

**BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III**

In the Matter of:	:	
	:	
	:	Proceeding under Section 311(c) and (e)
	:	of the Clean Water Act, as amended,
Tangier Oil Company, Inc.	:	33 U.S.C. § 1321(c) and (e)
P.O. Box 246	:	
Tangier, Virginia 23440,	:	
	:	Docket No. CWA-03-2020-0061CW
Operator,	:	
	:	
Barbara Thomas	:	
26959 Holly Avenue	:	
Crisfield, VA 21817,	:	
	:	
Owner,	:	
	:	
1000 Williams Wheatley Road	:	
Tangier, VA 23410,	:	
	:	
Facility.	:	
	:	

ADMINISTRATIVE ORDER ON CONSENT

The parties to this Administrative Order on Consent (“Consent Order”), the United States Environmental Protection Agency (“EPA”) and Tangier Oil Company, Inc. (“Tangier Oil”) and Barbara Thomas (“Owner”) (collectively, “Respondents”), having agreed to entry of this Consent Order, it is therefore Ordered and Agreed that:

I. Jurisdiction and General Provisions

1. This Consent Order is issued to Respondents pursuant to the authority vested in the President of the United States by Section 311(c) and (e) of the Federal Water Pollution Control Act (“Clean Water Act” or “CWA”), as amended, 33 U.S.C. § 1321(c) and (e), and the authority vested in the Administrator of EPA by Executive Order 12777 (56 Fed. Reg. 54757, October 22, 1991). The authorities of Section 311(c) of the Clean Water Act were delegated to the Regional Administrator of EPA Region III on January 19, 1993 and updated on October 25, 2016 by Delegation Nos. 2-89, and further delegated by the Regional Administrator to the Director of the Enforcement and Compliance Assurance Division (“ECAD”) by Regional Delegation 2-89 on April 15, 2019. The authorities of

Section 311(e) of the Clean Water Act were delegated to the Regional Administrator of EPA Region III on January 18, 2017 by Delegation Nos. 2-85, and further delegated by the Regional Administrator to the Director of the ECAD by Regional Delegation 2-85 on April 15, 2019.

2. This Consent Order pertains to a substantial threat of a discharge of oil from Respondents' facility ("Facility") located at 1000 Williams Wheatley Road, Tangier, Virginia 23440. This Consent Order requires the Respondents to perform actions to ensure the mitigation or prevention of a substantial threat of a discharge of oil within the meaning of Section 311(c)(1)(A) of the CWA, 33 U.S.C. § 1321(c)(1)(A).
3. This Consent Order requires the performance of actions to address an imminent and substantial threat to the public health or welfare of the United States, including fish, shellfish, and wildlife, public and private property, shorelines, beaches, habitat, and other living and nonliving natural resources, under the jurisdiction or control of the United States, because of an actual or threatened discharge of oil from a facility as set forth in Section 311(e)(1) of the CWA, 33 U.S.C. § 1321(e)(1).
4. EPA has provided notice of the issuance of this Consent Order to the Commonwealth of Virginia, in accordance with Section 311(e)(1)(B) of the Clean Water Act, 33 U.S.C. § 1321(e)(1)(B).
5. Respondents consent to the issuance of this Consent Order and consent to its terms. Respondents acknowledge EPA's authority and jurisdiction to issue and/or enforce this Consent Order. In executing this Consent Order, Respondents neither admit nor deny liability, and neither admit nor deny the Findings of Fact and Conclusions of Law set forth in Sections III and IV of this Consent Order. Respondents further agree that in any proceeding to implement or enforce this Consent Order, they will not contest the Findings of Fact or Conclusions of Law.

II. Definitions

6. "Business Days" as used in this Consent Order shall mean every day of the week except Saturdays, Sundays and federal holidays.
7. "Calendar Days" as used in this Consent Order shall mean every day of the week, including Saturdays, Sundays and federal holidays.
8. "CWA" shall mean the Federal Water Pollution Control Act, as amended, commonly referred to as the Clean Water Act, 33 U.S.C. §§ 1251-1387.
9. "Discharge" as used in this Consent Order shall have the meaning set forth in Section 311(a)(2) of the CWA, 33 U.S.C. § 1321(a)(2) and 40 C.F.R. § 300.5.
10. "Effective Date" shall have the meaning as set forth in Section XI, below.

11. "Facility" as used in this Consent Order shall mean the facility owned by Owner and operated by Tangier Oil located at 1000 Williams Wheatley Road, Tangier, Virginia 23440 and shall have the meaning set forth in Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10), and in Section 1001(24) of the Oil Pollution Act, 33 U.S.C. § 2701(24).
12. "National Contingency Plan" or "NCP" as used in this Consent Order shall mean the National Oil and Hazardous Substances Pollution Contingency Plan, codified at 40 C.F.R. Part 300, including, but not limited to, any amendments thereto.
13. "Navigable water(s)" as used in this Consent Order shall have the meaning set forth in Section 502(7) of the CWA, 33 U.S.C. § 1362(7).
14. "Oil" as used in this Consent Order shall have the meaning set forth in Section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1), and 40 C.F.R. § 300.5.
15. "Consent Order" shall mean this Administrative Order on Consent, Docket Number CWA-03-2020-0061CW, as set forth herein, and all attachments hereto.
16. "Permanently closed" with respect to any container, including tanks, shall mean: (1) all liquid and sludge has been removed from each container and connecting line; and (2) all connecting lines and piping have been disconnected from the container and blanked off, all valves (except for ventilation valves) have been closed and locked, and conspicuous signs have been posted on each container stating that is a permanently closed container and noting the date of closure. 40 C.F.R. § 112.2.
17. "SPCC Plan" shall mean the Spill Prevention, Control, and Countermeasure Plan for the oil storage and distribution facility located at 1000 Williams Wheatley Road, Tangier, Virginia 23440.
18. "State" or "Commonwealth" shall mean the Commonwealth of Virginia.
19. "Work" shall mean all the requirements of this Consent Order and any modifications thereto.
20. All terms not defined herein shall have the meanings set forth in the CWA or 40 C.F.R. Part 112.
21. Respondents shall ensure that their contractors, subcontractors, and representatives receive a copy of this Consent Order and comply with this Consent Order. Respondents shall be responsible for any noncompliance with this Consent Order.

