BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of: PETRO 49, INC. Homer, Alaska Respondent.	DOCKET NO. CWA-10-2025-0136 **CONSENT AGREEMENT** 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), the 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 I 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 $25,000. 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 I civil penalties may not exceed $23,647 per day for each day during which the violation continues, up to a maximum penalty of $59,114. *See also* 90 Fed. Reg. 1375 (January 8, 2025) (2025 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, the EPA issues, and Petro 49, Inc. ("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 the 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)(l)(C), 33 U.S.C. § 1321(j)(l)(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 the 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 31l(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 "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.

3.7. 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.

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

3.9. "Non-transportation-related," as applied to an on-shore facility is defined to include oil storage facilities and 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).

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. Owners or operators of non-transportation-related onshore facilities that, because of their location, could reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters or adjoining shorelines shall prepare and submit a Facility Response Plan (FRP). 40 C.F.R. § 112.20(a).

3.14. A facility could, because of its location, reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters or adjoining shorelines if it transfers oil over water to/from vessels and has a total oil storage capacity greater than or equal to 42,000 gallons; or if it has a total oil storage capacity greater than or equal to 1 million gallons and any one of the following is true: the facility does not have sufficient secondary containment for each aboveground storage area; the facility is located at a distance such that a discharge from the facility could cause injury to fish, wildlife, and sensitive environments; the facility is located at a distance such that a discharge from the facility would

shut down a public drinking water intake; the facility has had, within the past five years, a reportable discharge greater than or equal to 10,000 gallons. 40 C.F.R. § 112.20(f)(1).

General Allegations

3.15. Respondent is a corporation organized under the laws of the State of Alaska and is a "person" under CWA Sections 311(a)(7) and 502(5), 33 U.S.C. §§ 1321(a)(7), 1362(5) and 40 C.F.R. § 112.2.

3.16. At all times relevant to this Consent Agreement, Respondent was the "owner or operator," within the meaning of Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6), and 40 C.F.R. § 112.2 of the Petro Marine Homer Bulk Plant located at 4755 Homer Spit Road in Homer, Alaska (Facility).

3.17. The 1.5-acre Facility, which is located at the southeastern most part of Homer Spit, consists of a tank farm, a warehouse building with offices, a tank truck loading rack (TTLR), and pipelines that lead to Pioneer Dock and five marine headers. The tank farm consists of eight vertical aboveground storage tanks (ASTs) that store avgas, gasoline, diesel fuel, and heating fuels and have an approximate capacity of 1,250,000 gallons. The warehouse is heated by natural gas and houses up to 175 55-gallon drums of lube oil held for sale. The combined volume of all oil-filled containers with capacities of 55 gallons or greater is approximately 1,626,370 gallons, not including mobile refueler capacity.

3.18. 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.

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

3.20. On July 12, 2019, an authorized EPA representative inspected the Facility to determine compliance with Section 311(j) of the CWA, and in particular with the requirements of 40 C.F.R. Part 112 (hereinafter referred to as "the Inspection").

3.21. 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).

3.22. At the time of the Inspection, the Facility had an aggregate AST capacity greater than 1,320 gallons of oil in containers, each with a shell capacity of at least 55 gallons and a total oil storage capacity greater than or equal to 1 million gallons.

3.23. At the time of the Inspection, the Facility had a total onsite storage capacity of 1,626,370 gallons.

3.24. The Facility is located at a distance such that a discharge from the Facility could cause injury to fish, wildlife, and sensitive environments.

3.25. The Facility is located on Homer Spit, which extends approximately 4.5 miles into Kachemak Bay. The tank farm at the Facility is located across Route 1 from Kachemak Bay. The dock and fuel transfer area is located over Kachemak Bay.

3.26. Kachemak Bay is currently used for interstate commerce and is subject to the ebb and flow of the tide. As such, Kachemak Bay is a navigable water within the meaning of CWA § 502(7), 33 U.S.C. § 1362(7).

3.27. At the time of Inspection, the Facility was a non-transportation-related, onshore facility that, because of its location, could reasonably have been expected 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 SPCC regulations at 40 C.F.R. Part 112 and is required to prepare and implement an SPCC Plan.

