

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103**

In the Matter of:	:	
	:	
Heath Oil, Inc.	:	U.S. EPA Docket No. CWA-03-2022-0003
5609 State Route 8	:	
Harrisville, Pennsylvania 16038	:	Proceeding under Sections 311(j) and
	:	311(b)(6)(B)(ii) of the Clean Water Act,
Respondent.	:	33 U.S.C. §§ 1321(j) and 1321(b)(6)(B)(ii)
	:	

CONSENT AGREEMENT

PRELIMINARY STATEMENT

1. This Consent Agreement is entered into by the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region III (“Complainant”) and Heath Oil, Inc. (“Respondent”) (collectively the “Parties”), pursuant to Section 311(b)(6)(B)(ii) of the Clean Water Act (“CWA” or “Act”), as amended, 33 U.S.C. § 1321(b)(6)(B)(ii), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits (“Consolidated Rules of Practice”), 40 C.F.R. Part 22. Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6) authorizes the Administrator of the U.S. Environmental Protection Agency to assess penalties and undertake other actions required by this Consent Agreement. The Administrator has delegated this authority to the Regional Administrator who, in turn, has delegated it to the Complainant. This Consent Agreement and the attached Final Order (hereinafter jointly referred to as the “Consent Agreement and Final Order”) resolve Complainant’s civil penalty claims against Respondent under the CWA for the violations alleged herein.
2. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant hereby simultaneously commences and resolves this administrative proceeding.

JURISDICTION

3. The U.S. Environmental Protection Agency (“EPA”) has jurisdiction over the above-captioned matter, as described in Paragraph 1, above.
4. The Consolidated Rules of Practice govern this administrative adjudicatory proceeding pursuant to 40 C.F.R. § 22.1(a)(6).

GENERAL PROVISIONS

5. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this Consent Agreement and Final Order.
6. Except as provided in Paragraph 5, above, Respondent neither admits nor denies the specific factual allegations set forth in this Consent Agreement.
7. Respondent agrees not to contest the jurisdiction of EPA with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of this Consent Agreement and Final Order.
8. For purposes of this proceeding only, Respondent hereby expressly waives its right to contest the allegations set forth in this Consent Agreement and Final Order and waives its right to appeal the accompanying Final Order.
9. Respondent consents to the assessment of the civil penalty stated herein, to the issuance of any specified compliance order herein, and to any conditions specified herein.
10. Respondent shall bear its own costs and attorney's fees in connection with this proceeding.
11. Pursuant to 40 C.F.R. § 22.45(b)(1), this Consent Agreement and Final Order shall be issued after a 40-day public notice period is concluded.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

12. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant alleges and adopts the Findings of Fact and Conclusions of Law set forth immediately below.
13. 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, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil."
14. In Section 311(j)(1)(C) of the CWA, 33 U.S.C. § 1321(j)(1)(C), Congress required the President to promulgate regulations which would, among other things, establish procedures, methods, and other requirements for preventing discharges of oil from onshore facilities into navigable waters and for containing such discharges.
15. By Executive Order 12777, the President delegated the authority to promulgate regulations under Section 311(j) of the CWA to EPA for non-transportation-related onshore and offshore facilities.

16. EPA promulgated the Spill Prevention, Control, and Countermeasure (“SPCC”) regulations at 40 C.F.R. §§ 112.1-12 (the “SPCC Regulations”). Pursuant to 40 C.F.R. § 112.1(b), the Regulations apply to any owner or operator of a non-transportation-related onshore or offshore facility engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using, or consuming oil or oil products, which due to its 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. Pursuant to 40 C.F.R. § 112.1(d), the Regulations do not apply to any owner or operator of a facility with an aggregate aboveground oil storage capacity of 1,320 gallons or less.
17. Pursuant to 40 C.F.R. § 110.3, discharges of oil in such quantities that the Administrator has determined may be harmful to the public health or welfare or the environment of the United States include discharges of oil that cause a film or 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 adjoining shoreline.
18. Pursuant to 40 C.F.R. § 112.3, an owner or operator subject to the SPCC Regulations must prepare in writing and implement an SPCC plan, in accordance with § 112.7 and any other applicable section.
19. Pursuant to Section 311(j)(1)(C) and (j)(5)(A) of the CWA and the President’s delegation of authority, in 1994 the Administrator of EPA amended 40 C.F.R. Part 112 by promulgating the Facility Response Plan (“FRP”) regulations, codified at 40 C.F.R. §§ 112.20-21, and effective on August 30, 1994 (the “FRP Regulations”). These spill response regulations require owners or operators of non-transportation-related substantial-harm facilities to, inter alia, develop and implement an FRP, an oil spill response training program, and a program of oil spill response drills/exercises.
20. Pursuant to 40 C.F.R. § 112.20(a), the owner or operator of a non-transportation-related onshore facility that, because of its location, could reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters or adjoining shorelines shall prepare and submit to EPA an FRP.
21. As prescribed in 40 C.F.R. § 112.20(f)(1)(i-ii), a facility could, because of its location, reasonably be expected to cause substantial harm to the environment if: (1) the facility transfers oil over water to or from vessels and has a total oil storage capacity greater than or equal to 42,000 gallons; or (2) the facility’s total oil storage capacity is greater than or equal to 1,000,000 gallons and one of the following is true: (a) the facility does not have sufficient secondary containment to contain the capacity of the largest above-ground oil storage tank plus freeboard for precipitation within each storage area; (b) the facility is located at a distance (as calculated from the appropriate formula in 40 C.F.R. Part 112, Appendix C) such that a discharge from the facility could cause injury to fish and wildlife and sensitive environments; (c) the facility is located at a distance (as calculated from the appropriate formula in 40 C.F.R. Part 112, Appendix C) such that a discharge from the facility would shut down a public drinking water intake; or (d) the facility has had a reportable oil spill of at least 10,000 gallons within the last five years.

