UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10

IN THE MATTER OF	Docket No. CWA-10-2013-0035
TYREE OIL, INC., Respondent. North Bend and Eugene Facilities, Oregon	**CONSENT AGREEMENT AND FINAL ORDER**

I. LEGAL AUTHORITY

1.1 This Consent Agreement and Final Order ("CAFO") is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 311(b)(6)(B)(ii) of the Clean Water Act ("Act"), 33 U.S.C. § 1321(b)(6)(B)(ii), as amended by the Oil Pollution Act of 1990.

1.2 The Administrator has delegated the authority to issue the Final Order contained in Part V of this CAFO to the Regional Administrator of EPA Region 10, who in turn has delegated this authority to the Regional Judicial Officer.

1.3 Pursuant to Section 311(b)(6)(B)(ii) of the Act, and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits," codified at 40 C.F.R. Part 22 ("Part 22"), EPA issues and Tyree Oil, Inc. ("Respondent") agrees to issuance of the Final Order contained in Part V of this CAFO.

II. PRELIMINARY STATEMENT

2.1 In accordance with 40 C.F.R. §§ 22.13(b) and 22.45(b), issuance of this CAFO commences this proceeding, which will conclude when the Final Order in Part V of this CAFO becomes effective.

2.2 The Director of the Office of Compliance and Enforcement, EPA Region 10 has been delegated the authority to sign consent agreements between EPA and the party against whom a Class II penalty pursuant to Section 311(b)(6) of the Act, 33 U.S.C. § 1321(b)(6), is proposed to be assessed.

2.3 A concise statement of the factual bases for alleged violations of the Act and specific references to the statutory and regulatory provisions Respondent is alleged to have violated appear in Part III of this CAFO.

III. ALLEGATIONS

3.1 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 . . . ." Section 311(j)(5)(A) of the Act, 33 U.S.C. § 1321(j)(5)(A), provides that the President shall issue regulations requiring each owner or operator of certain facilities to "submit to the President a plan for responding, to the maximum extent practicable, to a worst case discharge, and to a substantial threat of such a discharge, of oil or a hazardous substance."

3.2 By Sections 2(b)(1) and 2(d)(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) and

Section 311(j)(5)(A) authorities to issue the regulations referenced in Paragraph 3.1 for non-transportation-related onshore facilities.

3.3 EPA has promulgated the Spill Prevention, Containment, and Countermeasures ("SPCC") regulations pursuant to these delegated statutory authorities, and pursuant to its authorities under the Clean Water Act, 33 U.S.C. § 1251 *et seq*. EPA's SPCC regulations establish certain procedures, methods and requirements applicable to 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").

3.4 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.

3.5 EPA has promulgated the Facility Response Plan ("FRP") regulations pursuant to its CWA Section 311(j)(5)(A) authorities. 40 C.F.R. §§ 112.20, 112.21.

3.6 Respondent is a corporation organized under the laws of Oregon. 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.

3.7 Respondent is the "owner 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 two oil storage and distribution

facilities: one located at 341 Newmark Street, North Bend, Oregon (the "North Bend Facility"); and another located at 1355 West 1st Avenue, Eugene, Oregon (the "Eugene Facility"). The North Bend Facility and Eugene Facility are collectively referred to in this CAFO as the "Facilities." Respondent began operating the Facilities before August 16, 2002.

3.8 The North Bend Facility is located approximately 20 feet west of Coos Bay, a "navigable water" within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 112.2. The Eugene Facility is located approximately 3,000 feet south and west of and connected via storm drain to the Willamette River, a "navigable water" within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 112.2.

3.9 The Facilities each have 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. The above-ground storage capacity at the North Bend Facility is currently over 2,000,000 gallons, and the above-ground storage capacity at the Eugene Facility is currently over 400,000 gallons.

3.10 Respondent is engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using or consuming oil or oil products located at each Facility, as described in 40 C.F.R. § 112.1(b).

3.11 Each Facility is a non-transportation-related facility within the meaning of 40 C.F.R. § 112.2 Appendix A, as incorporated by reference within 40 C.F.R. § 112.2.

3.12 Each 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.

3.13 Each Facility is therefore 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 ("an SPCC-regulated facility").

3.14 Pursuant to the Act, E.O. 12777, and 40 C.F.R. § 112.1 Respondent, as the owner and operator of an SPCC-regulated facility, is subject to the SPCC regulations.

3.15 40 C.F.R. § 112.3 requires that the owner or operator of an SPCC-regulated facility must prepare a SPCC plan in writing, and implement that plan in accordance with 40 C.F.R. § 112.7 and any other applicable section of 40 C.F.R. Part 112.