III. Findings of Fact

22. Respondent Barbara Thomas is an individual who owns the oil storage Facility located at 1000 Williams Wheatley Road, Tangier, Virginia, including the real property and the oil storage tanks and related appurtenances.
23. Respondent Barbara Thomas's son, Steven Thomas, does not have the authority to make decisions regarding Ms. Thomas' legal and/or financial affairs through power of attorney, although he regularly assists Ms. Thomas on such matters. Accordingly, as mutually agreed by the parties, Mr. Thomas was present and involved in discussions regarding this Consent Order.
24. Respondent Tangier Oil operates the Facility, storing and distributing its heating oil, diesel fuel, gasoline, and kerosene.
25. Tangier Oil was incorporated on July 21, 2004 in Virginia. At all times relevant to this matter, Respondent Tangier Oil has been a corporation doing business in the Commonwealth of Virginia.
26. At all times relevant to this matter, Tangier Oil has been the operator of the Facility and Barbara Thomas has been the owner of the Facility.
27. EPA conducted an inspection of the Facility on August 15, 2018 (hereinafter, "Inspection") to determine Respondents' compliance at the Facility with Section 311(j) of the CWA and its implementing regulations, the Spill Prevention, Control, and Countermeasure ("SPCC") and Facility Response Plan ("FRP") regulations, 40 C.F.R. Part 112.
28. During the Inspection, EPA inspectors observed one 250-gallon heating oil tank and nine bulk storage tanks (three 20,000-gallon diesel fuel tanks, two 10,000-gallon diesel fuel tanks, one 20,000-gallon gasoline tank, one 10,000-gallon gasoline tank, and two 20,000-gallon kerosene tanks) used to store various types of oil in connection with Respondents' operations at the Facility. The Facility also has one 110-gallon mobile tank; however, it was not observed during the Inspection.
29. The Facility is located directly adjacent to Tangier Harbor on the coastline of Tangier Island, abutting the Chesapeake Bay.
30. Tangier Island is located in an environmentally sensitive area comprised of intertidal flats and tidal marshes and situated in the middle of the Chesapeake Bay.
31. The Chesapeake Bay is navigable-in-fact within the meaning of The Daniel Ball, 77 U.S. (10 Wall.) 557, 563 (1870), such that it has been and is used as "a highway for

commerce, over which trade and travel are or may be conducted in the customary modes of trade and travel on the water.”

32. The Chesapeake Bay is a navigable water of the United States.
33. According to information provided to EPA by Tangier Oil following the Inspection, the Facility has an aggregate aboveground oil storage capacity of 150,360 gallons.¹
34. Tangier Oil conducts overwater transfers of oil to and from boats at the Facility’s dock, which is located over the waters of the Chesapeake Bay and adjacent to the Facility.

SPCC Findings of Fact

35. Pursuant to 40 C.F.R. § 112.8(c)(2), the owner or operator is required to construct all bulk storage tank installations with secondary containment to hold the entire capacity of the largest single container and sufficient freeboard to contain precipitation; diked area must be sufficiently impervious to contain discharged oil. The Facility’s SPCC Plan states that the secondary containment at the Facility has insufficient capacity to hold the capacity of the largest single container. The SPCC Plan also states that the diked containment berm is constructed of wood, sand, and stone and lined with plastic to ensure its imperviousness. However, during the Inspection, EPA inspectors observed holes in or gaps between the wooden planks that comprise the dike’s walls, and therefore, the secondary containment was not impervious.
36. Pursuant to 40 C.F.R. § 112.8(c)(10), the owner or operator is required to promptly correct visible discharges which result in a loss of oil from the container, including but not limited to seams, gaskets, piping, pumps, valves, rivets, and bolts. At the time of the Inspection, EPA inspectors observed significant shell corrosion on Tanks 1-9 and oil leak staining around Tank 3’s point of contact with the foundation. Tangier Oil indicated to EPA inspectors that they were aware of Tank 3’s leak and that, while the tank had not yet been permanently closed, it was not being used to store oil.
37. Pursuant to 40 C.F.R. § 112.8(c)(6), the owner or operator is required to test or inspect each aboveground container for integrity on a regular schedule and whenever one makes material repairs and maintain records of inspections and tests. During the Inspection, EPA inspectors observed significant shell corrosion on Tanks 1-9 and Respondents were unable to produce any records of integrity tests conducted on the aboveground containers.
38. On September 20, 2019, Tangier Oil notified EPA that in June 2019, Interspec LLC, a contractor employed by Tangier Oil, tested five of Tangier Oil’s nine aboveground bulk storage tanks to verify their integrity; the Facility’s four remaining bulk storage tanks were not tested as Tangier Oil stated that it intends to permanently close those tanks. According to the June 2019 integrity testing reports provided to EPA by email on

¹ This storage capacity figure corrects the storage capacity figure Tangier provided at the time of the Inspection, namely 150,250 gallons.