22. To meet the requirements of 40 C.F.R. § 112.20(h), an FRP shall follow the format of the model facility-specific response plan included in Appendix F to 40 C.F.R. Part 112, unless an equivalent response plan acceptable to the EPA Regional Administrator has been prepared to meet State or other Federal requirements.
23. The FRP Regulations also require the owner or operator of a substantial-harm facility to develop and implement a program of facility response drills/exercises for oil spill response. 40 C.F.R. § 112.21(a).
24. A program of oil spill drills/exercises must follow either the National Preparedness for Response Exercise Program Guidelines (“PREP Guidelines”), or an alternative program approved by the Administrator of the applicable EPA Region. 40 C.F.R. § 112.21(c).
25. For violations of Section 311(j) of the CWA, 33 U.S.C. § 1321(j), EPA has authority, under Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6), as amended by the Debt Collection Improvement Act and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, and implemented by 40 C.F.R. Part 19, Adjustment of Civil Monetary Penalties for Inflation, to file an Administrative Complaint seeking a civil penalty of \$19,505 per violation, or seeking \$19,505 per day for each day during which a violation continues, up to a maximum of \$243,808 for violations occurring after November 2, 2015 and penalties assessed after December 23, 2020.
26. Respondent is a Pennsylvania Corporation headquartered at 5609 State Route 8 in Harrisville, Pennsylvania 16038.
27. Respondent is a person within the meaning of Sections 311(a)(7) and 502(5) of the CWA, 33 U.S.C. §§ 1321(a)(7) and 1362(5), and 40 C.F.R. § 112.2.
28. Respondent is the owner and operator of a petroleum bulk storage facility known as the Heath Oil, Inc., located at 5609 State Route 8 in Harrisville, Pennsylvania 16038 (the “Facility”).
29. Respondent is, and has been at all times relevant to this Consent Agreement, the owner and/or operator of the Facility within the meaning of Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6), and 40 C.F.R. § 112.2.
30. According to Respondent’s current SPCC plan, the Facility has a total above-ground oil storage capacity of approximately 5 million gallons.
31. The Facility is bordered by a drainage swale that empties into an unnamed tributary of the East Branch of Wolf Creek. The tributary flows for approximately 2,900 feet and then drains into the East Branch of Wolf Creek.
32. Due to its location, the Facility could reasonably be expected to discharge oil in harmful quantities, as defined by 40 C.F.R. § 110.3, into Wolf Creek.

33. Wolf Creek is a navigable water of the United States within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7).
34. The Facility is an onshore facility within the meaning of Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10), and 40 C.F.R. § 112.2.
35. The Facility is a non-transportation-related facility within the meaning of 40 C.F.R. § 112.2 and Appendix A of 40 C.F.R. Part 112, as incorporated by reference within 40 C.F.R. § 112.2.
36. Pursuant to 40 C.F.R. § 112.1, Respondent, as the owner and operator of the Facility, is subject to the SPCC Regulations codified at 40 C.F.R. Part 112.
37. Pursuant to 40 C.F.R. § 112.3, Respondent is required to prepare in writing and implement an SPCC plan, in accordance with 40 C.F.R. § 112.7 and any other applicable section.
38. The Facility is a “substantial harm” facility pursuant to 40 C.F.R. § 112.20(f)(1) because the Facility’s total oil storage capacity is greater than or equal to 1,000,000 gallons and the Facility is located at a distance (as calculated from the appropriate formula in 40 C.F.R. Part 112, Appendix C) such that a discharge from the Facility could cause injury to fish and wildlife and sensitive environments.
39. The Facility’s FRP follows the PREP Guidelines for its facility response drills and exercise program.
40. EPA conducted an inspection of the Facility on September 11, 2018 to evaluate Respondent’s compliance with Section 311 of the CWA and the SPCC and FRP Regulations (the “Inspection”).