Count 1: Violation of SPCC Requirements at the Eugene Facility

3.16 At the time of EPA inspections conducted at the Eugene Facility on May 14, 2009, Respondent failed to fully prepare and implement its SPCC plan as follows:

a. The plan was not reviewed and certified by a licensed Professional Engineer, as required by 40 C.F.R. § 112.3(d);

b. The Facility failed to provide adequate secondary containment, as required by 40 C.F.R. § 112.8(c)(2);

c. The plan failed to provide rainwater drainage records, as required by 40 C.F.R. § 112.8(c)(3);

d. The plan failed to keep records of frequent visual inspections for container integrity, as required by 40 C.F.R. § 112.8(c)(6);

e. The plan failed to describe how containers are engineered to avoid discharges, as required by 40 C.F.R. § 112.8(c)(8);

f. The Facility failed to promptly remove accumulations of oil in diked areas, as required by 40 C.F.R. § 112.8(c)(10); and

g. The Facility failed to provide secondary containment for portable oil storage containers, as required by 40 C.F.R. § 112.8(c)(11).

3.17 Respondent's failure to fully prepare and implement its SPCC plan for the Eugene Facility, as noted in Paragraph 3.16, violated 40 C.F.R. § 112.3, and impacted its ability to prevent an oil spill.

Count 2: Violation of SPCC Requirements at the North Bend Facility

3.18 At the time of EPA inspections conducted at the North Bend Facility on July 28, 2009, Respondent failed to fully prepare and implement its SPCC plan as follows:

a. The plan failed to contain adequate discharge prediction, as required by 40 C.F.R. § 112.7(b);

b. The Facility failed to provide general secondary containment in the truck unloading area, as required by 40 C.F.R. § 112.7(c);

c. The Facility failed to conduct inspections in accordance with written procedures that the certifying engineer developed for the Facility, as required by 40 C.F.R. § 112.7(e);

d. The Facility failed to document training and discharge prevention procedures, as required by 40 C.F.R. § 112.7(f);

e. The Facility failed to design drainage systems for undiked areas with a potential for discharge, as required by 40 C.F.R. § 112.8(b)(3);

f. The plan failed to state that bulk storage containers were compatible with the material stored and conditions of storage, and the Facility failed to use containers compatible with material stored, as required by 40 C.F.R. § 112.8(c)(1);

g. The Facility failed to provide adequate secondary containment for bulk storage containers, as required by 40 C.F.R. § 112.8(c)(2);

h. The Facility failed to promptly remove accumulations of oil in diked areas, as required by 40 C.F.R. § 112.8(c)(10); and

i. The Facility failed to properly design pipe supports to minimize abrasion and corrosion, as required by 40 C.F.R. § 112.8(d)(3).

3.19 Respondent's failure to fully prepare and implement its SPCC plan for the North Bend Facility, as noted in Paragraph 3.18, violated 40 C.F.R. § 112.3, and impacted its ability to prevent an oil spill.

Count 3: Violation of FRP Requirements at the North Bend Facility

3.20 The North Bend Facility transfers oil over water to and from vessels and has a total oil storage capacity of greater than 42,000 gallons such that a discharge from the facility could significantly impact Coos Bay.

3.21 The North Bend Facility is therefore a non-transportation related, onshore facility within the meaning of 40 C.F.R. § 112.2 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, within the meaning of Section 311(j)(5)(B)(iii) of the Act, 33 U.S.C. § 1321(j)(5)(B)(iii), and 40 C.F.R. § 112.20(f)(1) ("an FRP-regulated facility").

3.22 Therefore, Respondent, as the owner/operator of an FRP-regulated facility, is subject to the FRP regulations found at 40 C.F.R. § 112.20.

3.23 Pursuant to Section 311 (j)(5) of the Act and 40 C.F.R. § 112.20, the owner or operator of an FRP-regulated facility in operation on or after August 30, 1994, is required to submit an FRP that satisfies the requirements of Section 311(j)(5).

3.24 On July 28, 2009, EPA inspected the North Bend Facility and found that

Respondent had failed to develop and implement an FRP, as required by 40 C.F.R. § 112.20.

3.25 Respondent's failure to develop and implement an FRP at the North Bend Facility violates requirements of Section 311(j)(5) of the Act and 40 C.F.R. § 112.20.

