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BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

DOCKET NO. CWA-10-2020-0002

Coleman Oil Company, LLC,

**CONSENT AGREEMENT**

Wenatchee, Washington,

Respondent.

Proceedings Under Section 311(b)(6) of the  
Clean Water Act, 33 U.S.C. § 1321(b)(6)

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**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 \$18,943 per day for each day during which the violation continues, up to a maximum penalty of \$236,783. *See also* 84 Fed. Reg. 2056 (February 6, 2019) (2019 Civil Monetary Penalty Inflation Adjustment Rule).

**In the Matter of: Coleman Oil Company, LLC**  
**Docket Number: CWA-10-2020-0002**  
**Consent Agreement**  
**Page 1 of 11**

**U.S. Environmental Protection Agency**  
**1200 Sixth Avenue, Suite 155, 11-C07**  
**Seattle, Washington 98101**  
**(206) 553-1037**

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 Coleman Oil Company, LLC (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)(1)(C), 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 . . . .”

3.3. Initially by Executive Order 11548 (July 20, 1970), 35 Fed. Reg. 11677 (July 22, 1970), and most recently by Section 2(b)(1) 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 311(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 corporation and is therefore a "person" under CWA Sections 311(a)(7) and 502(5), 33 U.S.C. §§ 1321(a)(7), 1362(5).

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 Coleman Oil Company Wenatchee Bulk Plant ("Facility").

3.10. At all times relevant to this Consent Agreement, Respondent was engaged in gathering, storing, processing, transferring, distributing, using or consuming oil or oil products at the Facility. 40 C.F.R. § 112.1(b).

3.11. At all times relevant to this Consent Agreement, the Facility was "non-transportation-related" within the meaning of 40 C.F.R. § 112.2.

3.12. At all times relevant to this Consent Agreement, the Facility was a non-transportation facility that, due to location, could reasonably have been expected, at the time of inspection, to discharge oil from an above-ground container to a navigable water of the United States or its adjoining shorelines in a harmful quantity and was therefore subject to the SPCC regulations at 40 C.F.R. Part 112.

3.13. The Facility had, at the time of inspection, 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.

3.14. The Facility began operating on or about 1921. Respondent acquired the Facility and began operating in 2007.

3.15. 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.

3.16. Following a discharge of biodiesel fuel from the Facility to the Columbia River that was discovered in March 2017, EPA conducted a review of Respondent's June 2010 SPCC Plan and identified the alleged regulatory violations listed below.

#### **Alleged Violations**

3.17. The regulation at 40 C.F.R. § 112.5(a) requires, in part, an owner or operator of a facility subject to 40 C.F.R. Part 112 to amend its SPCC Plan when there is a change in the facility design, construction, operation, or maintenance that materially affects its potential for discharge as described in 40 C.F.R. § 112.1(b). Respondent failed to amend its June 2010 SPCC Plan after installation of secondary containment for the truck loading rack, truck overfill alarms, and secondary containment for portable containers, in violation of 40 C.F.R. § 112.5(a).

3.18. The regulation at 40 C.F.R. § 112.5(b) requires an owner or operator of a facility subject to 40 C.F.R. Part 112 to complete a review and evaluation of the SPCC Plan at least once every five years and amend the SPCC Plan within six months of the review to include more effective preventative and control technology if the technology has been field-proven at the time of the review and will significantly reduce the likelihood of a discharge. Respondent failed to amend its June 2010 SPCC Plan after Respondent's June 2015 review of the June 2010 SPCC

Plan to include more effective preventative and control technology, in violation of 40 C.F.R. § 112.5(b).

3.19. The regulation at 40 C.F.R. § 112.7(a)(3) requires, in part, an owner or operator of a facility subject to 40 C.F.R. Part 112 to include in its SPCC Plan a facility diagram, which includes any underground tanks and connecting pipe, and mark as “exempt” any underground tanks that are otherwise exempted from SPCC requirements. Respondent’s June 20 0 SPCC Plan failed to identify an underground tank as exempt and did not identify buried connecting pipes from aboveground storage tanks to the truck loading rack in violation of 40 C.F.R. § 112.7(a)(3).