Count I
Failure to Amend SPCC Plan

41. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
42. 40 C.F.R. 112.5(a) requires owners or operators to amend the SPCC plan for the facility when there is a change in the facility design, construction, operation, or maintenance that materially affects its potential for a discharge.
43. Upon review of the Facility’s SPCC plan during the Inspections, EPA inspectors observed that the SPCC plan had not been amended to include the addition of a new Tank 101 and the removal of the old Tank 101 in 2017.

44. By failing to amend the Facility's SPCC plan to include the tank replacement, Respondent violated 40 C.F.R. 112.5(a).
45. By failing to comply with 40 C.F.R. § 112.5(a), Respondent is subject to the assessment of penalties under Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6).

Count II

Failure to Document Review and Evaluation of SPCC Plan

46. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
47. 40 C.F.R. § 112.5(b) requires owners or operators to complete a review and evaluation of the SPCC plan at least once every five years, document completion of each review and evaluation, and sign a statement in the plan or as an appendix as to whether the SPCC plan will be amended.
48. Upon review of the Facility's SPCC plan during the Inspections, EPA inspectors observed that the SPCC plan, which was dated June 2013, did not include documentation of subsequent review and evaluation, and did not include a signed statement regarding amendment.
49. By failing to include documentation of subsequent review and evaluation or a signed statement regarding amendment, Respondent violated 40 C.F.R. 112.5(b).
50. By failing to comply with 40 C.F.R. § 112.5(b), Respondent is subject to the assessment of penalties under Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6).

Count III

Failure to Include Required Information Pertaining to the SPCC Plan Facility Diagram and Discharge Response Contact List

51. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
52. 40 C.F.R. § 112.7(a)(3) requires owners or operators to describe in the SPCC plan the physical layout of the facility, including a facility diagram which must mark the location and contents of each fixed oil storage container, and phone number for the facility response team, including but not limited to, cleanup contractors.
53. Upon review of the Facility's SPCC plan during the Inspection, EPA inspectors observed that the SPCC plan did not adequately depict the location and contents of the Facility's oil containers in the facility diagram. Specifically, EPA inspectors observed that the main garage at the Facility contained a 250-gallon waste oil tank and multiple 55-gallon drums, none of which appeared on the facility diagram or were discussed in the SPCC plan. EPA also found that Tanks BT-1, BT-2, and BT-3 were not on the facility diagram or

discussed in the SPCC plan. The SPCC plan also did not contain contact information for cleanup contractors.

54. By failing to adequately depict the location and contents of the Facility's oil containers in the facility diagram and by failing to contain the necessary contact information for cleanup contractors, Respondent violated 40 C.F.R. § 112.7(a)(3).
55. By failing to comply with 40 C.F.R. § 112.7(a)(3), Respondent is subject to the assessment of penalties under Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6).

Count IV

Failure to Include Required Information Relating to Major Equipment Failure

56. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
57. In relevant part, 40 C.F.R. § 112.7(b) requires an owner or operator to describe in the 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 major type of equipment failure.
58. Respondent's revised SPCC plan, dated January 10, 2020, provided a prediction of the direction, rate of flow, and total quantity of oil which could be discharged from the Facility as a result of tank failure, piping failure, or leaks associated with product transfer at loading/unloading racks. However, during the Inspection, EPA inspectors observed that Respondent's June 2013 SPCC plan did not describe these predicted equipment failure scenarios.
59. By failing to discuss any equipment failure scenarios, Respondent failed to provide the required information regarding major types of equipment failure. Respondent therefore failed to comply with 40 C.F.R. § 112.7(b).
60. By failing to comply with 40 C.F.R. § 112.7(b), Respondent is subject to the assessment of penalties under Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6).

Count V

Failure to Conduct Appropriate Inspections

61. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
62. In relevant part, 40 C.F.R. § 112.7(e) requires an owner or operator to conduct inspections and tests in accordance with written procedures developed for the Facility. The written procedures and records of the inspections and tests must be kept with the SPCC plan for a period of three years. EPA inspectors observed that the SPCC plan's written procedures for visual inspections of tanks included the identification of signs of deterioration and for the identification of instability in tank foundations and supports.