3.28. At the time of Inspection, the Facility transferred oil over water to or from vessels and had a total oil storage capacity greater than or equal to 42,000 gallons. In addition, the Facility had a total oil storage capacity greater than or equal to 1 million gallons and is located at such a distance that a discharge from the Facility could cause injury to fish and wildlife and

sensitive environments. The Facility is therefore further subject to the regulations at 40 C.F.R. § 112.20 and is required to prepare and submit an FRP.

3.29. At the time of the Inspection, Respondent operated its oil spill prevention program using its February 2018 SPCC Plan and its July 2017 combined Oil Discharge Prevention and Contingency Plan (C-Plan) and Facility Response Plan (FRP).

Violations

SPCC Plan Violations

Count 1 – PE Certification

3.30. 40 C.F.R. § 112.3 requires a regulated facility to prepare in writing and implement an SPCC Plan in accordance with 40 C.F.R. § 112.7. A licensed Professional Engineer (PE) must review and certify the SPCC Plan. 40 C.F.R. § 112.3.(d). Through this certification, the PE must attest, in relevant part, that s/he is familiar with the requirements of Part 112; that s/he or his/her agent have visited and examined the facility; that the SPCC plan is prepared in accordance with good engineering practice including consideration of applicable industry standards and the requirements of 40 C.F.R. Part 112; that the SPCC plan is adequate for the facility; and that procedures for required inspections and testing have been established.

3.31. Respondent included an incomplete PE certification in its 2018 SPCC Plan because the PE failed to attest that he or his agent visited the facility, in violation of 40 C.F.R. § 112.3(d).

Count 2 – SPCC Plan Amendment

3.32. 40 C.F.R. § 112.5(a) requires a regulated facility to amend its SPCC Plan, in accordance with the general requirements in 40 C.F.R. § 112.7 and other sections applicable to the facility, when there is a change in the facility design, construction, operation, or maintenance that materially affects its potential for a discharge as described in 40 C.F.R. § 112.1(b). Amendments made pursuant to 40 C.F.R. § 112.5(a) must be prepared within six months, and

implemented as soon as possible, but not later than six months following the preparation of the amendment.

3.33. Respondent indicated in its FRP that it installed double bottoms in two tanks in 2013, a change that materially affects the Facility's potential for a discharge as described in 40 C.F.R. § 112.1(b). Respondent, however, failed to reflect this reconstruction in its SPCC Plan prior to 2016, in violation of 40 C.F.R. § 112.5(a).

Count 3 – SPCC Plan Description of Discharge or Drainage Controls

3.34. 40 C.F.R. § 112.7(a)(3)(iii) requires that a facility's SPCC Plan address discharge or drainage controls such as secondary containment around containers and other structures, equipment, and procedures for the control of a discharge.

3.35. Respondent stated in its 2018 SPCC Plan that tank farm secondary containment area sumps are automatically pumped to an oil water separator (OWS). During the Inspection, the EPA determined that the sump pumps in the tank farm secondary containment area are manually operated. The failure to accurately describe the sump pumps in the tank farm secondary containment is a violation of 40 C.F.R. § 112.7(a)(3)(iii).

3.36. Respondent's 2018 SPCC Plan, Section 2.2.3, identifies that there is a TTLR and barrel fill station. Based on Respondent's representations, the barrel fill station is located within the TTLR secondary containment area. The 2018 SPCC Plan, however, did not expressly identify where the barrel fill station was located or describe the barrel fill station's discharge or drainage controls, in violation of 40 C.F.R. § 112.7(a)(3)(iii).

3.37. Respondent stated in its 2018 SPCC Plan that the Facility's ASTs have automatic shut-off control valves and clock gauges. During the Inspection, the EPA determined that automatic shut-off control valves and clock gauges are not used at the Facility. The failure to accurately describe whether automatic shut-off control valves and clock gauges are used at the Facility is a violation of 40 C.F.R. § 112.7(a)(3)(iii).

3.38. Respondent stated in its 2018 SPCC Plan that the tank farm secondary containment is a reinforced concrete wall measuring four feet high. During the Inspection, the EPA determined that a substantial length of the secondary containment area wall, including the east and west segments, measures approximately three feet high not four feet high as described. The failure to accurately describe drainage controls such as secondary containment is a violation of 40 C.F.R. § 112.7(a)(3)(iii).