September 20, 2019, two of the five storage tanks that were tested for integrity (Tank 2 and Tank 7) were deemed unfit for continued service.

39. The Facility's SPCC Plan reflects the regulatory requirements of 40 C.F.R. § 112.8(b), namely the obligation for owners or operators of a facility whose drainage drains directly into a watercourse and not into an on-site wastewater treatment plant, to inspect the rainwater and, after such inspection ensuring no oil will be discharged, the owners or operators may drain uncontaminated retained stormwater, opening and resealing the bypass valve under responsible supervision, and keeping adequate records of any such events. However, at the time of the Inspection, Tangier Oil, which does not have an on-site wastewater treatment plant, could not locate the dike drainage bypass valve for EPA inspectors or provide records of inspections of retained rainwater or drainage events.
40. Pursuant to 40 C.F.R. § 112.3(d), a licensed Professional Engineer ("PE") must review and certify an SPCC plan for it to be effective to satisfy the requirements. By means of certification, the PE attests, amongst other enumerated items, that the procedures for required inspections and testing have been established and that the Plan is adequate for the facility. Id. at § 112.3(d)(iv)-(v). At the time of the Inspection, the Facility's SPCC Plan, dated March 2013, was not fully certified by a PE. The SPCC Plan identifies Robert Reali as the PE below the Plan's SPCC certification language, but the SPCC Plan is unsigned, not dated, and does not include a PE attestation regarding the SPCC Plan's adequacy for the Facility or an attestation regarding procedures being implemented at the Facility for inspections and testing.
41. Pursuant to 40 C.F.R. § 112.7(a)(3), an owner or operator must describe in the SPCC plan the physical layout of the facility and include a facility diagram that marks the location and contents of each fixed oil storage container and the storage area where mobile containers are located, as well as all transfer stations and connecting pipes, including intra-facility gathering lines. At the time of the Inspection, the SPCC Plan's facility diagram failed to depict the 250-gallon heating oil tank and pipelines located at the Facility. Additionally, the facility diagram was so small that diagram labels were largely illegible and therefore failed to adequately mark the location and contents of each fixed oil storage container.
42. Pursuant to 40 C.F.R. § 112.7(a)(3)(v), the owner or operator must address in the SPCC plan the methods of disposal of recovered materials. At the time of the Inspection, the Facility's SPCC Plan did not address any methods of disposal for materials recovered from cleaning up an oil spill at the Facility.
43. Pursuant to 40 C.F.R. § 112.7(f)(3), the owner or operator must conduct discharge prevention briefings for oil-handling personnel at least once a year to assure adequate understanding of the facility's SPCC plan. At the time of the Inspection, Tangier Oil indicated that it had held the requisite annual discharge prevention briefings in prior years; however, it had not conducted the discharge prevention briefing since 2015. Tangier Oil failed to provide records of previously-held annual discharge prevention

briefings, though a template of the Spill Prevention Training Record is included as Appendix 2 of the SPCC Plan.

44. Pursuant to 40 C.F.R. § 112.7(j), the owner or operator must include in the SPCC plan a complete discussion of conformance with applicable requirements and other effective discharge prevention and containment procedures including any applicable more stringent State rules, regulations, and guidelines. At the time of the Inspection, the Facility's SPCC Plan did not discuss conformance with any applicable discharge prevention and containment procedures or any applicable more stringent State rules, regulations, or guidelines.
45. Following the Inspection, and during the pendency of this Consent Order's issuance, Tangier Oil submitted to EPA a revised SPCC Plan ("Revised SPCC Plan") which corrects some, but not all, of the findings above. The Revised SPCC Plan, dated October 10, 2019, is certified by a PE and discusses conformance with any applicable discharge prevention and containment procedures or any applicable more stringent State rules, regulations, or guidelines. The Revised SPCC Plan still includes an illegible facility diagram, does not address methods of disposal for materials recovered from cleaning up an oil spill, and indicates that the Facility's containment is inadequate due to its permeability.

FRP Findings of Facts

46. Pursuant to 40 C.F.R. § 112.21(b), the owner or operator of a facility for which an FRP is required must develop a facility response training program to train those personnel involved in oil spill response activities. The Facility's Integrated Contingency Plan ("ICP"), utilized to comply with the FRP regulations, indicates that all on-site personnel receive annual oil spill preparedness and response HAZWOPER HAZMAT training. No applicable training records were observed by EPA, and Tangier Oil indicated that, while Facility personnel had received this training from a contracted entity ("HEPACO") in the past, these training events had not been conducted in two years.²
47. Pursuant to 40 C.F.R. § 112.21(c), the owner or operator must develop a program of facility response drills/exercises, including evaluation procedures, in accordance with an approved program. At the time of the Inspection, Tangier Oil's ICP included only certain elements of an approved program of drills and exercises (i.e. it did not include response simulations to a worst-case discharge scenario or unannounced drills and exercises), and the ICP's specified drills and exercise plan was not being fully implemented.³ The ICP

² Following the Inspection, Tangier Oil indicated that it had recently conducted spill preparedness and response training and provided EPA with certificates of completion which reflect that Tangier Oil completed HEPACO's oil spill response training on May 9-10, 2019.