- 63. During the Inspection, EPA inspectors observed that several tanks presented signs of extreme deterioration and signs of instability. These observations were not identified on monthly or annual visual inspection reports reviewed during the Inspection, though the written procedures developed for the Facility included the inspection of tanks for signs of deterioration and observations of tank foundations and supports for signs of instability.
- 64. By failing to conduct adequate inspections and tests in accordance with written procedures developed for the Facility, Respondent therefore failed to comply with 40 C.F.R. § 112.7(e).
- 65. By failing to comply with 40 C.F.R. § 112.7(e), Respondent is subject to the assessment of penalties under Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6).

Count VI
Failure to Conduct Appropriate Training

- 66. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
- 67. In relevant part, 40 C.F.R. § 112.7(f) requires an owner or operator to train oil-handling personnel in the operation and maintenance of equipment to prevent discharges; discharge procedure protocols; applicable pollution control laws, rules and regulation; general facility operations; and the contents of the Facility's SPCC plan.
- 68. During the Inspection, EPA inspectors observed that the documents comprising the substance of the training, provided to and reviewed by EPA, did not include training on pollution control laws, rules and regulations pertaining to the use and storage of petroleum products or contents of the SPCC plan including spill response and cleanup; spill notification and record keeping; or spill prevention practices.
- 69. By failing to appropriately train oil-handling personnel in accordance with the SPCC plan, Respondent therefore failed to comply with 40 C.F.R. § 112.7(f).
- 70. By failing to comply with 40 C.F.R. § 112.7(f), Respondent is subject to the assessment of penalties under Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6).

Count VII
Failure to Provide Adequate Secondary Containment

- 71. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
- 72. In relevant part, 40 C.F.R. § 112.8(c)(2) requires an owner or operator to construct all bulk storage tank installations to provide a secondary means of containment for the entire

capacity of the largest single container and sufficient freeboard to contain precipitation, and to ensure that diked areas are sufficiently impervious to contain discharged oil.

- 73. During the Inspection, EPA inspectors observed that the Facility lacked adequate secondary containment for a 250-gallon waste oil tank, which was located inside the main garage. According to the Facility's SPCC Plan, drainage within the main garage is directed to a 185-gallon oil-water separator, which was not sufficiently sized to contain the entire contents of the 250-gallon waste oil tank.
- 74. By failing to provide the 250-gallon waste oil tank with adequate secondary containment, Respondent therefore failed to comply with 40 C.F.R. § 112.8(c)(2).
- 75. By failing to comply with 40 C.F.R. § 112.8(c)(2), Respondent is subject to the assessment of penalties under Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6).

Count VIII
Failure to Conduct/Record Appropriate Integrity Testing

- 76. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
- 77. In relevant part, 40 C.F.R. § 112.8(c)(6) requires an owner or operator to test or inspect each aboveground container for integrity on a regular schedule and whenever material repairs are made. The owner or operator must keep comparison records.
- 78. During the Inspection, Respondent failed to provide EPA with any records indicating that integrity testing had been done on any of the following tanks: BT2, BT3, a 20,000-gallon fuel oil tank, and tanks 5 through 9. At the time of the Inspection, these tanks were observed by EPA inspectors to be in a deteriorating condition.
- 79. By failing to conduct the appropriate integrity testing on the aforementioned tanks or, in the alternative, by failing to keep comparison records of such integrity tests, Respondent therefore failed to comply with 40 C.F.R. § 112.8(c)(6).
- 80. By failing to comply with 40 C.F.R. § 112.8(c)(6), Respondent is subject to the assessment of penalties under Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6).

Count IX
Failure to Include Information Required by 40 C.F.R. § 112.20(h) in the FRP

- 81. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
- 82. Pursuant to 40 C.F.R. § 112.20(h), an FRP must follow the format of the model facility-specific response plan included in Appendix F of 40 C.F.R. Part 112 unless the owner or operator has prepared an equivalent response plan acceptable to the Regional

Administrator to meet State or other Federal requirements. Respondent has not submitted an equivalent response plan to the Regional Administrator for acceptance.