Count 4: Violation of the Oil Spill Prohibition at the Eugene Facility

3.26 Section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3), prohibits the discharge of oil or a hazardous substance 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. On January 24, 2009, a discharge of approximately seven barrels of oil, as defined in Section 311(a)(1) of the Act, 33 U.S.C. § 1321(a)(1), and 40 C.F.R. § 110.1, occurred from an above-ground storage tank at the Eugene Facility. Some of this oil entered into a stormwater system that discharged into or upon the Willamette River.

3.27 The January 24, 2009 discharge of oil from the Eugene Facility caused a film or sheen upon or discoloration of the surface of the Willamette River, and therefore, was in a quantity that has been determined may be harmful under 40 C.F.R. § 110.3. The sheen was present in the Willamette River through January 26, 2012.

3.28 Respondent's January 24, 2009 discharge of oil from the Eugene Facility into or upon the Willamette River and adjoining shorelines 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.

IV. CONSENT AGREEMENT

4.1 Respondent admits the jurisdictional allegations contained in Part III of this CAFO.

4.2 Respondent neither admits nor denies the specific factual allegations contained in Part III of this CAFO.

4.3 Respondent expressly waives any rights to contest the allegations and to appeal the Final Order contained herein.

4.4 The provisions of this CAFO shall bind Respondent and its servants, employees, successors and assigns.

4.5 Except as provided in Paragraph 4.10(b), each party shall bear its own costs in bringing or defending this action.

4.6 Pursuant to Section 311(b) of the Act, 33 U.S.C. § 1321(b), EPA has determined, and Respondent agrees, that an appropriate penalty to settle this action is $27,920. This penalty amount has been determined in consideration of the statutory penalty factors identified in Section 311(b)(8) of the Act, 33 U.S.C. § 1321(b)(8), including Respondent's agreement to pay a $2,080 penalty to the State of Oregon for Count 3 alleged above, Respondent's effort to correct the violations after having been notified by EPA, and Respondent's agreement to perform a Supplemental Environmental Project ("SEP").

4.7 Respondent agrees to pay the civil penalty cited in Paragraph 4.6 within thirty (30) days after the effective date of the Final Order. Respondent will be given prompt notice of the date when EPA files the Final Order with the Regional Hearing Clerk, which establishes its effective date.

4.8 Payment under this CAFO shall be made by cashier's check or certified check, payable to "Environmental Protection Agency" bearing the notation "OSLTF-311." Payment sent by the U.S. Postal Service shall be addressed to:

U.S. Environmental Protection Agency

Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Payment sent by express mail via a non-U.S. Postal Service carrier shall be addressed to:

U.S. Bank
Government Lockbox 979077
U.S. E.P.A. Fines and Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101

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

4.9 Respondent must deliver via United States mail a photocopy of the check described in Paragraph 4.8 to the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue, Suite 900, ORC-158
Seattle, WA 98101

Kate Spaulding
U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue, Suite 900, OCE-133
Seattle, WA 98101

4.10 If Respondent fails to pay the penalty assessed by this CAFO in full by the due date set forth in Paragraph 4.7, 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 Act, 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 Section 311(b)(6)(H) of the Act, 33 U.S.C. § 1321(b)(6)(H), any unpaid portion of the assessed penalty shall bear interest from the effective date of the Final Order contained herein, at the rate established by the Secretary of the Treasury under 31 U.S.C. § 3717(a)(1).

b. Attorneys' Fees, Collection Costs, Nonpayment Penalty. Pursuant to Section 311(b)(6)(H) of the Act, 33 U.S.C. § 1321(b)(6)(H), should Respondent fail to timely pay the penalty cited in Paragraph 4.6, 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 twenty percent (20%) of the aggregate amount of Respondent's penalties and nonpayment penalties that are unpaid as of the beginning of such quarter.

4.11 Respondent agrees to implement a SEP consisting of construction of a secondary containment vault (the "Vault") at its transload facility located at 2340 Irving Road, Eugene, Oregon. Respondent shall complete construction of the Vault within one hundred twenty (120) days after the effective date of the Final Order, in accordance with all provisions described in this Consent Agreement and Attachment A to this CAFO. The parties agree that this SEP is intended to secure significant environmental benefits by reducing the risk of a release of oil in harmful quantities into the environment.

4.12 Respondent hereby certifies that, as of the date it signs this Consent Agreement, Respondent is not required to perform or develop the SEP by any federal, state, or local law or regulation; nor is Respondent required to perform or develop the SEP by any other agreement, under a grant, or as injunctive relief in any other case. Respondent further certifies that it has not

received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP. For federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any cost or expenditures incurred in performing this SEP.