³ Following the Inspection, Tangier Oil indicated that it had recently conducted a tabletop exercise and boom deployment exercise. Tangier Oil's oil spill response training certificates also reflect completion of a PREP tabletop exercise, however, documentation/logs of the tabletop exercise need to provide additional specific information including the emergency scenario, the size of the spill in the exercise, and whether it was announced/unannounced. EPA has yet to receive such documentation for Tangier's tabletop and boom simulation.

required that the Facility conduct monthly qualified individual (“QI”) notification drills; however, at the time of the Inspection, Tangier Oil could only produce one QI notification record per year during 2014, 2017, and 2018 rather than 12 monthly records for each year between 2014 and 2018. The ICP required that the Facility conduct tabletop drill exercises quarterly, but Tangier Oil failed to produce records of any spill management team tabletop exercises from 2014 to 2016. The ICP required that the Facility conduct semi-annual facility equipment deployment drills; however, Tangier was only able to produce one equipment deployment exercise record for 2014, 2015, 2017, and 2018.

48. At the time of the Inspection, the Facility’s ICP failed to follow the format of the model FRP included in Appendix F to 40 C.F.R Part 112 in the following ways:
- a. The Facility’s ICP failed to include the 250-gallon heating oil tank in the hazard identification worksheets or equivalent documents, and in the facility diagram.
 - b. Pages 7 and 28 of the ICP indicate that a 40,000-gallon storage tank is available “for use in oil spill recovery operations;” however, at the time of the Inspection, EPA inspectors did not observe the 40,000-gallon storage tank at the Facility and its specific planned involvement in potential discharge scenarios or spill recovery efforts were not detailed in the ICP. Additionally, the Facility’s ICP does not describe the drainage route from oil storage areas and the type, number, and location of valves in the facility’s drainage systems are not identified.
 - c. Respondent has not received approval for an alternative drill/exercise program: therefore, in accordance with 40 C.F.R. § 112.21(c), Respondents must follow the National Preparedness for Response Exercise Program (“PREP guidelines”). The PREP guidelines specify that the facility conduct internal exercises, and that drill/exercise programs include unannounced exercises and evaluation procedures. At the time of the Inspection, the Facility’s ICP did not include a description of unannounced exercises.
 - d. At the time of the Inspection, the ICP’s site plan diagram was too small to discern facility features and identifiers, such as tank numbers, pipelines, etc., and the site plan diagram did not include a 250-gallon heating oil tank, transfer areas or pipelines, locations of emergency response equipment, or the point of interface between EPA-regulated and U.S. Coast Guard-regulated processes. Additionally, the ICP did not include a site drainage plan diagram, including drains, shut-off valves, response equipment transportation routes, or the direction of flow from discharge points. Finally, the ICP’s evacuation plan diagram did not identify the location of evacuation regrouping areas.
49. Following the Inspection, and during the pendency of this Consent Order’s issuance, Tangier Oil submitted to EPA a revised ICP (“Revised ICP”) which corrects some, but not all, of the findings above. The Revised ICP clarifies that that the previously-cited

40,000-gallon storage tank available “for use in oil spill recovery operations” is a 20,000 gallon-storage tank that is owned and operated by a neighbor. The Revised ICP contains a partial discussion of the FRP drill and exercise requirements but remains incomplete. The Revised ICP still contains an illegible site plan diagram, does not include a description of unannounced exercises, or describe the drainage route from oil storage areas and the type, number, and location of valves in the Facility’s drainage systems are not identified

50. Based on the foregoing and the Administrative Record which support the issuance of this Consent Order, the Director of the Enforcement and Compliance Assurance Division has determined that the threatened discharge of oil at or from the Facility poses an imminent and substantial threat to public health or welfare of the United States.

IV. Conclusions of Law

51. Respondents are each a “person” as defined by Section 311(a)(7) of the CWA, 33 U.S.C. § 1321(a)(7), and 40 C.F.R. § 300.5.
52. Barbara Thomas is an “owner” of the Facility as defined by Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6).
53. Tangier Oil Company Inc. is an “operator” of the Facility as defined by Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6).
54. The Facility is an “onshore facility” as defined by Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10), and 40 C.F.R. § 300.5.
55. “Oil,” as defined in Section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1), and 40 C.F.R. § 300.5, is present at the Facility.
56. The Chesapeake Bay is a “navigable water” of the United States as that term is defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and 40 C.F.R. § 300.5.
57. The quantity of oil which may be discharged from the Facility into or upon the navigable waters of the United States and adjoining shorelines would be in a “harmful quantity,” within the meaning of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), and 40 C.F.R. § 110.3(b), because the discharge would cause a sheen on the surface water of and a sludge or emulsion beneath the Chesapeake Bay or on its adjoining shorelines; thus, such a discharge of oil from the Facility would be in violation of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3).
58. In light of the proximity of the Facility’s aboveground oil storage tanks to the Chesapeake Bay, the lack of adequate, impervious secondary containment at the Facility, the lack of integrity testing and integrity testing records for the aboveground tanks at the Facility, the condition of certain tanks at the Facility, and the inadequately implemented

oil spill response training and drill/exercise program at the Facility, there is a substantial threat of a discharge of oil from the Facility into the navigable waters of the United States or upon its adjoining shorelines, as set forth in Section 311(c)(1)(A) of the CWA, 33 U.S.C. § 1321(c)(1)(A).

