, as required by 40 C.F.R. 112.3, as follows:

- a. The Tector Lease facility did not have a required SPCC Plan prior to February 8, 2013, in violation of 40 C.F.R. 112.3;
- b. The 2013 SPCC Plan was not signed to document full approval of management by a person with the authority to commit resources to implement the Plan until December 30, 2014, (after EPA's inspection), in violation of 40 C.F.R. 112.7;
- c. At the time of EPA's 2014 inspection, the facility had failed to complete a Certification of the Applicability of the Substantial Harm Criteria, in violation of 40 C.F.R. 112.20(e);
- d. The Tector Lease facility's SPCC Plan was not amended and updated within six (6) months of either the 2012 or the 2014 spills, in order to document repairs and/or improvements designed to minimize the likelihood and impact of future discharges, in violation 40 C.F.R. 112.5(a);
- e. The Tector Lease facility's SPCC Plan failed to describe specifics for a worse case discharge(s) from equipment failures, where past spills/discharges demonstrate the probability for such equipment failure. The SPCC Plan did not include a prediction of the direction, rate of flow, and total quantity of oil that could be discharged during such equipment failures (piping), in violation of 40 C.F.R. 112.7(b);
- f. Within the facility's SPCC Plan, an "impracticability" determination was made for "general" secondary containment that is required by 40 C.F.R. 112.7(c), which allows the facility to rely on a Contingency Plan prepared in accordance with 40 C.F.R. Part 109. However, the facility's Contingency Plan failed to meet the requirements of 40 C.F.R. 109 because the equipment and materials provided by the facility will not control a spill of 500 gallons, as described in the Contingency Plan (see 40 CFR 109.5(d)). Because the Contingency Plan is relied on by the facility to comply with the general containment requirements of 40 C.F.R. 112.7(c), this deficiency in the facility's Contingency Plan also constitutes a violation of 40 C.F.R. 112.7(c);

- g. The facility failed to periodically inspect aboveground piping and valves, in violation of 40 C.F.R. 112.9(d); and
- h. The Tector Lease facility failed to provide secondary containment to flow lines and intra facility gathering lines; or alternatively, to comply with a Contingency Plan prepared in accordance with 40 C.F.R. Part 109 (See Item 7, above).

31. Respondent's failure to prepare and implement a SPCC plan for the facility in accordance with the requirements of 40 C.F.R. Part 112, as described in Paragraph 30, violated 40 C.F.R. § 112.3.

32. In accordance with Section 311(b)(6)(A)(ii) of CWA, 33 U.S.C. § 1321(b)(6)(A)(ii), EPA may assess a civil penalty to any owner or operator in charge of any onshore facility who fails to comply with any regulation issued under Section 311(j) of CWA, 33 U.S.C. § 1321(j).

### **CONSENT AGREEMENT**

33. Respondent and EPA agree to the terms of this Consent Agreement and Respondent has read this Consent Agreement, finds it reasonable, consents to its issuance and will comply with the terms of the Final Order.

34. Respondent admits the jurisdictional allegations of this Complaint and Consent Agreement/Final Order and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of this Consent Agreement/Final Order.

35. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this Complaint and Consent Agreement/Final Order.

36. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above and its right to appeal this Consent Agreement/Final Order.

37. Respondent certifies by signing this Consent Agreement that it has prepared a SPCC plan for the facility, and to the best of its knowledge, it is presently in compliance with the CWA and all regulations promulgated thereunder.

38. Nothing in this Consent Agreement/Final Order shall be construed as a release from any other action under any law and/or regulation administered by EPA. Nothing contained in this Consent Agreement/Final Order shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state and local environmental statutes and regulations and applicable permits.

39. Failure to pay the assessed penalty may result in the referral of this matter to the United States Department of Justice for collection. If payment is not received on or before the due date, interest will be assessed at the annual rate established by the Secretary of the Treasury

pursuant to 31 U.S.C. § 3717. The interest will be assessed on the overdue amount from the due date through the date of payment. In any such collection, the penalty agreed to herein shall not be subject to review.

40. Each party shall bear its own costs and attorneys' fees in the action resolved by this Consent Agreement/Final Order.

41. Each signatory of this Agreement certifies that he or she is fully authorized to enter into the terms of this Consent Agreement and that the Agreement can be signed in part and counterpart.

42. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of a mitigated civil penalty as specified in Paragraph 48 of the Consent Agreement. Payment of this civil penalty shall resolve all civil and administrative claims for all violations of the CWA specifically alleged in Paragraphs 25 to 32 of this document, through the Effective Date of the Final Order, below.

43. The effect of the settlement in Paragraph 42, above, is conditioned upon the accuracy of the Respondent's representations to EPA, as memorialized in Paragraph 37 above.

