BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:	DOCKET NO. CWA-10-2023-0007
INTALCO ALUMINUM LLC,	**CONSENT AGREEMENT**
Ferndale, Washington,	
Respondent.	Proceedings Under Section 311(b)(6) of the Clean Water Act, 33 U.S.C. § 1321(b)(6)

I. STATUTORY AUTHORITY

1.1. This Consent Agreement is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by Section 311(b)(6) of the Clean Water Act (CWA), 33 U.S.C. § 1321(b)(6).

1.2. Pursuant to CWA Section 311(b)(6)(A), EPA is authorized to assess a civil penalty against any owner, operator, or person in charge of an onshore facility from which oil or a hazardous substance is discharged in violation of CWA Section 311(b)(3), 33 U.S.C. § 1321(b)(3), and/or who fails or refuses to comply with any regulation issued under CWA Section 311(j), 33 U.S.C. § 1321(j).

1.3. CWA Section 311(b)(6)(B), 33 U.S.C. § 1321(b)(6)(B), authorizes the administrative assessment of Class II civil penalties in an amount not to exceed $10,000 per day for each day during which the violation continues, up to a maximum penalty of $125,000. Pursuant to the 2015 amendments to the Federal Civil Penalty Inflation Adjustment Act, 28 U.S.C. § 2461, and 40 C.F.R. Part 19, the administrative assessment of Class II civil penalties may not exceed $20,719 per day for each day during which the violation continues, up to a maximum penalty of $258,978. *See also* 87 Fed. Reg. 1676 (January 12, 2022) (2022 Civil Monetary Penalty Inflation Adjustment Rule).

1.4. Pursuant to CWA Section 311(b)(6)(A) and (b)(6)(B), 33 U.S.C. § 1321(b)(6)(A)

and (B), and in accordance with Section 22.18 of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties," 40 C.F.R. Part 22, EPA issues, and Intalco Aluminum 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)(l) of Executive Order 12777 (October 18, 1991), 56 Fed. Reg. 54757 (October 22, 1991), the President delegated to EPA his Section 311(j)(1)(C) authority to issue the regulations referenced in the preceding Paragraph for non-transportation related onshore facilities.

3.4. Pursuant to these delegated statutory authorities and pursuant to its authorities under the CWA, 33 U.S.C. § 1251 *et seq.,* to implement Section 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. 40 C.F.R. 112.1.

3.6. The regulations define "person" to include any individual, firm, corporation, association, or partnership. 40 C.F.R. § 112.2.

3.7. The regulations define "onshore facility" to mean any facility of any kind located in, on, or under, any land within the United States other than submerged lands. 40 C.F.R. § 112.2.

3.8. In the case of an onshore facility, the regulations define "owner or operator" to include any person owning or operating such onshore facility. 40 C.F.R. § 112.2.

3.9. "Non-transportation-related," as applied to an on-shore facility, is defined to

include industrial, commercial, agricultural or public facilities which use and store oil. 40 C.F.R § 112 App. A.

3.10. The regulations define "oil" to mean oil of any kind or in any form, including, but not limited to, vegetable oils, petroleum, fuel oil, sludge, synthetic oils, oil refuse, and oil mixed with wastes other than dredged spoil. 40 C.F.R. § 112.2.

3.11. CWA § 502(7) defines "navigable waters" as "the waters of the United States, including the territorial seas." 33 U.S.C. § 1362(7). In turn, "waters of the United States" is defined to include, *inter alia*, all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide; tributaries to such waters; and wetlands adjacent to the foregoing waters. 40 C.F.R. § 112.2 (1993).

3.12. 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 an SPCC Plan in writing, certified by a licensed Professional Engineer, and in accordance with the requirements of 40 C.F.R. § 112.7.

3.13. A facility's SPCC Plan shall be prepared "in accordance with good engineering practices" and shall 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

3.14. Respondent is a limited liability company doing business in the state of Washington and a "person" under CWA Section 311(a)(7), 33 U.S.C. §§ 1321(a)(7), and 40 C.F.R. § 112.2.

3.15. At all times relevant to this Consent Agreement, Respondent was the "owner or operator," within the meaning of CWA Section 311(a)(6), 33 U.S.C. § 1321(a)(6), and 40 C.F.R.

§ 112.2, of the facility located at 4050 Mountainview Road in Ferndale, Washington ("Facility").