59. The threatened discharge of oil from the Facility in violation of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), poses an imminent and substantial threat to the public health or welfare of the United States, including fish, shellfish, and wildlife, public and private property, shorelines, beaches, habitat, and other living and nonliving natural resources under the jurisdiction or control of the United States, as set forth in 33 U.S.C. § 1321(e).
60. The Work required by this Order is necessary to protect the public health and welfare of the United States of America, including fish, shellfish, wildlife, public and private property, shorelines, beaches, habitat, and other living and/or nonliving natural resources under the jurisdiction or control of the United States. Further, this Work is necessary to ensure effective and immediate mitigation or prevention of a substantial threat of a discharge of oil into or on the navigable waters or on the adjoining shorelines to the navigable waters.
61. The Work required by this Order is in accordance with the NCP and is authorized by EPA pursuant to the authority granted in Section 311(c) and 311(e) of CWA, 33 U.S.C. § 1321(c) and 1321(e), as delegated by the President in Executive Order 12777, Section 2(b)(1), 56 FR 54757 (October 22, 1991).

V. Work to be Performed

62. Based upon the **Findings of Fact and Conclusions of Law and Determinations** set forth in Sections III and IV, above, EPA hereby orders Respondents to perform the actions set forth in this Consent Order.
63. With respect to tank integrity, Respondents must perform the following:
 - a. Within fourteen (14) calendar days from the Effective Date of this Consent Order, Respondents shall submit to EPA documentation which reflects the results of integrity testing recently completed on the Facility's aboveground storage tanks.
 - b. Within fourteen (14) calendar days from the Effective Date of this Consent Order, Respondents shall submit to EPA a plan and schedule for permanently closing or correcting deficiencies in the aboveground storage tanks (the "Tank Improvement and Closure Plan"). The proposed schedule shall at a minimum identify the number and location of each aboveground storage tank (a numbered diagram is sufficient), indicate the pending actions that are proposed for each tank (e.g. permanently closing and removing, permanently closing and leaving tank in place at facility, or specific improvements scheduled to be completed on the tank ensure it is of adequate condition/integrity to continue use and types of improvements to

be completed) and a proposed deadline for completion of each action pertaining to the respective tanks. EPA shall review the proposed Tank Improvement and Closure Plan and notify Respondents in writing of EPA's determination whether the draft proposed plan is approved. If approved, the Tank Improvement and Closure Plan will become final and Respondents shall commence tank closure and improvement work in accordance with the proposed approved schedule. If EPA determines that the draft Tank Improvement and Closure Plan is unacceptable, EPA will notify Respondents and Respondents will submit a new draft Tank Improvement and Closure Plan within ten (10) calendar days in accordance with Paragraph 67, below.

- c. Within fourteen (14) calendar days of completion of the Tank Improvement and Closure Plan, Respondents shall submit to EPA a Tank Improvement Completion Report, which shall include photographs and/or other documentation to demonstrate the completion of the improvements and/or permanent closures of the storage tanks.
 - d. Within fourteen (14) calendar days of completion of the Facility's Tank Improvement and Closure Plan, Respondents shall also submit to EPA an ongoing schedule to regularly test or inspect the Facility's remaining aboveground oil storage tanks consistent with 40 C.F.R. § 112.8(c)(6). This schedule, developed by or in consultation with an independent consultant with sufficient qualifications and experience to evaluate the condition of aboveground oil storage tanks in accordance with applicable industry standards, shall also be incorporated into the re-submitted Revised SPCC plan required to be prepared in writing and implemented by 40 C.F.R. § 112.3, and by Paragraph 66, below.
64. With respect to secondary containment at the Facility, Respondents must perform the following:
- a. Within twenty-one (21) calendar days from the Effective Date of this Consent Order, Respondents shall submit to EPA for its review and approval a plan with an accompanying schedule to complete construction of adequate, impervious secondary containment for the Facility in accordance with the requirements of 40 C.F.R. § 112.8(c) ("the Secondary Containment Plan"). The Secondary Containment Plan shall include the planned modifications to the Facility's secondary containment, as determined necessary and sufficient by a certified licensed PE to ensure, once completed, that the containment will be of adequate capacity and sufficiently impervious. The Secondary Containment Plan shall also include the calculations used to determine the dimensions and volume of the secondary containment for the Facility and proposed structural design modifications and construction materials intended to be used to ensure adequate capacity and imperviousness for the secondary containment. Upon receipt of EPA written approval of the Secondary Containment Plan, Respondents shall commence and thereafter complete modifications of/improvements to its secondary containment in accordance with the EPA-approved plan and schedule.

If EPA disapproves the Secondary Containment Plan, Respondent will resubmit in accordance with Paragraph 67, below.