83. EPA's review of Respondent's FRP for the Facility indicated that Respondent did not follow the format of the model facility-specific response plan included in Appendix F of 40 C.F.R. Part 112 in the following ways:
- a. 40 C.F.R. Part 112 Appendix F, Section 1.1 requires an FRP to include an emergency response action plan that is maintained in the front of the FRP, or as a separate document accompanying the FRP, and that includes, in relevant part, a diagram of the facility. Respondent's FRP contained an emergency response action plan which was not maintained in the front of the response plan or as a separate document accompanying the response plan. The emergency response action plan also did not include a Facility diagram.
 - b. 40 C.F.R. Part 112 Appendix F, Section 1.2 requires an FRP to include a facility information form which provides the name, position, home and work addresses, emergency phone number, and specific response training experience for each qualified individual for the facility. The Facility information form within Respondent's FRP did not include information pertaining to the specific response training experience for qualified individuals.
 - c. 40 C.F.R. Part 112 Appendix F, Section 1.3.1 requires an FRP to include the phone number of the State Emergency Response Commission (SERC) and the Local Emergency Planning Committee (LEPC). Respondent's FRP did not include these items.
 - d. 40 C.F.R. Part 112 Appendix F, Section 1.3.1 requires an FRP to include a Spill Response Notification Form which identifies the spill reporter's name, position, and phone number; company information (organization type, address, city, state, zip); and attestations as to whether material was discharged, whether information provided is confidential, and whether the facility has met federal obligations to report a spill. Respondent's FRP did not include these items.
 - e. 40 C.F.R. Part 112 Appendix F, Section 1.3.4 requires an FRP to include response training history for facility response personnel. Respondent's FRP did not include this information.
 - f. 40 C.F.R. Part 112 Appendix F, Section 1.4.1 requires an FRP to include certain information regarding oil storage tanks, including an inventory listing all oil storage containers located at the facility, the substance stored within each tank, a description of the day-to-day operations that may present a risk of discharging oil or releasing a hazardous substance, and the normal daily throughput for the facility. The tank inventory included within Respondent's FRP omitted several fuel-additive tanks and petroleum/water settling tanks located at the Facility and the FRP was not amended following product changes within tanks 101, 102, 103,

and 105, as observed during EPA's Inspection. Respondent's FRP also did not include a description of the day-to-day operations that may present a risk of discharging oil or releasing a hazardous substance or the normal daily throughput for the Facility.

- g. 40 C.F.R. Part 112 Appendix F, Section 1.4.2 requires an FRP to provide a vulnerability analysis addressing the potential effects of an oil discharge. Respondent's FRP did not include a planning distance used to assess the vulnerability of downstream resources to an oil discharge.
- h. 40 C.F.R. Part 112 Appendix F, Section 1.5.2 requires an FRP to identify the worst-case discharge volume at the Facility. Respondent's FRP listed the worst-case discharge volume at the Facility to be 825,600 gallons, or 80% of the full capacity of its largest tank, which is incorrect. The actual worst-case discharge volume at Respondent's Facility is the full volume of its largest tank, which is 1,032,000 gallons.
- i. 40 C.F.R. Part 112 Appendix F, Section 1.7.3 requires an FRP to describe how a Facility will contain and control a discharge through drainage, including the type and number of valves and separators used in drainage systems and sump pump capacities. Respondent's FRP did not include this information.
- j. 40 C.F.R. Part 112 Appendix F, Section 1.8.2 requires an FRP to contain a description of facility drills/exercises, including evaluation procedures. Respondent's FRP did not include this information.
- k. 40 C.F.R. Part 112 Appendix F, Section 1.8.3 requires an FRP to provide a description of the response training program to be carried out under the FRP. Respondent's FRP did not contain this information.
- l. 40 C.F.R. Part 112 Appendix F, Section 1.9 requires an FRP to include a site plan diagram, a site drainage diagram, and a site evacuation plan diagram.
 - i. In relevant part, the site plan diagram is required to include all aboveground and belowground bulk oil storage tanks and transfer areas and the contents and capacities of bulk oil storage tanks and drum storage areas. Respondent's FRP site plan diagram omitted several bulk storage tanks and transfer areas and did not provide the contents and capacities of all bulk storage tanks and drum storage areas.
 - ii. In relevant part, the site drainage plan diagram is required to include major sanitary and storm sewers, manholes, and drains. Respondent's FRP site drainage plan diagram omitted these items.