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

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

3.18. On March 15, 2018, authorized EPA representatives inspected the Facility to determine compliance with Section 311(j) of the CWA and the requirements of 40 C.F.R. Part 112 ("Inspection").

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

3.20. At the time of the Inspection, the Facility had an aggregate above-ground storage capacity greater than 1,320 gallons of oil in containers, each with a shell capacity of at least 55 gallons.

3.21. At the time of the Inspection, Respondent provided to EPA its Release Prevention, Control, and Countermeasure Plan, dated February 2018 ("2018 SPCC Plan").

3.22. The 2018 SPCC Plan stated that the Facility is located 200 feet above the shoreline of the Georgia Strait. Drainage from the Facility tends southwest towards a bluff and down natural ravines to the Georgia Strait. Georgia Strait is used for interstate commerce and is subject to the ebb and flow of the tide. As such, Georgia Strait is a water of the United States and a navigable water within the meaning of CWA § 502(7), 33 U.S.C. § 1362(7), and 40 C.F.R. § 112.2 (1993).

3.23. Accordingly, the Facility is a non-transportation-related, onshore facility that, due to location, could reasonably have been expected, at the time of inspection, to discharge oil into or upon the navigable waters of the United States or adjoining shorelines in a harmful quantity.

The Facility is therefore subject to the regulations at 40 C.F.R. Part 112.

3.24. Pursuant to 40 C.F.R. § 112.3, the owner or operator of an onshore facility that is subject to Part 112 and 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. § 112.7 and other applicable sections of 40 C.F.R. Part 112.

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

Violations

Testing and Inspection Violations

3.26. The regulations at 40 C.F.R. § 112.8(c)(6) require the owner or operator of an onshore facility to test or inspect each aboveground container for integrity on a regular schedule and whenever material repairs are made. The owner or operator must determine, in accordance with industry standards, the appropriate qualifications for personnel performing tests and inspections and the frequency and type of testing and inspections.

3.27. The 2018 SPCC Plan stated that containers CP-T1, CP-T2, and CP-T3 (collectively, "the Pitch Storage Tanks") are subject to the industry standards in American Petroleum Institute Standard 653 for Tank Inspection, Repair, Alteration, and Reconstruction ("API 653"). API 653, Section 6.4.2.1 sets forth the initial internal inspection intervals for newly constructed tanks. The interval from initial service date until the first internal inspection shall not exceed ten years unless a tank has one or more of the leak prevention, detection, corrosion mitigation, or containment safeguards listed in Table 6.1. API 653, Section 6.4.2.1.1. Alternatively, the initial internal inspection date can be established using a Risk Based Inspection ("RBI") assessment. RBI assessments may establish an initial inspection interval exceeding ten years, but the initial inspection interval shall not exceed twenty years for tanks without a release prevention barrier, or thirty years for tanks with a release prevention barrier, with certain exceptions. The Pitch Storage Tanks were installed in 1991, and, at the time of the Inspection,

Respondent had not performed an internal integrity inspection nor an RBI assessment, in violation of 40 C.F.R. § 112.8(c)(6).

3.28. The 2018 SPCC Plan failed to identify an applicable industry standard and a frequency for the inspection of mobile and portable containers, in violation of 40 C.F.R. § 112.8(c)(6).

3.29. The regulations at 40 C.F.R. § 112.7(a)(2) provide that, when the owner or operator of an onshore facility does not conform with the requirements of 40 C.F.R. § 112.8(c)(6), the owner or operator must state the reasons for nonconformance in the SPCC Plan and describe in detail alternate methods and show how they will achieve equivalent environmental protection.

3.30. Despite its failure to conduct initial internal integrity inspections in accordance with API 653, Respondent's 2018 SPCC Plan failed to explain its deviation from industry standards and describe the equivalent environmental protection of alternative methods, in violation of 40 C.F.R. § 112.7(a)(2).

3.31. The regulations at 40 C.F.R. § 112.7(e) require the owner or operator of an onshore facility to conduct required tests and inspections and to keep written procedures and a record of the tests and inspections with the SPCC Plan for a period of three years. During the Inspection, Respondent was unable to provide records of inspections of drum storage area SA-3, SA-4, and SA10, in violation of 40 C.F.R. § 112.7(e).