3.39. Respondent stated in its 2018 SPCC Plan that the largest truck compartment that can be filled at the TTLR is 2,000 gallons. During the inspection, Facility personnel stated that a truck with a 3,000-gallon capacity pup tank compartment can be used at the TTLR. The failure to accurately describe the capacity necessary for secondary containment is a violation of 40 C.F.R. § 112.7(a)(3)(iii).

3.40. Respondent stated in its 2018 SPCC Plan that the oil storage capacity of the OWS that serves as secondary containment for the TTLR is 6,000 gallons. During the Inspection, Facility personnel stated that the 6,000 gallons refers to the total physical structure displacement volume of the OWS, not its oil storage and retainment capacity. Accordingly, Respondent failed to identify or describe in its 2018 SPCC Plan the oil storage and retainment capacity of the OWS and could provide no documentation of such during the Inspection, in violation of 40 C.F.R. § 112.7(a)(3)(iii).

Count 4 – Discharge Prediction Analysis

3.41. 40 C.F.R. § 112.7(b) requires that, where experience indicates a reasonable potential for equipment failure, a regulated facility must include in its SPCC Plan a prediction of the direction, rate of flow, and total quantity of oil which could be discharged from the facility as a result of each type of major equipment failure.

3.42. Respondent failed to address in its 2018 SPCC Plan all types of potential major equipment failures. Specifically, Respondent failed to address potential major equipment

failures related to buried and aboveground piping and the cargo on/off loading area, in violation of 40 C.F.R. § 112.7(b).

Count 5 – General Secondary Containment

3.43. 40 C.F.R. § 112.7(c) requires that a regulated facility provide adequate containment and/or diversionary structures or equipment to prevent a discharge. Secondary containment may be either active or passive in design. *Id.*

3.44. Respondent's 2018 SPCC Plan does not address secondary containment for buried piping, including how leaks would be detected and what response would be implemented, in violation of 40 C.F.R. § 112.7(c).

Count 6 – TTLR Secondary Containment

3.45. 40 C.F.R. § 112.7(h)(1) requires that where drainage from a loading/unloading rack does not flow into a catchment basin or treatment facility designed to handle discharges, a regulated facility must use a quick drainage system for tank car or tank truck loading/unloading racks. The facility must design any containment system to hold at least the maximum capacity of any single compartment of a tank car or tank truck loaded or unloaded at the facility.

3.46. Respondent indicated in its 2018 SPCC Plan that the TTLR uses an OWS for secondary containment, but the SPCC Plan failed to identify or describe the oil storage and retainment capacity of this OWS. Moreover, the Facility has no ability to monitor or independently test whether the OWS's ball-float shut-off valve is operable. Accordingly, Respondent failed to confirm that the OWS can hold at least the maximum capacity of any single compartment of a tank car or tank truck loaded or unloaded at the facility, in violation of 40 C.F.R. § 112.7(h)(1).

Count 7 – TTLR Procedures

3.47. 40 C.F.R. 112.7(h)(3) requires that a regulated facility, prior to filling and departure of any tank car or tank truck, closely inspect the lowermost drain and all outlets of

such vehicles for discharges, and if necessary, ensure that they are tightened, adjusted, or replaced to prevent liquid discharge while in transit. 40 C.F.R. § 112.7(a)(1) requires that SPCC Plans discuss conformance with this requirement.

3.48. Respondent's 2018 SPCC Plan addressed checking a tank car or tank truck for leaks prior to filling and departure, but does not discuss inspecting the lowermost drain and all outlets of such vehicles for discharges, and if necessary, ensuring that they are tightened, adjusted, or replaced to prevent liquid discharge while in transit, in violation of 40 C.F.R. § 112.7(a)(1), and 40 C.F.R. § 112.7(h)(3).