- iii. An FRP's site evacuation plan diagram is required to include evacuation routes and the location of evacuation regrouping areas. Respondent's FRP did not include a site evacuation plan diagram.
 - m. 40 C.F.R. Part 112 Appendix F, Section 2.0 requires an FRP to include an FRP cover sheet. In relevant part, the FRP cover sheet is required to include the name of the owner and operator of the Facility, the Facility's phone number, the Facility's Dun and Bradstreet number, the Facility's North American Industrial Classification System (NAICS) Code, the Facility's largest oil storage tank capacity, the Facility's maximum oil storage capacity, and the worst-case discharge amount for the Facility. Respondent's FRP cover sheet omitted the name(s) of the owner/operator, the Facility's phone number, the Facility's Dun and Bradstreet number, and the NAICS code for the Facility. Respondent's FRP cover sheet also provided the following inaccurate information:
 - i. Respondent's FRP listed 825,600 gallons as its largest oil storage tank capacity. The correct volume of its largest oil storage tank capacity is 1,032,000 gallons.
 - ii. Respondent's FRP listed 5,900,000 gallons as its maximum oil storage capacity. The correct maximum oil storage capacity is 6,790,000 gallons.
 - iii. Respondent's FRP listed 825,600 gallons as the worst-case discharge volume. The correct volume is 1,032,000 gallons.
84. By failing to follow the format of the model facility-specific response plan included in Appendix F of 40 C.F.R. Part 112 or, in the alternative, by not preparing an equivalent response plan acceptable to the Regional Administrator to meet State or other Federal requirements, Respondent failed to comply with 40 C.F.R. § 112.20(h).
85. By failing to comply with 40 C.F.R. § 112.20(h), Respondent is subject to the assessment of penalties under Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6).

Count X

Failure to Conduct Appropriate Training

86. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
87. 40 C.F.R. 112.21(b) requires an owner or operator to develop a facility response training program to train personnel involved in oil spill response activities. Pursuant to 40 C.F.R. 112.20(h)(8), the facility response training program must be described in the FRP and presented in accordance with model facility-specific response plan included in Appendix F of 40 C.F.R. Part 112.
88. During the Inspection, the Facility was unable to provide to EPA inspectors any personnel response training logs and discharge prevention meeting logs as required by 40 C.F.R. 112 App. F, 1.8.3.

89. By failing to implement an appropriate training program for personnel involved in oil spill response activities, Respondent failed to comply with 40 C.F.R. § 112.21(b).
90. By failing to comply with 40 C.F.R. § 112.21(b), Respondent is subject to the assessment of penalties under Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6).

Count XI
Failure to Perform Drills and Exercises

91. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
92. 40 C.F.R. 112.21(c) requires an owner or operator required to prepare an FRP to develop a program of facility response drills/exercises in accordance with an approved program.
93. At the time of the Inspection, the Facility was unable to provide to EPA inspectors any record that any response drills/exercises had been performed in the past 5 years as required by 40 C.F.R. 112 App. F, 1.8.2.
94. By failing to implement a drills and exercises program, Respondent failed to comply with 40 C.F.R. § 112.21(c).
95. By failing to comply with 40 C.F.R. § 112.21(c), Respondent is subject to the assessment of penalties under Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6).

CIVIL PENALTY

96. In settlement of EPA's claims for civil penalties for the violations alleged in this Consent Agreement, Respondent consents to the assessment of a civil penalty in the amount of one hundred and forty-eight thousand dollars (\$148,000), which Respondent shall be liable to pay in accordance with the terms set forth below.
97. The civil penalty is based upon EPA's consideration of a number of factors, including the penalty criteria ("statutory factors") set forth in Section 311(b)(8) of the CWA, 33 U.S.C. § 1321(b)(8), including, the following: the seriousness of the violation; the economic benefit to the violator, if any; the degree of culpability; any other penalty for the same incident; history of prior violations, if any; the nature, extent, and degree of success of the violator's mitigation efforts; the economic impact of the penalty on the violator; and other matters as justice may require. These factors were applied to the particular facts and circumstances of this case with specific reference to EPA's *Civil Penalty Policy for Section 311(b)(3) and Section 311(j) of the Clean Water Act* (August 1998), which reflects the statutory penalty criteria and factors set forth at Section 311(b)(8) of the CWA, 33 U.S.C. § 1321(b)(8), the appropriate *Adjustment of Civil Monetary Penalties*

for Inflation, pursuant to 40 C.F.R. Part 19, and the applicable EPA memoranda addressing EPA's civil penalty policies to account for inflation.

98. Payment of the civil penalty amount, and any associated interest, administrative fees, and late payment penalties owed, shall be made by either cashier's check, certified check or electronic wire transfer, in the following manner:

- a. All payments by Respondent shall include reference to Respondent's name and address, and the Docket Number of this action, *i.e.*, **CWA-03-2022-0003**.
- b. All checks shall be made payable to **"Environmental Protection Agency,"** and **bearing the notation "OSLTF-311"**.
- c. All payments made by check and sent by regular mail shall be addressed and mailed to:

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

- d. For additional information concerning other acceptable methods of payment of the civil penalty amount see:

<https://www.epa.gov/financial/makepayment>

- e. A copy of Respondent's check or other documentation of payment of the penalty using the method selected by Respondent for payment shall be sent simultaneously by email to:

Jefferie Garcia
Senior Assistant Regional Counsel
garcia.jefferie@epa.gov

and

U.S. EPA Region III Regional Hearing Clerk
R3_Hearing_Clerk@epa.gov.

99. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment of the penalty as specified herein shall result in the assessment of late payment charges including interest, penalties and/or administrative costs of handling delinquent debts.

100. Payment of the civil penalty is due and payable immediately upon the effective date of this Consent Agreement and Final Order. Receipt by Respondent or Respondent's legal counsel of such copy of the fully executed Consent Agreement and Final Order, with a date stamp indicating the date on which the Consent Agreement and Final Order was filed with the Regional Hearing Clerk, shall constitute receipt of written initial notice that a debt is owed as of the effective date of this Consent Agreement and Final Order by Respondent in accordance with 40 C.F.R. § 13.9(a).
101. INTEREST: Interest on the civil penalty assessed in this Consent Agreement and Final Order will begin to accrue on the effective date of this Consent Agreement and Final Order. However, EPA will not seek to recover interest on any amount of the civil penalties that is paid within thirty (30) calendar days after the effective date of this Consent Agreement and Final Order. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R § 13.11(a).
102. ADMINISTRATIVE COSTS: The costs of the EPA's administrative handling of overdue debts will be charged and assessed monthly throughout the period a debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives – Case Management*, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.
103. LATE PAYMENT PENALTY: A late payment penalty of six percent per year will be assessed monthly on any portion of the civil penalty that remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).
104. Respondent agrees not to deduct for federal tax purposes the civil penalty assessed in this Consent Agreement and Final Order.

GENERAL SETTLEMENT CONDITIONS

105. By signing this Consent Agreement, Respondent acknowledges that this Consent Agreement and Final Order will be available to the public and represents that, to the best of Respondent's knowledge and belief, this Consent Agreement and Final Order does not contain any confidential business information or personally identifiable information from Respondent.
106. Respondent certifies that any information or representation it has supplied or made to EPA concerning this matter was, at the time of submission true, accurate, and complete and that there has been no material change regarding the truthfulness, accuracy or completeness of such information or representation. EPA shall have the right to institute further actions to recover appropriate relief if EPA obtains evidence that any information provided and/or representations made by Respondent to the EPA regarding matters

relevant to this Consent Agreement and Final Order, including information about respondent's ability to pay a penalty, are false or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action that EPA may have, civil or criminal, under law or equity in such event. Respondent and its officers, directors and agents are aware that the submission of false or misleading information to the United States government may subject a person to separate civil and/or criminal liability.

CERTIFICATION OF COMPLIANCE

107. Respondent certifies to EPA, upon personal investigation and to the best of its knowledge and belief, that it currently is in compliance with regard to the violations alleged in this Consent Agreement.

OTHER APPLICABLE LAWS

108. Nothing in this Consent Agreement and Final Order shall relieve Respondent of its obligation to comply with all applicable federal, state, and local laws and regulations, nor shall it restrict EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on the validity of any federal, state or local permit. This Consent Agreement and Final Order does not constitute a waiver, suspension or modification of the requirements of the CWA, or any regulations promulgated thereunder.

RESERVATION OF RIGHTS

109. This Consent Agreement and Final Order resolves only EPA's claims for civil penalties for the specific violations alleged against Respondent in this Consent Agreement and Final Order. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. This settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice, 40 C.F.R. § 22.18(c). EPA reserves any rights and remedies available to it under the CWA, the regulations promulgated thereunder and any other federal law or regulation to enforce the terms of this Consent Agreement and Final Order after its effective date.

EXECUTION /PARTIES BOUND

110. This Consent Agreement and Final Order shall apply to and be binding upon the EPA, the Respondent and the officers, directors, employees, contractors, successors, agents and assigns of Respondent. By his or her signature below, the person who signs this Consent Agreement on behalf of Respondent is acknowledging that he or she is fully authorized by the Respondent to execute this Consent Agreement and to legally bind Respondent to the terms and conditions of this Consent Agreement and Final Order.

EFFECTIVE DATE

111. Pursuant to 40 C.F.R. § 22.45(b), this Consent Agreement and Final Order shall be issued only after a 40-day public notice and comment period is concluded. This Consent Agreement and Final Order will become final and effective thirty (30) days after having been signed by the Regional Administrator or his delegate, the Regional Judicial Officer, and filed with the Regional Hearing Clerk.

ENTIRE AGREEMENT


112. This Consent Agreement and Final Order constitutes the entire agreement and understanding between the Parties regarding settlement of all claims for civil penalties pertaining to the specific violations alleged herein and there are no representations, warranties, covenants, terms, or conditions agreed upon between the Parties other than those expressed in this Consent Agreement and Final Order.