3.20. The regulations at 40 C.F.R. §§ 112.7(a)(3)(ii) & (iii) require, in part, an owner or operator of a facility subject to 40 C.F.R. Part 112 to address in its SPCC Plan discharge prevention measures and discharge or drainage controls. Respondent’s June 2010 SPCC Plan failed to identify prevention measures and discharge or drainage controls for the buried connecting pipes from aboveground storage tanks to the truck loading rack, in violation of 40 C.F.R. §§ 112.7(a)(3)(ii) & (iii).

3.21. The regulation at 40 C.F.R. § 112.7(b) requires an owner or operator of a facility subject to 40 C.F.R. Part 112 to 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, if experience indicates a reasonable potential for equipment failure. Respondent’s June 2010 SPCC Plan failed to include a prediction evaluation for buried connecting pipe failure, in violation of 40 C.F.R. § 112.7(b).

3.22. The regulation at 40 C.F.R. § 112.7(c) requires an owner or operator of a facility subject to 40 C.F.R. Part 112 to provide appropriate containment and/or diversionary structures

or equipment to prevent a discharge. In determining the method, design, and capacity for secondary containment, the owner or operator need only address the typical failure mode, and the most likely quantity of oil that would be discharged. Respondent's June 2010 SPCC Plan failed to identify a preventative system for buried connecting piling failures, a typical failure mode, and the most likely quantity of oil that would be discharged, in violation of 40 C.F.R. § 112.7(c).

3.23. The regulation at 40 C.F.R. § 112.7(e) requires, in part, an owner or operator of a facility subject to 40 C.F.R. Part 112 to conduct inspections and tests in accordance with written procedures developed for the facility, and to create and retain inspection records. Respondent's June 2010 SPCC Plan failed to include written procedures for the inspections and tests required by 40 C.F.R. §§ 112.8(d)(1) and (d)(4); written procedures for testing required by 40 C.F.R. 112.8(c)(8)(v); and written procedures for the creation and retention of records related to these inspections and tests, in violation of 40 C.F.R. § 112.7(e).

3.24. The regulations at 40 C.F.R. §§ 112.8(d)(1) & (d)(4) require, in part, an owner or operator of a facility subject to 40 C.F.R. Part 112 to provide buried piping with a protective wrapping and coating and to conduct integrity and leak testing of buried piping at the time of installation, modification, construction, relocation, or replacement. Respondent's June 2010 SPCC Plan failed to address these provisions, in violation of 40 C.F.R. §§ 112.8(d)(1) and (d)(4).

3.25. 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) of the CWA, 33 U.S.C. § 1321(b)(6).

#### 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 \$133,200.

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, Washington 98101  
young.teresa@epa.gov

Rick Cool  
U.S. Environmental Protection Agency  
Region 10, Mail Stop 20-C04  
1200 Sixth Avenue, Suite 155  
Seattle, Washington 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. Respondent expressly waives any right to contest the allegations and waives any right 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:

10-14-2019

FOR RESPONDENT:



Robert S. Coleman, Jr., Manager  
Coleman Oil Company, LLC

DATED:

11/15/2019

FOR COMPLAINANT:



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

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Coleman Oil Company, LLC,

Wenatchee, Washington,

Respondent.

DOCKET NO. CWA-10-2020-002

**FINAL ORDER**

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 19<sup>th</sup> day of November, 2019.



**RICHARD MEDNICK**  
Regional Judicial Officer  
U.S. Environmental Protection Agency  
Region 10

**CERTIFICATE OF SERVICE**

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in **In the Matter of: Coleman Oil Co., DOCKET NO.: CWA-10-2020-002** was served on the addressees in the following manner on the date specified below:


The undersigned certifies that a true and correct copy of the document was delivered to:

J. Matthew Moore  
Office of Regional Counsel  
U.S. Environmental Protection Agency  
Region 10, Mail Stop 11-C07  
1200 Sixth Avenue, Suite 155  
Seattle, WA 98101  
206-553-6266  
Moore.johnm@epa.gov

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt to:

Connie Sue Martin  
Schwabe, Williamson & Wyatt  
U.S. Bank Centre  
1420 Fifth Ave.  
Suite 3400  
Seattle, WA 98101

DATED this 22 day of November 2019.

  
Teresa Young  
Regional Hearing Clerk  
EPA Region 10