44. Notwithstanding any other provision of this Consent Agreement/Final Order, EPA reserves the right to enforce the terms of the Consent Agreement/Final Order by initiating a judicial or administrative action under Section 311 of the CWA, 33 U.S.C. § 1321, and to seek penalties against Respondent or to seek any other remedy allowed by law.

45. With respect to matters not addressed in this Consent Agreement/Final Order, Complainant reserves the right to take enforcement action for violations of the CWA and its implementing regulations, or any other available legal authority, including without limitation, the right to seek injunctive relief, penalties and damages.

46. This Consent Agreement/Final Order shall be effective upon entry of the Final Order by the appropriate Regional Official for EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

47. This executed Consent Agreement/Final Order shall be filed with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 7, 11201 Renner Boulevard, Lenexa, Kansas 66219.

**Penalty Payment:**

48. Respondent shall pay a civil penalty of Thirty Thousand, Three Hundred and Fifty One Dollars (\$30,351), plus applicable interest, in accordance with the terms and installment schedule set forth in Attachment A to this Consent Agreement/Final Order.

Payments shall be by cashier's or certified check made payable to the "Environmental Protection Agency – OSLTF-311" and remitted to:

U.S. EPA  
Fines and Penalties  
P.O. Box 979077  
St. Louis, Missouri 63197-9000.

49. On each payment, Respondent shall reference the Docket Number CWA-07-2016-0072 and **In the Matter of Hartman Oil, Inc.** on the check. A copy of each check shall also be mailed to:

Regional Hearing Clerk  
United States Environmental Protection Agency  
Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219

and

Howard Bunch  
Office of Regional Counsel  
United States Environmental Protection Agency  
Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219.

50. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Consent Agreement/Final Order shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

51. This Consent Agreement/Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement/Final Order.

52. The headings in this Complaint and Consent Agreement and Final Order are for convenience of reference only and shall not affect interpretation of this document.



RESPONDENT:  
Hartman Oil, Inc.

Date: 7/28/16

Signature: 

Printed Name: Willis E. Hartman


Title: PRESIDENT

COMPLAINANT:  
U.S. ENVIRONMENTAL PROTECTION AGENCY

8/18/16  
Date

  
\_\_\_\_\_  
John Smith  
Deputy Director  
Air and Waste Management Division

8/12/16  
Date

  
\_\_\_\_\_  
Howard Bunch  
Sr. Assistant Regional Counsel  
Office of Regional Counsel

**FINAL ORDER**

Pursuant to Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits, 40 C.F.R. Part 22, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

The Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.

Aug. 22, 2016  
Date

Karina Borromeo  
Karina Borromeo  
Regional Judicial Officer

## ATTACHMENT A

### Schedule

Payment	<u>Payment Due</u> <u>Dates; days after</u> <u>Effective Date</u>	<u>Due</u>	<u>Amount Due</u>		<u>Outstanding</u> <u>Balance</u>
			<u>Int.</u>	<u>Principal</u>	
Payment	30 days after	\$15,351	\$0.00	\$15,351.00	\$15,000.00
Payment	60 days after	\$7,543.75	\$43.75	\$7,500.00	\$7,500.00
Payment	90 days after	\$7,521.88	\$21.88	\$7,500.00	\$0.00
Totals		\$30,416.63	\$65.63	\$30,351.00	

### Terms

Interest will be set at the effective rate for debts to the United States as of the effective date of the Consent Agreement and Final Order (CAFO). For the calendar year 2016, the rate is 1% per annum. Upon the due date of the first installment, interest shall begin to accrue on the remaining penalty balance. Interest will not be compounded and interest will be calculated based on a 360-day year. At any time, Respondent may make advance payment of the remaining penalty balance and interest due, after obtaining a payoff figure and date from EPA. Unless excused, failure to timely pay any portion of the mitigated civil penalty may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties, late payment handling charges, and accumulated interest, as stated in Paragraph 39 of the Consent Agreement. In computing time, if a due date falls on a Saturday, Sunday, or Federal Holiday, the due date shall be the next day that is not a Saturday, Sunday, or Federal Holiday.

IN THE MATTER Of Hartman Oil Company, Inc., Respondent  
Docket No. CWA-07-2016-0072

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Order was sent this day in the following manner to the addressees:


Copy emailed to Attorney for Complainant:

bunch.howard@epa.gov

Copy by First Class Mail to Respondent:

Willis E Hartman, President  
Hartman Oil Company, Inc.  
10500 Berkeley Square Parkway  
Suite 100  
Wichita, Kansas 67206

Dated: 8/22/16

  
Kathy Robinson  
Hearing Clerk, Region 7