4.13 Respondent hereby certifies that it is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP. Respondent further certifies that, to the best of its knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to EPA within two years of the date of this settlement (unless the project was barred from funding as statutorily ineligible). For the purposes of this certification, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee or other mechanism for providing federal financial assistance whose performance period has not yet expired.

4.14 Respondent shall submit a SEP Completion Report to EPA within thirty (30) days after completing all SEP requirements. The SEP Completion Report shall contain the following information:

a. A description of the SEP as implemented;

b. Certification that the SEP has been fully implemented pursuant to the provisions of this CAFO;

c. Itemized costs, documented by copies of purchase orders and receipts or cancelled checks;

d. A description of any problems encountered and the solutions thereto; and

e. A description of the environmental and public health benefits resulting

from implementation of the SEP.

4.15 Unless otherwise instructed in writing by EPA, Respondent shall submit all notices and reports required by this CAFO by first class mail, overnight mail, or hand delivery to:

Kate Spaulding
U.S. Environmental Protection Agency
Region 10, Mail Stop: OCE-133
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

4.16 Respondent agrees that EPA may inspect Respondent's non-privileged records related to the SEP at any reasonable time in order to confirm that the SEP is being undertaken in conformity with the representations made herein.

4.17 Respondent must maintain legible copies of documentation of the underlying data for documents or reports submitted to EPA pursuant to this CAFO until the SEP Completion Report is accepted pursuant to Paragraph 4.18, and Respondent must provide the documentation of any such underlying data to EPA within fifteen (15) days after a written request for such information. In all documents or reports including, without limitation, the SEP Completion Report submitted to EPA pursuant to this CAFO, Respondent shall, by a corporate officer, sign and certify under penalty of law that the information contained in such a document or report is true, accurate, and not misleading by signing the following statement:

> I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

4.18 Following receipt of the SEP Completion Report described in Paragraph 4.14, EPA will do one of the following: (i) accept the Report and notify Respondent in writing the SEP has been satisfactorily completed; (ii) reject the Report and notify Respondent in writing of the deficiencies in the Report and provide Respondent an additional thirty (30) days in which to correct the identified deficiencies; or (iii) reject the Report and notify Respondent in writing it will seek stipulated penalties in accordance with Paragraphs 4.20 and 4.21.

4.19 In the event the SEP is not completed as contemplated by this CAFO, then stipulated penalties shall be due and payable by Respondent upon demand by EPA in accordance with Paragraphs 4.20 and 4.21. EPA's determination that the SEP has or has not been satisfactorily completed will be based on a comparison of the work completed by Respondent and the requirements of this CAFO. The determination of whether the SEP has been satisfactorily completed and whether the Respondent has made a good faith, timely effort to implement the SEP is reserved to the sole discretion of EPA, and will be made within a reasonable time after receiving the SEP Completion Report.

4.20 If Respondent fails to satisfactorily complete construction of the Vault or to satisfactorily complete the SEP as required by this CAFO, then Respondent shall pay stipulated penalties, upon written demand from EPA, in the following amounts for each day the SEP remains incomplete:

Period of Noncompliance	**Penalty Per Violation Per Day**
1st through 7th day	$ 100.00
8th through 21st day	$ 250.00
22nd through 30th day	$ 500.00
Greater than 30 days	$ 1,000.00

4.21 If Respondent fails to satisfactorily complete construction of the Vault or to satisfactorily complete the SEP as required by this CAFO, then EPA may elect to terminate the

SEP if it determines that Respondent is not making a good faith effort to satisfactorily complete the SEP. In addition, if at any time EPA determines that Respondent has abandoned the SEP, it may terminate the SEP. EPA shall provide written notice of SEP termination to Respondent. If EPA terminates the SEP, Respondent shall be liable for a lump sum stipulated penalty of $100,000, less any amount that Respondent has paid under Paragraph 4.20. If Respondent pays a lump sum stipulated penalty under this Paragraph, then it shall not be liable for stipulated penalties under Paragraph 4.20. Any sums already paid under Paragraph 4.20 shall be credited against the lump sum stipulated penalty due under this Paragraph.

4.22 Respondent shall pay stipulated penalties within fifteen (15) days after receipt of a written demand by EPA for such penalties. Payment shall be in accordance with the provisions of Paragraphs 4.8 and 4.9. Interest and late charges shall be paid as stated in Paragraph 4.10.