Count 8 – Brittle Fracture Evaluation

3.49. 40 C.F.R. § 112.7(i) requires that if a field-constructed aboveground container at a regulated facility undergoes a repair, alteration, reconstruction, or a change in service that might affect the risk of a discharge or failure due to brittle fracture or other catastrophe, or if a field-constructed aboveground container has discharged oil or failed due to brittle fracture failure or other catastrophe, the facility must evaluate the container for risk of discharge or failure due to brittle fracture or other catastrophe and take appropriate action, as necessary. 40 C.F.R. § 112.7(a)(1) requires that SPCC Plans discuss conformance with this requirement.

3.50. Respondent's 2018 SPCC Plan discusses 40 C.F.R. § 112.7(i) in Section 3.7, but does not include information to identify whether any of the ASTs at the Facility are field-constructed and therefore subject to the brittle fracture evaluation requirements in 40 C.F.R. § 112.7(i). This information was not provided during the Inspection. The failure of Respondent's 2018 SPCC Plan to identify whether any ASTs at the Facility are field-constructed and therefore subject to the brittle fracture evaluation requirements is a violation of 40 C.F.R. § 112.7(a)(1) and 40 C.F.R. § 112.7(i).

Count 9 – Facility Drainage from Undiked Areas

3.51. 40 C.F.R. § 112.8(b)(3) requires that regulated facility drainage systems from

undiked areas with a potential for a discharge flow into ponds, lagoons, or catchment basins designed to retain oil or return it to the facility. 40 C.F.R. § 112.8(b)(4) provides that if facility drainage is not engineered in accordance with 40 C.F.R. § 112.8(b)(3), the final discharge of all ditches inside the facility must be equipped with a diversion system that will, in the event of an uncontrolled discharge, retain oil in the facility. 40 C.F.R. § 112.7(a)(1) requires that SPCC Plans discuss conformance with this requirement.

3.52. The Facility's cargo loading/unloading area drains to a sump and then to an OWS and therefore is not engineered in accordance with 40 C.F.R. § 112.8(b)(3). Thus, pursuant to 40 C.F.R. § 112.8(b)(4), the cargo loading/unloading area must be equipped with a diversion system that will, in the event of an uncontrolled discharge, retain oil at the Facility. Respondent's 2018 SPCC Plan does not describe the storage/retention capacity of the OWS at the cargo loading/unloading area. In addition, at the time of the Inspection, the Facility could not monitor or independently test whether the OWS ball-float shut-off valve was operable. Accordingly, Respondent failed to determine whether oil would be retained in the Facility in the event of an uncontrolled discharge, in violation of 40 C.F.R. §§ 112.7(a)(1), 112.8(b)(3), and (b)(4).

Count 10 – Secondary Containment

3.53. 40 C.F.R. § 112.8(c)(2) requires that all bulk storage tank installations be constructed to provide a means of secondary containment for the entire capacity of the largest single container and sufficient freeboard to contain precipitation.

3.54. Respondent failed to adequately describe in its 2018 SPCC Plan the actual sized secondary containment capacity of the Facility's bulk tank farm. In addition, at the time of the Inspection, the Facility had no documentation to show any secondary containment area calculations (e.g., all secondary containment area wall segment heights, displacement volume determinations) for the bulk tank farm and incorrectly stated the height of the secondary containment concrete wall, in violation of 40 C.F.R. § 112.8(c)(2).

Count 11 - Piping

3.55. 40 C.F.R. § 112.8(d)(1) requires that a regulated facility provide buried piping that is installed or replaced on or after August 16, 2002, with a protective wrapping and coating. The facility must also cathodically protect such buried piping installations or otherwise satisfy the corrosion protection standards for piping in Part 280 or a State approved program. *Id*. If a section of buried line is exposed for any reason, the facility must carefully inspect it for deterioration and, if it finds corrosion damage, undertake additional examination and corrective action as indicated by the magnitude of the damage. *Id.* Further, 40 C.F.R. § 112.8(d)(3) requires a facility to properly design pipe supports to minimize abrasion and corrosion and allow for expansion and contraction. 40 C.F.R. § 112.8(d)(4) requires a facility to regularly inspect all aboveground valves, piping, and appurtenances. The facility must also conduct integrity and leak testing of buried piping at the time of installation, modification, construction, relocation, or replacement. *Id.* 40 C.F.R. § 112.8(d)(5) requires a facility to warn all entering vehicles to ensure that no vehicle will endanger aboveground piping or other oil transfer operations. 40 C.F.R. § 112.7(a)(1) requires that SPCC Plans discuss conformance with this requirement.