- b. Within twenty-one (21) calendar days after the completion of modifications/improvements to the Facility's secondary containment, as required by subparagraph 64.a., above, Respondents shall submit to EPA for its review and approval a written Secondary Containment Completion Report, which shall provide documentation of the completed construction of the secondary containment and a certification by a licensed PE as to the suitability of the secondary containment at the Facility which meets the requirements of 40 C.F.R. § 112.8(c). Such report shall include work orders, invoices, and/or photographs to demonstrate the completion of said secondary containment.
65. With respect to training, drills, and exercises required at the Facility, Respondent must perform the following:
- a. Within twenty-one (21) calendar days from the Effective Date of this Consent Order, Respondents shall submit to EPA the date of the next annual discharge prevention briefing for oil-handling personnel as required by 40 C.F.R. § 112.7(f)(3), or documentation to demonstrate when such training occurred since the Inspection.
 - b. Within twenty-one (21) calendar days from the Effective Date of this Consent Order, Respondents shall submit to EPA a schedule of planned facility response drills/exercises, required in accordance with the PREP Guidelines or another approved program and the Facility's updated ICP ("Drills/Exercises Schedule"), and documentation of any drills/exercises conducted since the Inspection. The Drills/Exercises Schedule shall include at a minimum:
 - i. A spill management tabletop exercise, occurring once a year
 - ii. Qualified Individual (QI) notification drills, occurring once a quarter (or four per year)
 - iii. An unannounced exercise, occurring once a year
 - iv. Equipment deployment exercises, occurring twice a year – approximately every six months
 - v. Worst-case discharge scenario, occurring at least once every three years

If EPA approves of the Drills/Exercises Schedule, Respondents will begin implementing drills/exercises in accordance with the schedule. If EPA disapproves the Drills/Exercises Schedule, Respondents will resubmit it in accordance with Paragraph 67, below.

66. With respect to correcting current deficiencies in the Facility's SPCC Plan and ICP, Respondents must perform the following:

- a. Within sixty (60) calendar days from Respondents' submission of the Secondary Containment Completion Report, Respondents shall submit to EPA for review a newly revised-version of the Revised SPCC Plan for the Facility, reflecting the modified/current secondary containment and correcting deficiencies identified by EPA, reviewed and certified by a licensed PE, and prepared and implemented in accordance with 40 C.F.R. § 112.3, 112.7 and any other applicable section of Part 112.
 - b. Within sixty (60) calendar days from Respondents' submission of the Secondary Containment Completion Report, Respondents shall submit to EPA for its review a newly revised version of the Revised ICP or FRP for the Facility, correcting deficiencies identified by EPA, and prepared in accordance with 40 C.F.R. § 112.20.
67. All reports and documentation to demonstrate completion required by this Consent Order are subject to EPA approval and shall be deemed incorporated into this Consent Order upon receipt by Respondents of written approval by EPA. In the event that EPA disapproves any required submission, EPA will: (a) specify the deficiencies in writing, and/or (b) submit its own modifications to Respondents to accomplish the relevant Work set forth above. Respondents shall amend and submit to EPA a revised submission that responds to and corrects the specified deficiencies within ten (10) calendar days of receipt of EPA disapproval or such longer time as may be specified in writing by EPA in its discretion. In the event that EPA submits its own modifications to Respondents, Respondents are hereby required to incorporate such modifications within ten (10) calendar days of receipt or such longer time as specified in writing by EPA. Any non-compliance with EPA-approved reports, plans, specifications, or schedules shall be considered a failure to comply with a requirement of this Consent Order. Determinations of non-compliance will be made by EPA.
68. Any notice, report, plan, certification, data presentation or other document submitted by either Respondent under or pursuant to this Consent Order which discusses, describes, demonstrates or supports any finding or makes any representation concerning the Respondents' compliance or non-compliance with any requirement(s) of this Consent Order shall be signed by a responsible corporate officer or a duly authorized representative of a responsible corporate officer and include the following certification:

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.

The term "responsible corporate officer" means: (i) the president, secretary or vice-president of the corporation in charge of principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or (ii) the

manager of one or more manufacturing facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures. A person is a duly authorized representative if: (1) the authorization is made in writing by a person described above; (2) the authorization specifies either an individual or position having responsibility for overall operation of the regulated facility or activity (a duly authorized representative may thus be either a named individual or any individual occupying a named position); and (3) the written authorization is submitted to the EPA Project Coordinator set forth in Paragraph 71 of this Consent Order.

69. Respondents shall provide EPA and its representatives, including contractors and grantees, with access to the Facility for the purpose of assessing Respondents' compliance with this Order and with the CWA. Respondents shall also provide EPA and its representatives, including contractors and grantees, with access to all records relating to Respondents' implementation of this Consent Order. Respondents shall preserve all documents and information relating to the activities carried out pursuant to this Consent Order for six (6) years after completion of the Work required by this Consent Order. At the end of the six-year period, Respondents shall notify EPA at least thirty (30) calendar days before any such document or information is destroyed and make such documents and information available for inspection by EPA. Upon request, Respondents shall provide EPA with copies of such documents and information.
70. All documents submitted by Respondents to EPA in the course of implementing this Consent Order shall be available to the public unless identified by Respondents as confidential and adequately substantiated at the time the assertion is made pursuant to 40 C.F.R. Part 2, Subpart B, and determined by EPA to require treatment as confidential business information in accordance with applicable law.
71. Documents, including plans, reports, and other correspondences required to be submitted to EPA under this Consent Order may be sent by email to EPA's Project Coordinator, Mark Wejrowski, SPCC/FRP Inspector, at wejrowski.mark@epa.gov, by fax at 215-514-2302 accompanied by a phone call to notify Mark Wejrowski of the sent fax and to confirm receipt, or by mail to:

Mark Wejrowski, SPCC/FRP Inspector
U.S. Environmental Protection Agency, Region III
Oil & Prevention Section (3ED12)
1650 Arch Street
Philadelphia, Pennsylvania 19103
(215) 814-3241

In the event that EPA's Project Coordinator assigned to this matter changes, EPA shall notify Respondents by phone and in writing of the change and provide Respondents with the newly-assigned Project Coordinator's name and contact information. Such a change

does not constitute a modification of this Consent Order and does not require further actions as described under Paragraph 87.

Information required to be submitted to Respondents under this Consent Order must be sent to:

Dennis Crockett
Tangier Oil Company, Inc.
P.O. Box 246
Tangier, Virginia 23440
(with a courtesy copy to: dennisglenna74@gmail.com)

Barbara Thomas
26959 Holly Avenue
Crisfield, Virginia 21817

VI. Parties Bound

72. This Consent Order shall apply to and be binding upon Respondents and Respondents' directors, officers, employees, agents, receivers, trustees, successors, and assigns. Neither a change in ownership or corporate or partnership status of Tangier Oil, nor a change in ownership or control of the Facility, shall in any way alter Respondents' responsibilities under this Consent Order. No change in ownership of any property covered by this Consent Order shall in any way alter, diminish, or otherwise affect Respondents' obligations and responsibilities under this Consent Order.
73. Respondents are jointly and severally liable for carrying out all activities required by this Consent Order. Compliance or noncompliance by one or more Respondents with any provision of this Consent Order shall not excuse or justify noncompliance by any other Respondent. To satisfy obligations under this Consent Order; however, Respondents are not required to complete activities or submit documentation separately, as it could be duplicative; Respondents shall coordinate to ensure that all obligations under the Consent Order are being met.

VII. Failure to Perform

74. In the event of an inability or anticipated inability to perform any of the actions required by this Consent Order in the time and manner required herein, Respondents shall notify EPA's Project Coordinator, Mark Wejrowski at (215) 814-3241, orally within twenty-four (24) hours of such event (or, if the event occurs on a Friday or Saturday, Sunday, or federal holiday, no later than the following business day), but in no event more than three (3) calendar days after such action was due to inform EPA of the reason(s) for, and the expected duration of, the inability to perform; the actions taken and to be taken by Respondents to avoid and mitigate the impact of such inability to perform; and the proposed schedule for completing such actions. Such notification shall not relieve

Respondents of any obligation of this Consent Order. Respondents shall take all reasonable actions to prevent and minimize any delay.

75. Failure by Respondents to carry out any requirement of this Consent Order in accordance with the terms and conditions specified herein may result in the initiation of an enforcement action against Respondents to require Respondents to perform such actions, in addition to any other relief that may be available to EPA pursuant to applicable law. Respondents reserves all rights, claims and defenses to respond to any enforcement by EPA pursuant to this paragraph or under any authority, except that Respondents shall not contest EPA's authority to enforce this Consent Order, as set forth in Paragraph 5 above.
76. Nothing in this Section VII or any other provision of this Consent Order shall be construed to limit any powers EPA may have under the CWA or any other law or regulation, nor shall they be construed to limit any defenses that Respondent may have under the CWA or otherwise.

VIII. Reservation of Rights

77. EPA reserves all rights, claims, interests, and defenses it otherwise may have, including but not limited to, the right to pursue penalties for noncompliance. Nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Consent Order, including the right to seek injunctive relief and/or the imposition of statutory penalties. Further, nothing in this Consent Order shall limit or otherwise preclude the United States from taking criminal or additional civil judicial or administrative enforcement action against Respondents or any third parties with regard to the Facility pursuant to any federal or state law, regulation or permit condition. Nothing in this Consent Order shall limit or otherwise preclude the United States from taking criminal or additional civil judicial or administrative enforcement action against Respondents for Respondents' failure to comply with any of the requirements of this Consent Order.
78. Nothing herein affects the requirement that Respondents comply with all applicable federal, state, and local laws, regulations and other legal requirements, including but not limited to the applicable provisions in 40 C.F.R. Part 112.
79. Neither EPA nor the United States, by issuance of this Consent Order, assumes any liability for any acts or omissions by the Respondents, or Respondents' employees, agents, contractors, or consultants engaged to carry out any action or activity pursuant to this Consent Order, nor shall EPA or the United States be held out as a party to any contract entered into by the Respondents or by Respondents' employees, agents, contractors, or consultants engaged to carry out the requirements of this Consent Order.
80. No informal advice, guidance, suggestions or comments by EPA regarding reports, plans, specifications, schedules or other submissions by the Respondents or the requirements of this Consent Order will be construed as relieving the Respondents of their obligation to obtain formal approval by EPA when required by this Consent Order, and to comply with the requirements of this Consent Order unless formally modified.