In the Matter of: Heath Oil, Inc.

EPA Docket No. CWA-03-2022-0003

For Respondent: Heath Oil, Inc.

Date: 11/11/2021

By: 
[SIGNATORY NAME] Daniel L Heath
[SIGNATORY TITLE] president

For the Complainant:

After reviewing the Consent Agreement and other pertinent matters, I, the undersigned Director of the Enforcement & Compliance Assurance Division of the United States Environmental Protection Agency, Region III, agree to the terms and conditions of this Consent Agreement and recommend that the Regional Administrator, or his/her designee, the Regional Judicial Officer, issue the attached Final Order.

Date: _____

By: _____

Karen Melvin, Director
Enforcement & Compliance Assurance Division
U.S. EPA – Region III
Complainant

Attorney for Complainant:

Date: _____

By: _____

Jefferie Garcia
Senior Assistant Regional Counsel
U.S. EPA – Region III

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103**

In the Matter of:	:
	:
Heath Oil, Inc. 5609 State Route 8 Harrisville, Pennsylvania 16038	: U.S. EPA Docket No. CWA-03-2022-0003
	:
Respondent.	: Proceeding under Sections 311(j) and 311(b)(6)(B)(ii) of the Clean Water Act, 33 U.S.C. §§ 1321(j) and 1321(b)(6)(B)(ii)
	:

FINAL ORDER

Complainant, the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region III, and Respondent, Heath Oil, Inc., have executed a document entitled “Consent Agreement,” which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules of Practice”), 40 C.F.R. Part 22 (with specific reference to Sections 22.13(b) and 22.18(b)(2) and (3)). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.

Based upon the representations of the parties in the attached Consent Agreement, the penalty agreed to therein is based upon consideration of, *inter alia*, EPA’s *Civil Penalty Policy for Section 311(b)(3) and Section 311(j) of the Clean Water Act (August 1998)* and the statutory factors set forth in Section 311(b)(8) of the Clean Water Act (“CWA”), 33 U.S.C. § 1321(b)(8).

NOW, THEREFORE, PURSUANT TO Section 311(b)(6)(B)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(ii), and Section 22.18(b)(3) of the Consolidated Rules of Practice, **IT IS HEREBY ORDERED** that Respondent pay a civil penalty in the amount of **ONE HUNDRED AND FORTY-EIGHT THOUSAND DOLLARS (\$148,000)**, in accordance with the payment provisions set forth in the Consent Agreement and in 40 C.F.R. § 22.31(c), and comply with the terms and conditions of the Consent Agreement.

This Final Order constitutes the final Agency action in this proceeding. This Final Order shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief, or criminal sanctions for any violations of the law. This Final Order resolves only those causes of action alleged in the Consent Agreement and does not waive, extinguish or otherwise affect Respondent’s obligation to comply with all applicable provisions of CWA and the regulations promulgated thereunder.

The effective date of the attached Consent Agreement and this Final Order is thirty (30) days after the Final Order, having been signed by the Regional Administrator or his delegate, the

Regional Judicial Officer, is filed with the Regional Hearing Clerk.

Date: _____

By: _____

Joseph J. Lisa
Regional Judicial and Presiding Officer
U.S. EPA Region III

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103**

In the Matter of: :
 :
Heath Oil, Inc. : **U.S. EPA Docket No. CWA-03-2022-0003**
5609 State Route 8 :
Harrisville, Pennsylvania 16038 : **Proceeding under Sections 311(j) and**
 : **311(b)(6)(B)(ii) of the Clean Water Act,**
Respondent. : **33 U.S.C. §§ 1321(j) and 1321(b)(6)(B)(ii)**
 :

CERTIFICATE OF SERVICE

I certify that on _____, the original and one (1) copy of foregoing *Consent Agreement and Final Order*, were filed with the EPA Region III Regional Hearing Clerk. I further certify that on the date set forth below, I served a true and correct copy of the same to each of the following persons, in the manner specified below, at the following addresses:

Copy served via Electronic Mail, to:

Matthew L. Wolford
638 West Sixth Street
Erie, PA 16507
(814) 459-9600 (Office)
Wolford@erie.net
(Attorney for Respondent)

Copy served via Electronic Mail to:

Jefferie E. Garcia
Sr.Assistant Regional Counsel
Office of Regional Counsel (3RC20)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029
garcia.jefferie@epa.gov
(Attorney for Complainant)

Dated: _____

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region III

TRACKING NUMBER(S): _____