3.56. Respondent's 2018 SPCC Plan does not expressly address or incorporate the requirements of 40 C.F.R. § 112.8(d)(1) and § 112.8(d)(3)-(d)(5) or describe how they are implemented with Facility-specific discussions. For example, the 2018 SPCC Plan does not address buried piping protection and required procedures if buried piping is exposed; pipe support abrasion/corrosion prevention; procedures for inspection of aboveground valves, piping, and appurtenances; and integrity and leak testing of buried piping. At the time of the Inspection, the Facility also did not have warning signs in areas of public access, including the TTLR. The failure to address these requirements and describe how they are implemented at the Facility is a violation of 40 C.F.R. §§ 112.7(a)(1), 112.8(d)(1), and 112.8(d)(3)-(d)(5).

FRP Violations

Count 12 – FRP Revision and Resubmission

3.57. 40 C.F.R. § 112.20(d)(1)(v) provides that a regulated facility shall revise and resubmit revised portions of its FRP within 60 days of each facility change that materially may affect the response to a worst-case discharge (WCD), including any changes that materially affect the implementation of the response plan.

3.58. In January 2019, the Land's End Resort initiated construction of a new 17,500 square foot addition on a bay-side lot between the hotel and an existing condominium development. The Facility's 2017 C-Plan/FRP indicated that a WCD from the Facility could flow through this lot on which the addition was constructed. In addition, this lot was part of the Facility's FRP response area. Outside construction of the new resort was substantially complete by the time of the Inspection. During the Inspection, Facility personnel acknowledged that the new construction triggered the need to revise and resubmit the FRP. Respondent, however, failed to timely submit a revised FRP, in violation of 40 C.F.R. § 112.20(d)(1)(v).

Count 13 – Training Program

3.59. 40 C.F.R. § 112.21(a) requires that a regulated facility develop and implement a facility response training program and a drill/exercise program that satisfies the requirements of this section. The facility must describe these programs in its FRP. 40 C.F.R. § 112.20(h)(8). 40 C.F.R. § 112.20(h)(8) also requires that the FRP include a checklist and record of inspections for tanks, secondary containment, and response equipment; a description of the drill/exercise program to be carried out under the FRP; description of the training program to be carried out under the FRP; and logs of discharge prevention meetings, training sessions, and drills/exercises.

3.60. Respondent indicated in its 2017 C-Plan/FRP that its response training program would follow the National Preparedness for Response Exercise Program (PREP) Guidelines. The 2016 PREP Guidelines provide that one incident management team (IMT) exercise per

triennial cycle must involve a WCD. The Facility conducted the last WCD exercise in 2015 and therefore failed to conduct an IMT WCD exercise for more than three years, in violation of 40 C.F.R. § 112.21(a).

3.61. Respondent's failure to comply with the requirements of 40 C.F.R Part 112 subjects it to civil penalties pursuant to Section 311(b)(6)(B)(ii) of the CWA, 33 U.S.C. § 321(b)(6)(B)(ii).

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), the 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, the EPA has determined that an appropriate penalty to settle this action is $47,000 ("Assessed Penalty").

4.4. Respondent consents to the assessment of the Assessed Penalty set forth in Paragraph 4.3 and agrees to pay the total Assessed Penalty within 30 days after the date of the Final Order ratifying this Agreement is filed with the Regional Hearing Clerk ("Filing Date").

4.5. Respondent shall pay the Assessed Penalty and any interest, fees, and other charges due using any method, or combination of appropriate methods, as provided on the EPA website: https://www.epa.gov/financial/makepayment. For additional instructions see: https://www.epa.gov/financial/additional-instructions-making-payments-epa.