4.23 In the event that there is an actual or anticipated delay in completion of the SEP as required by this CAFO attributable to force majeure, the time for performance of the obligation shall be extended by written agreement of the parties. An extension of the time for performing an obligation directly affected by the force majeure event shall not, of itself, extend the time for performing a subsequent obligation.

a. For the purposes of this CAFO, "force majeure" shall mean any event entirely beyond the control of Respondent or any entity controlled by Respondent, including Respondent' contractors, consultants, and subcontractors, that delays or prevents completion of the SEP notwithstanding Respondent's best efforts to avoid the delay. The best efforts requirement includes using best efforts to anticipate any such event and minimize the delay caused by any such event to the greatest extent practicable. Examples of events that are <u>not</u> force majeure events include, but are not limited to,

increased costs or expenses of any work to be performed under this CAFO and financial difficulties encountered by Respondent.

b. If any event may occur or has occurred that may delay completion of the SEP under this CAFO, whether or not caused by a force majeure, Respondent must notify by telephone the EPA contact identified in Paragraph 4.15, within five days of when Respondent became aware that the event might cause a delay. Within seven days thereafter, Respondent must provide in writing the reasons for the delay, the anticipated duration of the delay, the measures taken or to be taken to prevent or minimize the delay, a timetable by which those measures will be implemented, and whether, in Respondent's opinion, such event may cause or contribute to an endangerment to public health, welfare, or the environment. Respondent must exercise best efforts to avoid or minimize any delay and any effects of a delay. Failure to comply with the notice requirements of this Paragraph shall preclude Respondent from asserting any claim of force majeure.

c. Respondent shall have the burden of demonstrating, by a preponderance of the evidence, that the actual or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay was or will be warranted under the circumstances, that Respondent did exercise or is using best efforts to avoid and mitigate the effects of the delay, and that Respondent complied with the requirements of this Paragraph.

4.24 Any public statement, oral or written, in print, film, or other media made by Respondent making reference to the SEP shall include the following language: "This project was undertaken in connection with the settlement of an administrative enforcement action taken by the U.S. Environmental Protection Agency under the Clean Water Act as amended by the Oil

Pollution Act of 1990."

4.25 This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state, or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit, nor shall it be construed to constitute EPA approval of the equipment or technology installed by Respondent in connection with the SEP under the terms of this CAFO.

4.26 Respondent represents that it is authorized to execute this CAFO and that the party signing this CAFO on its behalf is authorized to bind Respondent to the terms of this CAFO. This CAFO may be executed in multiple counterparts, each of which shall be deemed to have the same force and effect as an original. A facsimile or email signature shall be treated as an original.

4.27 Compliance with all terms and conditions of this CAFO, including full payment of the penalty amount in Paragraph 4.6 and completion of the SEP, shall resolve Respondent's liability for federal civil penalties for the violations alleged in Part III above.

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

DATED:

1/24/13

FOR RESPONDENT:

RON TYREE, President
Tyree Oil, Inc.

DATED:

2/6/2013

FOR COMPLAINANT:

EDWARD J. KOWALSKI, Director
Office of Compliance and Enforcement

ATTACHMENT A

Supplemental Environmental Project

1. Respondent shall construct a secondary containment vault (Vault) adjacent to the rail spur at Respondent's transload facility located at 2340 Irving Road, Eugene, Oregon. The Vault shall be constructed using structurally reinforced concrete and shall measure approximately four feet wide, four feet deep, and extend the entire length of the rail spur, approximately 550 feet. The Vault shall be designed to capture and contain petroleum products released during loading or unloading of rail cars, including a "worst-case" release caused by a massive failure of the loading or storage systems, before any product reaches the A-1 channel, which ultimately flows to Amazon Creek and the Long Tom and Willamette Rivers.

2. Respondent shall incorporate the Vault described above into Respondent's SPCC plan, including a maintenance schedule and integrity testing.

V. FINAL ORDER

5.1 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 in the Consent Agreement.

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

5.3 This Final Order shall become effective on the date it is filed with the Regional Hearing Clerk.

SO ORDERED this 28th day of March, 2013.

for _____
THOMAS M. JAHNKE
Regional Judicial Officer
U.S. Environmental Protection Agency, Region 10

U.S. Environmental Protection Agency
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101
(206) 553-1037

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in **In the Matter of: Tyree Oil, Inc., DOCKET NO.: CWA-10-2013-0035**, was filed, and served as follows, on the signature date below.

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

Endre M. Szalay, Esquire
Office of Regional Counsel
U.S. Environmental Protection Agency
1200 Sixth Avenue, ORC-158
Suite 900
Seattle, WA 98101

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:

Danielle N. Granatt, Esquire
Veris Law Group PLLC
1809 Seventh Avenue
Suite 1400
Seattle, WA 98101

28th of March 2013
Dated

Candace Smith
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 10