3.32. The regulations at 40 C.F.R. § 112.8(d)(4) require the owner or operator of an onshore facility to conduct integrity and leak testing of buried piping at the time of installation, modification, construction, relocation, or replacement. Respondent's 2018 SPCC Plan failed to address integrity and leak testing of buried piping, in violation of 40 C.F.R. § 112.8(d)(4).

Secondary Containment Violations

3.33. The regulations at 40 C.F.R. § 112.7(c) require the owner or operator to provide

appropriate containment and/or diversionary structures or equipment to prevent a discharge. The entire containment system, including walls and floor, must be capable of containing oil and must be constructed so that any discharge from a primary containment system, such as a tank, will not escape the containment system before cleanup occurs. The regulations at 40 C.F.R. § 112.8(c)(2) requires that all bulk storage tank installations be constructed providing a secondary means of containment for the entire capacity of the largest single container and sufficient freeboard to contain precipitation.

3.34. During the Inspection, a metal bracket was absent from the secondary containment wall of the Pitch Storage Tanks. The missing bracket resulted in secondary containment inadequate to contain the entire capacity of the largest single container and sufficient freeboard to contain precipitation, in violation of 40 C.F.R. §§ 112.7(c) and 112.8(c)(2).

3.35. During the Inspection, the secondary containment basin surrounding tanks SS-T2, SS-T3, and SS-T4 was inadequate to contain the entire capacity of the largest single container and sufficient freeboard to contain precipitation, in violation of 40 C.F.R. § 112.8(c)(2).

Miscellaneous Violations

3.36. The regulations at 40 C.FR. § 112.7(a)(4) require the SPCC Plan to provide information and procedures to enable a person reporting a discharge to relate information on the exact address or location and phone number of the facility; the date and time of the discharge; the type of material discharged; estimates of the total quantity discharged; estimates of the quantity discharged as described in 40 C.F.R. § 112.1(b); the source of the discharge; a description of all affected media; the cause of the discharge; any damages or injuries caused by the discharge; actions being used to stop, remove, and mitigate the effects of the discharge; whether evacuation may be needed; and the names of individuals and/or organizations who have been contacted. The Emergency Response Procedures in Respondent's 2018 SPCC Plan failed

to include information regarding an estimate of the total quantity of oil discharged to water; a description of the media affected; and whether evacuation may be needed, in violation of 40 C.F.R. § 112.7(a)(4).

3.37. The regulations at 40 C.F.R. § 112.8(d)(3) require an owner or operator of an onshore facility to properly design pipe supports to minimize abrasion and corrosion and allow for expansion and contraction. Respondent's 2018 SPCC failed to address pipe support design, in violation of 40 C.F.R. § 112.8(d)(3).

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 $99,000.

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: https://www.epa.gov/financial/makepayment. Payments made by check must be payable to the order of "Environmental Protection Agency" and delivered to the following

address:

Address format for standard delivery (no delivery confirmation requested):	*Address format for signed receipt confirmation (FedEx, DHL, UPS, USPS certified, registered, etc):*
U.S. Environmental Protection Agency P.O. Box 979077 St. Louis, MO 63197-9000	U.S. Environmental Protection Agency Government Lockbox 979077 1005 Convention Plaza SL-MO-C2-GL St. Louis, MO 63101

Respondent must note on the check the docket number of this action and "Oil Spill Liability Trust Fund – 311."

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 R10_RHC@epa.gov	Rick Cool U.S. Environmental Protection Agency Region 10 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.

4.7.1. 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.

4.7.2. 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 expenses 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 4.7.2, above, each party shall bear its own fees and costs in bringing or defending this action.

4.12. For the purposes of this proceeding, Respondent expressly waives any affirmative defenses and the right to contest the allegations contained in the Consent Agreement and to appeal the Final Order.

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

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

DATED:

11/10/22

FOR RESPONDENT:

ROBERT S. BEAR
President
Intalco Aluminum LLC

FOR COMPLAINANT:

EDWARD KOWALSKI

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Date: 2023.01.04 16:46:18 -08'00'

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

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:	DOCKET NO. CWA-10-2023-0007
INTALCO ALUMINUM LLC, Ferndale, Washington, Respondent.	**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.

IT IS SO ORDERED.

RICHARD MEDNICK
Digitally signed by RICHARD MEDNICK
Date: 2023.01.06 10:33:33 -08'00'

RICHARD MEDNICK
Regional Judicial Officer
EPA Region 10