4.6. When making a payment, Respondent shall:

4.6.1. Identify every payment with Respondent's name and the docket number of this Agreement, CWA-10-2025-0136,

4.6.2. Concurrently with any payment or within 24 hours of any payment, Respondent shall serve proof of payment electronically to the following person(s):

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101
R10_RHC@epa.gov

Richard Cool
U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101
Cool.Richard@epa.gov

and

U.S. Environmental Protection Agency
Cincinnati Finance Center
Via electronic mail to:
CINWD_AcctsReceivable@epa.gov

"Proof of payment" means, as applicable, a copy of the check, confirmation of credit card or debit card payment, or confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with the appropriate docket number and Respondent's name.

4.7. Interest, Charges, and Penalties on Late Payments. Pursuant to 33 U.S.C. § 1321(b)(6)(H), 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to timely pay any portion of the Assessed Penalty per this Agreement, the entire unpaid balance of the Assessed Penalty and all accrued interest shall become immediately due and owing, and

EPA is authorized to recover the following amounts.

4.7.1. Interest. Interest begins to accrue from the Filing Date. If the Assessed Penalty is paid in full within thirty (30) days, interest accrued is waived. If the Assessed Penalty is not paid in full within thirty (30) days, interest will continue to accrue until the unpaid portion of the Assessed Penalty as well as any interest, penalties, and other charges are paid in full. Interest will be assessed at prevailing rates, per 33 U.S.C. § 1321(b)(6)(H). The rate of interest is the IRS standard underpayment rate.

4.7.2. Handling Charges. The United States' enforcement expenses including, but not limited to, attorneys' fees and costs of collection proceedings.

4.7.3. Late Payment Penalty. A twenty percent (20%) quarterly non-payment penalty.

4.8. Late Penalty Actions. In addition to the amounts described in the prior Paragraph, if Respondent fails to timely pay any portion of the Assessed Penalty, interest, or other charges and penalties per this Consent Agreement, the EPA may take additional actions. Such actions the EPA may take include, but are not limited to, the following.

4.8.1. Refer the debt to a credit reporting agency or a collection agency, per 40 C.F.R. §§ 13.13 and 13.14.

4.8.2. Collect the debt by administrative offset (i.e., the withholding of money payable by the United States government to, or held by the United States government for, a person to satisfy the debt the person owes the United States government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, per 40 C.F.R. Part 13, Subparts C and H.

4.8.3. Suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with the EPA or engaging in programs the EPA sponsors or funds, per 40 C.F.R. § 13.17.

4.8.4. Request that the Attorney General bring a civil action in the appropriate district court to recover the full remaining balance of the Assessed Penalty, in addition to interest and the amounts described above, pursuant to 33 U.S.C. § 1321(b)(6)(H). In any such action, the validity, amount, and appropriateness of the Assessed Penalty shall not be subject to review.

4.9. Allocation of Payments. Pursuant to 31 C.F.R. § 901.9(f) and 40 C.F.R. § 13.11(d), a partial payment of debt will be applied first to outstanding handling charges, second to late penalty charges, third to accrued interest, and last to the principal that is the outstanding Assessed Penalty amount.

4.10. Tax Treatment of Penalties. Penalties, interest, and other charges paid pursuant to this Agreement shall not be deductible for purposes of federal taxes.

4.11. 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.

4.12. 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.

4.13. Except as described in Subparagraph 4.7.2, above, each party shall bear its own fees and costs in bringing or defending this action.

4.14. 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. By signing this Consent Agreement, Respondent waives any rights or defenses that Respondent has or may have for this matter to be resolved in federal court, including but not limited to any right to a jury trial, and waives any right to challenge the lawfulness of the final order accompanying the Consent Agreement.

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

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

DATED: _____

FOR RESPONDENT:

Matthew Lindsey, Executive Vice President
Petro 49, Inc.

FOR COMPLAINANT:

EDWARD KOWALSKI
Digitally signed by EDWARD KOWALSKI
Date: 2025.09.02 11:25:01 -07'00'

Edward J. Kowalski
Director
Enforcement and Compliance Assurance Division
EPA Region 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of: PETRO 49, INC. Homer, Alaska Respondent.	DOCKET NO. CWA-10-2025-0136 **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 the 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 the 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.

GARTH WRIGHT Digitally signed by GARTH WRIGHT
Date: 2025.09.08 14:27:02 -07'00'

GARTH WRIGHT
Regional Judicial Officer
EPA Region 10