81. Nothing in this Consent Order shall constitute or be construed to be an admission of liability or wrongdoing or an admission of law or fact by Respondents. By entering into this Consent Order, the Respondents do not admit or deny any factual, legal or liability determinations express or implied. Respondents reserve all rights and defenses available regarding liability or responsibility in any proceeding regarding the Respondents other than proceedings, including administrative or civil, to enforce this Consent Order.

IX. Severability

82. If any provision or authority of this Consent Order, or the application of this Consent Order to any party or circumstances, is held by any judicial or administrative authority to be invalid, the application of such provisions to other parties or circumstances and the remainder of the Consent Order shall remain in full force and not be affected thereby.

X. Notice of Termination

83. When EPA determines, after EPA reviews and approves of the documentation demonstrating completion of Work required pursuant to Paragraphs 63 through 67, that the Work specified in this Consent Order has been fully performed, with the exception of any continuing obligations required by this Consent Order, EPA will provide Respondents a Notice of Termination.
84. Termination of this Consent Order shall not terminate Respondents' obligation to comply with any continuing obligations of any federal, state or local law, statute, ordinance, rule or regulation, and all continuing obligations shall continue as they did before the termination of the Consent Order.

XI. Effective Date and Subsequent Modification

85. This Consent Order shall be effective upon Respondents' receipt of a fully executed copy of the Consent Order ("Effective Date"). If the Respondents' date of receipt differs from one another, the later date of receipt shall be the Effective Date.
86. Any reports, plans, specifications, schedules, or other submissions required by this Consent Order are, upon approval by EPA, incorporated into this Consent Order. Any non-compliance with such EPA-approved reports, plans, specifications, schedules, or other submissions shall be considered non-compliance with the requirements of this Consent Order.
87. This Consent Order may be modified or amended by mutual agreement of EPA and the Respondents in a writing executed by the Director of the Enforcement and Compliance Assurance Division and Respondents. Such modifications or amendments shall be effective on the date they are fully executed by the Director of the Enforcement and Compliance Assurance Division or such other date as set by the Director of the


Enforcement and Compliance Assurance Division. Minor modifications to the Consent Order and/or schedules for Work thereto may be approved in writing by EPA's assigned Project Coordinator; in order to memorialize the agreed-upon minor modification(s) in writing and demonstrate the parties' mutual agreement, EPA's Project Coordinator and Respondents' Project Coordinator shall correspond by telephone to discuss the desired minor modification and EPA's Project Coordinator will memorialize the conversation in writing, detailing the specifics of the minor modification agreed to by the parties, and mail a copy to Respondents' Project Coordinator; in the event that Respondents' Project Coordinator objects to the written memorialization of the minor modification, Respondents shall indicate as much in writing within five (5) days of receipt of the written memorialization.

[SIGNATURE PAGES TO FOLLOW]

In Re: Tangier Oil Company, Inc.
EPA Docket No. CWA-03-2020-0061CW

For Respondent: TANGIER OIL COMPANY, INC.

Date: 3/10/20

By: 
Dennis Crockett
President, Tangier Oil Company, Inc.
Facility Operator

In Re: Tangier Oil Company, Inc.
EPA Docket No. CWA-03-2020-0051C/W

For Respondent: BARBARA THOMAS

Date: 3/31/2020

By: *Barbara Thomas*
Barbara Thomas
Facility Owner

For the Complainant:

After reviewing the Consent Order and other pertinent matters, I, the undersigned Director of the Enforcement and Compliance Assurance Division of the United States Environmental Protection Agency, Region III, agree to the terms and conditions of this Consent Order.

By: **KAREN MELVIN** Digitally signed by
KAREN MELVIN
Date: 2020.04.07
13:46:11 -04'00'

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

Attorney for Complainant:
Ziegler,
By: **Lauren** Digitally signed by Ziegler,
Lauren
Date: 2020.04.07
14:11:54 -04'00'

Lauren E. Ziegler
Assistant Regional Counsel
U.S. EPA – Region III

Appendix A: Index of Administrative Record

1. Tangier Oil Company, Inc. Tangier SPCC Plan, dated March 2013.
2. Tangier Oil Company, Inc. Tangier ICP Plan, dated February 2018.
3. U.S. EPA SPCC Field Inspection and Plan Review Checklist, dated October 4, 2018
4. U.S. EPA Facility Response Plan Field Inspection Checklist, dated October 4, 2018
5. Site Photographs from August 15, 2018 Inspection.
6. Inspection Narrative Memo, dated October 3, 2018.
7. U.S. EPA letter to Tangier Oil Company, Inc. Invitation to Enter into Administrative Order on Consent, dated September 30, 2019.
8. Tangier Oil Company, Inc. Response to September 30, 2019 EPA Letter, dated October 9, 2019.
9. Interspec LLC. Integrity Testing of Tangier Oil Company, Inc. Aboveground Tanks, dated June 2019.
10. Lease Agreement for Facility Property between Respondents, dated October 1, 2014.
11. Tangier Oil Company, Inc. Revised Tangier SPCC Plan, dated October 2019.
12. Tangier Oil Company, Inc. Revised Tangier FRP, dated October 2019.
13. Notification to Virginia Department of Environmental Quality, dated August 29, 2017.
14. Determination of Imminent and Substantial Threat to Public Health or Welfare at Tangier Oil Company, Inc. Facility, Tangier Island, Virginia, dated February 24, 2020.

